

IN THE HIGH COURT OF DELHI AT NEW DELHI

(EXTRA ORDINARY CIVIL WRIT JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2020

(IN THE MATTER OF PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

DHARANIDHAR KARIMOJJI

...PETITIONER

VERSUS

1. UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF FINANCE
JEEVAN DEEP BUILDING
3RD FLOOR
PARLIAMENT STREET
NEW DELHI - 110 001
TEL. 23093881
Email: wim-dfs@nic.in

2. RESERVE BANK OF INDIA
6, SANSAD MARG
NEW DELHI-110 001
TEL. 23711333
EMAIL ID: rdnewdelhi@rbi.org.in

...RESPONDENTS

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA INTERALIA SEEKING WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT DIRECTING RESPONDENTS TO REGULATE AND CONTROL WORKING OF ONLINE DIGITAL LENDERS DOING BUSINESS THROUGH MOBILE APP OR ANY OTHER PLATFORM, STOP CHARGING EXORBITANT INTEREST ON LOAN FROM BORROWERS, STOP HARASSMENT TO THE BORROWERS FROM RECOVERY AGENTS, FIX MAXIMUM RATE OF INTEREST CHARGEABLE BY ONLINE DIGITAL LENDERS AND TO SETUP GRIEVANCE REDRESSAL MECHANISM FOR BORROWERS IN EVERY

STATE TO RESOLVE THE PROBLEMS THEY FACE WITHIN SPECIFIC TIME.

To,

The Hon'ble Chief Justice of High Court,
And His Companion Judges of the
Hon'ble High Court of Delhi.

The humble petition of the
Petitioner above-named.

MOST RESPECTFULLY SHOWETH:

The present writ petition has been filed in Public Interest under Article 226 of the Constitution of India interalia seeking Writ of Mandamus or any other appropriate Writ directing Respondents to regulate and control working of Online Digital Lenders doing business through mobile App or any other platform, stop charging exorbitant interest on loan from borrowers, stop harassment to the borrowers from recovery agents, fix maximum rate of interest chargeable by online digital lenders and to setup grievance redressal mechanism for borrowers in every state to resolve the problems they face within specific time.

1. That the Writ Petitioner has no personal interest in the litigation and that the petition is not guided by self-gain or for gain of any other person/institution/body and that there is no motive other than of public interest in filing the writ petition.
2. That the Source of knowledge of the facts alleged in the writ petition is loan offers published by online lenders through mobile App; laws, RBI Circulars and guidelines available in

public domain; and news paper articles published by media. The Petitioner has done whatsoever inquiry/investigation which was in his power to do, to collect all data/material which was available and which was relevant for this court to entertain the present petition.

3. That this Writ Petition is being filed for the benefit of people taking loan online through mobile and other platforms from lenders and who are paying exorbitant interest rate on the loan taken, being harassed and humiliated by the lenders in case of default. Such borrowers are already financially stressed hence most of them are incapable of filing petition themselves in the court.
4. That the online money lending App / companies/ Platforms and institutions are likely to be affected by the orders sought in the writ petition. Since large number of online money lending Apps, companies/firms are doing business in this field they are not being individually impleaded as respondents. In case this Hon'ble Court directs the affected parties will be impleaded. That to the knowledge of the petitioner no other persons/bodies/institutions are likely to be affected by the orders sought in the writ petition.
5. The Petitioner is a Citizen of India and a B. Tech Graduate working as a freelancer in Digital Marketing. The petitioner

has the means to pay the costs, if any, imposed by the Court and on an undertaking to the Court in that respect.

6. That the Petitioner has not made any representation to the authorities as in his knowledge No particular authority is setup to regulate the working of online lending App companies. The petitioner has not previously filed any public interest litigation or preferred Letter Petitions.
7. That online lending platform are offering loan to the needy people through online Apps. As of today, there are around 300 instant personal loan apps in play stores. These apps give loans from Rs.1500/- to 30000/- for about 7 to 15 day tenure. They deduct almost 35% to 45% of loan money as platform fees/service charges/processing fees and transfer remaining money to the borrower bank accounts.
8. That the Petitioner has visited the Digital Apps of different digital lending companies and found that these companies are charging exorbitant interest rate and other charges. The following are some of the online lenders and their charges.

Huge amount of interest and other Charges being levied by lenders through Mobile Apps

The Petition has tried to avail a loan from different online mobile Apps. In the first case the petitioner tired to take loan of Rs. 17,000/- for 7 days from Cashsuper App (cashtrain).

