

TEAM CODE: T-47 R

BEFORE THE HON'BLE SC OF MANDIA

IN THE MATTER OF:

MR. SATISH DHANKAR

... PETITIONER

v.

THE UNION OF MANDIA

... RESPONDENT

SPECIAL LEAVE PETITION NO. ***/2017**

ON SUBMISSION TO THE HON'BLE SC OF MANDIA

UNDER ART. 136 OF THE CONST. OF MANDIA

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT

COUNSEL APPEARING ON BEHALF OF THE RESPONDENT

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LIST OF ABBREVIATIONS

¶	:	Paragraph
AIHC	:	All India HC Cases
AIR	:	All India Report
AP	:	Andhra Pradesh
Art	:	Article
Bom	:	Bombay
Cal	:	Calcutta
Cri	:	Criminal
Del	:	Delhi
DPSP	:	Directive Principles of State Policy
HC	:	High Court
IT Act	:	Information Technology Act
MOCCA	:	Maharashtra Organized Crime Control Act
PIL	:	Public Interest Litigation
PDS	:	Public Distribution System
SC	:	Supreme Court
SCC	:	Supreme Court Cases
SLP	:	Special Leave Petition
UOI	:	Union of India
US	:	United States
UK	:	United Kingdom

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STATEMENT OF JURISDICTION

The respondent humbly submits before the Hon'ble Supreme Court of Mandia, the memorandum for the respondent in an appeal filed by petitioner under Art. 136 of the constitution of India, 1950. However, the Respondent seeks permission of this Hon'ble Court to contend the maintainability of this Special Leave Petition.

The present memorandum sets forth the facts, contentions and arguments in the present case.

STATEMENT OF FACTS

BACKGROUND

The Republic of Mandia has a democratic parliamentary form of government with a federal structure based on principles of free and fair elections, equality, liberty, fraternity, transparency, accountability of state, freedom of religion, independent and autonomous judiciary and election commission, *inter alia* as its core values. The Constitution of Mandia also provides for an independent judiciary.

THE PURPOSE OF MAKING PEHCHAAN CARDS

The government formulated 'Pehchaan Policy' for profiling of its citizens for making of Pehchaan cards. This policy aimed at saving duplicity of identities, identifying illegal immigrants, checking the leakage in the government schemes and preventing corruption happening in PDS and other subsidy providing schemes of the government.

CONSTITUTION OF NATIONAL UNIQUE IDENTIFICATION AUTHORITY

National Unique Identification Authority was constituted on 30th November, 2009 which assigned the task of making Pehchaan cards to private entities having expertise. For this purpose, they took citizen's details like finger prints of both hands, scanning of iris, blood group, spouse and children details, educational qualification, number of spouses and their religion, details of life-threatening diseases like AIDS, cancer, hepatitis-B, permanent infertility, criminal/civil cases pending and government loan or any other liability.

PIL FILED BY MR. SATISH DHANKAR

Petitioner, Mr. Satish Dhankar, challenged the policy of mandatory Pehchaan cards in the HC of Nelhi on 22nd January, 2009 through PIL contending Pehchaan policy violates right to privacy and right to speech and expression- especially the right to remain silent and not to part with intimate information about oneself. He contended making it mandatory to provide information that is very intimate and integral to one's personality is unconstitutional and violative of fundamental rights. Meanwhile, the govt. made Pehchaan card compulsory for seeking benefits under social welfare schemes. Subsequently, on clarification of interim order passed by HC, issued on Petitioner's plea, the govt. could make it mandatory only for non-benefit schemes.

AMENDMENT OF PETITION

On 11th August, 2014, the govt. enacted the Pehchaan Act, 2014 which made Pehchaan cards mandatory for all benefit and non-benefit schemes, and it gave statutory basis to the National Unique Identification Authority. This Act provided for data protection and penalties and punishments for data leakages. The petitioner, thereby requested for amendment of Petition to challenge the Pehchaan Act, 2014 as well, which was accepted by HC. Subsequently, the petitioner contended that data collected by the govt. is not safe and it can be leaked to private entities threatening life and liberty of people. He also claimed that this data can be used by private companies for telemarketing or for communal profiling of the communities. The respondents responded to this by arguing that there is no right to privacy provided in any provision of Constitution of Mandia and promised to bring soon a substantive law for data protection.

REJECTION OF PIL BY HC

The HC rejected the PIL after hearing the matter in detail and held that Pehchaan Act, 2014 is constitutional and Pehchaan cards can be made mandatory. It further held that the right to deny information to the govt. cannot be held to be fundamental right in the light of necessity to protect the state from terrorism and other security related problems. It also held that making Pehchaan mandatory is essential for the benefits of schemes to reach to citizens, to eradicate the problem of duplicity of identities, and to make elections free and fair. The HC also justified the collection of data by private entities for the Pehchaan by quoting lack of adequate resources, expertise and staff for this purpose.

SLP FILED BY PETITIONER IN SC

The petitioner has approached the SC of Mandia through a Special Leave Petition and has prayed for quashing the judgment of Hon'ble HC of Nelhi and to declare the Pehchaan Act, 2014 and the whole Pehchaan project of the govt. of Mandia to be unconstitutional.

ISSUES PRESENTED

ISSUE 1

WHETHER THE SPECIAL LEAVE PETITION IS MAINTAINABLE?

ISSUE 2

WHETHER THE PEHCHAAN POLICY OF 2009 IS VALID EVEN IN THE ABSENCE OF STATUTORY SUPPORT?

ISSUE 3

WHETHER THE PEHCHAAN ACT, 2014 BROUGHT BY THE GOVERNMENT OF MANDIA IS CONSTITUTIONAL?

ISSUE 4

WHETHER THE PEHCHAAN PROJECT OF THE GOVERNMENT VIOLATES ANY OF THE FUNDAMENTAL RIGHTS PROVIDED BY THE CONSTITUTION?

ISSUE 5

WHETHER THE GOVERNMENT HAS TAKEN ADEQUATE MEASURES TO SECURE THE DATA COLLECTED FOR THE PURPOSE OF MAKING PEHCHAAN CARDS?

SUMMARY OF ARGUMENTS

[1]. WHETHER THE SPECIAL LEAVE PETITION IS MAINTAINABLE?

It is humbly submitted before the Hon'ble Court that the appeal filed by the petitioner is not maintainable as Special Leave cannot be granted when substantial justice has been done and no exceptional or special circumstances exist for the case to be maintainable. Also, there has been no failure of justice and Special Leave Petition cannot be granted just because the decision of HC might be suffering from some legal errors. Further, no substantial question of law is involved in the present case and interference is based on pure question of fact which is entitled to be dismissed as per the test laid down under the case of *Chunni Lal*.

Moreover, the petitioner has not exhausted alternative remedies. In the present case no special circumstances existed to forgo the statutory process of appeal. The petitioner had an option to appeal to the concerned HC's higher bench or apply for revision. In case of failure of above remedies, the petitioner also had an option to pursue his case before the SC under Art. 132 which provides for appellate jurisdiction of SC in appeals from HC in civil, criminal or other matters.

