

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2018

IN THE MATTER OF:

SWAMI AGNIVESH,
SOCIAL ACTIVIST,
7, JANTAR MANTAR ROAD,
NEW DELHI-110001.

... PETITIONER

VERSUS

1. UNION OF INDIA,
THROUGH ITS SECRETARY,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI-110001.

2. MINISTRY OF LABOUR & EMPLOYMENT
THROUGH ITS SECRETARY
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI-110001.

3. NATIONAL LEGAL SERVICES AUTHORITY (NALSA)
THROUGH ITS MEMBER SECRETARY,
12/11, JAM NAGAR HOUSE,
SHAHJAHAN ROAD,
NEW DELHI-110011.

...CONTESTING
RESPONDENTS

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA SEEKING MINIMUM
WAGES FOR THE LABOURERS/EMPLOYEES OF
THE UN-ORGANIZED SECTOR**

TO,

THE HON'BLE CHIEF JUSTICE OF
INDIA AND HIS COMPANION
JUSTICES OF THE SUPREME
COURT OF INDIA, NEW DELHI;

The humble Petition of
the Petitioner above-
named;

MOST RESPECTFULLY SHOWETH:-

1. The present writ petition (PIL) is being filed by the Petitioner in person under Article 32 of the Constitution of India for the enforcement of the fundamental rights particularly for workers of the un-organized sector, as also for women and working children, seeking direction(s) to be issued to the Respondents herein to fix and ensure payment of minimum wages for the labourers, particularly of the unorganized sector without any gender discrimination particularly regarding wages payable to women. Further, the Petitioner is also seeking a direction to prohibit the employment of children completely. The Petitioner further seeks that minimum wages may be fixed on an hourly basis at parity with the proportionate standard of living and purchasing power available to the similarly placed workers on hourly basis as is prevalent in their respective societies in countries like USA, Europe and Japan etc. This is to uphold the fundamental right to life as guaranteed by the Constitution in Article 21 and to ensure the basic minimum requirements to maintain a reasonable standard of life in consonance with the principles laid down by this Court in 'The Workmen represented by Secy. vs. The Management of Reptakos Brett & Co. Ltd. & Anr.' [(1992) 1 SCC 290] for the most needy, downtrodden and exploited sections of the society,

i.e., unorganized labourers with a view to securing for them a dignified life, equivalent at least to the wages and perks of class IV employees along with other perquisites as agreed to and being implemented by the Central Government, pursuant to the recommendations of the 7th Central Pay Commission. The Petitioner submits that discrimination between the Central Government employees and the labourers in the un-organized sector violates the fundamental rights under Articles 14, 16 and 21 of the Constitution of India. Thus, it is necessary to ensure the minimum human dignity which is still being denied to the labourers in the unorganized sector of the country representing about 475 million (approximately) people despite seventy years after independence and the country scaling great heights as one of the fastest growing economies of the world.

- 1A. The Petitioner's full name is Swami Agnivesh (born as Vepa Shyam Rao). The Petitioner is a Sanyasi, a follower of Arya Samaj movement, reformist and a social activist working tirelessly for eradication of bonded labour system and child slavery. As founder President of Bandhua Mukti Morcha, the Petitioner filed the PIL vide W.P.(C) No.2135/1982 in this Hon'ble Court which delivered a land mark judgment on 16.12.1983 for elimination of bonded labour system in India. He is based

in New Delhi, India. His annual income is Rs.4,84,162/-. The mobile number of the Petitioner is 9810976705, email address is agnivesh70@gmail.com, his Aadhar number is 570290328854 and PAN number is ADQPA1705R. The postal address of the Petitioner is : 7, Jantar Mantar Road, New Delhi-110001. It is stated that there is no civil, criminal or revenue litigation involving the Petitioner which has or could have a legal nexus with the issues involved herein. It is further stated that the Petitioner does not have any personal interest or oblique motive in filing the present petition.

2. The Petitioner is an activist based in New Delhi, India, and a leader of Arya Samaj and former Board member of KAICIID (King Abdullah bin Abdulaziz International Centre for Interreligious and Intercultural Dialogue). He was awarded the Right to Livelihood Award, known as the Alternative Nobel, in 2004, for his work for social justice. Late Justice V.R. Krishna Iyer called him a cyclonic swami, reflecting his dynamism and the diversity of his activism.

He is the grandson of the Diwan (Chief Minister) of a former princely state, called Shakti, now in Chattisgarh, and part of an Orthodox Hindu family. Later on, he obtained Law and Business Management degrees, became a lecturer in Kolkata's famous St. Xavier's

College from 1963-1968. He also practised law in the High Court of Judicature, Calcutta under the late Sabyasachi Mukherji who subsequently became Chief Justice of India.

In 1968, he became a full-time worker of the Arya Samaj, a Hindu reformist movement and two years later, became a sanyasi, renouncing worldly possessions and becoming, in the process, 'Swami Agnivesh' in March 1970. Along with Swami Indraves, he led various movements of students, teachers and farmers in Haryana. In 1974, as a trusted lieutenant of Lok Nayak Jai Prakash Narayan, he led his movement in Haryana and spent 13 months in Ambala Central Jail during emergency. He studied literature on Bapu's thoughts and ideals and was deeply influenced by them. He was elected as an MLA in Haryana and was Minister for Education for a short stint. He resigned in November 1979 and plunged himself in the movement for the emancipation of victims of age old bonded labour system and those of child slavery.

The Petitioner, a powerful communicator in Hindi and English, has worked on many social issues nationally and internationally such as abolition of untouchability and caste system in Hindu society, women's equality and religious tolerance and

reconciliation. He is a strong advocate of inter-faith action for social justice. The first International Anti-Slavery Award was given to him in London in 1990, Freedom and Human Rights Award in Berne, Switzerland in 1994, Rajiv Gandhi National Sadbhavna Award in 2004 and Right to Livelihood Award (Alternative Nobel for Peace in 2004.)

3. On 23.11.2017 the Petitioner had filed a Petition bearing W.P.(C) No.1181/2017 titled 'Swami Agnivesh vs Union of India & Anr.' before this Hon'ble Court. However, the said petition was disposed of vide order dated 11.12.2017 and the Petitioner was granted liberty to file an appropriately constituted petition. A true copy of the order dated 11.12.2017 passed by this Hon'ble Court in W.P.(C) No.1181/2017 is annexed herewith and marked as **ANNEXURE P-1 (pages 58 to 59).**

4. JUDGEMENTS OF THIS HON'BLE COURT AND DIRECTIONS CONTAINED THEREIN RELEVANT FOR FIXATION OF MINIMUM WAGE:

- I. In 'Crown Aluminium Works vs. Their Workmen' [(1958) 1 SCR 651], a Three Judge Bench of this Hon'ble Court had laid down. "It is quite likely that in under-developed countries where unemployment prevails on a very large scale, un-organized labour may be available on starvation wages but the employment of labour on starvation wages

cannot be encouraged or favoured in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms”.