The Lender is charging Rs. 1,190/- as interest for 7 days, Processing Fee of Rs. 4,250/- and GST of Rs. 765/-. The borrower will ultimately get Rs. 11,985/- in hand. The repayment amount is Rs. 18,190/-. That is total charges for a loan of Rs. 17,000/- for 7 days is Rs. 6205/- i.e. 36.50% charges for 7 days or 1903% charges for a year.

In the second case for loan of Rs. 3,000/- for 7 days another Lender is charging Service Fee of Rs. 750/- and GST of Rs. 135/-. The borrower will ultimately get Rs. 2,115/- in hand. The repayment amount is Rs. 3,014/-. That is total charges for a loan of Rs. 3,000/- for 7 days is Rs. 899/- i.e. 29.97% charges for 7 days or 1563% Charges for a year.

In the third case for loan of Rs. 3,000/- for 7 days another Lender is charging Service Fee of Rs. 750/-, GST of Rs. 135/- and Commission payment Rs. 15/-. The borrower will ultimately get Rs. 2,100/- in hand. The repayment amount is Rs. 3,000/-. That is total charges for a loan of Rs. 3,000/- for 7 days is Rs. 900/- i.e. 30% charges for 7 days or 1564% Charges for a year.

In the fourth case for loan of Rs. 5,000/- for 7 days another Lender is charging Platform Fee of Rs. 750/-, GST of Rs. 225/-, interest Rs. 35/- and Credit Evaluation fee of Rs. 500/-. The borrower will ultimately get Rs. 3,525/- in hand. The repayment amount is Rs. 5,035/-. That is total charges for a loan of Rs. 5,000/- for 7 days is Rs. 1510/- i.e. 30.20% charges for 7 days or 1575% Charges for a year. Copy of Screen shot downloaded from the digital payment APP showing huge amount of interest and other charges levied by online Money Lending App operators are annexed herewith and attached as **ANNEXURE P-1 PAGES ___ TO ___**

9. That if a person fails to pay the loan amount in 7 days or in the specified loan period, the collection agent calls even persons in the contacts list from the user phone which collected while applying for the loan. In the app-driven micro lending segment, the process of recovery has now turned into a nightmare for many borrowers. Unfortunately, while installing the app, borrowers must give their consent to the App Company to access their contacts, which some aggressive lenders are now tapping to publicly humiliate borrowers. This is breach of privacy of borrowers. There are lot of news about harassment from collection agents of these apps in newspapers and other media. Still, the Central

Government or any other authority is not taking effective action on the companies / firms running these apps. Copy of screen shot of some of the threatening messages sent by the online money lending Mobile App operators are annexed herewith and attached as **ANNEXUPRE P-2 PAGES___ TO**

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10. That the Petitioner has tested around 25 of these Chinese loan and apps to know how these works. Most of the apps are using the same code and layout colors are different. Fake loan apps like wowcash, antcash, sealoan, panda loans, cashin, cashcat, cashbird ask for advance payment 199/- to 799/- but these Apps never give loans.
 11. That a search on Google Play Store app store for the keywords "instant loan" displays over 200 apps that are willing to put cash in the bank account of borrower. In the hurry to get easy loans, many borrowers overlooked the interest rates, penalties and the track record of these lenders. Some borrowers are starting with borrowing small amounts (Rs. 500 to Rs. 50,000), but as their dependency rose, they ended up taking multiple loans until their cash flows dried up and they started defaulting.
 12. That most of the States have money lenders act and there is maximum interest rate fixed for lending money to

Borrowers. But no effective control is being followed as the action will be initiated only on the complaint of borrowers. Some of the online loan companies are functioning as Non Banking Financial Companies regulated by Reserve Bank of India. But it seems that RBI is not controlling the exorbitant interest rate and other charges being imposed by these companies and not restraining them from harassing the borrowers.

13. That Kerala Government in 1958 passed The Kerala Money Lenders Act. Section 7 of the Act had provision that No money-lender shall charge interest on any loan at a rate exceeding two per cent above the maximum rate of interest charged by commercial banks on loans granted by them. Copy of Relevant pages from the Kerala Money Lender Act 1958 is annexed herewith and attached as **ANNEXURE P-3** **PAGE ____ TO ____**.
14. That the UP Government in 1976 passed The Uttar Pradesh Regulation of Money-Lending Act, 1976. As per Section 12 (1) of the Act no money-lender shall in respect of any loan, whether advanced before or after the commencement of this Act, be entitled to interest exceeding such rates as may be notified under sub-section (2). As per Section 12(2) of the Act The State Government may from time to time, after

considering the rate of interest normally charged by a scheduled banks for commercial loans, notify the maximum rates of interest that may be charged by money-lenders. Copy of relevant pages from The Uttar Pradesh Regulation of Money-Lending Act, 1976 is annexed herewith and attached as **ANNEXURE P-4 PAGE ____ TO ____**.

