IN THE HIGH COURT OF DELHI AT NEW DELHI

(EXTRA ORDINARY CIVIL JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

DR. RESMI P. BHASKARAN PETITIONER

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

PUBLIC INTEREST LITIGATION UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT FOR FRAMING COMPREHENSIVE & DETAILED LEGAL FRAMEWORK FOR OPERATION OF TECHFINS IN THE FINANCIAL SECTOR IN INDIA

TO
THE HON'BLE CHIEF JUSTICE
AND HIS COMPANION JUSTICES OF
THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

THE HUMBLE PETITION
OF THE PETITIONER HEREIN

MOST RESPECTFULLY SHOWETH:

1. That by way of the present Writ Petition under Article 226 and 227 of the Constitution of India, the Petitioner seeks issuance of Writ of Mandamus or any other appropriate Writ for framing comprehensive & detailed Legal Framework for operation of TechFins in the financial sector in India. It is submitted that presently due to liberal attitude of the

regulatory authorities, the TechFins are permitted to enter into financial markets to conduct financial business in an unregulated environment. The absence of dedicated regulations has allowed the non-licensed Technology Companies as well as E-commerce Companies to enter into financial domain by partnering with existing entities and to compete with regulated financial institutions in number of areas, without having to comply with the same requirements. That such operation of technology companies in the finance sector poses potential risk to financial security, potential breach of systematic citizen's data, customers including businesses and customers and is thereby requested to be regulated by the Petitioner herein. The Petitioner herein has no personal interest in the present litigation and it 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.

1A. That the Petitioner has no ulterior or personal motives for filing the instant Petition and has not approached any other Court/Forum/Tribunal for the relief prayed herein. Pertinently, the petition, if allowed, would benefit the citizens of this country and also strengthen our financial and economic Sector thereof. The relief sought by way of the present Petition falls under the territorial jurisdiction of this Hon'ble Court and thus, for safeguarding the Fundamental Rights of the citizens of India, the

Petitioner seeks expeditious and efficacious relief, which can only be granted by this Hon'ble Court.

2. That the Petition relies upon various information that has been circulated in Public Domain along with relevant Government and regulatory Directions, Rules and Guidelines regulating the activities of the respondents.The Petitioner has also placed reliance upon various news articles published in leading newspapers & social media.

3. That the petition, if allowed, would benefit the citizens of this country and also strengthen financial Sector. The lackadaisical approach of the regulatory authorities allows for unregulated operation of Fintech Companies in Financial Sector which has a potential for causing incredible risks for society in the financial services market. Besides the fact that customers are less protected with this approach, it also creates an uneven playing field between regulated- and unregulated entities. Since these persons are too numerous and have no direct personal interest in the matter, they are unlikely to approach this Hon'ble Court on this issue. Hence the petitioners herein are preferring this PIL.

4. The affected parties by the reliefs sought in the present writ petition are the Reserve Bank of India, NPCI, Insurance Regulatory and Development Authority (IRDA), Securities and Exchange Board of India (SEBI) which regulates the Financial Sector in India. To the best of the knowledge of the Petitioner, no other party / persons / bodies /

institutions are likely to be affected by the orders sought in the present writ petition.

5. That the Petitioner herein is a a trained Applied Economist specialized in Policy Research, Knowledge Management, and Strategy Development and is well versed with Technology and law and has carefully studied its intersection. Thus, the Petitioner has an in expertise in Development Economies and is renowned Policy analyst. Further, in view of her experience and expertise, the Petitioner understands the Financial Sector, their working and the internal mechanism and. The Petitioner is well versed with the significance of financial data of the Indian users and the critical information it holds for the entire country. Therefore, the Petitioner seeks to protect the same before its misuse causes irreparable loss to the country. The Petitioner has the means to pay the costs if any imposed by the Hon'ble Court.

The personal particulars of the Petitioner are as follows:

S. No.	Particulars	Information
1.	Full Name	Resmi P Bhaskaran
2.	Complete Postal Address	9176/ B-9, DDA Flats, Vasant Apartments, Masoodpur, Vasant Kunj, New Delhi-110070

3.	Email ID	resmipb@gmail.com
4.	Phone No.	9910330572
5.	Proof Regarding Personal Identification	3327 1220 0594
6.	Occupation	Freelance Policy Analyst
7.	Annual Income	Rs. 7,00,000
8.	PAN Number	ADLPB5154G
9.	National Unique Identity Card No.	3327 1220 0594

A true copy of the identity proof of the Petitioner dated Nil is annexed herewith and marked as **ANNEXURE P-1.**

6. That the Respondent No. 1 is the Union of India, represented by the Secretary, Ministry of Law and Justice, which deals with the management of the legal affairs, legislative activities and administration of justice in India.