The Court brought out clearly the difference between minimum wage and living wage in the following words:

- (a) Fair wage is a mean between minimum wage and living wage;
- (b) Minimum wage is something more than the bare minimum or subsistence wage;
- (c) Minimum wage should be sufficient to cover the bare physical needs of the worker and his family;
- (d) Minimum wage would also provide for the preservation of the efficiency of the worker;
- (e) It would also provide some measure of education, medical requirements and amenities.

The Court had also acknowledged that the content of the expression 'minimum wage' 'fair wage' and 'living wage' is not fixed and static. With growth and development of the national economy living standards would improve and so would our notions about the respective categories of the wages would get expanded and be more progressive.

II. In 'Kamani Metals and Alloys Ltd. vs. Their Workmen', [(1967) 2 SCR 460], this Hon'ble Court considered an appeal against the award of Maharashtra Industrial Tribunal (I.T. No.271 of 1962) and upheld the principle observed by the Tribunal in fixing wages for monthly rated wage employees and the dearness allowance payable to the monthly rated workmen. The Principle for fixation of dearness allowance was as under:

- (a) On the first Rs.100 basic pay – 60%; (up to Rs.100/-)
- (b) On the second Rs.100 basic pay – 20% of the second hundred rupees (upto Rs.200/-)
- (c) On the third Rs.100/- (upto Rs.300/-) – 15% of the third hundred rupees
- (d) On the fourth Rs.100/- (upto Rs.400/-) – 10% of the fourth hundred rupees,
- (e) On the fifth Rs.100/- (upto Rs.500/-) – 10% of the fifth hundred rupees
- (f) On every hundred above Rs.500/- (basic) – 5% of every hundred rupees

The above percent of dearness allowance was applicable when the Bombay consumer price index was between 311 and 320. Variation in the above per cent was to be allowed per 10 points movement in the index.

III. In 'The Workmen represented by Secy. vs. The Management of Reptakos Brett & Co. Ltd. & Anr.' [(1992) 1 SCC 290], this Hon'ble Court endorsed the six components which ILC at its 15th Session held at Nainital in 1957, had taken into account in recommending a minimum wage structure. It also endorsed the observation made by the Court in 'Crown Aluminium Works' (supra) and observed, "An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry." It further endorsed the following two observations of the Fair Wages Committee (1949) on the definition of living wage and minimum wage as under:-

LIVING WAGE

'This living wage should enable the male earner to provide for himself and his family not merely the bare essential of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill health, requirements of essential social needs and a measure of insurance against the more important misfortunes including old age.'

MINIMUM WAGE

'The minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose, the minimum

wage must also provide for some measure of education, medical requirements and amenities.

The Court, thus, enlarged the ambit of minimum wage and observed “The concept of minimum wage is no longer the same as it was in 1936. Even 1957 is way behind. A worker’s wage is no longer a contract between an employer and employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional components as a guide for fixing the minimum wage in the industry : children’s education; medical requirement; minimum recreation including festivals/ceremonies, provision for old age, and marriage; These should further constitute 25 % of total minimum wage”. It is submitted that coming immediately after the recommendations of 15th Session of ILC, held at Nainital in 1957, it was clear that these components were over and above the components recommended by the ILC in 1957.

- IV. In ‘People’s Union for Democratic Rights & Ors. vs. Union of India& Ors.’ [1982) 2 SCC 494], (known as Asiad Workers’ case) this Hon’ble Court gave a broad, liberal

and expansive interpretation of Article 23 of the Constitution, in the following words:

‘Article 23 Prohibits traffic in human beings and beggar and other similar forms of forced labour’.

“It makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by Article 23 if it is forced labour, i.e., service has been rendered by force or compulsion.

The word force must be construed to include not only physical or legal force but force arising from the compulsions of economic circumstances which leave no choice of alternatives to a person and compel him to provide labour or service even though the remuneration received for it is less than the minimum wage.

When a person provides labour or service to another for a remuneration which is less than the minimum wage, the labour or service provided by him falls within the scope and ambit of forced labour under Article 23.”

It is pertinent to note that in the instant case, the workers did not get the minimum wage of Rs.9.25 per day as Rs.1 per worker was being deducted by the

Jamadars (middlemen) from the wages payable to the workers employed by the contractors for the Asiad Games Projects. The Court held that the same amounted to an infringement of Article 23 of the Constitution.

V. Sanjit Roy vs. State of Rajasthan [(1983) 1 SCC 525]

In this case, Government of Rajasthan had taken a stand that the Act was not applicable to the employees engaged in famine relief works by virtue of Section 3 of Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964.

Rejecting the above stand, the Court observed “The grounds advanced in the W.P. challenging the Constitutional validity of Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act 1964 are well founded. Article 23 mandates that no person shall be required or permitted to provide labour or service to another on payment of anything less than the minimum wage.

If the Exemption Act by excluding the applicability of the Act provides that minimum wages may not be paid to workmen employed in any famine relief work, it would be clearly violative of Article 23.

VI. In ‘Bandhua Mukti Morcha vs. Union of India & Others’ [(1984) 3 SCC 161] filed by the Petitioner herein, the Three Judge Bench of the Court, in its order dated

16.12.1983, had issued the following directions as far as enforcement of provisions of the Minimum Wages Act is concerned:

- (a) The Central Government (in respect of stone quarries) and the State Government (in respect of stone crushers) will take all necessary steps for the purpose of ensuring that minimum wages are paid directly to the workmen employed in the stone quarries and stone crushers and not through middlemen;
- (b) If payment of wages is made on truck load of chips, the Central Government will direct an appropriate officer of the Central Enforcement Machinery to determine how much cubic feet of stone the truck can contain and print on the body of truck itself the rate of wages that the workmen should receive for loading the chips on the truck. Surprise inspections should be carried out at least once a week for the purpose of ensuring that the trucks are not loaded beyond the permissible measurement capacity which is laid down in the Motor Vehicles Act, 1939 and Rules framed thereunder. Any instance of a truck being loaded in excess of the permissible measurement capacity should be brought to the

notice of the competent authority for necessary legal and penal action.

- (c) The Central and State Governments will ensure that the payment of wages is made directly to the workmen by the mining lessees and owners of stone crushers in presence of representatives of the lessee/owner and inspecting Officer of the Central Government. Inspecting officers of both Central and State Governments should carry out periodic checks in order to ensure that payment of stipulated wage is made to the worker.

The Court also held that:

- a. There would be no occasion for a labourer to be placed in a situation where he/she is required to supply forced labour for no wage or for nominal wage unless he/she has received some advance or other economic consideration from the employer.
- b. Whenever it is shown that a labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration and he is, therefore, a bonded labourer.
- c. This presumption may be rebutted by the employer and also by the State government, if it so chooses,

but unless and until satisfactory evidence is produced for rebutting this presumption, the court must proceed on the basis that the person is a bonded labourer entitled to the benefit of the provisions of the Act'.

The Petitioner submits that these are historic landmark judgements for the following reasons:

- A close co-relation has been established, beyond doubt, between denial of minimum wage and existence of forced labour;

A poor man who is landless and asset-less, renders services to a rich person who is otherwise resourceful, affluent and influential, not out of charity or catholicity but out of some genuine economic consideration/compulsion.