[2]. WHETHER THE PEHCHAAN POLICY OF 2009 IS VALID EVEN IN THE ABSENCE OF STATUTORY SUPPORT?

The Pehchaan Policy has passed the test of Wednesbury reasonableness as well the test of doctrine of proportionality which govern the judicial review aspect of administrative discretion. Moreover, all executive policies need not be backed by statutory support. Even if there's a violation of legal right, Pehchaan Policy has legal backing in Pehchaan Act, 2014.

[3]. WHETHER THE PEHCHAAN ACT, 2014 BROUGHT BY THE GOVERNMENT OF MANDIA IS CONSTITUTIONAL?

The government of Mandia enjoys full legislative competency and the enactment of the Pehchaan Act, 2014 is within its authority as provided under List I of the Seventh Schedule. Further, the objectives of the Act are completely clear and the Act does not seek to do indirectly what it cannot do directly, and is therefore not a colourable legislation. Also, the Act is not in violation of any of the fundamental rights provided by the Constitution and is therefore constitutionally valid.

**[4]. WHETHER THE PEHCHAAN PROJECT OF THE GOVERNMENT VIOLATES ANY OF THE
FUNDAMENTAL RIGHTS PROVIDED BY THE CONSTITUTION?**

It is humbly submitted before the Hon'ble Court that the 'Pehchaan Policy and Pehchaan Act, 2014', brought by the government is not in violation of any of the fundamental rights of the people. Right to Privacy, though recognised as fundamental right, is not absolute and is subject to reasonable restrictions. Pehchaan Project of the government is in accordance with procedure established by law provided under Art. 21 of the Constitution, as it satisfies the requirements of Arts. 14 and 19 and is also just, fair and reasonable. It aims at reasonably classifying people while laying down proper guidelines to successfully implement welfare schemes.

In fact, the policy is to enable the establishment of welfare state, which is one of the core values of the Constitution of India. It aims at bringing equality, by identifying the needy and their needs. The whole policy is to give effect to Directive Principles of State Policy, to subserve the common good, and reasonable restrictions can therefore be imposed on fundamental rights of the people to give effect to Directive Principles of State Policy as per Art. 37 of the Constitution of India, for larger public interest.

**[5]. WHETHER THE GOVERNMENT HAS TAKEN ADEQUATE MEASURES TO SECURE THE DATA
COLLECTED FOR THE PURPOSE OF MAKING PEHCHAAN CARDS?**

The government of Mandia has taken adequate measures to secure the data collected under the Pehchaan Project. Chapter VI and VII of the Aadhaar Act, 2016 deal with Protection of data and Offences & Penalties for breach of any such data. Authorities who have been given the power to collect data or the persons who have been delegated such power by the authorities, under the scheme are under the obligation to employ enough security measures to ensure the protection of the data so collected, and they are liable to penalty, if there is any accidental or intentional disclosure of information on their part. The Act, also provides that the biometric information collected under the policy shall not be used for any purpose other than generation of Aadhaar cards. Also, unauthorized sharing of sensitive personal information attracts liability to compensate under the Information Technology Act, 2000.

ARGUMENTS ADVANCED

[1]. THAT THE SPECIAL LEAVE PETITION IS NOT MAINTAINABLE

1. It is humbly submitted before this Hon'ble SC of Mandia that the Special Leave Petition filed by the petitioner is not maintainable as Special Leave cannot be granted when **substantial justice has been done** by the HC of Nelhi and **no exceptional or special circumstances exist** for the case to be maintainable. Also, the present case involves no substantial question of law and **inference is based on pure question of fact** which is entitled to be dismissed.

[1.1] NO EXCEPTIONAL AND SPECIAL CIRCUMSTANCES EXIST AND SUBSTANTIAL JUSTICE HAS BEEN DONE.

2. It is humbly contended by the respondent that the petitioner must show that exceptional circumstances exist and that if there is no interference, it will result in substantial and grave injustice and the case has features of **sufficient gravity to warrant review** of the decision appealed against, on merits. Only then the Court would exercise its overriding powers under Art. 136.¹ Special leave will not be granted when there is no failure of justice or when substantial justice is done, though the decision might suffer from some legal errors.²

3. In the case at hand, no exceptional and special circumstances have been shown by the petitioner. The HC of Nelhi in the present case, has very judiciously decided and rejected the PIL.³

4. Further, it is not possible to define the limitations on the exercise of the discretionary jurisdiction vested with the SC under Art. 136. But, being an **exceptional and overriding power**,⁴ naturally it has to be **exercised sparingly** with caution only in special and

¹ M.P Jain, Indian Constitutional Law, 576 (16th ed., Lexis Nexis Butterworth Wadhwa, Nagpur 2011); See also, The Constitution of India, 1950.

² Council of Scientific and Industrial Research v. K. G. S. Bhatt, (1989) 4 SCC 635; See also, State of H. P. v. Kailash Chand Mahajan, AIR 1992 SC 1277.

³ Moot Proposition, ¶ 24.

⁴ Narpat Singh v. Jaipur Development Authority, (2002) 2 SCC 666.

extraordinary situations.⁵ The provision does not give right to the party to appeal to the SC rather it confers a wide discretionary power on the SC to interfere in suitable cases.⁶

[1.2] INFERENCE FROM A PURE QUESTION OF FACT IS IN ITSELF A FACT

5. It is contended by the Respondent that the appeal doesn't involve any substantial question of law rather it **involves pure question of fact** and hence, is not maintainable. Questions of fact cannot be permitted to be raised unless there is material evidence which has been ignored by the HC or the finding reached by the court is perverse.⁷

6. Generally, on finding of fact, no interference should be made.⁸ **Even in cases where conclusions are reached without proper discussion, yet if it involves finding on fact, no interference of SC is called for.**⁹ Further, if the conclusion is based on some evidence on which subsequently a conclusion could be arrived at, no question of law is raised.¹⁰

7. The Apex Court has recognized that Right to privacy is a fundamental right emanating from Art. 21, subject to reasonable restrictions.¹¹ Therefore, the contention of the Petitioner that the Pehchaan Project infringes upon the citizens' right to privacy is purely a question of fact which can be decided on the basis of predetermined question of law as to the scope of right to privacy and hence, not open to review.

[1.2.1] NO SUBSTANTIAL QUESTION OF LAW IS INVOLVED

8. It has to be kept in mind that **the right of appeal is neither a natural nor an inherent right attached to the litigation.**¹² Being a substantive statutory right, it **has to be regulated in accordance with law in force at the relevant time.** It cannot be decided merely on equitable grounds.

⁵ Dhakeswari Cotton Mills Ltd. v. CIT West Bengal, AIR 1955 SC 65; See also, Arunalchalam v. Sethuratnam, AIR 1979 SC 1284; See also, H.M. Seervai, Constitutional Law of India, VOL. 1, 252 (4th ed., Universal Law Publishing, Allahabad 2010).

⁶ Dhakeswari Cotton Mills Ltd. v. CIT West Bengal, AIR 1955 SC 65.

⁷ Union of India v. Rajeshwari & Co., AIR 1986 SC 1748; See also, Gurbakhsh Singh v. State of Punjab, AIR 1955 SC 320.