15. That in 2013 The Kerala Prohibition of Charging Exorbitant Interest Act, 2012 was passed. As per Section 2 (c) of the Act "exorbitant interest" means an interest at the rate more than the rate specified in sub-section (1) of section 7 of the Kerala Money-Lenders Act, 1958 and includes daily vatti, hourly vatti, kanduvatti, meter vatti and thandal. As per Section 3 of the Act No person shall charge exorbitant interest on any loan advanced by him. As per Section 4 of the Act any offence under this Act shall be cognizable and non-bailable. Copy of The Kerala Prohibition of Charging Exorbitant Interest Act, 2012 is annexed herewith and attached as **ANNEXURE P-5 PAGE ____ TO ____**.

16. That State of Maharashtra in 2014 had passed The Maharashtra Money-Lending (Regulation) Act, 2014. Section 31 of the Act says that The State Government may, from time to time, by notification in the Official Gazette, fix the maximum rates of interest to be charged by a money-lender

in respect of secured loan and unsecured loan. But online lending platform is working in the state without any control from the State Government or Central Government. Copy of relevant pages from The Maharashtra Money-Lending (Regulation) Act, 2014 is annexed herewith and attached as **ANNEXURE P-6 PAGE ____ TO ____**.

17. Reserve Bank of India in its website clarified through FAQ that an Non Banking Financial Company – Micro Financial Institution (NBFC-MFI) can charge a differential rate of interest to its customers but the variance for individual loans between the minimum and maximum interest rate cannot exceed 4 per cent. Copy of the FAQ document related to NBFC-MFI dated 29.12.2017 of Reserve Bank of India is annexed herewith and attached as **ANNEXURE P-7 PAGE ____ TO ____**.

18. That the Kerala State Government on 31.01.2019 fixed 18% as maximum interest on loan that could be charged by money lenders. This was revealed by an Article Published in the Hindu.com on 1-2-2019. Copy of article published in the Hindu on 01-2-2019 stating that maximum interest that can be charged by money lenders in Kerala is 18% is annexed herewith and attached as **ANNEXURE P-8 PAGE __ TO __**.

19. That an Article published by the Economic times on 2.12.2019 claims that an estimated amount of Rs. 400 Crore is disbursed by Payday Loan Companies Every Month. The Lenders are charging 1% and 1.50% interest every day. On Annualised basis the interest rate works out to 365% to 540%. It is much higher than the interest charging on credit card (24% to 36%) per Year. The high interest rate is not the only cost for the borrower. There is also a processing fee that can be as high as 7% of the loan amount. If the cheque bounces or the borrower want to extend the repayment date, the borrowers are slapped with penal charges of Rs 500/- to Rs.1,000/-. Copy of the Article published in the Economic Times on 2.12.2019 showing huge interest rate being charged by lenders through online money lending App is annexed herewith and attached as **ANNEXURE P-9 PAGE ___TO ___**.

20. That Article published in thenewsminute.com on 02.06.2020 claims that many of the online loan companies are harassing the borrowers in different ways. They are also become a privacy concern as they usually breach privacy of borrower in case of default. Applications that provide Instant loans come under the Non-Banking Financial Companies (NBFCs) category which, like the banks, were allowed to

provide borrowers with a three-month moratorium. In March, RBI announced that all banks and lending institutions can allow a three-month moratorium on all term loans outstanding as of March 1, 2020. This includes all forms of retail loans and EMIs. This was then extended for another three months up to August 31, 2020. However, borrowers claim that several instant loan providers have been pressing their borrowers to cough up their monthly EMIs on time. These companies, which had in past been accused of resorting to intimidation tactics for EMI recoveries, reportedly continued this even during the lockdown when many businesses and jobs have been impacted. Some were even threatened with legal cases. Copy of Article Published in the thenewsminute.com on 02.06.2020 revealing harassment methods of online money lenders is annexed herewith and attached as **ANNEXURE P-10 PAGE __ TO __**.