VII. In 'Labourers working on Salal Hydro-electric Project vs. The State of Jammu and Kashmir' [(1984) 3 SCC 538], the following directions were issued by this Hon'ble Court, in relation to the series of violations of number of laws by the project authority of Salal Hydro-electric Authority. The directions in brief are:

- (a) The Central Government should take immediate steps to ensure that contractor or sub-contractors who make the payment of wage on piece rate basis do not execute any portion of the project work

without obtaining a licence under Section 12(1) of Contract Labour (R&A) Act; and the principal employer does not engage contract Labour without obtaining a registration certificate under Section 7(2) of the Act.

- (b) Wages to the workmen employed by the contractor or the sub-contractors should be paid directly without the intervention of any intermediary;
- (c) No deduction from wages except those authorised by the law, i.e., Payment of Wages Act, 1936 should be made;
- (d) Payment of wages should be made in presence of an authorised representative of the (principal employer) Central Government or the project.

5. It is submitted that the formula for fixing the minimum wage as was recommended by the 44th Indian Labour Conference (ILC) in 2012, and reiterated by the 46th ILC in 2015 may be taken into consideration. This formula for minimum wage was earlier adopted unanimously by the 15th ILC in 1957 and by this Hon'ble Court while issuing directions in the 'Reptakos Brett's' case (supra).

Based on this formula, the Seventh Pay Commission recommended Rs.18,000/- as minimum wage for a class IV employee of Govt. of India. The government accepted this for central government employees but there is no

decision and corresponding announcement of the decision, whatsoever to provide the same for all workers including those employed in the un-organized sector which is the most neglected/exploited and voiceless section in the country, regardless of any other factor including geographical location etc.

6. It is further submitted that even otherwise the concept of 'principle of equal remuneration for work of equal value' has not been fully applied in our country despite various pronouncements by this Hon'ble Court including (a) 'Randhir Singh vs. U.O.I. & Ors.' [(1982) 1 SCC 618] (b) 'Dhirendra Chamoli & Anr. vs. State of UP' [(1986) 1 SCC 637] (c) 'Federation of All India Customs and Central Excise Stenographer & Ors. vs. U.O.I. & Ors.' [(1988) 3 SCC 91] (d) 'Dharwad District PWD Literate Daily Wage Employees Association & Ors. vs. State of Karnataka & Ors.' [(1990) 2 SCC 396] etc. This lapse has to be viewed in the spirit of ILO's Equal Remuneration Convention No.100/1951 which India has ratified. Thus, there is an urgent need to spell out a clearly discernible and decipherable criterion for determining equal remuneration to women and men on the principle of work of equal value which is the guiding principle in ILO's Equal Remuneration Convention as has been referred to above.

7. As of now, a highly irrational and arbitrary list categorising different areas of work as skilled, semi-skilled and unskilled is being used for determining minimum wages. This entire field requires a comprehensive and scientific study to determine the value of different 'work' and categorise them to develop a formula/algorithm for deciphering/calculating the actual value of work undertaken by a worker which will be rational and universally valid.

8. **GROUND**

The Petitioner is filing the present writ petition on the following amongst other grounds, which are being taken without prejudice to one another:

- A. It is submitted that in the case of millions of workers including domestic workers, building and construction workers, sewer workers, brick kiln and stone quarry workers, workers in loading and unloading goods sheds, parcel offices of railways, docks and ports etc., cartload drivers, hand cart drivers, beedi rollers, labellers and packers, collectors of minor agricultural and forest produce, collectors of raw hides and skins, tanners and flayers, salt workers, scavengers, head load carriers etc. sweeping and cleaning workers, watch and ward employees who may not be working in traditional factories, getting a remunerative wage corresponding to

the labour/ service rendered by them and value thereof has not even been considered till date.

- B. The Petitioner submits that till date there is no fixed time limit regarding disposal of disputes pertaining to payment of wages. In case of inordinate delay, the worker should have direct access to the courts for adjudication of all such labour disputes. It may be noted that every aggrieved section of the society has a right to go to court directly for ventilation and redressal of grievances and fulfilment of legitimate demands but not the working class. The working class has to take permission which may take upto five years in the Labour Commissioner's Office.
- C. This Hon'ble Court may kindly consider that in view of the mandate of Articles 14 and 16 of the Constitution of India, the minimum wage formula may be fixed similar to the Central Government employees. Further, contract, casual or temporary employees performing similar duties and functions as discharged by permanent employees may be entitled to draw wages at par with permanent employees in the government sector. Also mere difference in nomenclature may not disentitle an employee from being paid the same wages as their counterparts in similar situations, for, any act of paying less wages as compared to other similarly situated employees,

constitutes an act of both discrimination and exploitative enslavement.

This Hon'ble Court in 'State of Punjab & Ors. vs Jagjit Singh & Ors.' upheld the Constitutional principle of 'equal pay for equal work' with respect to temporary employees vis-à-vis permanent employees in the government sector. The Court held that temporary employees performing similar duties and functions as discharged by permanent employees are entitled to draw wages at par with the similarly placed permanent employees. It is submitted that this principle must be applied in situations where the same work or work of equal value is being performed irrespective of the class/categories of employees.

Further, this Hon'ble Court, in plethora of judgments have discerned and laid down a number of principles. In 'Dhirendra Chamoli vs State of UP' (1986) 1 SCC 637, the Court held that not paying the same wages, despite the work being the same, is violative of Article 14 of the Constitution of India and amounts to exploitation in a Welfare State committed to a socialist pattern of society.

It may be noted that Article 39(d) of the Constitution of India deals with certain principles of policy to be followed by the State. It specifically requires the State to

strive for securing 'equal pay for equal work' without any gender discrimination. Thus, the right of equal wages claimed by temporary employees emerges, inter-alia, vide Article 39 of the Constitution as was held by this Hon'ble Court in 'D.S. Nakara vs Union of India' (1983) 1 SCC 304 and 'Surinder Singh vs Engineer-in-Chief, CPWD' (1986) 1 SCC 639.

The claim for equal wages would be sustainable where an employee is required to discharge similar duties and responsibilities as employees who are similarly situated and the concerned employee possesses the qualification prescribed for the particular post.

In fact, the unorganized sector employees are performing/discharging duties which are far more arduous, drudgerous and hazardous as in the case of manual sewage cleaning employees and of much higher value than as is being normally performed by the class IV Government employees and, therefore, they deserve remuneration higher than the class IV employees of Government. It is only due to lack of an organized and collective voice/bargaining power that these citizens have been denied their just and fair recognition/rewards in the form of wages/salaries.

In 'Bhagwan Dass vs State of Haryana' (1987) 4 SCC 634, it was held that in a claim for equal wages, the

duration for which an employee remains or has remained engaged, the manner of selection/appointment etc. would be inconsequential, in so far as the applicability of the principle is concerned.

It is submitted that the classification of workers (as unskilled, semi-skilled and skilled) doing the same work, into different categories, for payment of wages at different rates is not tenable. Such an act of the employer may be arbitrary and discriminatory and, therefore, violative of Articles 15 and 16 of the Constitution.

It is submitted that if daily wage employees can establish that they are performing equal work of equal value and that all the other relevant factors are fulfilled, a direction by this Court to pay such employees equal wages would be justified.