7. That the Respondent No. 2 is the Union of India, represented by the Secretary, Ministry of Finance.

8. That the Respondent No.3 is Reserve Bank of India and is responsible for issuing relevant Policies, directives and guidelines from time to time for Banking Sector

9. That the Respondent No.4 is NPCI which was setup by Respondent No.3 and is the owner, network operator, service provider, and coordinator of the UPI Network, and is responsible for granting permission to Payment Service Provider to operate under the UPI ecosystem and has the power to off-board a member/participant from the payment system.

10. That the Respondent No.5 is Insurance Regulatory and Development Authority of India and is responsible for issuing relevant Policies, directives and guidelines from time to time for Insurance Sector.

11. That the Respondent No. 6 is The Securities and Exchange Board of India (SEBI) and is responsible for issuing relevant Policies, directives and guidelines from time to time for Equity and Mutual Funds market in India.

12. That the Respondent No. 6 is Pension Fund Regulatory and Development Authority (PFRDA) and is responsible for issuing relevant Policies, directives and guidelines from time to time for Pension Sector in India.

13. That all aforesaid parties are proper and necessary parties to the present Writ Petition.

14. The detailed facts and circumstances leading to the filing of the present writ petition are as under-

15. That in any country 'Financial Sector' forms the backbone of an economy. A healthy financial sector is a sign of stable and robust economy. The Financial Sector is responsible for loan advances to

business and individuals for their diverse needs, granting mortgages and issuance of insurance policies to protect people, companies, and their assets. It further aids in building up one's savings and provide millions of job opportunities.

16. That the Financial Sector in India is a highly regulated sector, having Rules/Provisions for all the major participants operating under it. Financial Sector mainly consists of banks, non-banking financial corporations (NBFC's), other small financial entities including small banks and payments banks as well as insurance companies, pension funds, securities market and mutual funds.

17. That Respondent No. 3 i.e. RBI is the apex institution established in accordance with the provisions of the Reserve Bank of India Act, 1934 which regulates the whole banking sector including payment and settlement systems of India. That in order to regulate the banking sector, Respondent No. 3 performs supervisory functions over scheduled commercial Banks, Co-operative Banks, All India Financial Institutions, Local Area Banks, Small Finance Banks, Payments Banks, Credit Information Companies, Non-Banking Finance Companies as well as Primary Dealers.

18. That apart from banking and non-banking institutions, Respondent No. 3 also regulates different payment systems which are used to settle financial transactions through the transfer of monetary value used in lieu

of tendering cash. That these payment systems include both paper-based payment systems and electronic payment systems. That this payment systems are regulated by 'Payment System Operators' which are authorized by the Reserve Bank of India to operate under the Payment and Settlement Systems Act, 2007. That while Respondent No. 3 itself regulates payment systems of National Electronic Funds Transfer, National Electronic Fund Transfer (NEFT), Electronic Clearing Service (ECS) as well as cheque clearing systems. Various other payment systems are regulated by other payment system operators which are duly authorized by RBI to operate payment system. Some of the example of payment systems includes National Financial Switch (NFS), Immediate Payment System (IMPS), Unified Payments Interface (UPI), which are operated and regulated by NPCI (National Payments Corporation of India) which is a Payment System Operator being run under the supervision of Reserve bank of India.

19. That apart from Banking, there are various other critical sectors which function within the financial sector which includes Insurance, Securities as well as Mutual Fund and Pension Sector etc. That just like Banking sector, these sectors are also highly regulated. That Securities Exchange Board of India (SEBI) is the regulatory body for the securities market that regulates the functions of securities market and mutual funds to keep a check on malpractices and to protect the investors. Similarly Insurance

sector in India is regulated by Insurance Regulatory and Development Authority of India (IRDAI) which is an autonomous statutory body for regulating and developing the insurance industry in India. Moreover Pension Fund Regulatory and Development Authority (PFRDA) develops and regulates the pension sector in India.

20. That all these regulating authorities especially Respondent No. 3 regulating the whole banking sector and payment and settlements system ensures stability in the financial sector. That these authorities in order to regulate the authorized financial entities use various supervisory processes, which ensures stability in the functions and operations of financial entities, and further mitigate ongoing as well as potential financial risk affecting the health of financial entities, thereby securing the whole financial sector.

21. That regulating the financial sector is important in order to ensure fair competition, consumer protection, prevention and reduction of financial crimes. That successful regulation of the financial sector prevents market failure, promotes macroeconomic stability, protects investors, and mitigates the effects of financial failures on the real economy. Further, all these regulations and regulators in the financial sector point to the fact that every major part of the financial sector needs regulation for financial stability.

22. That with advent of technology in India, India's vision to promote a cashless economy got strengthened day by day. Today, Technology which was initially applied at the back-end systems of established financial entities has now become mainstream in order to provide consumer oriented fast paced services. Technological innovation today has totally transformed the structure of the banking sector. That with the internet revolution and the mobile internet/ smartphone revolution, Financial sector has grown exponentially, and with it came the term 'FinTech', which is the concept where Finance industry start using technology to offer better customer experience. Finance Technology which originally referred to computer technology applied to the back office of banks or trading firms, now includes a broad variety of technological interventions into personal and commercial finance. Financial technology nowadays is also being used to automate investments, insurance, trading, banking services and risk management.That with the help of technology-enabled products and services 'Fintech' is rapidly reshaping traditional financial services, making them faster, easier, cheaper and more accessible.

