IN THE SUPREME COURT OF INDIA

[CIVIL ORIGINAL JURISDICTION]

WRIT PETITION (C) NO._____OF 2021

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

IN THE MATTER OF:

THE INDIAN FEDERATION OF APP-BASED TRANSPORT WORKERS, (IFAT) & ORS …PETITIONERS

VERSUS

UNION OF INDIA & ORS. … RESPONDENTS

WITH

I.A NO. OF 2021: APPLICATION FOR INTERIM RELIEF

I.A NO. OF 2021: APPLICATION FOR EXEMPTION FROM FILING DULY AFFIRMED AFFIDAVIT

PAPER BOOK

(For Index, please see inside)

[VOLUME -I (Page A to 262)]

ADVOCATE FOR THE PETITIONERS: NUPUR KUMAR

RECORD OF PROCEEDINGS

S. NO. DATE OF RECORD OF PROCEEDINGS PAGES

INDEX

Sr. No.	Particulars	Page Nos. of part to which it belongs		Remarks
		Part 1 (contents of paper book)	Part 2 (Contents of file alone)	
	Court Fees	Rs.	Rs.	
1.	Listing Proforma	A-A1	A-A1	
2.	Cover Page of Paper Book		A2	
3.	Index of Record of Proceedings		A3	
4.	Defect List			
5.	Note Sheet		NS1-	
6.	Synopsis and List of Dates	**B - L**		
7.	Writ Petition with Affidavit	**1 - 74**		
8.	**APPENDIX:** Relevant provisions of_The 'Unorganised Workers' Social Welfare Security Act, 2008'	**75 - 76**		
9.	**ANNEXURE P-1:** True copy of a specimen Lease Agreement executed between Ola and a driver	**77 – 125**		
10.	**ANNEXURE P-2:** True copy of Delivery partner terms and conditions of Zomato	**126 - 163**		

11.	**ANNEXURE P-3:** True copy of the Swiggy Agreement	**164 - 187**		
12.	**ANNEXURE P-4** True copy of the Ola Privacy policy	**188 - 203**		
13.	**ANNEXURE P-5** True copy of the COVID Terms and Conditions and Privacy notice by Ola dated 25.05.2020	**204 - 219**		
14.	**ANNEXURE P-6** True copy of the judgment in the matter of Uber BV and other v/s Aslam and others dated 19th February 2021 passed by the United Kingdom Supreme Court reported in [2021]UKSC5	**220 - 262**		

(VOLUME II from pages 263 to 576)

SYNOPSIS

The present petition is being filed raising questions of the great public and constitutional importance namely whether the 'Right to Social Security' is a guaranteed fundamental right for all working people- whether employed in the formal or informal sectors. It is the case of the Petitioners herein who are commonly known as "gig workers" and "platform workers" that they are in an employment relationship with the aggregators and hence covered by the definition of 'workman' within the meaning of all the applicable social security legislations including: The Workmen's Compensation Act, 1923; The Industrial Disputes Act, 1947; The Employee's State Insurance Act, 1948; Employee's Provident Funds and Miscellaneous Provisions Act, 1952; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972 and 'Unorganised Workers' Social Welfare Security Act, 2008'.

In any event, it is a case of the Petitioners that they are "unorganized workers" within the meaning of the *'Unorganised Workers' Social Welfare Security Act, 2008'* **("UW Act")** and hence for that reason also they are entitled to registration and social security under the said Act.

The failure of the State to register them as "unorganized workers" or to provide them social security under the existing law is violation of their rights under Article 21 of the Constitution of India (**"CoI"**) namely: the right to work, the right to livelihood; right to decent and fair conditions of work. It is also a denial of the right to equality before law and equal

protection of laws inasmuch as they are similarly situated with all other workers under the applicable social security laws including the Act of 2008 thereby violating Article 14 of the CoI.

It is the further case of the Petitioners that the denial of social security to the said "gig workers" and the "platform workers" has resulted in their exploitation through forced labour within the meaning of Article 23 of the CoI. "Gig workers" or "app workers" or "platform workers" work in what has come to be known as workers who work in the "informal economy". The informal economy accounts for 1/3rd the Gross Domestic Product ("**GDP**") and 70% of employment in an average developing country. A substantial number of workers including the wageworkers and unorganized workers work and generate value in the said economy.

In 2008, Parliament enacted the UW Act to provide the social security and welfare of unorganized workers. This Act provides for the registration of the workers of the unorganised sector in order to make them eligible for the social security benefit in terms of the scheme framed by the Central Government and the State Governments. The workers who otherwise are not covered by the legislations referred to above are extended benefit under the UW Act 2008. However, "gig workers" or "app workers" or "platform workers" continue to be deprived of the benefit even under the UW Act, 2008.

Pertinently, Parliament enacted 'The Code on Social Security, 2020'**("Code of 2020")** in order to amend and

consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors. This Code seeks to replace the number of existing labour legislations including the UW Act, 2008. It received the President's Assent on 29.09.2020. The Code of 2020 in its chapter IX under heading *"Social Security For Unorganised Workers, Gig Workers and Platform Workers"* seeks to provide for the framing of schemes for unorganized workers. Thus, it is for the first time that the legislature recognized "Gig Workers" and "Platform Workers" as unroganised workers. It is thus evident that it is the policy of the Union of India to provide social security to the "gig workers" and the "platform workers". However, this Code of 2020 is yet to be given effect.

At present these workers are not being provided the benefit of social security under any of the labour legislations-organized or unorganised. This defeats the very purpose of the social-welfare legislations, which seek to ensure social security-a facet the right to work and livelihood on decent conditions of work under Article 21 of CoI, to the workers. These legislations have been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the workers.

The inaction on part of the State in ensuring social security to the "gig workers" and "platform workers" notwithstanding the existence of the said laws, is the clearest violation of Article 21 apart from a violation of Article 14 and Article 23 of the Constitution.

This Hon'ble Court in '***Olga Tellis v. Bombay Municipal Corpn.', [(1985) 3 SCC 545],*** held that right to livelihood is part of Article 21 of the Constitution in the following terms-

> *".....An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life..."*
>
> (Emphasis added)

The Right to Livelihood includes the right to work on decent and fair conditions of work. Recognizing that social security is an integral part of the Right to work and livelihood, Parliament has enacted aforesaid legislations to give effect to the said rights. Hence, the state is duty bound to ensure that the right guaranteed under the said statutes are de-jure and de-facto made available to all working people.

This Hon'ble Court in '***Gujarat Mazdoor Sabha v. State of Gujarat', [(2020) 10 SCC 459]*** held *"A worker's right to life cannot be deemed contingent on the mercy of their employer or the State".*

The Respondents companies herein have been claiming that there exists no contract of employment between them and the Petitioners and that their relationship with the Petitioners are in nature of partnership. If such a claim were to be accepted, this would be inconsistent with the purpose of social-welfare legislations cited above. It is submitted that the Respondent companies, which owns the Apps, exercises complete supervision and control over the manner and method of the work with those who are allowed to register on the said Apps. The mere fact that their employers call themselves "Aggregators" and enter into the so-called "partnership agreements" does not take away the fact that there exists a *jural* relationship of employer and employee; master and servant and worker within the meaning of all applicable laws. The said contracts are a mere devise to disguise the nature of relationship, which is *de-jure*, and *de-facto* relationship of employer and worker being a contract of employment.

Recently, the UK Supreme Court rejecting the appeal of Uber BV against the order of an Employment Tribunal held *"...It is the very fact that an employer is often in a position to dictate such contract terms and that the individual performing the work has little or no ability to influence those terms that gives rise to the need for statutory protection in the first place. The efficacy of such protection would be seriously undermined if the putative employer could by the way in which the relationship is characterized in the written contract determine, even prima facie, whether or not the other party is to be classified as a worker. Laws such as the National Minimum Wage Act were manifestly enacted to protect those whom Parliament considers to be in need of protection and not just those who are designated by their employer as qualifying for it".*

The said observations apply *mutatis mutandis* to the Petitioners in the present case. In fact, Uber is a multi-national entity which functions through companies incorporated in different parts of the world but on the same conditions with its employees worldwide. The terms of condition by Uber, Ola, Zomato and Swiggy with their drivers or delivery staff are almost the same.

In any event the said contracts are fixed-term employment contract in the nature of ‘take it or leave it’. And the workmen offering their services have no choice but to sign the said contracts for their livelihood. The said contracts are also opposed to public policy.

Article 25(2) of Universal Declaration of Human Rights (UDHR), 1948 assures that everyone has the right to a standard of living adequate for the health and well being of himself and of his family including medical care, sickness, and disability. Article 7(b) of the International Convention on Economic, Social and Cultural Rights, 1966 recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, safe and healthy working conditions. India is a party to these Conventions and hence duty bound to enact legislations and implement them in relation to the said “Gig workers”. Denial of the social security to the “gig workers” and the “platform workers” is an affront to the workers' right to life and right against forced labour that are secured by Articles 14, 21 and 23 of the Constitution of India .

Hence the present Writ petition.

LIST OF DATES

Dates	Particulars
2008	The Unorganized Workers' Social Security Act, 2008 (**'UW Act, 2008'**) was enacted in 2008 with the sole purpose of providing social security to the unorganized workforce that notably constituted more than 94% of the total employment in the country.
09.08.2019	The Motor Vehicles (Amendment) Act, 2019 was enacted according to which all issues pertaining to "Aggregators" would be resolved under the Information Technology Act, 2000. The Aggregators have to register themselves under the Information Technology Act, 2000.
04.03.2020	In France, the Supreme court has recognized the right of an Uber driver to be considered as an "Employee" in its decision, which upheld the ruling of the Paris Court of Appeals dated 10th January 2019. Now, a contract between Uber and its 28000 drivers in France is recognized as an "Employment Contract".
27.03.2020	Statement on Development and Regulatory policy issued by Reserve Bank India under which all commercial banks (including regional rural banks,

	small finance banks and local area banks), cooperative banks, All India Financial institutions and NBFCs (including housing and finance companies and micro- finance institutions were permitted to allow a moratorium of three months on the payment of instalments in respect of all term loans outstanding as on March 1, 2020
27.03.2020	Circular no. DOR no. BP. BC. 47/21.04.048/2019-20 was issued by the Reserve Bank of India under which all commercial banks, cooperative banks, All India financial institutions and NBFCs were permitted to grant a moratorium of three months on payment of all installments falling due between March 1, 2020 and May 31, 2020.
23.05.2020	Circular no. DOR. No. BP. BC. 71/21/04.048/2019-20 was issued by the Reserve Bank of India under which all lending institutions mentioned in the previous circulars were permitted to extend the moratorium by a further period of three months i.e. from June 1, 2020 to August 31, 2020 on the payment of all installments in respect of term loans. Interest was allowed to continue to accrue on the outstanding portion of the term loans during the moratorium.
06.08.2020	Circular no. DOR.No.BP.BC/4/21.04.048/2020-21 was issued by the Reserve Bank of India.
27.11.2020	Central Government issued the Motor Vehicle

Aggregators Guidelines 2020 which were framed pursuant to the Motor Vehicles Amendment Act, 2019, however these guidelines have not been implemented in any state/ Union Territory.

29.09.2020 President gave assent to the 'Social Security Code, 2020 **("Social Security Code")** which amend and consolidates the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors. This Code seeks to replace the number of existing labour legislations including the UW Act, 2008. The Social Security Code in its chapter IX under heading *"Social Security For Unorganised Workers, Gig Workers and Platform Workers"* seeks to provide for the framing of schemes for unorganized workers. However, this Code of 2020 is yet to be given effect.