- D. The Petitioner humbly submits that Article 38 of the Constitution of India in part IV, Directive Principles of State Policy states “(1) The State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals

but also amongst groups of people residing in different areas or engaged in different vocations.]”

It is submitted that based on the principle flowing from Article 38 (2), the Government cannot deny a temporary employee at least the minimum wage being paid to an employee in the corresponding regular cadre, along with dearness allowance and additional dearness allowance, as well as all other benefits which are being extended to casual workers.

E. The Petitioner respectfully submits that the idea of having a national minimum wage has been under consideration of the Government of India for quite some time. The justification for having such a national level minimum wage may be considered on the following premises:

- This will act as a national level floor wage below which nobody can pay although an employer concerned can always go above it.
- Fixing of a national level floor wage at Rs.600/- per day or Rs.18,000/- p.m. would be in keeping with the rise in the Consumers’ Price Index (CPI, for short) as committed by the Labour Bureau which is attached to the office of Ministry of Labour and Employment.
- According to the findings of the Labour Bureau, in case of agricultural labourers, the index which stood at 239

(average) in 1995 has gone up to 825 (average) in 2015 which is more than 300 % increase.

- According to the said findings, the index which stood at 239 (average) in 1995 in case of non-agricultural rural labourers has gone up to 829 (average) in 2015 which is also more than 300 % increase.
- According to the said findings again, in case of industrial workers, the index which stood at 123 (average) in 2006 has gone up to 261.4 (average) in 2015 which is more than 200 % increase.
- The figures have gone up further by the year end of 2016 as would be evident from the following:
 - Agricultural labourers – CPI – 876
 - Rural labourers – CPI – 881
 - Industrial workers – CPI – 275

It is submitted that as against such rapid increase in the CPI which would contribute to the cost of living, the increase in the per capita income at current prices is barely 11.7 %. Further, the rate of inflation has not remained steady, i.e., it is alternately rising, coming down and again rising. It may not be out of context to state here that the socio- economic structure of India is such that inequality in income and standard of living is

pervasive in as much as some people live quite affluently while a substantial number lead a life below poverty line.

F. This Hon'ble Court may kindly appreciate that the advantages in having a national level minimum floor wage would be the following :

- It will provide an incentive or motivation for hard work as also contribution of better quality from labour which in turn will lead to higher level of prosperity for the enterprise.
- It will act as a check against indiscriminate inter-state distress migration which takes place due to disparity in wages obtaining in different parts of the country, amongst other factors and which is invariably associated with the lot of privation, misery and suffering and often ends up in debt bondage which is a cognizable and bailable offence under Sections 16, 17, 18, 19 and 20 of BLS(A) Act, 1976.
- It will reduce the incidence of indebtedness and bondage.
- It will provide an incentive to save.
- Incentive to save would give a boost to a higher demand for consumption which will prevent recession in the market.
- Higher saving would also give a boost to investment and growth.

- Higher the wage, higher will be contribution to EPF and ESI which are contribution based social security schemes
 - Higher the contribution, stronger will be the corpus of EPF and ESI.
 - Stronger the corpus, higher will be the scale of benefits of social security (for those who are members of EPF and ESI).
 - Eventually this will lead to creation of a healthy, stable, motivated and contented work force which will be a significant asset in favour of higher production and productivity as also higher GDP rate of growth of the economy.
- G. The Petitioner humbly submits that this Hon'ble Court, has always established itself as a crusader and champion of the rights of the downtrodden and played a pivotal role through its catena of judgments.

The Preamble of the Constitution declares, inter-alia, justice, social, economic and political and also equality of status and opportunity; and to promote among them all fraternity assuring the dignity of the individual and unity and integrity of the nation. The judiciary is an important Constitutional pillar, to coordinate with the legislature; it is the bounden duty of the executive to protect and uphold the rights of all, particularly of such people who are voiceless and unable

to articulate their suffering arising out of inequality in access to employment opportunity and income which they face when it comes to earning their livelihood. This Hon'ble Court has tirelessly worked being the Apex Court of the country, to secure to the entire Indian population and especially those who, though most deserving, cannot attract the attention of the people in power due to lack of a collective voice and, therefore, are resigned to their fate and prefer to suffer silently. It is, therefore, submitted that 475 million (approximately) unorganised workers in our country who are at the bottom layer of society and who continue to be poor, deprived and exploited have the first right on the resources of our country. Any neglect in addressing their misery and suffering is a crime against humanity, spirit of negation of the welfare State and negation of the spirit of the Constitution of India. Lending voice to the voiceless has been the guiding spirit of the founding fathers of the Constitution. The labour in the unorganized sector of our country is, no doubt the most voiceless and, therefore, require the well-deserved and the most caring consideration of this Hon'ble Court.

The Petitioner submits that Article 39 of the Constitution emerges as a leveller/equaliser. It says: "The State shall, in particular, direct its policy towards securing—(a) that the citizens, men and women equally,

have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

It is submitted that while considering equal pay for equal work, there has to be a rational criterion to be uniformly and consistently applied for all skilled, semi-skilled and unskilled employees. Fixing an arbitrary criterion for categorization of workers in a casual manner may harm the interests of the poor workers like sewage cleaning workers who are mostly un-unionised, and therefore, voiceless.

In 'Grihakalayan vs. Union of India' (1991) 1 SCC 619, this Hon'ble Court held that denial of equal pay for equal work becomes irrational classification within the meaning of Article 14. The Court further observed, equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principles of State Policy as contained in Article 39(d) of the Constitution, it has assumed the status of a Fundamental Right in service jurisprudence, having regard to the Constitutional mandate of equality in Articles 14 and 16 of the Constitution.

- H. The Petitioner respectfully submits that this Hon'ble Court has constantly and consistently regarded the principle of equal pay for equal work as a Constitutional goal, much higher than being a mere Directive Principle, and has subsequently enforced it in-tandem with the fundamental rights, enshrined under Right to Equality, viz., Articles 14 to 18 and Article 39(d). It is further submitted that even otherwise the concept of 'principle of equal remuneration for work of equal value' has not been fully applied in our country despite various pronouncements by this Hon'ble Court. The same principle has also been an integral part of ILO's Equal Remuneration Convention No. 100 of 1951 which has been ratified by India in 1958. Thus, there is an urgent

need to spell out a clearly discernible and decipherable criterion for determining work of 'equal value'.

In 'Randhir Singh' (supra) the Three Judge Bench of this Hon'ble Court held that: "It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. "Equal pay for equal work for both men and women" as enunciated in Article 39 of the Constitution means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean the same thing to everyone...."

"...The principle of "equal pay for equal work" is expressly recognized by all socialist systems of law, e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German

Democratic Republic, para 2 of Section 33 of the Romanian Code. Indeed, this principle has been incorporated in several Western Labour Codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance” (vide International Labour Law by Istvan Szaszy, p. 265).’