23. That gazing at business opportunities and growth in finance technology, specially the massive evolution in payment systems and lending services, a variety of new entities entered into the financial sector, which had hitherto been dealing into technology and e-commerce and therefore had

no real experience in banking or financial services. That these new entities i.e. technology companies entering into the finance sector are commonly termed as 'TechFins'. It is submitted that these "TechFins" have their origin in Technology or e-commerce environments which are typically connected to a multitude of clients (both consumers and/or small businesses) and have a very deep well of data alongwith established international network. This data gives them a real advantage in the provision of financial services and offering their customers cross services

24. It is submitted that the TechFins unlike traditional financial institution deliberating and intentionally operate for the most part in an unregulated environment mostly as Third Party Apps. Techfins firms identify the loopholes in existing regulatory regime to work as un-regulated entity. and exploit such loop holes and operate as un regulated entity. TechFins are neither subject to client/customer/investor protection rules nor subject to measures that ensure the functioning of financial markets and prevent the build-up of systemic risk which are fundamental pillars of modern financial regulation. Most of the TechFin entities have the propensity to avoid the financial regulatory system as long as they can, to minimize regulatory constraints and costs.

25. That these 'TechFins' in order to avoid authorization to work as Financial entities and to avoid large number of compliance which are

mandatory to be followed by Financial entities offering financial services, usually enters the financial market as a third party provider to registered financial entities or as a channel linking the registered financial service providers and customers. That by working as third party providers or as a channel between the financial entities and customers, they are able to take advantage of legal and regulatory loopholes which allows these 'TechFins' to offer financial services in their own names without attracting the need for financial/banking license, authorization or compliance with any major regulations. That Techfins, despite being unregulated are today providing core banking activities by partnering with financial institutions. Recently, Google by way of collaboration with Axis Bank and Visa has also launched 'Credit Cards' which despite being a core banking activity is being provisioned through unregulated Techfins. A true copy of the news article reporting launch of credit card by way of collaboration between Google Pay, Axis bank and Visa dated 12.10.2020 is annexed herewith and marked as **ANNEXURE P-2.**

26. That various Tech Giants such as Facebook, Google and Amazon (i.e. 'TechFins') today are looking to grab major part of the financial sector by deliberate misuse and avoidance of operational and regulating laws, rules and regulations. Further, being unregulated entities these 'TechFins' are able to save on massive operational cost / time which they would have spent in obtaining licenses for banking / non-banking financial

institutions or to work even as a small bank or payments bank or insurance service providers. That partnering with various regulated financial entities has allowed them a 'back gate' access to the financial sector allowing them to offer financial services in their own name without any apex organization regulating them. A true copy of the article titled 'Big Tech will push deeper into finance this year but avoid the 'headache' of being a bank' reflecting how 'TechFins' avoid being regulated dated 03.01.2020 is annexed herewith and marked as **ANNEXURE P-3.**

27. That due to the benefits of adopting an operational model that works and operates in a gray area of law, all new entrants to the financial sector deliberately projects, operates and market themselves as 'TechFin' company. That presently due to liberal attitude of the regulatory authorities, the TechFins are permitted to enter into financial markets to conduct financial business in an unregulated environment. The absence of dedicated regulations have allowed the non-licensed financial institutions (i.e. Tech giants) to enter into financial domain by partnering with existing entities and to compete with regulated financial institutions in number of areas, without having to comply with the same requirements. That recently WhatsApp has announced its plan to expand its operation into Indian Financial Market by unveiling its plan to enter Lending and Micro Finance Sector in India with its Banking partners. A

true copy of the News Article dated 23.07.2020 published in BFSI.Com From The Economic Times is annexed herewith and marked as **ANNEXURE P-4.**

28. That UPI (Unified Payment Interface) ecosystem is the perfect example to point out how the Respondents are encouraging these 'techfins' in the financial sector and miserably failing to curb their operational model. That 'TechFins' despite requiring no authorization from apex regulator of banking sector, have become an integral part of UPI ecosystem. That UPI which is an instant real time payment system is regulated and operated by Respondent No. 3 through NPCI i.e. Respondent No. 4. That UPI allows instant transfer of funds between two bank accounts by way of various participants which includes both regulated entities which could be banking or non-banking entities. Further the regulatory framework is such that it also allows non-regulated entities like 'TechFins' to operate in the UPI ecosystem. That the regulated financial entities function as Payment system providers (PSP) and are allowed to offer their own UPI app. However, there is loophole intentionally built by Respondent No. as red carpet for international tech giants to operate with no liability against risks of data and payments protection. That the loophole being ,explicit permission to offer UPI services by unregulated 'TechFins' and that too under their own brand names by working as Third Party App Providers

(TPAP). A true copy of the Relevant Extract of the UPI Guidelines 2019 dated Nil is annexed herewith and marked as **ANNEXURE P-5**.