19.02.2021 In United Kingdom, decision of ***Uber BV v/s Aslam*** dated 19th February 2021 was pronounced wherein the UK Appeals Court examined the nature of work done by Uber drivers and came to a conclusion that a driver working for Uber is a "worker" working under a "workers contract", and thus entitled to all benefits such as minimum wages etc.

23.03.2021 The Hon'ble Supreme Court of India decided the

matter of Small Scale Industrial Manufacturers' Association v/s Union of India reported in 2021 SCC Online SC 246 being Writ Petition (C) no. 476 of 2020 and ordered that charging of penal interest/ interest on interest/ compound interest during the moratorium period is not being levied as the Central Government has come out with a policy decision after the publication of RBI circulars dated 27.03.2020, 06.08.2020 and 05.05.2021 by which it has been decided not to charge interest on interest on loans upto Rs. 2 Crores. The Hon'ble Supreme Court also directed what whatever amount has been recovered by way of interest on interest/ compound interest/ penal interest shall be refunded and/or given credit for in the next installment of the loan account.

07.04.2021 Circular no. DOR.STR.REC.4/21.04.048/2021-22 was issued by the Reserve Bank of India under which all lending institutions have been called upon to put in place a Board approved policy to refund/adjust the 'interest on interest' charged to borrowers during the moratorium period.

05.05.2021 Circular no. DOR.STR.REC.12/21.04.048/2021-22 was issued by the Reserve Bank of India

May 2021 Second wave of pandemic hit the nation.

29.06.2021 This Hon'ble Court decided the matter of 'Bandhua Mukti Morcha v/s Union of India & Ors'

in Suo Moto Writ Petition (C) No. 6 of 2020 under which the plight of persons (including unorganised workers) not holding ration card were duly recorded and the Central Government was directed to ensure registration of unorganised workers to be completed by 31.12.2021 so that benefits of social security could inure to them.

26.08.2021 E-SHRAM portal was launched in accordance with directions issued by the Hon'ble Supreme Court in

20.09.2021 Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA

[CIVIL ORIGINAL JURISDICTION]

WRIT PETITION (CIVIL) NO._____ Of 2021

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:-

1. **The Indian Federation of App-based Transport Workers, (IFAT),** a registered union representing App based Transport workers, through its Secretary Shaik Salauddin having office at 2-3-645/4/A/108, Prem Nagar, Amberpet, Hyderabad, Telangana 500 013

2. **Tulasi Jagdish Babu,**
   Age 61 years, occupation: taxi-driver with ANI Technologies Pvt. Ltd. ("**Ola**") having address at D. no. 27-64/8/66/1, Road no. 9 Ramabrahma Nagar, Safilguda, Neredment, RK Puram Post, Secunderabad 500056

3. **Kaushar Khan,**
   Aged 28 years, occupation: unemployed, having address at B Block, House no. B-798, Gali no. 8, Nathu Colony, Nathupura near Muhammadi Masjid, New Delhi 1100084

…PETITIONERS

Versus

1. **Union of India**
   Through the Secretary, Ministry of Commerce and Industry**,** Udyog Bhawan, New Delhi 110107

2. Union of India through the Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi 110001

3. Union of India through Secretary, Ministry of Consumer Affairs, Food and Public Distribution, Krishi Bhawan, New Delhi 110001

4. Union of India, through Secretary, Ministry of Electronics and Information Technology, Electronics Niketan, 6 CGO Complex, Lodhi Road, New Delhi 110003

5. Union of India, through Secretary, Ministry of Road Transport and Highways**,** Transport Bhawan, 1 Parliament Street, New Delhi 110001

6. M/s. ANI Technologies Pvt. Ltd., company having registered office at Regent Insignia, #414, 3rd Floor, 4th Block, 17th Main, 100 Feet road, Koramangala Bangalore Karnataka 560034

7. Uber India Systems Pvt. Ltd., company having registered office at Regus Business Platinum Centre Pvt. Ltd. Level 13, Platinum Techno Park, Plot no. 17/18, Section 30 A, Vashi Navi Mumbai Maharashtra 400705

8 Bundl Technologies Pvt. Ltd, company having registered office at No. 55, Sy no. 8-14, Ground Floor, I&J Block, Embassy Tech Village, Outer ring road, Devarbisanahalli Bengaluru 560103

9. Zomato Ltd., company having registered office at ground floor 12A, Meghdoot Nehru Place New Delhi 110019

…RESPONDENTS

WRIT PETITION UNDER ARTICLE 32 OF CONSTITUTION FOR ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION IN THE NATURE OF MANDAMUS DIRECTING THE RESPONDENTS TO RECOGNIZE ALL APP-BASED WORKERS AS AN "UNORGANIZED WORKER" UNDER SECTION 2(M) OF THE UNORGANISED WORKERS' SOCIAL WELFARE SECURITY ACT, 2008 AND ENSURING SOCIAL SECURITY TO THE PETITIONERS, FAILURE OF WHICH HAS RESULTED IN A CLEAR VIOLATION OF THE CONSTITUTIONALLY GUARANTEED RIGHTS UNDER ARTICLE 14, 21 AND 23 AND THEIR RIGHT TO WORK ON DECENT AND FAIR CONDITIONS OF WORK.

To,

THE CHIEF JUSTICE OF INDIA AND
HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONERS ABOVE NAMED.

MOST RESPECTFULLY SHOWETH:

1. The Petitioners have approached this Hon'ble Court under Article 32 of the Constitution against violation of their fundamental rights to equality under Article 14; right to life, the right to work, the right to livelihood and right to decent and fair conditions of work under Article 21 and the right against exploitation under Article 23 of the Constitution of India on their own behalf and other "Gig Workers" similarly placed. The inaction of the Respondents 1 to 5 in not

ensuring social security to the Petitioners has resulted in the clear violation of the constitutionally guaranteed rights under Article 14, 21 and 23 and their right to work on decent and fair conditions of work. Every working person is entitled to social security under law and Respondents No. 1 to 5 have violated the rights of the Gig workers/ App-based workers to social security and all the Respondents, jointly and severally have violated the rights of the Gig workers/ App-based workers in that the denial of fair conditions of work is a form of exploitation of labour and hence forced labour within the meaning of Article 23 of CoI.

2. That the Petitioners herein are approaching this Hon'ble Court directly, without availing the jurisdiction of the Hon'ble High Court under Article 226 of the Constitution as the issues involved in the present writ petition have a pan India ramification and requires an authoritative pronouncement by this Hon'ble Court on the issues sought to be respectfully agitated vide the present petition. It is respectfully prayed that this Hon'ble Court, as the highest Constitutional Court in the country, may adjudicate the instant writ petition and in the process lay down the law which would be applied all across the country under Article 141 of the Constitution of India and which law would be of critical importance to safe guard the Petitioners' fundamental rights under the Constitution of India.

ARRAY OF PARTIES:-

3. Petitioner No. 1 is a registered union and federation of Trade Unions representing App-based transport and delivery workers and has worked extensively to champion the labour rights of the workers

driving and riding for companies like Respondent nos. 6 to 9. Petitioner no. 1 has an active membership of over 35000 drivers and delivery partners in 12 cities across India and has been taking steps towards organizing, collectivizing, campaigning and collaborating with unions and other civil society organizations aiming for decent work conditions, policy formulation and regulation through advocacy and labour activism. Petitioner no. 1 has also been in talks with the necessary authorities, and with the aggregators of communicating the grievances of App based drivers to them. Petitioner no. 1 has is concerned with the violation of fundamental rights of its members who are the App based transport and delivery workers and have been adversely affected by the exploitative business practices of Respondent nos. 6 to 9.

4. The Petitioner 2 is an adult Indian inhabitant and has been an App-based driver with Respondent no. 6 since 2017 and has been a victim of the exploitative practices followed by Respondent no. 6. Petitioner no. 2 is concerned with the challenge in this Petition.

5. The Petitioner no 3 is an adult Indian inhabitant, and is currently unemployed. She last worked as a driver with Respondent no. 6 and 7. After the second wave of the pandemic hit, her vehicle was illegally and/or without any intimation to her, auctioned off by a lending institution contrary to the guidelines issued by this Hon'ble Court. Petitioner no. 3 is concerned with the challenge in this Petition.

6. Respondent no. 1 is the Ministry of Commerce and Industry under the Union of India through its Secretary. Respondent no. 2 is

Ministry of Labor and Employment under the Union of India, through its Secretary. Respondent no. 3 is the Ministry of Consumer Affairs, Food and Public distribution under the Union of India through its Secretary. Respondent no. 4 is the Ministry of Electronics and Information Technology under the Union of India through its Secretary. Respondent no. 5 is the Ministry of Road Transport and Highways under the Union of India through its Secretary.

7. Respondent no. 6 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at the address mentioned in the cause title. Respondent no. 6 is an Indian company rides sharing aggregator-offering services that include ride-hailing and food delivery. It is hereinafter referred to as "Ola".

8. Respondent no. 7 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at the address mentioned in the cause title. Respondent no. 7 is an aggregator company that provides services of ride-hailing and food delivery. It is hereinafter referred to as "Uber". It is part of a multinational chain of Companies which market their services under the brand "Uber" and follow the same global policies with their App based workers as indicated below.

9. Respondent no. 8 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at the address mentioned in the cause title. Respondent no. 8 is India's largest online food ordering and delivery platform, and as of March 2019,

was operating in 100 Indian cities. It is hereinafter referred to as "Swiggy".

10. Respondent no. 9 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at the address mentioned in the cause title. Respondent no. 9 is an Indian multinational food delivery platform and as of 2019, its services were available in approximately 24 countries. It is hereinafter referred to as "Zomato".

FACTS IN BRIEF:-

11. The facts leading to the fling of the present Writ Petition are as follows:-

11.1. Looking 10 years back from now, there were no food delivery services; and/or ride sharing mobile applications and/or other services that are today easily accessible through mobile applications. In fact, there existed no mobile/internet platforms on which individuals could seek work through which they could earn wages outside the traditional organized employment. However, today the situation is very different. The "Gig Economy", has sprung up in the last ten years and has expanded manifold, not just in India, but across the world. It is part of the informal economy; that occupies a sizeable share of the workforce allocation in India. Workers in the "on location" platform" are often known as platform workers. Platform workers comprises workforce that performs work and/or participate in work through a web-based platform. They work to provide services such as passenger transport (ride-hailing) food and

goods delivery, logistics services, healthcare professionals, travel services, e-market place for wholesale/retail of goods and services and every day rush couriers or utility service providers, all of whom operate as trough platforms owned and/or operated by Aggregators. As of today, according to a study titled "The Long Shadow of Informality, Challenges and Policies" authored by the staff of the World Bank Group, published on 2021, the informal economy accounts for 1/3rd the Gross Domestic Product ("GDP") and 70% of employment in an average developing country. The Petitioners crave leave to refer and rely upon the said study as and when required.

11.2. Unfortunately, till date, workers who run the Gig Economy, i.e. gig workers and platform workers have not been given the benefit of any social security laws in India. In our country, a plethora of laws exist that seek to give social security to every person, however, gig workers and platform workers remain excluded till date. This petition is concerned with such workers providing ride-sharing/hailing services, food and grocery delivery services, who have been collectively referred to as "App-based-workers" who must either be considered "workers" within the meaning of relevant social security laws or in any event, in the alternative, they fall under the category of "Unorganised workers" in the organized sector not covered by the legislations referred to in Schedule II to the Unorganised Workers' Social Welfare Security Act, 2008 (**"UW Act, 2008"**) and seek appropriate directions to remedy the position of inequality and to being them at par with other "workers". It is submitted that failure to cover them both under existing laws in Schedule II to the UW Act, 2008 as also the UW Act of 2008 itself

is a gross denial of equal protection of laws and equality before law, and hence a violation of Article 14 and the right to work on decent and fair conditions of work under Article 21 of the Constitution.