‘The Preamble to the Constitution of the International Labour Organisation also recognises the principle of ‘equal remuneration for work of equal value’ as constituting one of the means of achieving the improvement of conditions “involving such injustice, hardship and privation to large number of people as to produce unrest so great that the peace and harmony of the world are imperilled”. Construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), we are of the view that the principle “equal pay for equal work” is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those

drawing the different scales of pay do identical work under the same employer...” (para 8)

In ‘Dhirendra Chamoli’ (supra), this Hon’ble Court held that casual workers on daily wages basis are entitled to salary and conditions of service on par with the regular workers. It is not open to Government to deny such benefits to casual workers on the ground of their acceptance of employment with full knowledge of their disadvantage. Such denial would be clearly violative of Article 14 as Central Government cannot avoid the mandate of equality enshrined in Article 14 of the Constitution. This article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value.

In ‘Federation of All India Customs and Central Excise Stenographers’ (supra), it was held that “...Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the work done; it cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility.....” “..... It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay

for unequal work will be a negation of that right.....”
(para 7)

In ‘Dharwad District PWD Literate Daily Wages Employees Association’ (supra), the Three Judge Bench of this Hon'ble Court held that “...to emphasise upon the feature that equal pay for equal work and providing security for service by regularising casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal to our socialistic polity. Article 141 of the Constitution provides how the decisions of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State — be it of the Centre or the State, or the public sector — that the Constitution makers wanted them to be bound by what this Court said by way of interpreting the law...” (para 11)

- I. It is submitted that while fixing the minimum wage, which should not be less than the minimum of the pay scale (at the lowest grade, in the regular pay scale of the Central Government employees, as fixed by the 7th Pay Commission) extended to regular employees in the Central Government, the following factors may be taken into consideration:
 - i) That a fair wage is the basic demand as well as right of all workers. In India where only 7% of workers are in the

organized sector (formal or public), workers have some tools like collective bargaining to negotiate a better wage for themselves. But for the remaining 93% who are in the unorganized sector, a fair wage is still a dream with limited or no scope at all for organizing them to enable them to demand better wages. The issue of proper remuneration against the work done which may be considered as fair wage, is still an ongoing debate. Fair wage is a wage on which a worker and his/her family can maintain itself. It takes into account not only daily expenses of the worker and his/her dependent family but is also supposed to include living expenses, medical expenses, children's education, house rent, expenses towards fulfilling social obligations, transportation expenses etc. The MW Act, enacted in 1948, is one of the oldest labour legislations in India, based on Article 43 of the Indian Constitution, which states that "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities".

The norms under which an appropriate Government can fix, review and revise minimum wage were first fixed

in 1957 and were later extended to include more items in 1991, listed below:

- (i) Daily minimum wages should be such that a wage earner of the family can provide food for three adults (which every standard family denotes). Enough food is classified in terms of calories, i.e., 2700 calories per adult, as recommended by Dr. Akroyd, an eminent nutritionist which is considered to be the minimum food requirement.
- (ii) It should be enough to provide annual clothing of 72 yards per family @18 yards per member.
- (iii) Minimum wage should also cover rent for housing the wage earner and members of his/her family.
- (iv) In addition, 20 % of the minimum wage is to be accounted for fuel, electricity and other house hold expenses.
- (v) Further, according to the direction of the Hon'ble Supreme Court in 'The Workmen represented by Secy. Vs. The Management of Reptacos Brett & Co. Ltd. & another' as referred earlier 25% of total minimum wage should be taken into account for meeting the cost of education of children, medical requirement, minimum recreation including festivals/ceremonies and provision for marriage, old age etc.

It is pertinent to note that according to one estimate prepared in 2014, by a trade union, on the basis of actual average of retail prices of these items in seven cities – Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Bhubaneswar and Thiruvananthapuram, the expenses come to Rs.20,861/- in a month or Rs.802/- a day. However, the fact is that today's minimum wage across the States does not reflect the realities behind the above criterion. In addition, the criterion itself does not accurately reflect the realities in terms of cost of today's living. For example, the minimum wage requirements do not cover the transport or communication cost, cost of migration etc. It is submitted that as late as 2016 and 2017, the Office of the Chief Labour Commissioner has released minimum wages fixed by the appropriate govts. for various sectors of economic activity which are far lower than the above amount of Rs.802/- a day. It is, however, pertinent to mention that the price index since the year 2014 has further sky-rocketed, so much so that presently even the amount of Rs.802/- per day does not fully cover the total cost of living on a day to day basis.

- J. The Petitioner submits that this Hon'ble Court may kindly issue appropriate directions to appropriate Governments under the MW Act to keep pace with the ever increasing inflationary trends while fixing the daily

minimum wage as the 2014 estimate of expenses of Rs.802/- a day may be inadequate in 2017-18.

This Hon'ble Court has held in the case of 'State of Punjab & Others vs. Jagjit Singh & Others' [(2017) 1 SCC 148] that "there is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The principle is binding on all, under Article 141 of the Constitution of India. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work charge, daily-wage, casual, ad-hoc, contractual, and the like). In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For,

he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

“Article 7 The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and

reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.” India is a signatory to the above Covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution, referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of ‘equal pay for equal work’ constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis. Having traversed the legal parameters with reference to the application of the principle of ‘equal pay for equal work’, in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of ‘equal pay for equal work’. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged

by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged

Government employees, holding the same post. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post”.

- K. The Petitioner earnestly pleads that Article 14 of the Constitution of India may be followed in letter and spirit by this Hon’ble Court and workers in the unorganized sector may not be discriminated against the workers in the organized sector. Considering the human rights enshrined in the ‘Universal Declaration of Human Rights’, the catena of judgments of this Hon’ble Court and the long hours of hard work put in by the unorganized workers in comparison to Government Class-IV employees, the minimum wage at any cost should not be fixed lower than the lowest pay scale given to the Central Government employees in 7th Central Pay Commission which is Rs.18,000/- and other allowances like dearness allowance, city compensatory allowance, house rent allowance, transport allowance, children education allowance, uniform allowance etc. may be

converted into cash for the daily wagers/ unorganized workers.

The Petitioner humbly submits that according to the recommendations of the 7th Central Pay Commission, nearly 6-7 lakh government employees who are organized, would be getting better packages such as salary, gratuity, allowance, DA, pension etc. But for the poor and voiceless workers in the unorganized sector, there is no one to champion their cause for a sensible and justifiable wage which can be the irreducible barest minimum to support their families.

It is submitted that keeping in view the Constitutional guarantees, these workers should get the same package of pay, facilities and amenities as has been given to Government employees.

- L. It is submitted that the Government has been claiming its economy to be the 3rd fastest growing in the world and it has negated any suggestion to the contrary. Therefore, when India is aspiring to be a global leader, it would be outrageous and inhuman to think that the poor workers of this country do not get the minimum package of wages compared to what their more privileged counterparts in the government earn. It may be appreciated that the benefits of a fastest growing economy are being exploited by the upper strata of the society and even a miniscule of

the profits does not trickle down to the people at the grass-root level who through their 'blood, sweat and tears' substantially contribute to the prosperity of the enterprise as also the GDP rate of growth of the economy. It may not be forgotten that the workers in the unorganized sector are pillars of economic growth and such people may not be denied the fruits of their hard manual labour. It may not be out of context to mention that India being a welfare state cannot afford to deny the dignity and decency which are due to the unorganized labour in terms of a proper remuneration so essential for a decent and dignified existence and the market forces have to be balanced to ensure access to all those who deserve it.