21. That Article published in the Mint.com on 08.06.2020 states that search on the Google Play Store app store for the keywords "instant loan" displays over 200 apps that are willing to put cash in the bank account of borrowers. In the hurry to get easy loans, many overlooked the interest rates, penalties and the track record of these lenders. Many started

with borrowing small amounts (Rs. 500 to Rs. 50,000), but as their dependency rose, they ended up taking multiple loans until their cash flows dried up and they started defaulting. That's when a happy experience of getting credit on tap turned horribly sour. In the app-driven micro lending segment, the process of recovery has now turned into a nightmare for many borrowers. Unfortunately, while installing the app, borrowers must give it consent to access their contacts, which some aggressive lenders are now tapping to publicly humiliate borrowers. Copy of Article Published in the mint.com on 08.06.2020 showing number of instant loan apps doing money lending business in India is annexed herewith and attached as **ANNEXURE P-11** **PAGE ___ TO ___**.

22. That on 24.06.2020 Reserve Bank of India published Circular No. RBI/2019-20/258 DOR (NBFC) (PD) CC.No.112 /03.10.001/2019-20 for Adherence to Fair Practice Code and guidelines for loan sourced by Banks and NBFCs over Digital Lending Platforms. But this Circular does not have any guideline to cap interest rate, regulate or control Digital Lending. This is applicable for Digital Lending Platforms working under NBFCs only. The Guidelines published are:

- a) Names of digital lending platforms engaged as agents shall be disclosed on the website of banks/ NBFCs.
- b) Digital lending platforms engaged as agents shall be directed to disclose upfront to the customer, the name of the bank/ NBFC on whose behalf they are interacting with him.
- c) Immediately after sanction but before execution of the loan agreement, the sanction letter shall be issued to the borrower on the letter head of the bank/ NBFC concerned.
- d) A copy of the loan agreement along with a copy each of all enclosures quoted in the loan agreement shall be furnished to all borrowers at the time of sanction/ disbursement of loans.
- e) Effective oversight and monitoring shall be ensured over the digital lending platforms engaged by the banks/ NBFCs.
- f) Adequate efforts shall be made towards creation of awareness about the grievance redressal mechanism.

Copy of RBI Circular No RBI/2019-20/258 DOR (NBFC) (PD) CC.No.112 /03.10.001/2019-20 dated June 24, 2020 regarding information to be furnished by digital lending platforms running under NBFC is annexed herewith and attached as **ANNEXURE P-12 PAGE ___ TO ___**.

23. Article published by thenextweb.com on 17.08.2020 revealed that a China-based lending company Moneed's

unprotected database has exposed the names and phone numbers of millions of Indians, putting them at risk of identity theft. Security researcher Anurag Sen found this database on an open elastic server that had more than 389 million phonebook records. Moneed has offices in Hangzhou, New Delhi, and Hong Kong. Copy of article published by thenextweb.com on 17.08.2020 regarding exposure of unprotected database by Chinese App is annexed herewith and attached as **ANNEXURE P-13 PAGE ___ TO ___**.

24. That Article published in the Business-standard.com on 21.09.2020 revealed that Lending platform mPokket will disburse instant loans of Rs 1,200 Crore in the Financial Year 2021. Borrowers can avail loans of up to Rs 30,000, with the amount being instantly credited to the user's bank account or digital wallet. This shows that there are big companies doing digital lending business in India and the volume of business is huge. There is urgent need to formulate rules and regulations to control the workings of these Lenders. Copy of the Article published in the business-standard.com on 21.09.2020 revealing that a money lending platform will disburse instant loan of Rs. 1200 crore in

Financial Year 2021 is annexed herewith and attached as **ANNEXUPRE P-14 PAGE ___ TO ___**.

25. That another Article Published in the Economic Times on 24.10.2020 titled “Here's how not to fall for fake loan apps” revealed that millions of Indians are downloading instant loan apps to make ends meet. Taking advantage of this, cybercriminals are using new ways to swindle mobile phone and computer users. Compared to last year, financial frauds have increased manifold. It's been estimated that 500,000 people have been scammed with scammers having made more than Rs 15 crore from these apps since the end of March 2020. The venture capital tracking platform, Traxcn, reportedly estimates that currently in India there are 484 different lending apps - including genuine apps that are listed on Play Store and App Store. More than a hundred apps are offering payday loans, and many of them show more than a million installs. Many of the Lenders have no physical address. Copy of the Article published in the Economic Times on 24.10.2020 regarding fake loan apps is annexed herewith and attached as **ANNEXURE P-15 PAGE ___ TO ___**.