11.3. The Petition seeks an appropriate declaration that they are "unorganized workers" and/or "wage workers" within the meaning of the UW Act, 2008 and hence entitled to be registered under the said Act. In the alternative, the Petitioners seek a declaration that the said existing social security laws as mentioned above cover them since the relationship between the Aggregators and the drivers is one of employer and employee. These workers have been adversely affected during the pandemic, mainly due to the lack of any law protecting them, resulting in the aggravation of the inequality suffered by them.

11.4. Section 2(2), the Code on Social Security, 2020 defines 'aggregator' as follows-

> *"Aggregator" means a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider;"*

11.5. Section 2(35), the Code on Social Security, 2020 defines 'gig worker' as follows-

> *"gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship;"*

11.6. Further, gig-workers and platform workers, under the Social Security Code, 2020 will be entitled to certain benefits as described

in Section 109 of the Social Security Code 2020 which will be made available through contributions of the Aggregators as described in Section 109(3) and Section 110 of the Social Security Code 2020, once the said legislation is enforced and enacted by the Central Government. It is submitted that notwithstanding the inadequacy of the provisions in the Social Security Code, 2020, the App-based workers cannot be expected to wait indefinitely to receive the statutory benefits they are entitled to receive as of today under the UW Act. It is, thus, clear from the Social Security Code 2020 that it is the policy of the Government of India to regulate the terms and conditions of the employment of these App based workers and hence, they must be presently brought on par with "unorganized workers". The said "Gig workers" however do not admit that they are "outside the traditional employer-employee relationship" as mentioned in Section 2(35) of the Social Security Code, 2020 and reserve the right to contest the same as and when necessary. For the present, a reference is made to the said Code for the limited purpose of establishing the policy of Union of India to cover the said workers under social security laws.

A. THE REAL NATURE OF WORK RELATIONSHIP SHARED BY AN APP BASED WORKER WITH THE AGGREGATOR IS THAT OF AN "EMPLOYER-EMPLOYEE" RELATIONSHIP:

11.7. A careful and close analysis of the terms of engagement of an App-based worker with the Aggregator will reveal that the App-based workers in fact share a regular Employer-Employee relationship with the Aggregators. This will become evident from the following

examples of agreements executed between Aggregators and drivers/driver partners:

(i) The cab aggregators, i.e. Uber and Ola, operate through different categorizations of car ownership arrangements. These are:

a. Partner vehicles: Are those which are owned by the drivers themselves and by registering with Ola or Uber through their online platform and after going through a process of physical verification of relevant documents and the vehicle, drivers can utilize their ride sharing service for earnings for a certain commission claimed by the Aggregators from their fare.

b. Fleet operators/owners registered with Ola: Certain fleet operators/ owners of vehicles also have a number of vehicles registered with either of the companies. Ola also provides assistance in securing drivers for fleet vehicles if the fleet operators/owners are unable to onboard them. Under this option, a driver has to lease the vehicle from Ola under a lease Agreement, the key terms of which (that demonstrate control by Ola) are as follows:

i. Every vehicle leased from Ola is compulsorily fitted with a GPS device, which gives information to Ola at all times, of the location of the vehicle; This GPS device is required to be strictly switched on at all times and there is continuous monitoring via the App that collects at minimum, the live location date, working time and speed, user comments and ratings.

Drivers can only lease vehicles from Ola if they are found to be eligible after completing a police verification, background check and any other verification that Ola may consider appropriate;

ii. There are conditions imposed by the App and its terms of service (type of vehicle/ equipment used), the sequencing of tasks, control over access to customers etc.

iii. The vehicle so leased, can only be used exclusively for the business of Ola;

iv. The driver is not allowed to use the vehicle beyond the contracted kilometers specified in the Lease Agreement. If he/she uses the vehicle beyond the contracted kilometers, then additional amounts are to be paid to Ola;

v. The driver is not allowed to undertake maintenance activity on the vehicle without the prior written consent from Ola; The maintenance of the vehicle is to be carried out by the driver as per instructions of Ola, and any failure in doing so would result in a termination of the lease agreement;

vi. Damage to the vehicle more than 2(two) times, would result in a termination of the lease agreement.

vii. In the event of a termination of the lease owing to some default of the driver, the driver is not entitled to even reclaim the security deposit.

viii. Positive and negative incentives – including ratings by customers and temporary blocks on use of the App; demand- related pay and pricing bonuses for rapid task completions. True copy of a specimen Lease Agreement executed between Ola and a driver is annexed hereto and marked as **ANNEXURE P-1 [Pg No. 77 to 125].**

(ii) Delivery Partner Terms and Conditions executed between Zomato and its driver partners:

i. Under this Agreement, driver partners have to compulsorily undergo a training course and support service to its driver partners;

ii. Zomato provides assets to its delivery partners(phone; bags etc.) which the driver partner has to necessarily use for providing services;

iii. The driver partners have to compulsorily use the Zomato DP platform that regulates the manner in which the driver partner is to provide services to customers;

iv. The Driver partner is required to abide by the timelines issued by Zomato for delivering orders to customers;

v. The delivery charges levied by the driver partner are decided by Zomato;

vi. Zomato also provides discretionary additional "availability fees" to its driver partners;

vii. Driver partners are not allowed to charge users an amount above the delivery charges fixed by Zomato;

viii. Zomato is authorized to collect from the users, the delivery charges which are then remitted to the driver partners on a weekly basis;

ix. Zomato is entitled to deduct charges from the amount collected in lieu of services provided by the driver partners to users;

x. Zomato is entitled to make Tax deduction at Source ("TDS") from the amounts payable to the delivery partners;

xi. Delivery partners are required to make themselves available as and when a request is placed upon them for delivery, through the Zomato platform;

xii. Delivery partners are required to ensure that their vehicles used for delivery are in well maintained condition; and there is no delay in delivery;

xiii. Delivery partners are required to conduct themselves in accordance with the policies and instructions of Zomato;

xiv. The amounts collected by the Delivery partners from users are required to be deposited with Zomato at such times as required and instructed by Zomato;

xv. Delivery partners are required to carry out their services by themselves and are not allowed to delegate the pick up and/or delivery to any third person;

xvi. Zomato is entitled to collect personal information of the drivers; and further access and use the delivery

partner's information for the purposes of check, certification, marketing, service, analytics, development, business development or for any other purpose that Zomato deems fit;

xvii. Zomato is at liberty to terminate the contract with a driver partner at its discretion if its finds that the delivery partner's conduct is not in consonance with the terms spelt out in the Agreement;

xviii. Delivery partners are liable to pay penalties to Zomato in case they operate outside the terms and conditions of the Agreement. True copy of Delivery partner terms and conditions of Zomato are annexed hereto and marked as **ANNEXURE P-2 [Pg No.126 to 163]**.

At this juncture, it is submitted that Zomato Ltd. has undertaken its Initial Public Offering ("IPO") of Rs. 93,75,00,00,000/- and has filed a Red Herring Prospectus with the Registrar of Companies ("ROC"). Pursuant to the IPO, Zomato Ltd. is raising upto Rs. 9,00,00,000/- as a fresh issue component on the IPO, which is to be utilized towards organic and inorganic growth of business. The organic growth involves increasing delivery infrastructure, which essentially means that Zomato Ltd. will be creating additional employment for lakhs of people, thereby increasing the unorganized workforce by a large magnitude. It is therefore, all the more important that conditions of unorganized workers are regulated by bringing them within the regulations that govern and safeguard the mainstream workforce of the country.

(iii) Pick up and Delivery Executive Agreement of Bundl Technologies Pvt. Ltd. ("**Swiggy**"):

i. Consideration payable to delivery executives is as per the Payout Scheme of Swiggy, which is subject to revision by Swiggy to which the Delivery Executive is not entitled to raise any objection.

ii. The amounts payable to a delivery executive is calculated by Swiggy depending on the number of hours logged by the Delivery Executive and the number of orders picked up and successfully delivered.

iii. If the delivery executive breaches any guidelines issued by Swiggy, the same would lead to a termination of Agreement;

iv. Delivery executives are compulsorily required to carry bags and wear uniforms prescribed by Swiggy;

v. Delivery executives are not allowed to uninstall the Swiggy application without notice to Swiggy;

vi. Delivery executives have to undergo training upon execution of Agreement in addition to onboarding costs;

vii. Delivery executives are under an obligation to disclose to Swiggy all information with regard to the services and activities performed by the delivery executive under the Agreement

viii. Delivery executives are penalized if they reject an order that is assigned to them through the mobile application;

ix. If the Delivery executive is not able to deliver the order within 120 minutes after pick up, then he is not entitled to receive any payment for that order;

x. Delivery executives are expected to adhere to a code of conduct prescribed by Swiggy, that consists of dress, appearance and hygiene codes;

xi. Delivery executives are required to work with Swiggy representative to ensure regular cash conciliations of food deliveries. True copy of the Swiggy Agreement is annexed hereto and marked as **ANNEXURE P-3 [Pg No. 164 to 187]**.

(iv) Privacy Policy of ANI Technologies Pvt Ltd. "**Ola**":

i. Ola is entitled to collect personal information of its driver partners which include but are not limited to name, address, email address, telephone number, date of birth and proof of identity, bank account details including even the transaction history and available balance; text messages sent and received, phone directory details, photos in the USB storage, device ID and location data;

ii. This data is retained by Ola even after termination of a driver partner's account with Ola;

iii. If a driver partner refuses to provide information, then he/she will not be able to avail Ola services; True copy of the Ola Privacy policy is annexed hereto and marked as **ANNEXURE P-4 [Pg No. 188 to 203]**.

(v) **COVID Terms and Conditions and Privacy notice by Ola dated 25.05.2020 :** Under this Agreement, made applicable in May 2020, the driver partners are obligated to follow the following guidelines:

i. Driver partners are required to sanitize their vehicle, at a location specified by Ola, for sanitization of the vehicle, the applicable costs for which are to be borne by the driver partners;

ii. Driver partners are required to undergo training and study awareness materials prescribed by Ola, failing which Ola will take action against driver partners;

iii. Driver partners' failure to adhere to the terms and conditions prescribed by Ola will attract penalties; disciplinary action; and suspension of services without notice;

iv. Ola is entitled to install wearable devices and/or dashboard cameras in the vehicles of the driver partners; which hardware is to be utilized for the purposes of supervision by Ola; These devices are to be kept active for as long as the driver partner is "on duty". True copy of the COVID Terms and Conditions and Privacy notice by Ola dated 25.05.2020 is annexed hereto and marked as **ANNEXURE P-5 [Pg No. 204 to 219].**

11.8. Recently, both Uber and Ola have updated their service agreements for their riders and drivers. These service agreements essentially absolve the ride sharing/ hailing company (the aggregator) of all liabilities and/or responsibilities towards the drivers or riders. In fact, Uber has also stopped using the word "partner" in the agreement and now defines individuals utilizing their app service for commercial gains as "customers". This is obviously an attempt to distance itself from any language that would make the aggregator responsible for providing the drivers with social security or any form of protection or acknowledging any form of "employer-employee" relationship. The Petitioners crave leave to refer and rely upon the latest service agreements of Uber and Ola as and when produced. The Driver has no option but to sign the agreement if she wishes to be on the App.