- M. This Hon'ble Court may kindly appreciate that no government can use the excuse that by bringing the unorganized workers at par with the government employees, the exchequer may be heavily burdened. It is not a secret that corporate houses who usurp the resources of the country, get loan waivers easily by the banks and are in a position to influence the government policy. It is a well-documented fact that a microscopic minority of citizens and organisations have access to an overwhelming share of the bank loans and have failed to utilise the loan for the purpose for which it was

sanctioned which has given rise to non-productive assets (NPA) of a massive scale bringing bad name to the country, the economy and the process of governance in its totality.

Even otherwise, there has been heavy concentration of wealth in a few hands which is a violation of Article 39 which reads as under: Article 39(c) – ‘The State shall, in particular, direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment’.

It is amply clear that there is no dearth of resources in the country to shoulder the economic sustenance of all the citizens, on an equitable basis. India does possess the wealth and capacity to shoulder the responsibility of payment of minimum wages to guarantee a decent and dignified life for each and every of its citizen; the issue is one of rational and scientific management and optimum utilization of national resources. It is submitted that this Hon’ble Court is the upholder of the Constitutional guarantees, more specifically the right of all citizens and, in particular, the poor, deprived, displaced and disadvantaged, lead a decent and dignified life and it is bounden duty of this august body to ensure and protect realization of this valuable right.

It is regrettable to note that despite the 'Bandhua Mukti Morcha' (supra) judgment, there have been no corresponding changes in the MW Act, to the following effect:

- i. Every case of denial of minimum wage would amount to existence of forced/bonded labour.
- ii. The corresponding penalty for violation of provisions of the Act including denial of minimum wage which is an offence punishable with fine upto Rs.500/- (Section 22(A) of MW Act) should be enhanced so as make it effective in achieving the desired goal of ensuring implementation of the objects and provisions of the Act.

It has been observed that there is a large scale difference in the minimum rates of wages being notified by the appropriate governments in different parts of the country. Such difference is contributing to regional economic disparity on the one hand and inter-district and inter-state migration with not too happy consequences on the other. Such trends towards inter-state migration which is usually distress driven, would be reduced substantially, if there is uniform national level minimum wage. The State

Governments may decide to notify higher rates of wages, if they so like but national level minimum wage as base wages once fixed and until reviewed and revised will remain sacrosanct and no State Government, employer, contractor or any other agency ought to be permitted to pay lower wages than the national level minimum wage even though nothing will prevent them to pay higher than the notified wage.

- iii. On account of rapid changes in the economy and labour market, every such wage would be liable for review and revision like minimum support price for food grains every year and in any case not later than two years.
- iv. Every such wage shall be payable principally in cash and not in kind. A Saving Bank account may be opened in the name of the recipient of minimum wage, the wage paid in cash may be deposited in the said account and a passbook may be issued to the depositor. The same can also piggy back on the Pradhan Mantri Jan Dhan Yojna which is aimed at opening bank accounts for every citizen.
- v. Women should be entitled to payment of same minimum wage, as men for work of equal value,

without any discrimination, as is the spirit of the ILO Convention No.100 of 1951 which India has ratified in 1958.

- vi. All cases of non-payment or delayed payment of wages should be decided by a Tribunal (and not by a claim adjudicating authority as is the provision under Section 20 of the Act which has no powers to enforce its award).
- vii. In all such cases of fixation of minimum wage, there should be a linkage with the cost of living index or consumers' price index number applicable to such workers as is being determined by the Labour Bureau, Chandigarh and Shimla, which is an attached office of the Ministry of Labour & Employment.

N. The Petitioner respectfully submits that it is, however, an irony that even nearly seven decades after enactment of the Act and more than six and half decades after the Constitution came into force, a large chunk of our country's working population in the sweated sector remains outside the purview of the minimum wage legislation, as the sectors of economic activity in which they are employed, have not yet been notified as scheduled employments (there is as of now no provision for universal coverage under the MW Act; universal

coverage will be possible only if the conditionality laid down under Section 3 (1A) of MW Act is removed by way of amendment).

- O. The Petitioner submits that the Constitution of India has guaranteed to all its citizens the right to life under Article 21. There is no denying the fact that without having the means to earn the livelihood, this right would be rendered meaningless. In 'Narendra Kumar Chandla vs. State of Haryana', [(1994) 4 SCC 460], this Hon'ble Court held that right to livelihood is an integral facet of the right to life.

It is submitted that every wage is, the price of labour and the price for the product of labour. A labourer can exercise his/her right to live only if he/she has an opportunity to work and receive an adequate remuneration for his/her work. By 'adequate remuneration', it is implied that the remuneration should be sufficient to meet the basic needs of earning as well as non-earning members of the family. The basic needs of a family may include food, water, clothing, housing, health and medical care, environmental sanitation, primary education to children, sickness and insurance for the period when a person is unable to work, etc.

It is further submitted that Article 43, in part IV of the Constitution of India, which contains Directive

Principles of State Policy, enjoins on the State thus: “The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities...”

- P. It is submitted that the formula for fixing the minimum wage as was recommended by the 44th Indian Labour Conference (ILC) in 2012, and reiterated by the 46th ILC in 2015 may be taken into consideration. This formula for minimum wage was earlier adopted unanimously by the 15th ILC in 1957 and by this Hon’ble Court while issuing directions in the Reptakos Brett’s case (supra).

Based on this formula, the Seventh Pay Commission recommended Rs.18,000/- p.m. as minimum wage. The government accepted this for central government employees, but so far it has not even considered the same for all workers including those who are in the unorganized sector. The same should be ensured for all workers, including those in the unorganized sector, being the most neglected and voiceless section in the country, regardless of any other factor including geographical location etc.

Q. The Petitioner respectfully submits that the plethora of judgments of this Hon'ble Court has time and again given directions to take effective and necessary measures as far as living and minimum wage are concerned. The living wage concept as given in Article 38 of the Constitution should uniformly and consistently be implemented. Further there are other Articles, viz. 23, 24, 35, 38, 39, 43 which can be given effect to by the mandate under Article 141 of the Constitution of India which has to be respected and given effect to by all the courts across the country and by the Government whenever it is necessary. In 'Reptakos' case (supra), way back in the year 1992, this Hon'ble Court had issued directions which are yet to be given effect to.

In 'Vishaka & Ors. vs State of Rajasthan & Ors. [(1997) 6 SCC 241], this Hon'ble Court issued writ of Mandamus along with suitable directions to enforce the fundamental rights, guidelines and norms laid down by it to bridge the gaps in the existing legislation.

It is submitted that as held in 'Vishaka' (supra) this Hon'ble Court, under Article 32 of the Constitution of India, has the power to issue the guidelines whenever necessary and under Article 73 of the Constitution of India, the Executive is to protect and enforce the fundamental rights. It is submitted that further

International Conventions and norms consistent with the spirit of the fundamental rights can be read into those rights for interpreting them in the larger context to promote the objects of the Constitution. In the absence of domestic law on the particular aspect, these Conventions and norms as ratified by India can be relied by the Supreme Court to formulate guidelines for enforcement of fundamental rights.