⁸ CIT v. Maganlal Chaganlal (P) Ltd., (1997) 11 SCC 557.

⁹ Amarchand Sobhachand v. CIT, AIR 1971 SC 720.

¹⁰ CIT v. Orissa Corp Ltd., AIR 1986 SC 1849.

¹¹ K. S. Puttaswamy and Anr. v. Union of India and Ors., AIR 2015 SC 3081

¹² Hero Vinoth (Minor) v. Seshammal, AIR 2006 SC 2234.

9. As per the test laid down under *Sir Chunilal Mehta & Sons Ltd. v Century Spinning & Mfg. Co. Ltd.*,¹³ to determine whether a substantial question of law is involved is an open question in the sense that there is no scope for interference by the HC with a finding recorded when such finding could be treated to be a finding of fact;¹⁴ if the question has been well- settled by the Highest Court and it is merely a question of applying the settled principles in determination of the matter.¹⁵

10. Re-appreciation of evidence and substitution of the findings by the HC is impermissible.¹⁶ Hence, it is submitted that on account of the fact that the position is well-settled by this Court in its earlier decisions,¹⁷ no substantial question of law is involved in the present case.

[1.3] THE PETITIONER HAS NOT EXHAUSTED ALTERNATIVE REMEDIES AVAILABLE TO HIM

11. The doctrine of exhaustion of alternative remedies guides the practice and procedure of the SC in the exercise of its power conferred under Art. 136. As per the principle, all the **statutory remedies would have to be exhausted before approaching the SC** under its special jurisdiction, unless special circumstances can be shown to convince the court that it must allow the appeal.¹⁸ In the instant matter, the petitioner's PIL filed in the HC of Nelhi was rejected, so he approached this Hon'ble Court through a SLP¹⁹ without resorting to the appeal to the court under Art. 32 which was available to him as an alternative forum and as his Fundamental Right and no special circumstances existed to forego the statutory process of appeal.

12. The **petitioner also had an option to resort to the jurisdiction of HC by appeal to the Court's higher bench or application for revision.** The respondents humbly submit that keeping in view the precedents laid down by the Apex Court,²⁰ the petitioner's sheer failure to exhaust the available alternative remedies renders the current SLP non-maintainable.

¹³ *Sir Chunilal Mehta & Sons Ltd. v. Century Spinning & Mfg. Co. Ltd.*, AIR 1962 SC 1314.

¹⁴ *M. Janardhana Rao v. Joint Commissioner of Income Tax* AIR 2005 SC 1309.

¹⁵ *Sir Chunilal Mehta & Sons Ltd. v. Century Spinning & Mfg. Co. Ltd.*, AIR 1962 SC 1314; See also, Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179.

¹⁶ *Commissioner of Income Tax v. P. Mohanakala*, (2007) 210 CTR 20.

¹⁷ *Malabar Industrial Co. Ltd. v. CIT*, (2000) 243 ITR 83.

¹⁸ *British India Steam Navigation Co. Ltd. v. Jasjit Singh Additional Commissioner of Customs*, AIR 1964 SC 1451.

¹⁹ Moot Proposition, ¶28.

²⁰ *Onkarlal Nandlal v. State of Rajasthan*, (1985) 4 SCC 404.

[2]. THAT THE PEHCHAAN POLICY OF 2009 IS VALID EVEN IN THE ABSENCE OF STATUTORY SUPPORT.

13. It is humbly submitted before the Hon'ble Court that the Pehchaan Policy passes the test of principle of proportionality and also Wednesbury unreasonableness as it is a result of objective administrative discretion.

[2.1]. THE PEHCHAAN POLICY PASSES THE TEST OF PRINCIPLE OF PROPORTIONALITY

14. Administrative action in India allegedly affecting fundamental freedoms has always been tested on the anvil of proportionality.²¹ Proportionality broadly requires that **government action must be no more intrusive than is necessary to meet an important public purpose.**²² A decision is proportionate if (a) the executive objective is sufficiently important to justify limiting a fundamental right, (b) the measures designed to meet the executive objective are rationally connected to it and (c) the means used to impair the rights are no more than necessary to accomplish the objective.²³

15. The Pehchaan Policy is meant to identify citizens for various benefits, including elimination of duplicity of identities, leakage in government schemes, corruption²⁴ and terrorism.²⁵ The HC of Nelhi, while pronouncing judgment in favour of Pehchaan, identified and noted the need of Pehchaan Cards in order to solve security problems, ensure free and fair elections and eradicate problems of duplicity.²⁶ Therefore, the conditions of legitimacy, suitability, necessity and fair balance²⁷ have been met in the instant case, as the Pehchaan scheme of 2009 did only what was required to make absolutely certain that the measures taken to provide benefits to citizens were rationally connected to the policy.

²¹ Om kumar v. Union of India, AIR 2000 SC 3689, 3702.

²² John Adler, General Principles of Constitutional and Administrative Law, 385 (4th ed., Palgrave Macmillan, Basingstoke, United Kingdom, 2002).

²³ De Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing, (1999) 1 A.C. 69, 80.

²⁴ Moot Proposition, ¶1.

²⁵ Moot Proposition, ¶3.

²⁶ Moot Proposition, ¶25.

²⁷ R v. Minister of Agriculture, Fisheries and Food, ex parte Federation Europeenne de la SanteAnimale (FEDESA), (1991) 1 C.M.L.R. 507; See also, Julian Rivers, Proportionality and Variable Intensity of Review, 65(1) Cambridge Law Journal 174, 181 (2006).

[2.2]. THE PEHCHAAN POLICY PASSES THE TEST OF WEDNESBURY UNREASONABLENESS

16. When an administrative action is questioned as arbitrary, the principle of Wednesbury Unreasonableness comes into operation.²⁸ It is a principle that applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it.²⁹ It, therefore, means that administrative discretion should be exercised reasonably and matters irrelevant to the subject must be excluded from consideration.³⁰

17. In the instant case, the State had brought in the Pehchaan policy only to ensure that citizens enjoy manifold benefits through the process of generation of single identity which was free from the dangers of falsification and duplicity. There was no overt or covert administrative overreach and the government was objective in its approach.

[2.2.1] THE PEHCHAAN POLICY WAS NOT ARBITRARY

18. ‘Arbitrarily’ means in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in nature of things, non-rational, not done or acting according to reason or judgment, depending on will alone.³¹ Since *Maneka Gandhi’s case*,³² the Courts have adopted the Wednesbury principle that if the classification was an arbitrary act of the State under Art. 12 of the Constitution, Art. 14 would strike it down.³³ Art. 14 protects us from both legislative and executive tyranny by way of discrimination.³⁴

19. The Pehchaan policy was a well thought-out administrative action, detailed and planned in its implementation. There was no element of whim or ambiguity which would make it fall within the purview of definition of ‘arbitrarily’, as propounded by this Hon’ble Court. Therefore, in the instant case of the Pehchaan policy of 2009, Art. 14 would not spring into action as its application has been limited by the legitimate and rational administrative discretion exercised.

²⁸ *Supra* note 21 at 3704.