11.9. It is evident from the extracts of agreements (of Ola, Swiggy and Zomato), that there is total control and supervision exercised by the aggregator upon their drivers, and this would necessarily mean that an App-based worker shares an Employer- Employee relationship with the Aggregator. This is also supported by multiple judgments of this Hon'ble Court, which are mentioned below. Additionally, a perusal of the agreements as described above will also show, that whilst there has been a consistent effort on the part of the Aggregators to treat App-based workers as workforce that operates outside the traditional "Employer– Employee" relationship, they are in fact and in law, in an employment relationship with the Aggregators. Worldwide, employers have repeatedly projected gig and platform work as being a kind of contractual job, however the

reasons for this classification are naturally, pro-employer, i.e. (a) Employers are enabled to operate outside the statutory framework of formal employment, and thus have no obligations to provide benefits to their employees; and (b) lesser tax obligations.

11.10. However, if the relationship between the Company/organization and the gig/platform worker is analyzed, it is apparent that gig/platform workers, are in essence "employees" and share a regular "Employer-Employee" relationship with the aggregators that they work for and are hence a "Wage worker" within the meaning of Section 2(n) of the 'Unorganised Workers' Social Security Act, 2008'. The test of an "Employer-Employee" relationship has been discussed time and again before this Hon'ble Court and some decisions of note are as follows:

11.11. In, ***'Dhrangadhara Chemical Works Ltd. v/s State of Saurashtra & Ors.*** **[AIR 1957 SC 264]:** This Hon'ble Court has held that the *prima facie* test for determination of the relationship between master and servant is the existence of right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is put to but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at page 23 in *Mersey Docks and Harbour Board v/s Coggins & Griffith (Liverpool) Ltd.,* " The proper test is whether or not the hirer had authority to control the manner of the act in question." The Petitioners crave leave to refer and rely upon the judgment of 'Dhrangadhara *Chemical Works Ltd. v/s State of Saurashtra & Ors.* [AIR 1957 SC 264] as and when required.

11.12.In, ***'Hussainbhai, Calicut v/s Alath Factory Thezhilali Union, Kozhikode & Ors.'*** **[(1978) 4 SCC 257]:**This Hon'ble Court analyzed the concept of Employer-Employee relationship from the point of view of economic realities and observed that the true test is: where a worker or a group of workers labors to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker, is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu, is of no consequence, when on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management and not the immediate contractor. The Petitioners crave leave to refer and rely upon the judgment in Hussainbhai, Calicut v/s Alath Factory Thezhilali Union, Kozhikode & Ors. reported in (1978) 4 SCC 257 as and when required.

11.13.In, ***'Ram Singh v/s Union Territory of Chandigarh'*** **[(2004) 1 SCC 126]**: This Hon'ble Court analyzed the concept of "control" in an employer-employee relationship and observed that in determining the relationship of employer and employee, no doubt "control" is one of the important tests, but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to

take multiple pragmatic approaches weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is required. "Integration" test is one of the relevant tests. It is applied for examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other facts that are relevant are – who has the power to select or dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and material and what the mutual obligations between them are. The Petitioners crave leave to refer and rely upon the judgment delivered in Ram Singh v/s Union Territory of Chandigarh reported in [(2004) 1SCC 126] as and when required. If the parameters laid down in the afore-described judgments are considered, it is evident that the App workers share an "Employer- Employee" relationship with the Aggregators.

11.14. Notwithstanding the above, the said "Gig workers" are not considered workers or employees within the meaning of the existing social security legislations referred to above and hence have been denied social security on the ground that they are not "employees" or "workers" within the meaning of the said Act, being considered independent service providers. On the other hand, they are not registered under the UW Act, 2008 and hence not eligible for any benefits under the said Act. It is in these circumstances that the said Gig workers are approaching this Hon'ble Court for appropriate declarations and necessary action by the Respondents jointly and severally.

B. INTERNATIONAL RECOGNITION OF "EMPLOYER-EMPLOYEE" RELATIONSHIP IN RELATED TO APP-BASED WORKERS RECOGNIZED IN TERRITORIES OUTSIDE INDIA:

12. In United Kingdom, recently in the decision of ***Uber BV v/s Aslam*** dated 19th February 2021, the UK Appeals Court examined the nature of work done by Uber drivers. The central question before the Appeal Court was whether an employment tribunal was entitled to find that drivers, whose work was arranged through Uber's smartphone application, work for Uber under workers' contracts, and qualify for the national minimum wage, paid annual leave and other workers' rights. Uber's case before the Appeal Court was that the drivers did not have any such rights because they work as "independent contractors" and perform services under contract made with passengers through Uber (which acts as a booking agent). Whilst examining the claim, the Appeal Court took note of the relationship of the Aggregator (Uber) and the worker (driver) and came to the following conclusions:

12.1. For rides booked through Uber, Uber makes a weekly payment to the driver of sums paid by the passengers after deducting a "service fees";

12.2. Drivers operating through Uber are prohibited from exchanging their contact details with passengers or contacting a passenger save and except in the circumstances where they are required to return lost property;

12.3. To become a driver with Uber, a prospective driver has to present certain documents and attend an interview, pursuant to which, drivers are on boarded;

12.4. An Uber driver is required to provide a vehicle, which is required to be of a specific and accepted make and model, of a specified age and of a preferable colour.

12.5. Uber drivers are required to adhere to standards of performance and if it is found that such standards are not being adhered to, then action is taken against them by Uber.

12.6. Uber drivers are given instructions on how to conduct themselves etc.

12.7. If an Uber driver's acceptance rate for a trip falls below a set level, then he is subject to warning messages from Uber. If pursuant to such warning messages, the uber driver does not bring his "acceptance rate" up, he will ultimately be logged-off from the Uber App.

12.8. Further, Uber also handles passenger complaints, and determines whether to make a refund to the passenger or otherwise (sometimes without even referring the matter to the driver concerned). Such refunds generally result in correspondingly reduced payments to the drivers.

12.9. Uber drivers are required to sign "partner registration form" stating that they agreed to be bound by and comply with terms and conditions described as "Partner Terms" in 2013. In October 2015, a new "Services Agreement" was introduced to which drivers were required to signify their agreement electronically once more, before they could continue with their work on Uber. The new agreement of October 2015 is now formulated as a legal agreement between Uber BV, an "independent company" and the driver as "the Customer".

13. The Appeal Court also took note of the 'fare calculation policy' of Uber, which allows for a fare to be determined on the basis of a "recommended fare" by Uber. The driver is allowed to reduce this amount, but not increase. Uber also retains the right to change the fare calculation at any time in its discretion based upon local market factors. Lastly, the Appeal Court also noticed that Uber drivers are required to accept "Rider Terms" before they use the Uber App.

14. In light of the various terms and conditions which have to necessarily be abided by the Drivers while working for Uber, the Appeal Court came to a conclusion that a driver working for Uber is a "worker" working under a "workers contract", and thus entitled to all benefits such as minimum wages etc. True copy of the judgment in the matter of Uber BV and other v/s Aslam and others dated 19th February 2021 passed by the United Kingdom Supreme Court reported in [2021] UK SC 5 is annexed hereto and marked as **ANNEXURE P-6 [Pg No. ____ to ____].**

15. In France, the Supreme Court has recognized the right of an Uber driver to be considered as an "Employee" in its decision dated 4th March 2020, which upheld the ruling of the Paris Court of Appeals dated 10th January 2019. Now, a contract between Uber and its 28000 drivers in France is recognized as an "Employment Contract". The Petitioners crave leave to refer and rely upon the aforesaid decision as and when produced.

16. The French Supreme Court, in November 2018, had also determined that an employment contract existed between a deliveryman and an

aggregator named "Take Eat Easy". The Petitioners crave leave to refer and rely upon the aforesaid decision as and when produced.

17. Therefore, it is evident that "platform workers" have been in fact categorized as "workers" and consequently entitled to social security benefits in United Kingdom, France and Netherlands. In India, currently gig workers and platform workers, are yet, awaiting their turn as far as their entitlement to social security benefits is concerned, for the reason that whilst all other persons who are employed in establishments are entitled to social security benefits" under the Maternity Benefit Act, 1961, Employees' Provident Fund and Miscellaneous provisions Act, 1952, Minimum Wages Act, 1948, Employees State Insurance Act, 1948, Payment of Bonus Act, 1965, Gratuity Act, 1972, etc., none of these benefits are available to app-based workers. This is for the reason that applicability of the afore-mentioned statutes is made dependent on a traditional employer employee relationship and is linked to the number of employees employed at a particular establishment. Therefore, App-based workers, merely by nature of being "e" nature of employment are currently excluded, as also since their employer is "hidden". It is submitted that the said App based workers must be considered as "workers" within the meaning of the statutes referred to above and given the aforesaid benefits. In the event that the said statutes are not considered to be applicable for the reason that the number of workers employed therein is less than the statutory number, the said workers must be considered "unorganized workers" in the organized sector not entitled to the benefits of the laws mentioned in scheduled II to the UW Act, 2008.

C. LEGAL PROTECTIONS OFFERED TO UNORGANIZED WORKERS

18. The Unorganized Workers' Social Security Act, 2008 (for short being referred to as 'UW Act, 2008') was enacted in 2008 with the sole purpose of providing social security to the unorganized workforce that notably constituted more than 94% of the total employment in the country. Under the UW Act, it was noticed that there was a huge deficit in coverage of the unorganized sector workers in the matter of labor protection and social security measures required to ensure the well-being of workers under the unorganized sector. At the time when the UW Act was enacted, the gig economy had not yet emerged as prominently as it has subsequently, and thus there was no specific provision in the UW Act relating to App-based workers. However, a perusal of definition of "employer"; "employee" and "unorganized worker" and "wage worker" and " self-employed worker " makes it evident that App-based workers fall within the ambit of application of the UW Act.

i. The relevant definitions are reproduced below:

> *Section 2 (m): "unorganized worker" means a home-based worker, self employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector* ***who is not covered by any of the Acts mentioned in Schedule II to this Act****; (emphasis supplied)*
>
> *Section 2 (n): "wage worker" means a person employed for remuneration in the unorganized sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employees, whether in cash or kind, whether as a home based worker, or as a temporary or casual worker or as a migrant worker, or workers employed by households including domestic workers with a monthly wage of an amount as may be notified by the Central Government and State Government as the case may be.*

Section 2(l) "unorganised sector" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;

ii. Every person covered under the ambit of the UW Act is entitled to (a) Life and disability cover; (b) health and maternity benefits; (c) old age protection; (d) provident fund; (e) employment injury benefit; (f) housing; (g) educational schemes for children; and (j) old age homes.

19. The tragedy of the Gig workers is that they are denied the benefits of social security both under the Acts applicable to the organised sector and the unorganised sector. This has led to their employment conditions being degrading and less than human sometimes amounting to forced labour within the meaning of Article 23 of the Constitution. The Central Government or the State Governments are required to frame schemes to cover different categories of unorganized workers under the UW Act, 2008 to address their social security needs. Neither the Central Government nor the State Governments have registered the said workers nor have they framed schemes thereunder which has resulted in denying them indefinitely of the benefit of social security and fair and decent conditions of work. Nor have the said Governments insisted on their coverage under the said existing formwork of social security laws, leaving them in the lurch to fend for themselves. It is, therefore, just and necessary for this Hon'ble Court to declare the rights of the said workers to social security as a fundament right being part of the right to work and right livelihood as held in *Olga Tellis (supra)* as being part of the right to life. The said right to livelihood must be on

fair and just conditions of work that include the right to social security. They are, for example, deprived of minimum working hour, disability benefit, housing benefit as applicable to unorganised workers under the UW Act, 2008. These and other social security schemes are required to be implemented to ensure some measure of protection to App based workers since they are stated to be not covered by the laws in schedule II to the UW Act of 2008 and hence fall within the definition of "unorganised worker". Any scheme introduced by the Central/State Governments can be partly funded by the Central/State Governments and/or the aggregators who ought to contribute a percentage of their annual turnover towards cess as is done under other schemes.