26. That in a shocking incident, a young woman who took loans through online apps and unable to pay has committed

suicide on 3rd November 2020. She was living in Gajuwaka's Sundaraiah Colony in Visakhapatnam District. She was an MBA graduate, she came from a poor family and borrowed money from her friends for household needs and to pay off the debts, she has taken loan from online companies through apps. However, the family members were not aware of it. The police upon investigating the case found that she has taken loans of Rs. 25,000 from various mobile apps and could not repay it. After the app management has been harassing over the repayment of loan, Ahlada who is unable to bear the pressure has committed suicide. That in the case of default in repaying loan many of the companies harassing the borrowers in different ways. These companies, which had in past been accused of resorting to intimidation tactics for EMI recoveries, reportedly continued this even during the lockdown when many businesses and jobs have been impacted. Some were even threatened with legal cases. Copy of the Article published in thehansindia.com on 04.11.2020 regarding the suicide of a young woman who took loan through online App is annexed herewith and attached as **ANNEXURE P-16 PAGE __ TO __**.

27. That on 23.12.2020 The Reserve Bank of India (RBI) has warned borrowers and customers from availing loans from

digital lending websites and mobile apps, which are unregulated entities. Reserve Bank of India said that:

“RBI Cautions against unauthorised Digital Lending Platforms/Mobile Apps”

“There have been reports about individuals/ small businesses falling prey to growing number of unauthorised digital lending platforms/Mobile Apps on promises of getting loans in quick and hassle-free manner. These reports also refer to excessive rates of interest and additional hidden charges being demanded from borrowers; adoption of unacceptable and high-handed recovery methods; and misuse of agreements to access data on the mobile phones of the borrowers.

Legitimate public lending activities can be undertaken by Banks, Non-Banking Financial Companies (NBFCs) registered with RBI and other entities who are regulated by the State Governments under statutory provisions, such as the money lending acts of the concerned states. Members of public are hereby cautioned not to fall prey to such unscrupulous activities and verify the antecedents of the company/ firm offering loans online or through mobile apps. Moreover, consumers should never share copies of KYC documents with unidentified persons, unverified/unauthorised Apps and should report such Apps/Bank Account information associated with the Apps to concerned law enforcement agencies or use Sachet portal (<https://sachet.rbi.org.in>) to file an on-line complaint.

Reserve Bank has also mandated that digital lending platforms which are used on behalf of Banks and NBFCs should disclose name of the Bank(s) or NBFC(s) upfront to the customers. The names and addresses of the NBFCs

registered with the Reserve Bank can be accessed here and the portal for filing complaints against the entities regulated by the RBI can be accessed through <https://cms.rbi.org.in>.”

Copy of the Press Release dated 23.12.2020 issued by Reserve Bank of India regarding Cautions against unauthorised Digital Lending Platforms/Mobile Apps is annexed herewith and attached as **ANNEXURE P-17** **PAGE ___ TO ___**.

28. News Article published in the ndtv.com said that several borrowers committing suicides in recent weeks and months due to harassment they faced from purported employees and collect agents of these digital lending platforms. Hyderabad Police have frozen 75 bank accounts holding Rs. 423 crore in connection with a multi-crore money lending scam - that charged victims up to 35 per cent interest - conducted via 30 mobile phone apps that were not approved by the Reserve Bank of India (RBI). Officials say the call centres employed hundreds of youngsters trained to lure customers, entrap them into borrowing successive sums from multiple apps, and were trained to "abuse, defame and blackmail" victims in order to recover borrowed money and the interest. In three call centres alone over 1,000 people were employed, many of

whom were college graduates paid between Rs. 10,000 and Rs. 15,000 per month. Copy of the Article published in the ndtv.com on 23rd December 2020 titled “Multicore Loan Apps Scam Caught In Hyderabad, Gurgaon; RBI Warning Out” is annexed herewith and attached as **ANNEXURE P-18**
PAGE ___ TO ___.