²⁹ Council of Civil Service Unions. v. Minister for the Civil Services, (1984) 3 All ER 935, 951.

³⁰ Associated Picture House v. Wednesbury Corporation, (1947) 2 All ER 680 (CA), 682-683.

³¹ Sharma Transport v. Govt. of A.P., AIR 2002 SC 322.

³² Maneka Gandhi v. Union of India, AIR 1978 SC 597.

³³ Kasturi Lal Lakshmi Reddy v. State of J&K, AIR 1980 SC 1992, ¶ 14.

³⁴ Basheshar Nath v. The Commissioner of Income Tax, Delhi & Rajasthan, AIR 1959 SC 149, ¶25.

20. Assuming arguendo that administrative discretion was applied in a wrong manner, the Courts do not go into the merits of the exercise of discretion by the State as the Court cannot go into the question whether the opinion formed by the State is right or wrong.³⁵ The Court does not substitute its own views for that of the concerned administrative authority.³⁶

[2.3]. THE EXECUTIVE CAN MAKE POLICIES WITHOUT STATUTORY SUPPORT

21. The administrative organ in India does not always need a statutory power to act and execute a policy.³⁷ **The executive function includes the determination as well as carrying out of policy and therefore, has within its ambit initiation of legislation, maintenance of order and promotion of social and economic welfare.**³⁸

22. The executive can take administrative action without a specific statutory sanction over the entire area falling within legislative competence of the concerned legislature, if it does not infringe the legal right of any person.³⁹

23. In the instant case, the creation and implementation of Pehchaan policy was well within the competence of the Central executive, its legislative correlative. Moreover, the Pehchaan policy was made to strengthen national security, and ramp up social, political and economic benefits. This Hon'ble Court must therefore resort to judicial deference as no legal rights of any person have been violated.

24. Also, the Pehchaan policy of 2009 was given legislative backing by the medium of the Pehchaan Act, 2014 enacted on 11th of August, 2014,⁴⁰ so that the executive action affecting legal rights must have the authority of law.⁴¹

[3]. THAT THE PEHCHAAN ACT, 2014 BROUGHT BY THE GOVERNMENT IS CONSTITUTIONAL

25. **A law which violates the fundamental right of a person is void.**⁴² Additionally, unconstitutionality might arise either because the law is in respect of a matter not within the

³⁵ Partap Singh v. State of Punjab, AIR 1964 SC 72.

³⁶ Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740.

³⁷ Ram Jawaya v. State of Punjab, AIR 1955 SC 549.

³⁸ *Id.*, at 556.

³⁹ Naraindas v. State of Madhya Pradesh, AIR 1974 SC 1232.

⁴⁰ Moot Proposition, ¶12.

⁴¹ State of Madhya Pradesh v. Bharat Singh, AIR 1967 SC 1170.

⁴² Namit Sharma v. Union of India, (2013) 1 SCC 745.

competence of the legislature or because the matter itself being within the competence, its provisions offend some constitutional restrictions.⁴³

[3.1] THAT THE STATE ENJOYS LEGISLATIVE COMPETENCE IN THE INSTANT CASE

26. The government of Mandia enacted the Pehchaan Act, 2014 in the monsoon session of the Parliament on 11th August, 2014. **Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule⁴⁴** and also enjoys powers to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule of the Constitution.⁴⁵

27. Under Entry 17 and 45 of List I respectively, matters of ‘Citizenship’ and ‘Banking’ are within the purview of the Central government, which enjoys a majority in the Parliament. Similarly, under Entry 20 and 23 of List III respectively, matters concerning ‘Economic & Social Planning’ and ‘Social Security’ are enlisted on which the Central government can legislate. Thus, the government of Mandia enjoyed legislative competence to enact the Pehchaan Act, 2014.

**[3.2] THAT THE PEHCHAAN ACT, 2014, CONSEQUENTLY, IS NOT A COLOURABLE
LEGISLATION**

28. The doctrine of colourable legislation is relevant only in connection with the question of legislative competence.⁴⁶ **Colourable legislation seeks to convey that by enacting the legislation in question the legislature is seeking to do indirectly what it cannot do directly.⁴⁷** There has been no fraud and the Parliament of Mandia is fully competent to enact the legislation.⁴⁸

**[4]. THAT THE PEHCHAAN PROJECT OF THE GOVERNMENT DOES NOT VIOLATE ANY OF THE
FUNDAMENTAL RIGHTS PROVIDED BY THE CONSTITUTION**

29. It is humbly submitted before this Hon’ble Court that the ‘Pehchaan Policy and the Pehchaan Act, 2014’ brought by the respondent is not in violation of Art. 14, Art. 19 or Art. 21 guaranteed under Part III of the Constitution of India.

⁴³ M.P.V. Sundararamier & Co. v. State of A.P., AIR 1958 SC 468, ¶23.

⁴⁴ Art. 246(1), The Constitution of India, 1950.

⁴⁵ Art. 246(3), The Constitution of India, 1950.

⁴⁶ Jalan Trading Co. v. Mill Mazdoor Sabha, AIR 1967 SC 691.

⁴⁷ Naga People’s Movement v. Union of India, (1998) 2 SCC 109, ¶ 39.

⁴⁸ *Id.*

[4.1] RIGHT TO PRIVACY IS NOT ABSOLUTE AND IS NOT VIOLATED BY THE PEHCHAAN PROJECT

30. Exercise of right to privacy guaranteed by the Constitution of India is not absolute,⁴⁹ and the **government can impose reasonable restrictions** as and when the situation arises in the interest of the community.⁵⁰ It is essential for the Government of Mandia to impose reasonable restrictions on the exercise of Right to Privacy of its people, **in view of larger public interest**⁵¹ of strengthening the security of the state,⁵² to bring down the level of corruption,⁵³ to ensure free and fair elections⁵⁴ and to ensure welfare entitlements provided by the government properly reach the deprived sections of the society.⁵⁵

31. European Convention on Human Rights also recognizes that right to privacy is not absolute and lays down certain circumstances which include national security, public safety and the economic well-being of the country, protection of health, rights and freedoms of others, *inter alia* under which the right can be interfered with, by the state.⁵⁶

32. Lord Denning while stating that the English law must recognize right to privacy, also asserted that **the exercise of the same cannot be free from limitations.**⁵⁷ Though right to privacy is an inalienable right; its **curtailment is necessary for stability of the society.**⁵⁸ Following these principles, interception of telephone calls to prevent organized crimes in accordance with the provisions of MOCCA has also been held to be constitutionally valid by SC.⁵⁹

33. To begin with, the options canvassed for limiting the right to privacy include an **Art. 14 type reasonableness enquiry**⁶⁰; **limitation as per the express provisions of Art. 19**; a just, fair and reasonable basis for limitation per Art. 21; and finally, a **just, fair and reasonable**

⁴⁹ Sharda v. Dharam Pal, (2003) 4 SCC 493; See also, Ramlila Maidan Incident v. Home Secretary, Union of India, (2012) 5 SCC 1.

⁵⁰ Gobind v. State of Madhya Pradesh & Anr., (1975) 2 SCC 148; See also, Kartar Singh v. State of Punjab, (1994) 3 SCC 569.