20. For a person to avail benefits provided under the UW Act, he/she/they must be registered under the UW Act, which is undertaken through Workers Facilitation Centers under Section 9 thereof. To facilitate the enrolment and registration of App based workers into the social security schemes, all that they are required to do is to submit a self- declaration form as specified under Section 10 and/or by certifying that they are unorganized workers. Further, toll free centers, helplines and facilitation centers ought to be set up that would assist in filing, processing, and forwarding the application forms for registration of App based workers and to further disseminate information on available social security schemes.

21. It is submitted that there already exists a fully functional mechanism under the UW Act, under which App-based workers can be registered and hence benefit from the schemes thereunder and can be brought to par with other sectors of employees and be given the

social security benefits that are available as a matter of right to every other worker in the country.

22. Though in the matter of '***Bandhua Mukti Morcha v/s Union of India & Ors [Suo Moto Writ Petition (Civil) No. 6 of 2020],*** this Hon'ble Court has directed that registration of unorganized workers be completed forthwith and the module be finalized by the Central Government by 31st July 2021, the registration of the workers has not yet started in compliance with the this Hon'ble Court's order date 29th June 2021. The new portal for the creation of a National Database of unorganized workers known as E-SHRAM in the country was launched on 26th August 2021 by the Central Government. However, the various categories of workers who are entitled to register themselves on this portal (categorized by way of NCO family codes), do not include Gig and Platforms workers. The Petitioner no. 1 has made several representations to the Central Government in this regard, calling for simplification of the process by making it easier for App based workers to access the system. True copy of the judgment dated 29th June 2021 in Bandhua Mukti Morcha v/s Union of India & Ors. (Suo moto Writ Petition (Civil) No. 6 of 2020 is annexed hereto and marked as **ANNEXURE P-7 [Pg No. ___ to ____].** True copy of the representation made by the Petitioner no. 1 to the Central Government is annexed hereto and marked as **ANNEXURE P-8 [Pg No. ___ to ___].** True copy of the list of NCO family codes in the E-SHRAM portal are annexed hereto and marked as **ANNEXURE P-9 [Pg No. ___ to ___]**

23. The Aggregators themselves, who are clearly employers in the context of the UW Act, 2008 are required to be registered under the

Information Technology Act, 2000 and its corresponding Rules. Therefore data regarding number of aggregators is already available including details of number of drivers and therefore till the time the schemes under the UW Act or under any other Acts are framed, as an immediate relief the Aggregator, Central Government and respective States must contribute financial assistance so that immediate relief like medical assistance, life insurance, maternity benefit, accident compensation, old age assistance, pension etc. is provided. Besides social security measures, working conditions relating to working hours, payment of commissions, safety measures are required to be provided as they are otherwise bound in law to do.

24. Two research studies were conducted by the Petitioner No. 1, who has been working with App-based workers for the past several years, which focused on the deteriorative working conditions: the decrease in earnings of App-based workers during the pandemic and the denial of social security benefits like pension and health insurance. The two reports are as under:

    a. **Research study titled "Protecting Workers in the Digital Platform Economy":** This study focused on the occupational health and safety among App-based transport workers attempting to understand the factors that limit the workers' access to health insurance and/or other safety nets during emergencies. The findings of this study were based on surveys which were conducted within 2128 respondents from the following cities: Bengaluru, Chennai, Delhi NCR, Hyderabad, Jaipur and Lucknow. True copy of this Research study titled "Protecting Workers in the Digital Platform

Economy" is annexed hereto and marked as **ANNEXURE P-10 [Pg No. ___ to ___].**

b. **Research study titled "Locking down the impact of COVID-19 -Appraising State and Private measures for App-based Transport and Delivery workers" –** This report explored the responses to the outbreak of COVID-19 by digital platform based companies, trade unions and governments to help out App-based workers during the lockdown. For this report, five (5) surveys were conducted amongst the workforce working for app-based companies like Ola, Uber, Swiggy, Zomato etc. which focused on varied areas vis-à-vis (a) determining what the occupational health and safety standards of Ola and Uber drivers are and what influences their decisions in terms of investing in healthcare for themselves; (b) immediate concerns of App-based workers in regard to impending loan repayments and EMIs; (c) assessment of financial conditions of the workforce immediately preceding and during the pandemic; (d) the issue of accessibility and availability of funds and ration during the pandemic; and (e) the mode and manner of transition back to work for the App-based workers and whether the digital platform companies were taking any responsibility for the health and safety of the drivers in order to restart work. True copy of the research study titled "Locking down the impact of COVID-19 – Appraising State and private measures for App-based transport and delivery workers" is annexed hereto and marked as **ANNEXURE P-**

11 [Pg No. ___ to ___]. Both the reports as described above are hereinafter referred to as "**IFAT reports".**

25. According to the IFAT reports, in 2015, Uber had the second largest operation in the world and it was reported that India alone had over 5 million weekly active riders in August 2017. Currently, Uber holds 40% market share in India, and its domestic rival, Ola is the market leader with a share of 56%. Ola operates in nearly 125 Indian cities, offering cabs, auto rickshaws and even two wheelers, whilst Uber services are available in 36 cities. In view of the large number of persons employed by these companies, i.e. the App-based workers, the need to analyze their conditions during the pandemic and in the aftermath thereof is vital.

D. THE URGENT NEED FOR APP-BASED WORKERS TO RECEIVE SOCIAL SECURITY BENEFITS AND REGULATION OF THEIR WORKING CONDITIONS:

26. Despite the precarity of employment and low earnings even during normal times, in the first and second phase of the COVID-19 pandemic, the conditions of the App based workers further worsened and in addition to a loss of employment, the IFAT reports also revealed that there has been a severe decrease of 80% in the average monthly income (from Rs. 25000 to Rs. 5000) of the App based transport workers, and there was no support from the State and the Aggregators in ameliorating their conditions.

27. In addition to loss of employment and loss of earnings faced by App-based workers, there are also other aspects that are of immediate and urgent concern. The app-based workers face the

following additional issues which are leading to a slow descent of App-based workers into starvation and poverty:

27.1. **Fuel prices**: - The one most essential requirement for any platform worker is his/her mode of transport. Whether it's a taxi-hiring service, or a delivery service, the carrying out of their services cannot be done without their vehicle. The running of the vehicle, regardless of the increase or decrease in demand for services requires fuel. The constant hike in fuel prices coupled with decreased demand in recent times has made it very difficult for App based workers to survive particularly during the pandemic. In addition to this, during normal times there have been multiple price hikes and increase of fuel rates across the country, which has only aggravated the situation further.

27.2. **Regular payment of EMI installments:** A large number of app-based workers, in order to carry out their work, have vehicles that are purchased on loans, which demand the regular payment of easy monthly installments ("**EMI**s"). These EMIs are naturally, discharged through the income generated by workers. In a situation from the first lockdown in 2020 through the second lockdown in 2021, and even now, during the phase of slowly opening-up cities, there has been an undeniable contraction in demand for services and a consequent reduction in income. In the circumstances, the app-based workers are faced with the inability of discharging high EMI burdens. The EMI collection has neither been suspended; nor delayed despite the orders of this Hon'ble Court; and in the face of constant harassment and bullying by loan and recovery agents, the app-based workers find themselves at risk without any safety net

provided by the state. By reason of compulsion of EMI payments, there is now a significant number of workers who are trapped in debt cycles. 65.7% of persons who had taken loans, had to take another loan to pay the earlier loans. Consequently, according to IFAT reports, 64.3% of the surveyed persons who have taken loans, claim to be paying close to Rs.15000 a month even during the pandemic. Further, data evaluation has shown that 52.2% of the surveyed persons have taken loans and are earning Rs. 5000/- or less in a month, and are still being charged with a EMI in the range of Rs. 10,000 to Rs. 15,000/-. A large number of persons (84.5%) have also stated that since they have not been able to pay EMI installments, they are now being constantly harassed by loan recovery agents.

i. For instance, in Hyderabad, Telangana, one Dandu Laxmi who drives for both Ola and Uber, lost her husband due to COVID 19 in 2020. Currently, she is the sole bread winner for her family and has two children. She had taken a vehicle loan from Mahindra Finance. However, due to the loss of income due to the pandemic and having used up all her savings for her late husband's treatment, she was under immense financial stress. She had to pawn her jewelry to not only run her household but also to pay for the EMIs of the vehicle loan. The loan recovery agents did not consider her plight and was given an ultimatum of 24 hours to pay Rs. 60,000/- or have her vehicle seized. This incident took place in June 2020. Dandu Laxmi reached out to IFAT and Telangana Gig and Platform Workers Union (TGPWU) who were able to collect the said amount and were able to stop the recovery agents

from impounding her vehicle. It is submitted that in fact, Mahindra finance has been sending loan recovery agents to the houses of the workers to recover loans and have even seized vehicles. It is imperative to note that this is being done contrary to the orders of this Hon'ble Court and contrary to law.

ii. In Bengaluru, Karnataka, many drivers who had taken 3 year vehicle loans from banks such as Axis Bank, HDFC bank, IDFC bank, and other NBFCs such as Mahindra Finance, Shriram Transport Finance, Toyota Finance etc. are being asked to complete payment of the loan amount before the completion of the loan period. Their vehicles have been seized when they were unable to make 4-5 loan installment payments as there was no work and people had lost both lives and livelihoods. The drivers informed IFAT that banks and NBFCs were insisting on completion of payments towards vehicle loans within a stipulated time, failing which the vehicles will be auctioned off to recuperate the loan amount. Namma Chalakara Trade Union (NCTU), an affiliate of IFAT, has been able to stall the loan recovery agents in some instances, but yet, many people have lost their vehicles to the auction process.

iii. In Delhi NCR, Kaushar Khan's vehicle was seized and then sold off by Kotak Mahindra Finance when she skipped a few EMI payments. Kaushar Khan and her husband had secured the loan for the vehicle in 2019 and both of them were driving the vehicle alternatively to earn a decent living. Due to the

pandemic, they could not pay a few EMIs of the vehicle between March and October 2020, but as the situation improved, they again started making the loan installment payments from October 2020 till March 2021. With the lockdown being reinstated in the country, they lapsed on one payment of Rs. 12,000/- for the month of April 2021. At this point, their vehicle was seized without any prior notice from Agra when it was scheduled for a trip. The agent who had provided them with the loan, informed them that they had to make a payment of Rs. 50,000 to get their vehicle released. When Kaushar Khan and her husband were finally able to scrap together this amount by reaching out to family and friends, they came to know that their vehicle had already been sold off. When they confronted the manager of Kotak Mahindra Finance on how their vehicle could be sold off without informing them, the manager communicated that a notice had in fact been sent to them, however this notice had never been received by Kaushar Khan.