29. That it is important to highlight that under the UPI regime the TPAP and PSP are required to follow different regulations. It is submitted that in terms of regulations, these 'TechFins' (for example Google or Amazon) operating under the UPI payment systems as TPAP are 'shallow' entities as it is the Payment Service Providers (PSP) which bears the brunt, liability and risk mitigation requirements of all regulators and also takes up all the liability of these 'TechFins' or Third Party App Providers in the UPI ecosystem.That Further, Even TPAPs are not even required to get their audit done for protection of customer data, refer the UPI procedural guidelines.

30. That despite being unregulated entities, these 'TechFins' are being able to dominate the complete UPI ecosystem. Together, Google Pay, PhonePe, and Amazon Pay control 85% market share in UPI payments systems. Further Facebook-owned WhatsApp is yet to launch a full-scale UPI app. A true copy of the relevant article with regard to dominance of 'TechFins' in UPI ecosystem dated 11.07.2020 is annexed herewith and marked as **ANNEXURE P-6**. However, large reliance on such unregulated entities in the financial sector poses many issues. Recently one Third Party App named 'PhonePe' went down for unscheduled maintenance activity which affected large no. of users, using the

particular Third Party application. A true copy of the relevant portion of the PhonePe Entrackr dated 07.03.2020 is annexed herewith and marked as **ANNEXURE P-7**.

31. That while operating models of TechFins depends largely on collecting, processing and utilization of user data for various business purposes including target advertising. The main purpose of these TechFins remains collection of more and more data including personal sensitive data to be in used in its other revenue generating businesses. That at this juncture it is important to highlight that entering of 'TechFins' into financial sector also raises important concerns regarding 'Data Access' and 'utilization of Financial Data' by these 'TechFins'. It is submitted that the TechFin Companies begins with relationships with customers in a non-financial services setting, collects massive amounts of Citizen's personal sensitive, financial transaction and expenditure transaction data from those relationships, and then seeks to make use of that data by leveraging its customer relationships by serving as a conduit through which its customers can access financial services provided by a separate institution. That recently Rajya Sabha MP Shri. Binoy Viswam of the Communist Party of India (CPI) has filed a petition before the Supreme Court seeking directions to ensure that the data of Indian citizens collected on Unified Payments Interface (UPI) platforms is not misused by corporations. A

true copy of the News Article dated 17.09.2020 published in Bar & Bench is annexed herewith and marked as **ANNEXURE P-8.**

32. That it is submitted that the Techfin entities with the most accurate, detailed and extensive digitalized information about customers have an undue advantage over traditional financial institution as they can influence the decision of the customers through datafication i.e. the process of analyzing and using data. The data superiority of TechFins comes from information obtained from various sources that combined provide a comprehensive, data-based view of their customers' preferences and behaviors. This data may be generated, for instance, from: software companies (Microsoft, Google) aggregating information about users' activities.

33. That it is submitted that due to TechFins' pre-existing enormous presence in the Indian Market, they already possess large data of existing customer (including data related to customer product preferences, location access, web -based activities and other related information) which in combination with Financial Data can be mis utilized in numerous ways. That 'Techfin' are able to leverage data generated from social media and general economic activity into financial services to an extent unavailable to established financial institutions. It is submitted that the TechFins moving into financial services, can relatively quickly assemble huge amount of financial information of their customers, and supplement it

with their very detailed knowledge of many other aspects of the customer's choices and preferences. These preferences can then be processed through algorithms that have established correlations between client's payment behavior, savings discipline, and other relevant factors so as to offer products and services in that line which will influence the decision making of customers. A true copy of the news article highlighting the data threat by entering of tech giants into financial sector dated 16.09.2020 published in The Hill is annexed herewith and marked as **ANNEXURE P-9.**

34. Moreover the TechFin companies to increase their user base create an impression that their services/innovations are completely free for consumers. However this is partly true as Customers "pay" by providing access to themselves and information about them, to these Techfin firms, which they monetize and make huge profits as in the case of Facebook & Google, majority of revenue comes from monetization of data. A true copy of the news article highlighting the Monetization of data as major source of revenue for Facebook and Google dated 08.09.2020 is annexed herewith and marked as **ANNEXURE P-10.**

35. That all in all, for TechFins, data accumulation, processing and analytics are key, beginning with self-developed algorithms that look directly for data correlations. This also means that in a data-driven world, opting to not share personal data may make users de facto a second class, digital,

citizen: Because the best products, prices and opportunities will only be provided to the one consenting to share their data with the predictive algorithm of the TechFin, which will be a clear violation of Article of 14 and 21 of the Constitution of India.