⁵¹ Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi, (2012) 13 SCC 61.

⁵² Moot Proposition, ¶ 3

⁵³ Moot Proposition, ¶ 1.

⁵⁴ Moot Proposition, ¶ 2.

⁵⁵ Moot Proposition, ¶ 1.

⁵⁶ Art. 8, European Convention on Human Rights, 1953 (Adopted on September 3, 1953).

⁵⁷ Lord Denning, 'What Next in Law' available at https://isistatic.org/journal-archive/ma/27_02/shenfield.pdf (Last visited on September 4, 2017).

⁵⁸ R v. Director of Serious Fraud Office, Ex parte Smith, [1993] AC 1.

⁵⁹ State of Maharashtra v. Bharat Shanti Lal Shah, (2008) 13 SCC 5.

⁶⁰ E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555.

standard per Art. 21 plus the amorphous standard of ‘compelling state interest’. The last of these four options is the highest standard of scrutiny⁶¹ that a court can adopt. It is from this menu that a standard of review for limiting the right of privacy needs to be chosen.⁶²

[4.1.1] PEHCHAAN ACT, 2014 BROUGHT BY THE GOVERNMENT IS IN ACCORDANCE WITH,
PROCEDURE ESTABLISHED BY LAW PROVIDED UNDER ART. 21 OF THE CONSTITUTION

34. Right to Privacy has been culled from Art. 21 of the Constitution of India.⁶³ **Right to Privacy is a part of Right to life and Personal Liberty** and it can be curtailed only in accordance with the Procedure established by Law, as provided under Art. 21 of the Constitution of India.⁶⁴ International Convention on Civil and Political Rights also provides that liberty of the people can be restricted, in accordance with such procedure as are established by law.⁶⁵

35. The SC in *Maneka Gandhi*,⁶⁶ has laid down a triple test for any law to be considered to be in accordance with the ‘Procedure established by law’: (1) The law must prescribe a procedure (2) the procedure must satisfy the requirements of Arts. 14 and 19 (3) And, it should be just, fair and reasonable.

36. The Pehchaan Act, 2014 enacted by the government which makes Pehchaan Cards mandatory for all schemes (benefit and non- benefit both), is in accordance with procedure established by law, as its purpose is to eliminate terrorism, prevent corruption, and to ensure welfare of the people, and it enacts adequate guidelines for its implementation.

[4.1.2] PEHCHAAN PROJECT OF THE GOVERNMENT IS IN VIEW OF COMPELLING STATE INTEREST

37. The test of Compelling state interest laid down in *Gobind*,⁶⁷ provides that **right to privacy of the people can be compromised in view of compelling state interest**. Threat to the security of the state, high level of corruption,⁶⁸ and duplicity of identities⁶⁹ are all in the nature of compelling state interest. Thus, Pehchaan Policy and the Pehchaan Act, 2014

⁶¹ United States v. Carolene Products, 304 U.S. 144 (1938).

⁶² K. S. Puttaswamy and Anr. v. Union of India and Ors., AIR 2015 SC 3081.

⁶³ Mr. X v. Hospital Z, (1998) 8 SCC 296.

⁶⁴ People’s Union for Civil Liberties v. Union of India, AIR 1991 SC 207.

⁶⁵ Art. 9, International Convention on Civil and Political Rights (Adopted by United Nations General Assembly on December 16, 1966).

⁶⁶ Maneka Gandhi v. Union of India, AIR 1978 SC 597

⁶⁷ Gobind v. State of Madhya Pradesh & Anr., (1975) 2 SCC 148.

⁶⁸ Moot Proposition, ¶ 1.

⁶⁹ *Id.*

brought by the government which restricts the rights of the people in order to safeguard public order and security of the state, is valid.

[4.1.2.1] NATIONAL SECURITY OF THE STATE

39. Several International Conventions⁷⁰ as well as legal provisions in other countries⁷¹ recognize that fundamental rights of the people can be restricted in the interest of the security of the state. **Art. 19(2)** of the Constitution of India **provides that restrictions can be imposed on rights guaranteed under Art. 19(1)(a), if there exists a threat to the security of the state.** In *Gobind v. State of Madhya Pradesh*,⁷² the Court has held that the right to privacy can be restricted if there is a compelling state interest to be served and recognised threat to national security in the nature of compelling state interest.

40. In the case of *Ram Prasad v. State of Bihar*,⁷³ the government brought a legislation to cancel the lease of a particular individual, even though the legislation did not satisfy the test of reasonable classification, to maintain public peace and order.

41. Terrorism and hostile neighbours pose a huge threat to the national security of the state. The Pehchaan Policy and the Pehchaan Act, 2014 brought by the government will help in eliminating all forms of terrorism by finishing off sleeping modules and local support bases of terrorists in the country. Also, the whole project will help in keeping track of financial transactions throughout the country, which in turn will curb terror finance and Hawala transactions.⁷⁴

[4.1.2.2] RIGHT TO REMAIN SILENT

42. Art. 19(2) provides that for the purposes of the security of the State the State can impose reasonable restrictions on the exercise of Art. 19(1)(a). **Right to remain silent is implied in the freedom of speech and expression** under Art. 19(1)(a),⁷⁵ and therefore, the restrictions mentioned under Art. 19(2) will apply on right to remain silent as well and a citizen can be asked to part with information about oneself in the interest of the security of the state.

⁷⁰ Art. 8, European Convention on Human Rights, 1953 (Adopted on September 3, 1953).

⁷¹ Art. 5(2), U K Human Rights Act, 2000 (Adopted on October 2, 2000).

⁷² *Gobind v. State of Madhya Pradesh & Anr.*, (1975) 2 SCC 148; See also, *Investigating Directorate: Serious Offences v. Hyundai Motor Distributors Ltd*, 2001 (1) SA 545 (CC).

⁷³ *Ram Prasad v. State of Bihar*, AIR 1953 SC 215.

⁷⁴ Moot Proposition, ¶ 3.

⁷⁵ *Bijoe Emmanuel v. State of Kerala*, AIR 1987 SC 748.

43. People are exempted from disclosure of personal information which has no relationship to any public activity or interest, or which would cause “unwarranted invasion of the privacy of the individual” unless the authority is satisfied that the larger public interest justifies its disclosure.⁷⁶

[4.1.2.3] PREVENTION OF CORRUPTION

44. The main objective of the respondent behind bringing the Pehchaan Policy and the Pehchaan Act, 2014 is to check the leakage in the government schemes and to prevent corruption happening in PDS and other subsidy providing schemes of the government.⁷⁷ Corruption is required to be mitigated to ensure that the deprived sections of the society are able to benefit from various social welfare schemes of the government, which will help in establishing socialist state, which has been held to be **one of the goals of our constitution**⁷⁸ and is **necessary for the ‘common good’** of the people of the country. Socialism aims at distribution of material resources of the community in such a way as to subserve the common good.⁷⁹

45. The remarkable success of Andhra Pradesh government in curbing corruption by mandatory issuing of biometric cards should be taken into consideration here. The State government collected a range of biometric data including iris scan, photographs and fingerprints in a period of 4 years after collecting the relevant data, the state government began a structured programme to sort out duplicate cards on the basis of biometric information. This was done by comparing fingerprints and iris scans, initially at the district level and ultimately at state level. In the process, the state government reportedly weeded out 1.1 crore duplicate ration cards. According to the reported statistics, biometric ration cards have proven to be a great success in the state government’s efforts to streamline its PDS Network and perhaps reduce corruption and pilferage.⁸⁰

46. The system of bio-metric identification of homeless persons will help in supply of benefits like food and kerosene oil to persons who are the correct beneficiaries.⁸¹ It is also

⁷⁶ Thalappalam Service Cooperative Bank Limited v. State of Kerala, (2013) 16 SCC 82.