27.3. From the time of the first lockdown in 2020, repayment of loans had already emerged as a major concern for app-based workers especially with no source of income to pay the EMIs, the Reserve Bank of India was pleased to issue directions from time to time by which moratorium on loan installment repayments were announced. A summary of the measures announced by the Reserve Bank of India are noted hereinbelow:

i. RBI's Statement on Developmental and Regulatory Policies dated 27th March 2020: Under this Statement the RBI

announced (amongst other policies), a policy of 'Moratorium on Term Loans'. As a part of this policy, all commercial banks (including regional rural banks, small finance banks and local area banks), cooperative banks, All India Financial institutions and NBFCs (including housing finance companies and micro-finance institutions) ("lending institutions") were permitted to allow a moratorium of three months on payment of instalments in respect of all term loans outstanding as of March 1, 2020. Accordingly, the repayment schedule and all subsequent due dates, as also the tenor for such loans, may be shifted across the board by three months. True copy of the RBI's Statement on Developmental and Regulatory Policies dated 27th March 2020 is annexed hereto and marked as **ANNEXURE P-12 [Pg No. ___ to ____].**

ii. RBI'S COVID 19 Regulatory Package dated 27.03.2020: Under these guidelines issued by way of Circular no. DOR no. BP. BC. 47/21.04.048/2019-20 all commercial banks, cooperative banks, all financial institutions and NBFCs ("lending institutions") were permitted to grant a moratorium of three months on payment of all instalments falling due between March 1 2020 and May 31 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest was to continue to accrue on the outstanding portion of the term loans during the moratorium period. True copy of the RBI circular dated 27.03.2020 is annexed hereto and marked as **ANNEXURE P-13 [Pg No. ___ to ____].**

iii. RBI's COVID 19 Regulatory package dated 23rd May 2020 issued by way of Circular DOR. No. BP. BC. 71/21/04.048/2019-20: Under this circular, the lending institutions mentioned in the previous circulars were permitted to extend the moratorium by a further three months i.e. from June 1, 2020 to August 31, 2020 on the payment of all installments in respect of term loans. Interest was allowed to continue to accrue on the outstanding portion of the term loans during the moratorium period. True copy of the RBI circular dated 23rd May 2020 is annexed hereto and marked as **ANNEXURE P-14 [Pg No. ___ to ___].**

iv. The issue of interest on interest being charged on the principal amounts (which were under moratorium) was brought to the attention of this Hon'ble Court in the matter of 'Small Scale Industrial Manufacturers Association v/s Union of India'[2021 SCC Online SC 246] being Writ Petition (C) no. 476 of 2020 and decided on 23rd March 2021. This Hon'ble Court, after hearing grievance of the Petitioners, was pleased to order that charging of penal interest/ interest on interest/ compound interest during the moratorium period is not being levied as the Central Government has come out with a policy decision after the publication of RBI circulars dated 27.03.2020, 06.08.2020 and 05.05.2021, by which it is decided not to charge interest on interest on loans up to Rs. 2 Crores. This Hon'ble Court ordered that there will be no charge of interest on interest/ compound interest/ penal

interest for the period during the moratorium for any of the borrowers, and whatever amount has been recovered by way of interest on interest/compound interest/ penal interest or the period during the moratorium, the same shall be refunded and/or given credit for in the next instalment of the loan account. True copy of the judgment delivered in 'Small-Scale Industrial Manufacturers Association v/s Union of India' in Writ Petition(C) No. 476 of 2020 by this Hon'ble Court is annexed hereto and marked as **ANNEXURE P-15 [Pg No. ___ to ___].** After this judgment, RBI has issued a Master Circular on 07.04.2021 under which all lending institutions have been called upon to put in place a Board approved policy to refund/adjust the 'interest on interest' charged to the borrowers during the moratorium period. True copy of the RBI circular dated 6th August 2020 is annexed hereto and marked as **ANNEXURE P-16 [Pg No. ____ to ___]**. True copy of the RBI circular 7th April 2021 is annexed hereto and marked as **ANNEXURE P-17 [Pg No. ____ to ____]**. True copy of the RBI 5th May 2021 is annexed hereto and marked as **ANNEXURE P-18 [Pg No. ___ to ___]**.

v. Whilst this Hon'ble Court has given reprieve in the matter of loan installment moratorium and non-levy of interest on interest/ compound interest/ penal interest, the ground realities are starkly different. App-based drivers continue to face incessant harassment from the banks/ NBFCs, and are under a constant threat of seizure of their vehicles over lapsed EMIs. Instances of harassment faced by App-based drivers have

been described above. Further, the data from surveys conducted by IFAT and the Telangana Gig and Platform workers Union (TGPWU) has given the following key findings:

a. Among the public sector banks, State Bank of India provides 23% of the loans;
b. Mahindra Finance is the largest private lender providing vehicle loans in Telangana;
c. Shriram Transport Finance, Mahindra Finance and other private financiers/ small scale loan agencies were the topmost NBFCs that have seized the largest number of vehicles from drivers.
d. There are also instances where the vehicles of the drivers have been seized on the occasion of missing just 1 EMI payment.
e. Despite loan moratoriums and directions for non-levy of interest on interest/ penal interest/ compound interest, banks and NBFCs are still collecting interests on loans; and seizing and auctioning vehicles in the event of a default. An indicative list with details of persons whose vehicles have been seized by lending institutions in violation of the settled law is annexed hereto and marked as **ANNEXURE P-19 [Pg No. ___ to ____].** It was also found that the banks, both public and private and NBFCs have not followed appropriate guidelines while taking possession of the vehicles. The required notices were not issued before seizing vehicles nor were the drivers informed about their

vehicles being auctioned off, particularly in Telangana.

27.4. **Health related issues:** The gig economy, by its very nature is informal, which leads to longer, unaccounted working hours, because of which the app-based workers inevitably develop chronic ailments, which have a direct nexus to the nature of work being performed by them. From the survey evidence reported in the IFAT reports, it is seen that on an average, drivers/driver partners spend close to 16 to 20 hours in their cars in a day. The long hours of work in fixed positions affects the drivers/driver partners physically, and also mentally, owing to hostile working conditions comprising of insensitive customers and traffic officials, tied with an isolated workspace, all of which exasperates mental well-being. The most frequent ailments faced by these workers in the age group of 20 to 40 are chronic back ache, constipation, liver issues, waist pain, and neck pain. According to IFAT survey, it has been found that about 60.7% of the surveyed persons in the 20-40 age group have claimed to have back problems. In addition to this, irregular food hours also contribute to illnesses affecting stomach, diabetes, and blood pressure. In fact, even before the pandemic, the App-based workers were exposed to health problems without any safety net, and this situation is aggravated now. They are not covered by any insurance scheme as the Employees' State Insurance ("ESI") Act, 1948 is not applicable to them. App-based workers are rarely provided with masks/sanitizers and in many cases have to pay from their own earnings. They are not provided with any medical allowance and must personally pay any and all of their medical bills. Several app-

based workers have been hospitalized and some have lost their lives due to Covid-19. The fact that App-based workers have been operating "essential services" is borne out by order no 40-3/2020 dated 24.03.2020 issued by the Ministry of Home Affairs ("MHA") along with the annexures thereto, containing guidelines on the measures to be taken by Ministries/Departments of Government of India, State/Union Territory government for containment of Covid-19 epidemic. According to this order, transportation for essential services would remain operational throughout the lockdown. Being essential service providers, App based workers ought to be treated as front line workers and solatium or compensation be awarded to their families who have lost lives due to COVID 19. True copy of the order dated 24.03.2020 issued by the Ministry of Home Affairs is annexed hereto and marked as **ANNEXURE P-20 [Pg No. ___ to ____].** True copy of the extract of the Operational Guidelines issued by the Ministry of Health and Welfare in December 2020, which identifies "front-line workers" is annexed hereto and marked as **ANNEXURE P-21 [Pg No. ___ to ____].**

27.5. **Inability to pay for medical expenses:** A very crucial aspect of the plight of the app-based workers is that whilst the nation went into lockdown, the app-based workers, for the lack of a minimum wage guarantee were forced to go out and work, with whatever little demand that did exist. An analysis of the earning capacity of App-based workers versus their capacity to spend on health-related issues will bring to light that App-based workers are currently in an extremely vulnerable state. For example, according to the surveys conducted, 73.5% of the App-based workers did not have any health

insurance. In the absence of health insurance or any other social security or protection services, the allocation of expenses towards health is a decision that a driver partner would take after serious thought.

27.6. Further, according to the IFAT reports, the App based workers were infected with COVID 19 and had to undergo treatment at hospitals, incurring an average expenditure between Rs. 40,000 to Rs. 60,000. Approximately 50.6% of the surveyed persons were found to be paying more than Rs. 4000/- on an average. In fact, the survey also revealed, that about 25.3% of the surveyed persons, who tested positive for COVID 19 during 2020-2021, were without any work. The expenditure incurred towards COVID treatment coupled with no earnings during the time when the driver was ill, and lack of business thereafter all indicate that the drivers/driver partners are now vulnerable and trapped in debt cycles.

27.7. **Inability to earn a fair/minimum wage even during normal times:** Though during the COVID period, the earnings of App based workers drastically fell from Rs. 25000/- to Rs. 5000/-, even during normal times, when there is demand for the services their average monthly income is barely Rs. 25000/- out of which they are required to pay the expenses as regards EMIs, vehicles insurances, license renewals, penalties, road tax etc., which comprise a large part of out-goings for a driver, the mandatory deductions from their earnings (which the companies and/or the state has not waived) essentially leaves a paltry sum in hand for the driver/ driver partners.

27.8. **Harassment faced by drivers:** The dangers that app- based workers face just to do their job have been documented over the years. There are instances of robbery, physical attacks and criminal accusations by customers, intimidation by authorities and at times, harassment by the Aggregator itself. Whilst the aggregator companies claim to have a robust resolution support for its customers and partners, but on ground the experience has been disappointing. The grievance redressal systems are essentially automated programs with scripted responses from the call center personnel that tend to overlook and trivialize the drivers' problems. Further, the aggregator companies bear no responsibility towards their driver partners in the event of an accident or any other untoward episode that the driver partners may encounter, whilst on duty. In fact, the harassment faced by the drivers have also led to increase in instances of suicide. There are no points of contact on occupational health and safety or other working conditions between the app-based workers and the Aggregator companies. There is also a lack of grievance, complaint, or appeal mechanism.

27.9. **Opacity of the System:** An extremely important issue is the lack of information and transparency available with the driver partners in the manner of working of the App-based companies as regards the fixation of fares, promotional costs, surge pricing, incentives, penalties and bonuses. There is little or no information available as to how exactly rides are allocated, whereas a Grievance Redressal Mechanism has been recommended by the Committee by the Motor Vehicle Aggregators guidelines 2020, but nothing has been done to make it effective.

27.10. **Absence of any form of social protection such as ESIC and EPF:** It is evident from the above, that the App-based workers receive less than subsistence wages and yet do not receive any help/ assistance from the State and/or the aggregator companies. The App-based workers are not granted any benefits such as disablement benefits, accident insurance, medical benefits, maternity benefits, provident fund schemes, or pension plans. App based workers are being treated unequally and unfairly in comparison to other unorganized workers.

27.11. **Abdication of responsibility by Aggregator companies:** The Aggregator companies have borne no responsibility towards alleviating any of the difficulties faced by the App-based workers. For example, it was reported that Ola was waiving off lease rentals for the drivers and asking them to return their leased vehicles. Whilst this seemed to be a positive step that would reduce the monetary burden on the driver, however, the caveat to this move was the absence of any proper plan on how an individual would repossess their leased vehicles as and when the lockdown was lifted. In another example, Zomato had pledged that it would reimburse the cost of grocery, ration and other essentials that a rider purchases, but the bills ought to be GST compliant. For a Zomato driver, who earns less than Rs. 15000 per month, it was unreasonable to expect that they would purchase their daily essentials from shops that print GST compliant bills. According to surveys conducted and reported in the IFAT reports, it was found that a large number of app-based workers had not received any aid during the lockdown period from the

aggregator companies. Whilst some companies had disbursed funds collected from public fund-raising campaigns, there were concerns as regards the manner of collection and disbursal of such funds, as the eligibility criteria for recipients of such fund infusion were not disclosed.