36. That at this juncture it is pertinent to point out that the current financial regulations do not cover the shortcomings that occur from the incorrect use of financial data by TechFin Companies, as the Data delivery to financial institutions is not a regulated activity in our country. In view of the existing robust data bank of Techfins which if merged with financial Data of users can have huge implications, and therefore, there is an immediate need to frame the Financial regulation to address several shortcomings arising from improper use of financial data. It is submitted that the regulators should require authorization for data gathering, processing and analytics when used for financial services, either directly as a financial services provider or indirectly as a conduit for data delivery or access to customers. It is a necessity in a world where the value of data exceeds the value of traditional production if measured by market valuation. In a world where data is the new currency and where special legislation regulates intermediaries managing financial assets owed to and owned by others (as banks and asset managers do), it is a pressing need to adequately regulate 'data intermediaries' in addition to financial

intermediaries given that both pose similar risk to individuals and society.

37. That further Techfins have started extending their operations in the fields of Mutual Funds as well in the area of National Pensions System , thereby virtually entering every aspect of financial transactions that its users make, be it for personal or professional or occupational purposes. That Techfins are encouraging the users to invest in Mutual Funds Schemes as well as National Pensions Systems using their Platform by partnering with different entities which again raises the concerns of their such drastic presence in the financial sector without any effective regulations regulating 'Techfins'.

38. That entering of technology and e-commerce companies in the insurance sector is another major concern which needs to be addressed keeping in mind the rise of unregulated entities in the financial sector. That insurance is a part of Financial services which had hitherto been regulated in the country. That it wasn't until the 1990s that life insurance was opened to the private sector in India. That Insurance Regulatory Authority of India (IRDAI), Respondent No. 5 herein, is the statutory body responsible for promoting insurance activities in India. One of the main tasks of the Respondent No. 5 is to specify qualifications and code of conduct for intermediaries, agents, surveyors, and loss assessors.

39. That there are various ways in which technology companies and e-commerce companies have entered into the insurance market. That their initiatives usually involve cutting off the middleman and bringing the insurance services to its customer directly. That services like these are often referred to as 'insurTech'. That after online payments, Financial services specially Insurance sector has become the new battle ground for these TechFins. A true copy of the relevant news article highlighting the growing presence of Techfins in the Insurance Sector dated 10.10.2020 is annexed herewith and marked as **ANNEXURE P-11.**

40. That while some technology companies like AKCO chose to acquire a license to operate as a General Insurer, thereby converting themselves into a regulated insurance company. Other big tech companies instead of working as a regulated general insurer chooses to operate by partnering with regulated General insurers. Further many of these big tech companies like Google are influencing the Insurance technology by entering into the insurance business through new channels like acquiring stake in web aggregators Platforms like 'policy bazar' which offers a market place to buy insurance policies offered by various entities. A true copy of the reports stating that Google is planning to acquiring stake in 'Policy Bazar' dated Nil is annexed herewith and marked as **ANNEXURE P-12.**

41. That one of the major issue that arises in these new entrants is that technology companies offering Insurance services remain unregulated by the apex regulatorr iinsurance Sector i.e. Respondent No. 5. That Respondent No. 5 issues various rules regulations for regulating the Insurance Companies like Protection of Policyholders' Interests Regulations, 2017, Maintenance of Insurance Records Regulations. Further these regulation which regulates the insurance companies are easily avoided by technology companies by instead of obtaining License from IRDA, these technology companies work by partnering with insurance companies. Therefore, the major compliance and liability remains of the insurance companies and technology companies despite being a part of the insurance sector remains largely unregulated. Tech firms should be subject to the same facts-and-circumstances analysis as non-tech actors with respect to whether a given activity triggers producer licensing requirements. That even NAIC which is U.S. standard-setting and regulatory support organization is looking into the role of insure Tech and coming up with white paper on the application of existing producer licensing requirements to emerging technologies companies in Insurance.

42. That another major concern is that the Insurance companies have access to major data of their policyholders as insurance requires submitting of details which are not readily available with any other entities. In case of

Life insurance, health insurance, mediclaim policies, the personal data includes details of the health of the individual, their habits as well as other medical records. That entering of technology companies into insurance also raises concerns of data protection and privacy of Individuals.

43. That Further it is pertinent to highlight that operation of unregulated 'TechFins' can be a potential risk to the financial stability of our country. That no doubt, Financial entities regulated by the Respondent No. 3 are and will always be in a better situation to deal with both internal and external challenges as there are regulations in place which prescribes type of business they can engage in, the amount of minimum paid-up capital and reserves regulated entities should have, the type of subsidiary companies they can incorporate. Further, Respondent No. 3 is also empowered to have control over the management of such entities in certain cases.

44. That in contrast there are no set of rules and regulations that prescribes any guidelines for working of 'Techfins' and therefore reliance on them for providing financial services poses many challenges. It is submitted that these concerns are closely connected with the structure of the TechFin industry, the ways in which these firms operate, as well as the particular innovations that they are introducing to the market. It is submitted that activities of TechFin companies are significantly opaquer

than the activities of traditional financial institutions, which makes it more difficult for regulators to monitor their behaviour. Moreover, most of the TechFin companies operate cross-border, which makes it even harder for national regulators to control and regulate them, which also raises the complicated question, where TechFin activities are subject to tax. Moreover, since these Techfin Companies do not register themselves as financial service providers as they enter the financial sector by partnering with an existing regulated or licensed entity, or acting as their conduit and therefore regulating these TechFin companies has its complications, and require special attention of the Regulatory authorities.