⁷⁷ Moot Proposition, ¶ 1.

⁷⁸ Air India Statutory Corp. v. United Labour Union, AIR 1997 SC 645.

⁷⁹ State of Karnataka v. Raghunath Reddy, AIR 1978 SC 215.

⁸⁰ Bageshree, Biometric Identification for Ration Cards too, The Hindu November 29, 2007 available at <http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/Biometric-identification-for-ration-cards-too/article14884735.ece> (Last visited on September 06, 2017).

⁸¹ People’s Union for Civil Liberties v. Union of India & Ors., 2010) 5 SCC 318.

submitted that the petitioner have placed reliance over the existing norms of privacy, but have failed in analysing that many findings of the U.S. Court have implied that the use of biometrics does not invade an individual's civil liberties or privacy.⁸² The Justice Wadhwa review has suggested a computer based information system as well as the use of biometric smart cards to reduce leakage.⁸³

[4.1.2.4] AVOIDING DUPLICITY OF IDENTITIES

47. Duplicity of identities poses a huge threat to the democratic structure of the country as it challenges the system of free and fair elections, which is the basic pillar of our country. The Project will help in ensuring free and fair elections.⁸⁴

48. Also, this linking of bank accounts will help in increasing the tax collection by the government. Linking of Pehchaan Cards with PAN, will increase the tax returns of the government by minimising corruption. In the recent case of *Binoy Viswam*,⁸⁵ the government has held linking of Aadhaar Cards with PAN constitutional.

49. Pehchaan Project is also a solution to problem of illegal immigrants in the country, which will help in more rational distribution of the welfare entitlements provided by the government to the citizens of the country and reduce terrorism and the process of mandatory identification of citizens will eliminate illegal immigrants. Following these principles, the SC has approved Aadhaar based verification of existing and new mobile.⁸⁶

[4.1.3] THERE IS NO REASONABLE EXPECTANCY OF PRIVACY ON PART OF CITIZENS

50. The theory of reasonable expectancy of privacy has been recognized under the U.S and English law. This test was first laid down in *Katz v. United States*,⁸⁷ which provides that **first the person must exhibit an actual expectation of privacy and, second, that the expectation must be recognized as reasonable by the society.**

⁸² *Schmerber v. CA*, 384 US 757 (1966); See also, *U.S. v. Dionisio*, 410 US 1, 764, 35 L. Ed. 2d 67 (1973).

⁸³ Justice Wadhwa Committee, Public Distribution System Report on The State of Tamil Nadu (2007) available at Pdscvc.nic.in/Tamilnadu%20reports.htm (Last visited on September 06, 2017).

⁸⁴ Indrajit Gupta Committee Report on State Funding of Elections, Ministry Of Law, Justice And Company Affairs, Government Of India, 21 (December, 1998) available at <http://lawmin.nic.in/ld/erreports/Indrajit%20Gupta%20Committee%20Report.pdf> (Last visited on September 09, 2017).

⁸⁵ *Binoy Viswam vs. Union of India & Ors.*, (2017) 4 SCC 673.

⁸⁶ *Lokniti Foundation v. Union of India & Ors*, WP(C) No.612/2011.

⁸⁷ *Katz v. United States*, 389 US 347 (1967).

51. Following the principle of reasonable expectation of privacy, the SC has observed in *Canara Bank Case*,⁸⁸ that:

“Parting with information does not deprive the individual of the privacy interest. The reasonable expectation is allied to the purpose for which information is provided; while, legitimate aims of the state, such as the protection of the revenue may intervene to permit a disclosure to the state, the state must take care to ensure that the information is not accessed by a private entity.”

52. The information asked by the respondent; blood group, spouse and children detail, religion, caste, etc. have been provided by the people during census as well. Reasonable expectation of Privacy does not arise out of parting with information about oneself including core biometric information, for making of Unique Identity Cards, i.e. Pehchaan Cards by the government rather from the security of the Pehchaan database, or in other words not to use the information so collected under the project for any other purpose than making of Pehchaan cards and subsequent reasonable classification of people, not to disclose the information to private entities of which the government has taken care of, under Section 29 of the Aadhaar Act.

[4.2] PEHCHAAN POLICY AND THE PEHCHAAN ACT, 2014 BROUGHT BY THE GOVERNMENT DO NOT VIOLATE ART. 14 OF THE CONSTITUTION

53. Pehchaan Policy brought by the state, enables the government to identify all the people; their economic condition, health, educational classification, *inter alia* in the country and thereby, make a reasonable classification of people based on intelligible differentia as per Art. 14 of Constitution of India for successful implementation of welfare schemes.

[4.2.1] PEHCHAAN PROJECT SATISFIES THE TEST OF REASONABLE CLASSIFICATION

54. While **Art. 14 forbids class legislation**, it does not forbid reasonable classification for the purposes of legislation.⁸⁹ The test of reasonable classification was laid down by SC in *Budhan Chaudhary v. State of Bihar*,⁹⁰ which provides that: (1) the classification proposed in

⁸⁸ It has been quoted by Justice Dr D Y Chandrachud in the case of K. S. Puttaswamy and Anr. v. Union of India and Ors., AIR 2015 SC 3081.

⁸⁹ *Budhan Chaudhary v. State of Bihar*, AIR 1955 SC 191; See also, *Kedarnath Bajoria v. State of West Bengal*, AIR 1953 SC 404;

⁹⁰ *Budhan Chaudhary v. State of Bihar*, AIR 1955 SC 191.

the legislation must be founded on intelligible differentia and that, (2) there must be close nexus between the classification and the object of the Act.

Principle of Intelligible Differentia

55. The expression intelligible differentia means **difference capable of being understood and should be reasonable and not arbitrary**. The Pehchaan Policy and the Pehchaan Act, 2014 aim at classifying people based on their needs for instance health disorders, financial issues, etc. and implement welfare schemes based on such reasonable classification.