27.12. **Abdication of responsibility of State as regards the welfare of App-based workers:** In addition to the afore-said difficulties faced by the App-based workers, the role assumed by the State in ensuring the welfare of App-based workers is decreasing with every new law passed. For example, according to the Motor Vehicle (Amendment) Act, 2019, App-based drivers have been further disenfranchised, of even having the safety of a grievance redressal mechanism such as the labor courts for all other workers in the country. The Motor Vehicle (Amendment) Act, 2019 now states that all issues pertaining to "Aggregators" would be resolved under the Information and Technology ("IT") Act, 2000 under which Aggregators are required to be registered. Though Aggregators are covered under the IT Act and the Motor Vehicles Act, 1988 in terms of licensing and regulation, it is to be noted that the Ministry of Labour and Employment and the Ministry of Road Transport and Highways ("**MoRTH**") oversees labour-related issues. The MoRTH has constituted a "Committee to Review Issues Relating to Taxi Permits". The Committee submitted its report titled "Report of the Committee Constituted to Propose Taxi Policy Guidelines to Promote Urban Mobility" in December 2016, wherein it directed for safe, convenient and reliable transportation for passengers but had no provisions regarding the working conditions of drivers except for

mentioning that States may place appropriate cap on the duty hours of driver "in the interest of road safety and in consonance with labour laws." The committee recommended range-bound dynamic pricing to match demand and supply. Minimum and maximum tariffs were allowed without a commensurate increase in the commission/earnings for the drivers, all the recommendations are passenger oriented. The Aggregators have been mandated to comply with the provisions of the Information Technology Act, 2000. The Petitioners crave leave to refer and rely upon the "Report of the Committee Constituted to Propose Taxi Policy Guidelines to Promote Urban Mobility". The Central Government on 27th November 2020 has issued the Motor Vehicle Aggregators Guidelines 2020 which have been framed in pursuance to the Motor Vehicle Amendment Act 2019 under which the Aggregators have been called upon to:

a. To ensure health insurance for each Driver integrated with the Aggregator for an amount not less than Rs. 5 Lakhs with base year 2020-21 and increased by 5% each year.
b. To ensure term insurance for each driver integrated with the Aggregator for an amount not less than Rs. 10 lakhs with base year 2020-21 and increase by 5% each year.
c. To Ensure that those drivers are not working for more than 12 hours in a day;
d. To provide for the setting up of a grievance redressal centre and also a 24X7 control room to provide support to drivers.
e. To ensure that a driver integrated with a vehicle shall receive at least 80% of the fare applicable on reach ride and the

remaining charges for each ride shall be received by the Aggregator.

28. Though the guidelines provide for some protection to the App-based workers, none of these have been implemented in any of the States/ Union Territories. The Petitioners along with the other Unions have submitted certain changes to the said guidelines to also cover food/goods delivery service since the definition of aggregators has been incorrectly restricted only to a "digital intermediary or market place for a passenger to connect with a driver for the purpose of transportation" leaving out a large number of App based workers. True copy of the Motor Vehicles Aggregators Guidelines 2020 are annexed hereto and marked as **ANNEXURE P-22 [Pg No. ____ to ____].** However, the Motor Vehicle (Amendment) Act, 2019, whilst giving a statutory recognition to Aggregators and bringing them within the umbrella of Information Technology Act, 2000, also has the effect of distancing an App-based worker from seeking benefits that are otherwise available to the other workers in the country. The difficulty of disenfranchisement, as is being done currently is simply this: The gig economy is growing at unprecedented speed, and churning out jobs that are hazardous, dangerous , and the entire gig economy is based on the "free market" principles, that deems drivers and passengers/customers as free agents, and not employees, but the reality is, that App-based drivers are in fact "employees" in every sense possible, which is evident from a perusal of the agreements/writings they execute with Aggregators. Apart from nomenclature that cleverly designates App-based drivers as "Driver Partners", the App-based drivers are in fact

under control and supervision of the Aggregators whilst on duty and are not “free agents”. Since the aggregators control how and when work is carried out, the act of designating App-based drivers as “free agents” and not employees, is only a convenient course of action that has been undertaken to undermine their status and increase their precarity of existence. In fact, the status of App-based workers, today is that of forced/bonded labor. It is submitted, that a review of the contracts executed by App-based workers with Aggregators, the never-ending debt cycles, and the conditions of work, the complete absence of a meaningful dispute redressal mechanism, and the abdication of the State from providing any semblance of a safety net, will make it more than evident that the gig economy is turning out to be a modern form of slavery. It is claimed by most platforms that since the work of gig workers is characterized by flexibility with the freedom to choose the time and nature of work, they ought to be classified as self-employed or independent contractors. The nature of control exerted by Aggregator companies over App-based workers is a mixture of (a) compulsion of working/hailing rides for a minimum no. of hours in a day to remain active on the App; (b) following code of conduct set by the Aggregator companies; (c) no freedom to refuse a ride/ pick up; (d) no freedom to communicate and/or contact a passenger save and except for the purpose of ride; (e) undergoing training sessions with the Aggregator companies; and (f) installing location tracking devices in vehicle that must necessarily be kept switched on all the time; (g) agreeing to hail rides and/or pick up/drops on the basis of the charges decided by the Aggregator companies, in which the App-based drivers have no control over etc. All the afore-said aspects (which are not

exhaustive) are indicative of the control covertly exerted by the Aggregator companies upon the App-based drivers. It is therefore evident that Respondent nos. 6 to 9 have complete supervision and control over the number of hours of work and the rate at which they will be paid. They also have disciplinary control over them in that they can be removed from the platform for alleged defaults in observing the policies of the Respondents. In the context of app based drivers' work being akin to forced labour, several App based drivers have spoken up in recent times and their verbal accounts reinforce the averments made in this petition. A copy of an article titled "We are slaves to them: Zomato, Swiggy delivery workers speak up against unfair practices" authored by Tanishka Sodhi published on www.newslaundry.com dated 14th August 2021 is annexed hereto and marked as **ANNEXURE P-23 [Pg No. ____ to ___].**

29. For the reasons as described above, it is evident that App-based workers, despite having the most prominent share of the informal economy in India, are subjected to working conditions that are hazardous, dangerous and completely devoid of any security provided by the State under the said Act or otherwise. The gig economy, despite emerging as the largest employment generating sector in today's date, is merely modern slavery disguised as a "free agent" business model. The precarious conditions that the App-based workers are subjected to, have only become aggravated during the pandemic, and the conditions have gone from bad to worse. Through the first lockdown into the second lockdown, and thereafter, whilst there might have been a slight recovery in

business, the fact remains, that App based workers only have the amounts that they earn by working at their disposal. Within these amounts that are earned, the App based workers are required to pay the regular deductions, manage household expenses; medical expenses; etc. which concludes, that in reality, the net amounts actually being earned by App-based workers are below a subsistence wage. In addition, they have no safety net provided to them by the State, on the grounds that it is a "free agent" business model and not a traditional "Employer – Employee" relationship. The agreement between the aggregators and the driver is a fixed term contract, which is a "take it or leave it" contract and the driver has no power to negotiate the terms of the contract except sign on the dotted line without even understanding the legal implications thereof. The said contract, is therefore, bad in law and opposed to public policy. The said labour performed by the drivers and delivery persons is also "forced labour" within the meaning of Article 23 of the Constitution.

30. Thus, faced with the afore-said difficulties being deprived of the most basic social security benefits and with absolutely no regulation of their working conditions, and having suffered immensely during both the 1st and 2nd phase of the Covid-19 pandemic, the Petitioners are constrained to file this Petition under Article 32 of the Constitution of India.

31. That the Petitioners herein are filing the Writ petition on the following amongst other Grounds:

GROUNDS

Right to Social Security a fundamental right and the Obligations of the State

A. **BECAUSE** the social security of the workers is a fundamental right under Article 21 of the Constitution. Right to livelihood, decent and humane work condition; occupational safety and health standards constitute part of the social security. The Constitution in the Preamble and Part IV (Directives Principles of State Policy) reinforces them succinctly as socio-economic justice. The right to social and economic justice is thus a Fundamental Right. Parliament has enacted numerous legislations to give effect to the said rights. Hence, the State is duty bound to ensure that the right guaranteed under the said statutes are de-jure and de-facto made available to "gig workers" and the "platform workers". The failure to do so amounts to violation of the fundamental rights of workers under Article 14, 21 and 23 of the Constitution.

B. **BECAUSE** this Hon'ble Court in '***Olga Tellis v. Bombay Municipal Corpn.,' [(1985) 3 SCC 545]*** held that right to livelihood is part of Article 21 of the Constitution in the following terms-

> *".....An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And*

yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life…"

C. **BECAUSE** this Hon'ble Court in '***Consumer Education & Research Centre v. Union of India' [(1995) 3 SCC 42]*** held:

> *"[The] right to health and medical care to protect [one's] health and vigour while in service or post retirement is a fundamental right of a worker under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."*

D. **BECAUSE** the Right to live with human dignity enshrined in Article 21 derives its life breath from the directive principles of State policy, particularly clauses (e) and (f) of Articles 39, 41 and 42. Those articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements, which must exist to enable a person to live with human dignity. ***(See 'Consumer Education & Research Centre v. Union of India'*** *[(1995) 3 SCC 42)]*.

E. **BECAUSE** the State and its agencies/ instrumentalities cannot absolve themselves of the responsibility of extending the benefit of the labour laws legislations "gig workers" and the "platform workers". The human beings who are employed for doing the work of delivery the food and riding the car to drop the passengers cannot be treated as mechanical robots.

F. **BECAUSE** it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting violation of the social

welfare legislations and ensuring observance of the fundamental right by the private individual who is transgressing the same.

G. **BECAUSE** Article 25(2) of Universal Declaration of Human Rights, 1948 assures that everyone has the right to a standard of living adequate for the health and well being of himself and of his family … including medical care, sickness, disability. Article 7(b) of the International Convention on Economic, Social and Cultural Rights, 1966 recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, safe and healthy working conditions.

H. **BECAUSE** this Hon'ble Court in '***Gujarat Mazdoor Sabha v. State of Gujarat', [(2020) 10 SCC 459]*** held "A worker's right to life cannot be deemed contingent on the mercy of their employer or the State".

Aggregators and delivery partners

I. **BECAUSE** the terms of engagement between Respondent nos. 6,7,8 and 9 and the App based workers shows that the said Respondents have complete supervision and control over them and hence they are 'workmen' as defined in all applicable social security laws as referred to above. And it is the duty of the Respondents No. 1 to 5 and the respective State Governments to enroll them as such under all the aforesaid applicable social security laws which they have failed and neglected to do thus violating their fundamental right to work on fair and decent conditions of work and livelihood under Article 21 of the Constitution of India.

J. **BECAUSE** the App-based workers are in a precarious position and are urgently entitled to the regulation of their status and working conditions and also to social security benefits that are available to other workers in the country. The relationship of App based workers vis-à-vis the Aggregators is that of an "Employer- Employee" relationship and therefore, there is no reason why platform workers are excluded from the social security benefits that are available to all other employees working in other establishments. The arbitrary and unfounded exclusion of App-based workers from benefits of social security falls foul of Article 14 of the Constitution of India. Failure of the Respondents to regulate the terms and conditions of employment has led to a violation of the fundamental rights of the said workers under Article 14, 21 and 23 of the Constitution.