45. That the activity of solicitation of clients, marketing or arranging of financial services are well regulated under the Indian Financial regulations. It is submitted that although TechFins control access to clients, however they are not subject to the 'solicitation', 'marketing' or 'arranging' rules originally written for those who control access to clients. For instance, a platform such as Amazon, Facebook, and Google functions as an access point for multiple clients to other businesses, some of which may be licensed (payment providers, credit institutions), while others such as simple shops are not, however these don't fall within the contour of financial regulations meant for solicitation of client etc as they operate without registration.

46. Moreover financial laws in India assigns to financial advisors and a bank, asset- and fund managers of traditional financial institutions the status of fiduciary. which means financial services providers, in all of their business activities, have to put the interests of their clients in first place. However, this principle doesn't apply to Techfin Companies as the TechFin companies technically function just as a conduit between the supply and the demand side and therefore safeguards like the principle of fiduciary status which is existent in many aspect of relationship between banker and customer, especially in relation to information of customers available with bank, is missing for customers and investors when they are dealing with TechFin companies.

47. It is submitted that the absence of fiduciary relationship which exists between banker and customer in many aspects of their transactions, especially the fiduciary relationship in relation to the data of customers available with banker , can lead to many problem. That with the help of data-analytics TechFin companies can generate information about the weak sides of a customers and use this to their advantage. For instance, TechFin companies can adjust prices upward for customers insensitive to price, or unwilling to switch products and providers, which would normally violate financial regulations. Moreover due to the fact that these 'TechFins' are being relied upon by large no. of users, any disruption or operational failures in 'techfins' can have a far reaching effect

,consequential effecting the whole payment systems as well as the financial stability of our country.

48. Moreover, from the perspective of licensed intermediaries, unregulated entry of Techfin in financial sector provide unbalanced, and arguably unfair, competition. The fixed costs of an initial license and the ongoing costs of supervision and related reviews by accountants etc., will mean licensed intermediaries bear higher costs than unlicensed ones. In the long run, licensed intermediaries are doomed to lose in such contest, given their higher cost-base and limited flexibility to respond to competitive challenges. It is submitted that such an unregulated entry of TechFin entities creates an uneven playing field in the financial services industry, which can have serious consequences on the financial services industry.

49. That due to the fact that there is no apex body regulating 'Techfins', various issues have come into light wherein these 'techfins' have failed to adhere to laws, rules and regulations which are complied by other regulated entities. Some of these non-compliance includes Google pay (operated by 'TechFin') violating RBI guidelines on localisation, storage and sharing of data. Further there are also cases wherein Google pay failed to adhere mandatory guidelines including interoperability guidelines issued by Respondent No. 4. A true copy of the Reserve Bank of India (RBI) Circular bearing RBI/2017-18/153 DPSS CO. OD. No.

2785/06.08.005/2017-2048 dated 06.04.2018 is annexed herewith and marked as **ANNEXURE P-13.** A true copy of the news article highlighting the Court Issues Notice to Government, RBI Plea against Google Pay dated 24.08.2020 is annexed herewith and marked as **ANNEXURE P-14.**

50. That these 'TPAP' operated by TechFins are able to get away with any non-compliance as it is not regulated by any major regulation and therefore not answerable to any authority including Reserve Bank of India. That recently the same came into light when Google Pay, came in controversy in a case pending before this Hon'ble Court wherein the Reserve Bank of India (RBI) was directed to inform how the mobile payments app was facilitating financial transactions without authorisation. That in response to the question raised by this Hon'ble Court, Respondent No. 3 and Google Pay admitted that third party applications providing financial services are not authorized by Respondent No. 3. A true copy of the news article dated 23.07.2020 stating that GPay Does not Need RBI authorization Google Tells Delhi High Court is annexed herewith and marked as **ANNEXURE P-15.**

51. That interestingly these 'TechFins' which are neither authorized by nor regulated by Respondent No. 3, are not only a part of the financial sector but also influences major decisions taken by Respondent No. 4 in regulating the UPI regime by being members of NPCI steering

committee. That NPCI steering committee takes all major decisions on business, operational, and technical issues within the UPI network. That these 'TechFins' are therefore able to influence the business, operational, and technical policies of the UPI regime which they themselves are a part of. A true copy of the showing 'TechFins' in the list of members of NPCI steering committee dated Nil is annexed herewith and marked as **ANNEXURE P-16**.

52. That it is pertinent to mention that the issue of 'TechFins' providing Financial Services has been viewed seriously in many countries. That European Central Bank (ECB) has also raised concerns about the same and cautioned against the power of Big Tech in financial services. That as per ECB Big Techs have the potential to quickly gain a significant market share, which it says could lead to significant concentration risks and, in the event of operational failures and targeted cyber-attacks, could have a systemic impact on the financial system as a whole, thus increasing financial stability risks. Furthermore as per ECB, the arrival of Big Tech companies in financial services is prompting a rethink of supervisory oversight based around the mantra 'same activity, same risks, same supervision and regulation'. A true copy of the news article dated 27.08.2020 is annexed herewith and marked as **ANNEXURE P-17**.