There is Rational Nexus between Classification and Objective Sought

56. It is contended that the **law can make and set apart the classes according to the needs and exigencies of the society**.⁹¹ If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation.⁹²

Possibility of Abuse of Power does not render a Legislation Arbitrary

57. Arbitrariness on the possibility that a power may be abused, despite the guidelines, in the provisions providing for such power cannot be held to be arbitrary and unreasonable.⁹³ The principle underlying the guarantee of Art. 14 is not that the same rules of law should be applicable to all persons within the territory or that the **same remedies should be made available to them irrespective of differences of circumstances**.⁹⁴

[4.2.2] PEHCHAAN PROJECT SATISFIES THE TEST OF ARBITRARINESS

58. The purpose of the Pehchaan Policy and the Pehchaan Act, 2014 is to reasonably classify people based on intelligible differentia and is therefore, not arbitrary and unreasonable. There is a close nexus between the objective of the Act and classification and the Act provides for

⁹¹ Suresh Kumar Koushal v. Naz Foundation (2014) 1 SCC 1; See also, Mihir Alias Bhikari Chauhan Sahu v. State, 1992 Cri LJ 488.

⁹² M P Jain, Indian Constitutional Law, 917 (7th ed., Lexis-Nexis Butterworth Wadhwa, Nagpur, 2015).

⁹³ Commissioner of Central Excise Jamshedpur v. Dabur (India) Ltd., (2005) 3 SCC 646; See also, Budhan Chaudhary and Ors. v. State of Bihar, AIR 1955 SC 191.

⁹⁴ Suresh Kumar Koushal v. Naz Foundation (2014) 1 SCC 1; See also, Mihir Alias Bhikari Chauhan Sahu v. State, 1992 Cri LJ 488.

adequate guidelines to be followed by the executive in implementation of the provisions of the Act,⁹⁵ and therefore is not arbitrary or unreasonable.

59. In the recent case of *Binoy Viswam*, the SC has observed that Section 139AA of the IT Act, which requires the linking of Aadhar Card with PAN is not arbitrary and not violative of right to equality of the people, and therefore held it to be constitutional.⁹⁶

[4.3] PEHCHAAN PROJECT HAS BEEN BROUGHT TO GIVE EFFECT TO DIRECTIVE PRINCIPLES OF STATE POLICY GUARANTEED UNDER PART IV OF THE CONSTITUTION OF INDIA

60. Pehchaan Project has been brought by the government to give effect to directive principles of state policy contained in Part IV of the Constitution of India. Art. 37 of the Constitution of India provides that though the directive principles of state policy are not enforceable in a court of law, they are **fundamental in the governance of the country and it is the duty of the state to enact laws in accordance with the principles.**

[4.3.1] ESTABLISHMENT OF SOCIALIST WELFARE STATE

61. The object in Art. 38 is to establish a state which must constantly **strive to promote welfare of the people** by securing and making as effectively as it may be a social order in which social, economic and political justice shall inform all the institutions of national life,⁹⁷ and to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities, opportunities amongst individuals and groups of people residing in different areas or engaged in different avocations.⁹⁸ Art. 38 reaffirms what has been declared in the preamble to the Constitution, viz., the function of the Republic is to secure *inter alia*, social, economic and political justice.⁹⁹

62. Welfare state is one which seeks to promote prosperity and well-being of the people.¹⁰⁰ Republic of Mandia is a welfare state with principles of equality, liberty and fraternity, *inter alia* as its core values.

⁹⁵ *Kathi Ranning Rawat v. State of Saurashtra*, AIR 1952 SC 123; See also, *Kedarnath Bajoria v. State of West Bengal*, AIR 1953 SC 404.

⁹⁶ *Binoy Viswam vs. Union of India & Ors.*, (2017) 4 SCC 673.

⁹⁷ *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252.

⁹⁸ *Dalmia Cement (Bharat) Ltd. V. Union of India*, (1996) 10 SCC 104.

⁹⁹ *Supra* note 78.

¹⁰⁰ *Paschim Band Khet Mazdoor Society v. State of West Bengal*, (1996) 4 SCC 37.

63. The Directive Principles of State Policy supplement the Preamble, which comprises the basic structure of the constitution.¹⁰¹ These principles have been characterized as **basic to our social order**, as they seek to build a socially just society. Courts must strive to give such an interpretation as will promote the match and the progress towards a Socialist Democratic State.¹⁰² **Many rights have been compromised and diluted from time to time to enforce these principles.**¹⁰³ Government has brought the Pehchaan Project for profiling of the citizens of Mandia, which will make it possible for the state to analyse and implement welfare policies in the country by identifying the needs of the people and those in need as well based on reasonable classification; this will there forth aid in bringing about equality among the people in the country, by distributing material resources in such a manner so as to subserve the common good, as per Art. 39 of the Constitution of India.

64. Fundamental Rights and Directive Principles constitute true conscience and **without faithfully implementing the Directive Principles it is not possible to achieve the Welfare State contemplated by the Constitution.**¹⁰⁴

[4.3.1.1] SOCIAL AND ECONOMIC JUSTICE

65. Pehchaan Policy will not only help in successful implementation of welfare schemes, it will also help in increasing the tax base, which will increase the revenue of the government and it will be possible for the government to subserve more welfare schemes for the social and economic upliftment of the downtrodden. **Directive Principles of State Policy provide for social and economic rights** and its purpose is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution.¹⁰⁵ **The Courts have raised social and economic justice to the level of fundamental right.**¹⁰⁶ All state action should be such as to make socio-economic democracy with liberty, equality and fraternity, a reality to all the people through democratic socialism under the rule of law.

[4.3.1.2] MAINTENANCE OF PUBLIC HEALTH

66. Art. 47 talks about raising the level of nutrition and the standard of living of its people and the improvement of public health as its primary duties. The Pehchaan Policy and the

¹⁰¹ Keshavananda Bharti v. State of Kerala, AIR 1973 SC 1461.

¹⁰² Atam Prakash v. State of Haryana, AIR 1986 SC 859.

¹⁰³ D. D. Basu Commentary on The Constitution of India, Vol. 3, 3138 (8th ed., Lexis Nexis Butterworth Wadhwa Publications, Nagpur, 2008).

¹⁰⁴ V. Markandeya v. State of A.P., AIR 1989 SC 1308.

¹⁰⁵ Pathumma v. State of Kerala, (1978) 2 SCC 1.

¹⁰⁶ *Supra* note 78.

Pehchaan Act, 2014 brought by the government aim at keeping record of diseases and disorders plaguing the country, and thereby, implement welfare schemes to aid the needy, for the maintenance of public health.

[4.3.2] REASONABLE RESTRICTIONS CAN BE IMPOSED ON FUNDAMENTAL RIGHTS TO GIVE EFFECT TO DIRECTIVE PRINCIPLES OF STATE POLICY

67. Part III and Part IV of the Constitution of India are complementary and supplementary to each other;¹⁰⁷ the former provides for civil and political rights while the latter provides for social and economic rights and one cannot have primacy over the other.¹⁰⁸

68. The Directive Principles of State Policy is in order to promote the broader egalitarian principle.¹⁰⁹ **Government can impose reasonable restrictions on fundamental rights, for promoting or effectuating a directive principle in public interest.**¹¹⁰ The Constitution can be reshaped to give effect to these principles for the purpose of social good, with certain limitations.¹¹¹ Though, these principles are not justiciable but these are not merely moral principles, these are fundamental in the governance of the country.¹¹² They are relevant in considering reasonable restrictions that can be imposed on fundamental rights.¹¹³

69. Two rules of construction laid down, viz., in case of conflict between the right of the individual and the laws aiming to implement socio-economic policies in pursuance of Directive Principles, weightage should be given to the latter and every legislation enacted in pursuance of Directive Principles should be construed as one purporting to be in ‘public interest’ or as a reasonable restriction on the Fundamental Rights.¹¹⁴

70. Both the Directive Principles and the Fundamental Rights are equally fundamental. The principles embody a commitment which was imposed by the Constitution-makers on the state to bring about ‘economic and social regeneration teaming millions’; meaning that the interest of an individual however important is secondary to the interest of the community.¹¹⁵

¹⁰⁷ Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore, AIR 1970 SC 2042.