K. **BECAUSE** the contract of employment described as a "partnership agreement "between the Respondent companies and the App based workers, is a fixed term contract and the App based workers have no option but to accept the terms and conditions and hence it is a contract opposed to public policy in the nature of a "take it or leave it" contract amounting to a form of "forced labour" under Article 23 of the Constitution.

L. **BECAUSE** this Hon'ble in '***People's Union for Democratic Rights v. Union of India', [(1982) 3 SCC 235]*** held that Article 23 is not limited in its application against the State but it prohibits "traffic in human being and begar and other similar forms of forced labour" practiced by anyone else. The Court observed:

"12. Article 23 is not limited in its application against the State but it prohibits "traffic in human being and begar and other similar forms of forced labour" practised by anyone else. The sweep of Article 23 is wide and unlimited and it strikes at "traffic in human beings and begar and other similar forms of forced labour" wherever they are found. The reason for enacting this provision in the Chapter on Fundamental Rights is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted….."

M. **BECAUSE** this Hon'ble Court in ***PUDR (supra)*** case held that any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force", it would be "forced labour". The Court held:

> *"14. Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to provide and "force"*

which would make such labour or service "forced labour" may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force", it would be "forced labour". Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly "forced labour". There is no reason why the word "forced" should be read in a narrow and restricted manner so as to be confined only to physical or legal "force" particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution-makers have given us one of the most remarkable documents in history for

ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word "force" must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is "forced labour" because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Article

23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23".

N. **BECAUSE** in any event the App based workers fulfill the definition of 'Unorganized workers' within the meaning of the Act of 2008 since they are not covered by the laws in Schedule II to the said Act and, hence, are entitled to a declaration of this Hon'ble Court that they are "unorganized workers" within the meaning of the said Act and hence ought to be forthwith registered and extended all consequential benefits.

O. **BECAUSE** the Aggregators are taking advantage of the lack of organization of the Gig workers who have no bargaining power to ensure fair and decent wages and are wholly dependent of the State to ensure fair conditions of work as a Fundamental Right .

P. **BECAUSE** the working conditions of app based workers currently is akin to a modern form of slavery wherein, ostensibly an App based worker is a "free agent", free to choose his mode and manner of providing services, however in reality it is not so. A scrutiny of the working conditions and mandates applicable to App based workers makes it apparent that the App based workers are fully controlled by the Aggregators and are in fact employees and not "free agents". The act of classifying them as "driver partners" is but a convenient manner for Aggregator to escape their responsibility to provide benefits to their employees in the manner that benefits are made available to the organized workforce. Therefore, the current

situation of App based workers is akin to forced labor, and thus violative of Article 23 of the Constitution of India. The contracts are "fixed term "contracts between unequal bargaining partners and hence opposed to public policy.

Q. **BECAUSE** in contradistinction to the complete absence of any steps taken in our country to alleviate the distressing situation of app-based workers, in several countries worldwide multiple steps have been taken towards independent fiscal measures to provide fast and direct economic assistance in the nature of unemployment insurance (Under the CARES Act, in USA); and The Canadian Emergency Response Benefit ("CERB"), which is a government intervention program to support gig workers through the pandemic through direct cash benefits. Failure of the Respondents to do so has lead to the violation of Article 14, Article 23 and Article 21 of the Constitution of India by all the Respondents.

R. **BECAUSE** App based workers ought to be extended benefits by registration under the said law and through appropriate schemes framed for them for benefits such as (a) life and disability cover; (b) accident insurance; (c) health and maternity benefits; (d) old age protection; (e) housing; and (f) other matters as provided under the UW Act on the basis of equality with other UW under the UWA. This is also in line with the directive principle of State policy enshrined in Article 41 of the Constitution of India. Being denied the most basic needs to enable them to survive, deprives app-based workers of their right to livelihood on decent and fair conditions of

work and right to life with human dignity guaranteed under Article 21 of the Constitution.

S. **BECAUSE** the immediate and urgent need for regulation of work conditions; status of App-based workers is compounded by the hardships being suffered by this section of workers, which hardships have magnified during the ongoing pandemic. It is imperative that all app-based workers be immediately brought under the umbrella of the existing social security schemes existing under the existing labor statutes. It is a fact that App-based transport and delivery workers have been severely impacted and have suffered loss of business/ earnings due to the lockdowns.

T. **BECAUSE** even otherwise the said Respondents 6 to 9 are registered under the Information Technology Act, 2000 and hence are immediately capable of being regulated since all the necessary data to identify the Aggregators are available.

U. **BECAUSE** the App based workers ought to be treated as front line workers who have operated "essential services" from the commencement of the pandemic namely 23rd March 2020 and ought to be covered by the Operational guidelines issued in December 2020, by the Ministry of Health and Welfare issued by which certain groups were identified as Front Line Workers (FLWs) for the purpose of receiving vaccination on priority. Frontline Workers were defined as "workers engaged in the delivery of essential services" and included, amongst others, bus drivers as well. The identification of FLWs issued by the Ministry of Health and Family Welfare was obviously based on the nature of services being carried

out by the proposed beneficiary, and thus the fact that App-based drivers have carried out essential services from the beginning of the lockdown, there is no reason why they ought not to be treated as "Frontline workers" by the Government of India with all attendant benefits.

V. **BECAUSE** in fact the dependence of the general public on App based workers for food delivery and transport increased during the pandemic as both transport and food delivery were essential services during a period where mobility was prohibited or services restricted.

W. **BECAUSE** the Centre, States and the Aggregator companies are required to contribute to a cess specifically set up for the benefit of App based workers, so that social benefit schemes can be extended to them forthwith. Their contribution is essential and necessary to ensure that benefits reach the App-based workers.

X. **BECAUSE** certain benefits to drivers of Aggregators have been specified under the Motor Vehicles Aggregator Guidelines 2020, which ought to be implemented forthwith by all States/ Union Territories to all app based workers until such time as appropriate schemes are framed for App based workers.

Y. **BECAUSE** the App based workers are entitled to a moratorium of their loans and EMI on par with the other person in the Small Scale industry in order to get over a very difficult period in their life threatening their very survival.

Z. **BECAUSE** the Respondents 1 to 5 have violated the right to work of the App based workers by seizing their vehicles during a period of the pandemic and thereafter having regard to the fact that the vehicle is their only means of work and employment and the said vehicles ought not to be seized.

32. The Petitioners herein crave the liberty of this Court to add, alter, modify or amend the grounds during the pendency of this Writ Petition, if necessary.

33. That the Writ Petition has been filed without any delay or latches and there is no legal bar in entertaining the same. That the Petitioners have no other efficacious alternative remedy except to file the present Writ Petition before this Hon'ble Court by invoking Article 32 of the Constitution. The Petitioners have not approached any authority for Redressal of the instant grievance, as approaching this Hon'ble Court under its writ jurisdiction was the only remedy available to the Petitioners herein.

34. That the Annexures are true and correct copies of their respective originals.

PRAYER

It is, therefore, under the facts and circumstances of the present case most humbly prayed, that this Hon'ble Court may be pleased to:

(a) Issue an appropriate writ, order or direction to declare that the Respondents1 to 5 have violated the rights of the App workers under Articles 14, 21 and Article 23 of the Constitution of India and the Respondents 6 to 9 have violated the rights of the App workers

under Article 23 of the Constitution of India by their failure to cover them as "workers" under applicable social security laws namely: *The Workmen's Compensation Act, 1923; The Industrial Disputes Act, 1947; The Employee's State Insurance Act, 1948; Employee's Provident Funds and Miscellaneous Provisions Act, 1952; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972* and *'Unorganised Workers' Social Security Act, 2008'* and extend the benefits of the said laws to them.

(b) In alternate issue an appropriate writ, order or direction to declare that the said "gig workers" are 'unorganized workers' and/or "wage workers" within the meaning of the Section 2(m) and 2(n) of the Unorganised Workers' Social Welfare Security Act, 2008 and the failure of Respondent nos. 1, 2 and 3 to register App based workers as Unorganized Workers has violated their rights under Article 14,21 and 23 of the Constitution of India;

(c) Issue an appropriate writ, order or direction to Declare that the failure of Respondent nos. 1, 2 and 3 to frame beneficial schemes for App based workers has violated their rights under Articles 14,21 and 23 of Constitution of India;

(d) Issue an appropriate writ, order or direction in the nature of Mandamus directing the Respondents to recognize all App-based workers as an "unorganized worker" under Section 2(m) of the Unorganised Workers' Social Welfare Security Act, 2008 and specific schemes be formulated for them including health insurance, maternity benefits, pension, old age assistance, disability allowance,

education allowance, housing allowance, and the same be added in the Schedule of the UW Act;

(e) Issue a writ, order or direction in the nature of mandamus directing the Respondents to include the option of registering as a Gig/Platform worker on the E-SHRAM portal and to include the category of Gig/Platform workers in the NCO Family codes; and to consider suggestions of Petitioner no. 1 in order to resolve glitches and/or errors, if any, in the registration process on the E SHRAM portal.

(f) Issue a writ, order or direction in the nature of mandamus to direct the Respondents/ State Governments to issue directions to Aggregators to deposit a percentage of their total annual turnover with contribution from the Centre/ State governments as cess, for operating the schemes for the benefit of App based workers.

(g) Issue a writ, order or direction in the interim in the nature of mandamus directing the Respondents to ensure compliance of the Motor Vehicle Aggregator Guidelines 2020 by all states and Union Territories specifically with regard to a minimum health insurance; fixation of working hours; setting up of a grievance redressal center; minimum payment of fares and these protections be extended to all App based workers;

(h) Issue a writ, order or direction in the nature of mandamus directing the Respondents to recognize App-based workers as "frontline workers" and issue guidelines to all States and/or UTs to extend all health and welfare benefits reserved for Frontline workers, including coverage of medical expenses, an insurance of Rs. 50 Lakhs in case

of death due to COVID-19 and to forthwith ensure their vaccination is completed at the cost of the Aggregator companies on a priority basis in the interest of the safety of both workers and passengers;

(i) Issue a writ, Order or direction in the nature of mandamus directing all Aggregator companies to provide economic relief to app-based workers in the nature of cash transfers of Rs. 1175/- per day for app-based drivers; and Rs. 675/- per day until 31st December 2021 or until such time as the pandemic has completely subsided to App based workers;

(j) Issue a writ, order or direction in the nature of mandamus directing the Respondents to extend the distribution of food grains under the PM Garib Kalyan Ann Yojana to all App-based workers irrespective of whether the App-based workers hold ration cards or not;

(k) Issue a writ, order or direction in the nature of mandamus directing the Respondents to ensure that all financial institutions, banks and/or NBFCs are complying with the directions issued in RBI Circulars dated 27.03.2020; 06.08.2020; 07.04.2021 and 05.05.2021; and with directions issued in the judgment titled Small Scale Industrial Manufacturers Association v/s Union of India reported in [2021 SCC Online SC 246];

(l) Issue directions to the Respondents to ensure that no financial institutions, banks and/or NBFCs seize and/or auction vehicles of App-based workers who are not able to pay EMIs of their loans till the pandemic continues;

(m) Issue directions to the Respondents to ensure that any financial institution, bank or NBFC that is not complying with the directions issued in RBI Circulars and in the judgment titled Small Scale Industrial Manufacturers Association v/s Union of India reported in [2021 SCC Online SC 246] shall be subjected to an appropriate penalty;

(n) Pass such other and further order or orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY

DRAWN BY: Ms. Megha Chandra, and Paras Nath Singh, Advocates
SETTLED by: Ms. Indira Jaising and Ms Gayatri Singh, Sr. Advocates

FILED BY:

[NUPUR KUMAR]
Advocate for the Petitioners

Filed on 20.09.2021