- R. The Petitioner submits that in the Regional Conference of the State Legal Services Authorities of the Western Region organised by the NALSA at Ahmedabad on 28-29 August, 2010 the topic of deliberations was 'Workers in the Unorganised Sector and the Role of Legal Services Authorities'. Detailed discussions took place on the plight of unorganised workers in securing their statutory rights and availing of the benefits of the various schemes put in place by the State Governments.

As per the discussions held at the said Regional conference, it is estimated that the workers in the unorganised sector contribute more than 60 per cent of the national economy. Unlike their brethren in the organised sector, they are generally reluctant to come to the forefront and demand for the benefits under the various schemes and other welfare measures put in place by the labour department and other institutions because

of their sheer unorganised or loosely organised nature. Such workers are generally not confined to any particular area as their place of work has no permanent status. Quite often their work is seasonal and when the work at one place is finished they migrate to other places in search of work. They do different kinds of work depending on the availability of work. Some stick on to certain avocations on the basis of caste and tradition and yet remain unorganised.

Further, it was discussed that in this scenario, the general problem the authorities and welfare institutions face is that the workers in the unorganised sector are not identifiable. Illiteracy, poverty and the concern for earning their daily bread compel these workers to forsake the benefits of the various social welfare measures. It is the duty of the legal services institutions to reach out to the workers in the unorganised sector for making available the benefits of various schemes and to provide them the protection of law.

9. The Petitioner has been making representations to the Government particularly to the Ministry of Labour and Employment regularly. On 15.01.2018 there was a meeting with the Hon'ble Minister of Labour and Employment Mr. Santosh Gangwar. There does not appear any positive or perceptible follow-up action on the

part of MOL&E Govt. of India in the light of the discussion which took place in the meeting on that day and the concerns which were clearly expressed about the inadequacies, deficiencies and infirmities in the existing Minimum Wage Legislation by various stakeholders.

10. The Petitioner had approached the Hon'ble Shri Santosh Kumar Gangwar, MOS (L&E) on 15.01.2018 for the relief sought in the petition. But unfortunately no concrete steps seem to have been taken so far. Therefore, the Petitioner has no other alternative and efficacious remedy but to approach this Hon'ble Court. A true copy of the brief points considered at the meeting dated 15.01.2018 with Hon'ble Shri Santosh Kumar Gangwar, MOS (L&E) is annexed herewith and marked as **ANNEXURE P-2 (pages 60 to 64)**.

PRAYER

In view of the above mentioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased:

- i) to issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to ensure that right to live a decent and dignified life is secured and right under Article 21 of the Constitution of India percolates to workers in the unorganized sector;

- ii) to issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to ensure that a national level minimum wage as base wages are set, every such wage would be liable for review and revision like minimum support price for food grains every year and in any case not later than two years;
- iii) to issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to ensure that women should be entitled to payment of same minimum wage as men, for work of equal value, without any discrimination;
- iv) to issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to ensure that there will be no employment of children in any schedule employment which is being notified under 5.3(1A) of Minimum Wages Act read with Rule 24(1) of Central Minimum Wages Rules, 1950;
- v) to issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to fix the hourly minimum wages to ensure/secure a parity required in consonance with the proportionate standard of living available to their counterparts in their respective societies in advanced countries as India has also become advanced in various fields and is striving to become in

others, so as to protect the unorganized labour; in the alternative

- vi) to issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents in consonance with the 7th Central Pay Commission's remunerations for the Class IV employees; and
- vii) to issue a writ of mandamus or any other appropriate writ, order or direction to Respondents that a comprehensive scientific study be undertaken to calculate/decipher the value of different categories of work for implementing the 'principle of equal remuneration for work of equal value'; and
- viii) to issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to prohibit the child labour completely; and
- ix) to pass such other or further order/s as it may deem fit and proper.

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

DRAWN AND FILED BY:

(SWAMI AGNIVESH)

Petitioner in Person

DRAWN ON: 21.05.2018

FILED ON: __.05.2018

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2018

IN THE MATTER OF:

SWAMI AGNIVESH ... PETITIONER

VERSUS

UNION OF INDIA & ORS. ... RESPONDENTS

A F F I D A V I T

I, Swami Agnivesh, Social Activist, aged 79 years, 7, Jantar Mantar Road, New Delhi-110001, do hereby solemnly affirm and declare as under:-

1. That I am Petitioner in person in the above noted petition and being well conversant with the facts of the case, competent to swear this affidavit before this Hon'ble Court.
2. The accompanying Writ Petition at pages 1 to ___, List of Dates & Events at pages B to ___ and accompanying application(s) at pages ___ to ___ have been drafted by me. The contents of the accompanying petition in paras 1 to ___, List of Dates & Events and accompanying application(s) are true and correct to my knowledge and nothing material has been concealed therefrom.
3. The Petitioner has no personal gain/private motive or an oblique reason for filing the present petition.

DEPONENT

VERIFICATION:

Verified at New Delhi on this ____th day of May, 2018 that contents my above affidavit are facts true and correct to my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

ANNEXURE P-1

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).1181/2017

SWAMI AGNIVESH

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(FOR ADMISSION AND IA NO.134495/2017 – PERMISSION
TO FILE ADDITIONAL DOCUMENTS)

Date : 11-12-2017 This petition was called on for hearing
today.

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr. Mehmood Pracha, Adv.

Mr. R.H.A. Sikander, Adv.

Mohd. Danish, Adv.

Mrs. Sudha Gupta, Adv. [AOR]

Mr. Mansoor Ali, Adv.

For Respondent(s) --

UPON hearing the counsel the Court made the following

ORDER

Having heard learned counsel for the petitioner, we are not inclined to entertain the writ petition in the present format. However, we grant liberty to him to file an appropriately constituted petition.

With the aforesaid observation and liberty, the writ petition stands disposed of.

(Subhash Chander)

(H.S. Parasher)

AR-cum-PS

Assistant Registrar

//TRUE COPY//

ANNEXURE P-2

Subject: Meeting of MOS (L&E) with Shri Swami Agnivesh and other representatives of Bandhua Mukti Morcha Andolan held on 15.01.2018 at 3 P.M.

MOS (L&E) held a meeting as mentioned above. Details of the participants are at annexure.

2. DGLW welcomed Hon'ble MOS, Secretary (Labour & Employment), Swami Agnivesh and other participants for the meeting. He briefly explained about the rehabilitation policy for the bonded labours and the social security measures taken by this Ministry for un-organized workers with reference to Un-organized Workers Social Security Act, 2008.
3. Hon'ble MOS (L&E) in his introductory remarks stated that there are about 40 crores un-organized workers in the country involving 15 crore families. At present there is no database for the un-organized workers and the Government has initiated the process of giving UWIN to the un-organized workers so that they will not face any difficulty while migrating to other States in search of work. He also stated that recently he had held a camp at Bareilly and initiated the process of giving life/accidental insurance cover benefit under converged Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) and Pradhan Mantri Suraksha Bima Yojana (PSBV). He also expressed his concern on very low expenditure from the

building and other construction workers cess fund for the benefit of Building and Other Construction Workers (BOCW).