53. That even the Financial stability Board (FSB) which is an international body that closely monitors the global financial system in its report titled

'Big tech in finance: Market development and potential stability implications' has also highlighted that TechFin could reach a scale and concentration such that their failure could cause widespread disruptions to other parts of financial systems or the economy. A true copy of the relevant portion of the news article showing that Financial Stability and Big Tech dated Nil is annexed herewith and marked as **ANNEXURE P-18.**

54. That recognizing the risk that 'TechFins' pose to the Financial Service, countries like USA are considering a new bill by the name of 'Keep Big Tech Out of Finance Act' that would explicitly ban large platform companies from performing banking functions. That as per the bill any large platform utility may not be, and may not be affiliated with any person that is, a financial institution. That as per the bill "large platform utility" is defined as "a technology company with an annual global revenue of $25,000,000,000 or more, predominantly engaged in the business of offering to the public an online marketplace, an exchange, or a platform for connecting third parties. A true copy of the new articles dated 15.07.2019 published in REUTERS is annexed herewith and marked as **ANNEXURE P-19.**

55. That it is submitted that the pace at which regulators have responded to technological changes in the financial services industry is quite slow. The lackadaisical approach of the regulatory authorities allows for an

incredible increase in risks for society in the financial services market. Besides the fact that customers are less protected with this approach, it also creates an uneven playing field between regulated- and unregulated entities.

56. That additionally these Techfins in most of the cases neither have any registered office in India nor does they have a full-time representative/officer posted within the territory of India. Thus, in case of any breaches of holding it criminally liable would be impossible. Therefore in order to avoid future difficulties, these Fintech's should not be allowed to enter or continue with their offering of financial Services unless they have a registered office within the territory of India.

57. TechFins should be held to similar standards to licensed entities to avoid discriminatory practices towards the public. If nothing is done the regulate the operation of Techfin in Financial Sector, the uneven playing field will persist – authorized intermediaries will lose business, the level of compliance will be gradually undermined, and the role of enforcement agencies will be weakened as their mandates will be too narrow. It is submitted that continued unregulated operation of Techfin in financial sector can lead to financial catastrophe which may lead to National Financial crisis. In this backdrop there is an urgent need for the regulators to take following measures:-

I. Focused Regulations are required to be framed immediately to prevent the Techfin Companies from entering into financial sector or offering financial services through any mode/mechanism without prior registration/approval from the Financial Regulators in India. For example Techfin for offering any kind of banking services at its platform even in partnership with any existing bank must take prior approved and regulated from the RBI. Similarly a Techfin in order to offer Insurance services on its platform must take prior Approval from IRDA. These Techfin companies merely on the basis of partnering with existing financial institution shouldn't be permitted to offer financial services.

II. To protect the personal sensitive, transactional data and financial Data of user from any kind of exploitation, the activity of 'financial data gathering and Data analytics' by TechFin and other entities operating in Financial Sector be made Regulated activity.

III. Regulations are required to be put in place in order to ensure that the Data collected while providing financial services shouldn't be shared, monetized or used for any other purpose.

IV. In line with RBI's Data Localisation Norms for UPI platform, Regulations are required to be put in place in order to ensure that entire data collected while providing financial services by Techfins or other entities are mandatorily stored and processed in India only.

V. The legal nature of the relationship between conduit (TechFin) and users be conferred fiduciary status in relation to data of users collected , stored or processed Information by such TechFins from the users of financial services offered by them.

VI. Immediate steps are required to expand the scope of existing definitions, such as 'solicitation', 'marketing' and 'arranging' to include the activities of offering Financial services by Techfin Companies through their platforms. For instance definition of 'solicitation' etc. should include Websites, Apps etc

VII. The Regulators must consider imposing equal and joint liability for damages on the backend financial institution and the TechFin at the front-end.

VIII. Regulations need to be framed by regulators to have access to the TechFin's data-based business models and algorithms in order to ensure sound methods and adherence to protected factors relevant to that reference market.

IX. Regulations need to be framed for empowering regulators to shut down the activity of TechFins in cases of violations (while preserving customer data), and blacklist such fintech organizations or to appoint a commissioner to run the quarantined TechFin part of the business in the public interest.

58. That in view of the facts mentioned herein, it is essential that 'Techfins' providing financial services are prohibited from offering financial services till the time adequate regulations governing the entry and operation of TechFin in to financial Sector are put in place by the Respondents. That the Petitioner is praying for various reliefs on the basis of the following Grounds:

GROUNDS

A. Because Real power without any responsibility: The Tech Giants gazing at business opportunities and growth in finance Sector, especially the massive evolution in payment systems and lending services are entering into various financial services verticals like Payments, Lending, Banking and Insurance through various tie-ups with licensed partners where the licensed partner has minimal operational control and responsibility yet complete liability of regulatory risk. That these 'TechFins' are today dominating the complete UPI ecosystem, with Google Pay, PhonePe, and Amazon Pay controlling more than 85% market share in UPI. That despite having a market share of more than 85 percent, they do not require any authorization from Respondent No. 3.