29. The following are the links for some of the Apps of online lending platforms tested by the Petitioner.

- a) Cashtrain - <https://play.google.com/store/apps/details?id=com.twoteam.hfs>
- b) YOYO cash - <https://play.google.com/store/apps/details?id=com.ruming.yoyo>
- c) Palmcash - <https://play.google.com/store/apps/details?id=com.pro.fish.palmcash>
- d) Cashmere - <https://play.google.com/store/apps/details?id=com.comptech.cashere>
- e) Quickmoney - <https://play.google.com/store/apps/details?id=com.gukmoney.app>
- f) wow cash - <https://play.google.com/store/apps/details?id=com.wowin.wowcash>
- g) Kush cash - <https://play.google.com/store/apps/details?id=in.kushcash.app>
- h) Cashtok - <https://play.google.com/store/apps/details?id=ind.cashtok.app>
- i) Uucash - <https://play.google.com/store/apps/details?id=com.uucash>
- j) Moneybox - <https://play.google.com/store/apps/details?id=com.mboxszzy.blueone>
- k) Cashcred - <https://play.google.com/store/apps/details?id=com.yin.doll>
- l) Cashguru - <https://play.google.com/store/apps/details?id=com.gold.fish.cashguru>
- m) Antcash - <https://play.google.com/store/apps/details?id=com.anticash.in>
- n) Sea loan - <https://play.google.com/store/apps/details?id=com.mysea.newloan>
- o) Panda loans - <https://play.google.com/store/apps/details?id=instantloan.easypandacashloan>
- p) Cash bird - <https://play.google.com/store/apps/details?id=com.cashbird.india.android>

30. That the Hon'ble Supreme Court in **Francis Coralie v. Union Territory of Delhi (1981 AIR 746, 1981 SCR (2) 516)**, observed that “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view

of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration...”

31. That the Hon’ble Supreme Court in ***Bandhua Mukti***

Morcha v. Union of India (1984 AIR 802, 1984 SCR (2)

67) Characterizing Article 21 as the heart of fundamental rights, the Court gave it an expanded interpretation.

Bhagwati J. observed:

“Moreover, when a complaint is made on behalf of workmen that they are held in bondage and are working and living in miserable conditions without any proper or adequate shelter over their heads, without any protection against sun and rain, without two square meals per day and with only dirty water from a nullah to drink, it is difficult to appreciate how such a complaint can be thrown out on the ground that it is not violative of the fundamental right of the workmen. It is the

fundamental right of every one in this Country, assured under the interpretation given to Article 21 by this Court in Francis Mullen's case, to live with human dignity, free from exploitation. This right to live with human dignity, enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Article 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that, the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State....”

32. That the Petitioner has no other alternative remedy but to approach this Hon'ble Court and invoke Article 226 of the Constitution of India on the following amongst other grounds which are urged hereinafter without prejudice to each other.

GROUND

That the present Writ Petition is being filed on the following, amongst other, grounds without prejudice to each other;

- A. Because there is no uniform law to regulate online digital lending. State Money Lending laws are not being implemented properly. It seems that there is no maximum interest rate fixed by Reserve Bank India for online Digital Lending Platforms working under Non Banking Financial Companies.
- B. Because the Online Digital Lending companies are exploiting its customers by charging very high interest on loan i.e. even 365% in a year and additional charges. There is no maximum limit for interest chargeable on such loans.
- C. Because the lending companies are adopting various methods to harass the borrower in case of default of repaying loan. They even access the private contacts numbers saved in the mobile phone of borrowers and call the relatives and friends to harass defaulted borrowers. Thus Right of Privacy of the Customers is being denied.
- D. Because people already stressed with bad financial condition are becoming victims of the loan companies. Many times they are not able to take legal help due to financial stress and other reasons.

- E. Because due to the harassment of recovery agents of online digital lending firms a girl in Hyderabad was committed suicide. This shows the level of harassment being used by the recovery agents of online digital lenders.
- F. Because the volume of online digital lending is very high and millions of people are losing huge amount in the form of interest and other charges. They are also facing harassment from the recovery agents of online digital lending companies.
33. The petitioners submit that no other writ petition has been filed by the petitioner regarding online money lending app and that the petitioner has no other efficacious alternative remedy than to file the present writ petition.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- a) Issue a Writ of Mandamus or any other appropriate Writ directing Respondents:
- i. To Regulate and control working of Online Digital Lenders doing business through mobile App or any other platform;
 - ii. To stop charging exorbitant interest on loan from borrowers;

- iii. To stop harassment to the borrowers from recovery agents of online digital lenders;
 - iv. To fix maximum rate of interest chargeable by online digital lenders;
 - v. To setup grievance redressal mechanism for borrowers in every state, to resolve the problems they face from online digital lending App operators or their agents, within specific time;
- b) Any other relief, order or direction this court may deem fit and proper under the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS DUTY BOUND SHALL EVERY PRAY.

THROUGH

**[PRASHANT BHUSHAN]
ADVOCATE FOR THE PETITIONER**