4. Thereafter, various participants expressed their views on the subject and made suggestions which are as under:-

1. Dr. L.D. Mishra (Ex. Labour Secretary, GOI)

- (a) There is need for floor level national minimum wage to mitigate the problem of diversity in minimum wages amongst States/UTs so as to minimize migration.
- (b) Labour laws providing social security may be amended keeping in view the prevailing economic scenario.
- (c) Minimum wage may also be made applicable to MGNREGA workers.

2. Ms. Mohanty (from Odisha)

- (a) Un-organized workers may be categorized as tribal, rural and urban labourers and social security benefits may be given accordingly.
- (b) The more vulnerable categories of un-organized workers like bonded labour, trafficked children or women be categorized and given separate social security schemes.
- (c) National/State level portal for migrant workers and dedicated helpline in every district of the country.
- (d) Budgetary provision for un-organized workers in the union budget may be increased.

3. Dr. Jain

- (a) There is lack of coordination amongst different institutes on labour under Ministry of Labour and Employment. Better coordination is required among them for having case studies and formation of social security policies in future.
- (b) Collectors/SDMs are not fully aware of social security scheme for un-organized workers specially rehabilitation of bonded labour.

4. Shri Ram Saran Joshi

- (a) Work site camps may be organized for workers to sensitize them about the social security schemes available for them.

5. Mr. Chandan

- (a) Mathaddi Model of Pune may be adopted for work regularization.
- (b) The proposal of 10-12 per cent contribution by the beneficiary under the proposed social security code may be scrapped.

6. Shri Mehmood Pracha (Supreme Court Advocate)

- (a) India is a welfare state and a minimum wage may be defined for the country keeping in view this concept.

7. Mr. Prakash

- (a) There is no policy for the rag pickers specifically in Delhi.
- (b) A policy based on Maharashtra Mathaddi Model may be framed and sectoral boards may be constituted for implementation of such policy.

8. Ms. Hemlatha

- (a) In spite of being banned bylaw, the manual scavenging is very much in vogue. Many deaths have been reported recently and all the victims are the contract workers. For the lack of database, it is very difficult to trace the details of a worker in a case of death/accident.

9. Ms. Dutta (SEWA)

- (a) There is need for a policy and database for home based worker/domestic workers.
- (b) Rehri Patri Kanoon, 2013 may be implemented in letter and spirit in Delhi.

9. Mr. Mayaram

- (a) Stone Mines in Faridabad area have been closed and the mine workers have become un-employed. Such workers may be registered under BOCW Act and the condition of 90 days of working under a single contractor may be waived.

10. Swami Agnivesh

- (a) DM/SDMS are not serious about the rehabilitation of bonded labours and need sensitization. They should not delegate their mandate to the Deputy CLC/ALC.
- (b) Awareness amongst un-organized workers should be increased by the use of TV/FM radio/Local vernaculars.
- (c) National minimum wage may be fixed and no state should be allowed to have their minimum wage below the national minimum wage.
- (d) There is need to amend certain labour laws.

The Hon'ble Minister thanked all the participants for their concern for the un-organized workers and requested them to submit their specific suggestions on the issue in writing for consideration of the Government.

The meeting ended with thanks to the Chair.

//TRUE COPY//

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. NO. OF 2018

IN

WRIT PETITION (CIVIL) NO. OF 2018

IN THE MATTER OF:

SWAMI AGNIVESH

... PETITIONER

VERSUS

UNION OF INDIA & ORS.

... RESPONDENTS

**APPLICATION FOR PERMISSION TO FILE THE
PETITION AND ARGUE IN PERSON**

TO

THE HON'BLE CHIEF JUSTICE OF
INDIA AND HIS COMPANION
JUSTICES OF THE SUPREME
COURT OF INDIA, NEW DELHI;

The humble application of
the Applicant/Petitioner
above-named;

MOST RESPECTFULLY SHOWETH :-

1. The Petitioner in person has filed the accompanying Writ Petition (PIL) under Article 32 of the Constitution of India, in public interest, seeking directions to be issued by this Hon'ble Court to the Respondents herein to fix and ensure the minimum wages for the labourers, particularly of the unorganized sector. The Petitioner in person submits that this application may be read as part of the Writ Petition for the sake of brevity.

2. The Petitioner had obtained Law and Business Management degrees, became a lecturer in Kolkata's famous St. Xavier's College from 1963-1968. He also practised law in the High Court of Judicature, Calcutta under the late Sabyasachi Mukherji who subsequently became Chief Justice of India and as such he is competent to argue the present petition himself.
3. The Petitioner in person respectfully submits that he may be permitted to file the petition and argue the same in person. Hence, the application.

P R A Y E R

In view of the above mentioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased:

- a) to grant permission to the Petitioner to file the present petition and argue the same in person; and
- b) to pass such other or further order/s as it may deem fit and proper.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT/
PETITIONER SHALL, AS IN DUTY BOUND, EVER PRAY

DRAWN AND FILED BY:

(SWAMI AGNIVESH)

Petitioner in Person

NEW DELHI

DRAWN ON: 21.05.2018

FILED ON: __.05.2018

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. NO. OF 2018

IN

WRIT PETITION (CIVIL) NO. OF 2018

IN THE MATTER OF:

SWAMI AGNIVESH

... PETITIONER

VERSUS

UNION OF INDIA & ORS.

... RESPONDENTS

**APPLICATION FOR CONDONATION OF DELAY IN
RE-FILING THE PETITION**

TO

THE HON'BLE CHIEF JUSTICE OF
INDIA AND HIS COMPANION
JUSTICES OF THE SUPREME
COURT OF INDIA, NEW DELHI;The humble application of
the Applicant/Petitioner
above-named;**MOST RESPECTFULLY SHOWETH :-**

1. The Petitioner in person has filed the accompanying Writ Petition (PIL) under Article 32 of the Constitution of India, in public interest, seeking directions to be issued by this Hon'ble Court to the Respondents herein to fix and ensure the minimum wages for the labourers, particularly of the unorganized sector. The Petitioner in person submits that this application may be read as part of the Writ Petition for the sake of brevity.
2. That the matter was received in defect for the first time on 28.05.2018. However, the file got misplaced in the

office of the Petitioner and the same was traced out recently in the first week of July 2018. Thereafter, the objections were removed and the matter is being re-filed.

3. That due to the above said reason, the matter could not be re-filed within stipulated time as prescribed by the registry and hence there is a delay of ____ days in re-filing the present petition.
4. That the present application is made bona-fide and the delay in re-filing the petition as mentioned above may kindly be condoned in the interest of justice.

P R A Y E R

In view of above mentioned facts, it is respectfully prayed that this Hon'ble Court may be pleased:

- a) to allow the present application for condonation of delay of ____ days in re-filing the present petition; and
- b) to pass such other or further order/s as it may deem fit and proper.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT/
PETITIONER SHALL, AS IN DUTY BOUND, EVER PRAY

DRAWN AND FILED BY:

(SWAMI AGNIVESH)
Petitioner in Person

NEW DELHI
DRAWN ON: 10.07.2018
FILED ON: ____ .07.2018