B. Because there exists a need for effective regulation of 'TechFin' companies dominating the financial services : The current regulations in India do not adequately provide regulatory control and oversight over operations of 'TechFins' in India. That UPI regime in which such companies are predominant, allows these 'Techfins' to operate without any supervision or regulation from the apex regulatory body i.e. Respondent No. 3. Currently, there are sector specific regulations like RBI Banking Regulations Act, 1949, SEBI (Foreign Institutional Investors) Regulations, 1995,, Insurance Regulatory and Development Authority of India (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations, 2015, Payments and settlement systems Act, 2007 as well general regulations like Foreign exchange Management Act, 1999 (FEMA). However, these 'TechFins' despite offering financial services are not regulated by any these sectoral regulator.

C. Because there are Unfair advantages to 'TechFins': That it is important that 'TechFins' are held to similar standards as other licensed regulated entities providing financial services. That 'Techfins' are allowed to be a part of the financial sector without any banking license and therefore they are able to abstain from any big risk, liability, regulatory overhead including initial license and the ongoing costs of supervision and related reviews by accountants etc. That it is pertinent to highlight that while all the financial services are being offered in their name and not in the name of regulated entities with which these TechFins collaborate with, these TechFins take nil responsibility. That the whole regulatory compliance as well as necessary licensing rests with financial entity with which they collaborate.

D. Because there is potential Risk to Financial stability: That 'TechFins' owns a significant market share in Indian Financial sector today. That in view of absence of any rules and regulation, any event of operational failure including targeted cyberattacks can affect the whole financial system can be affected as a whole. That the same has been pointed out both by European Central Bank as well as Financial stability Board.

E. Because it is the duty of Respondents to supervise sectors where TechFins are operating. That it is the responsibility of Respondents to supervise the TechFins operating in the Financial Sector especially in view of the fact that Financial Sector is the back bone of Indian Economy. That Reserve Bank of India is the designated authority for the regulation and supervision of payment systems under Payment and settlement systems act, 2007 and therefore has the mandatory duty to ensure that all entities participating in the payment systems especially UPI are authorized and effectively regulated by Respondent No. 3. Similarly, Respondent No. 5 is under obligation to regulate the Insurance sector and must regulate TechFins which offers insurance products by way of arrangements with licensed insurance companies.

F. Because there is potential threat from Access to Financial Data Combined with general social and economic data. That 'Techfins' are driven by common interest in collection of big and fast data and concentration of financial data by being part of financial sector along with data generated by offering other technology services can pose a big threat to both Individual privacy as well as country's safety as a whole.

G. Because countries all over the world are recognizing the risk that 'Techfins' pose to the Financial Services. Countries like the USA are considering a new bill by the name of 'Keep Big Tech Out of Finance Act' that would explicitly ban a technology company with an annual global revenue of $25,000,000,000 or companies engaged engaged in the business of online marketplace, an exchange, or a platform for connecting third parties from performing banking functions.

59. The Petitioner has no other alternative efficacious remedy except to file the present Writ Petition under Article 226 and 227 of the Constitution of India seeking redressed of its grievances.

60. The Petitioner has not filed any other writ petition in any other court in India praying for similar relief in any other Courts in India.

PRAYER

This Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction under Article 226 and 227 of the Constitution:

i) Directing the Respondents to not to permit 'TechFins' to enter or operate into financial sector without establishing registered offices within the territory of India, and without prior registration/approval from the concerned Financial Regulators in India, and

ii) Directing the Respondents to immediately formulate comprehensive, detailed and strict legal framework for 'entry' as well as 'operations' of 'TechFins' in the Financial sector in India through any mode/mechanism, (including partnering with existing registered financial entities), and

iii) Directing the Respondents to formulate legal framework to ensure regular mandatory statutory audit of 'TechFins' by relevant statutory authorities;

iv) Directing Respondents to formulate a robust and strict framework to ensure privacy and security of sensitive financial data of customers collected while offering financial services, and to inflict Penal action against 'Techfins' operating in contravention of the said framework;

v) Directing the Respondents to formulate Regulations (in line with RBI's Data Localisation Norms for UPI platform) in order to ensure that entire data collected while providing financial services by Techfins or other entities are mandatorily stored in India only;

vi) Directing the Respondents No. 3 & 4 to ensures uniformity in rules, regulations and guidelines for all entities offering UPI services including Payment Service Providers (PSP) as well as by Third Party App Providers (TPA):

vii) Pass such further or other order(s), as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interests of justice.

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

Counsel for the Petitioner

Through

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Dated: 18.11.2020
Place: New Delhi