¹⁰⁸ Pathumma v. State of Kerala, (1978) 2 SCC 1.

¹⁰⁹ Sanjeev Coke Mfg. Co. v. Bharat Coal Ltd., AIR 1983 SC 239.

¹¹⁰ Papanasam Labour Union v. Madura Coats Ltd., (1995) SCC 1501.

¹¹¹ *Supra* note 78.

¹¹² Art. 37, The Constitution of India, 1950.

¹¹³ State of Gujrat v. Mirazpur Moti Kureshi Kassab Jamat, AIR 2006 SC 212.

¹¹⁴ Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845; See also, State of Bihar v. Kameshwar Singh, AIR 1952 SC 252, Bijoya Lakshmi Cotton Mills v. State of West Bengal, AIR 1967 SC 1145.

¹¹⁵ *Supra* note 101.

71. In a number of decisions the SC has given many Directive Principles of State Policy, the status of fundamental rights. In *Unnikrishnan v. State of A.P.*,¹¹⁶ the directive principle contained in Art. 45 has been raised to the status of a fundamental right. It has been held that children from the age of 6 to 14 years have fundamental right to free and compulsory education. Similarly, ‘equal pay for equal work’ has been held to be a fundamental right.

[4.3.2.1] REASONABLE RESTRICTIONS CAN BE IMPOSED ON FREEDOMS PROVIDED UNDER ART.

19(1)

72. A restriction which promotes any objective embodied in the Directive Principles is usually considered reasonable by courts of law.¹¹⁷ Thus in the *State of Bombay v. F.N. Balsara*,¹¹⁸ the SC gave weightage to Art. 47 which directs the state to bring about prohibition of consumption of intoxicating drink except for medicinal purposes. It was held by the SC that the restrictions imposed by the Bombay Prohibition Act was a reasonable restriction on the right to engage in any profession or carry on trade. Also, in *Bijoy Cotton Mills v. State of Ajmer*,¹¹⁹ the SC upheld the Constitutional validity of the Minimum Wages Act, 1948, because it was enacted to give effect to directive principles of State Policy provided under Art. 43 of the Constitution. Therefore, the fixation of wages for labourers did not violate freedom of trade under Art. 19(5).

[5]. THAT THE GOVERNMENT HAS TAKEN ADEQUATE MEASURES TO SECURE DATA COLLECTED FOR THE PURPOSE OF MAKING PEHCHAAN CARDS.

73. The government of Mandia, while enacting the Pehchaan Project has taken adequate steps to guarantee the security of the data collected for the Pehchaan Cards. The Pehchaan Act, 2014 of Mandia has a whole chapter on data protection, penalties and punishments for data leakage.¹²⁰ Also, the respondent has promised to bring the substantive law for the protection of data.¹²¹

¹¹⁶ *Unnikrishnan v. State of A.P.*, AIR 1993 SC 2178.

¹¹⁷ *Papanasam Labour Union v. Madura Coats Ltd.*, (1995) SCC 1 501.

¹¹⁸ *State of Bombay v. F.N. Balsara*, AIR 1951 SC 318.

¹¹⁹ *Bijoy Cotton Mills v. State of Ajmer*, AIR 1955 SC 33.

¹²⁰ Moot Proposition, ¶ 12.

¹²¹ Moot Proposition, ¶ 23.

[5.1] PROTECTION OF DATA THROUGH ADEQUATE SECURITY MEASURES

74. Chapter VI and Chapter VII of the Aadhaar Act, 2016 deal with Protection of data and Offences & Penalties for breach of any such data. The National Unique Identification Authority adopts and implements appropriate technical and organisational security measures to ensure that the information in the possession or control of the Authority is secured and protected against **access, use or disclosure not permitted under this Act** or regulations made thereunder, and against accidental or intentional destruction, loss or damage.¹²²

[5.1.1] PROVISION OF EFFECTIVE SANCTIONS

75. Unauthorized sharing of sensitive personal information¹²³ attracts liability to compensate under the Information Technology Act, 2000.¹²⁴ The petitioner's concern that leaked data from Pehchaan database can be misused by the private companies has been also made good by way of Section 43 of the Act which deals with offenses by companies. **Provisions for penalty for unauthorized access to the Pehchaan database like hacking, downloading, copying, extracting, introducing any virus or other computer contamination, damaging, etc. have been provided.**¹²⁵

76. Moreover, none of the world's legal system can ensure a crimeless society.¹²⁶ **What is important is that the law provides for adequate measures to prevent such instances of crime and the political community considers the rules as binding upon them.**¹²⁷

[5.1.2] DELEGATION OF AUTHORITY TO PRIVATE ENTITIES FOR COLLECTION OF DATA

77. The contention raised by the petitioner that the collection of data is done by private entities, hence making it insecure¹²⁸ holds no ground as under the Aadhaar Act, government obliges the authorities and private agencies appointed for the purpose to **have in place**

¹²² Section 28(2), Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

¹²³ Section 30, Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

¹²⁴ Section 43A, Information Technology Act, 2000.

¹²⁵ Section 38, Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

¹²⁶ John Austin, *The Province of Jurisprudence Determined*, 90, (1st ed., Richard Taylor, London, 1832).

¹²⁷ Stephen Hall, *The Persistent Spectre: Natural Law, International Order and Limits of Legal Positivism* Vol. 12(2) *European Journal of International Law* 269, 270 (2002) *available at* https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwjsvP09o_WAhVEuo8KHV2bBwgQFggrMAM&url=http%3A%2F%2Ffejil.org%2Fpdfs%2F12%2F2%2F1518.pdf&usg=AFQjCNH5rTwPqIIQd-U04C9A6AsDTNzWug (Last visited September 02, 2017).

¹²⁸ Moot Proposition, ¶ 17.

appropriate technical and organisational security measures for the information¹²⁹ as well as not to reveal such data collected to anyone.¹³⁰

78. Also, it is not possible for the state to employ manpower to such large extent for the collection of data due to **lack of resources**, therefore the delegating of such responsibility by the authority to **private entities who have expertise in the field** is reasonable and valid. Such Public Private Partnerships has been relied upon in several countries to reduce the broad public sector constraints in relation to either lack of public capital or public sector capacity, resources or specialised expertise to develop, manage and operate infrastructure assets.¹³¹ In this regard, it is also imperative to note that the delegation of authority to various private agencies by the state, arises from the various functions of the state which is necessary in the modern context, in response to the changing needs of the society.

[5.2] PRESUMPTION OF MISUSE OF DATA

79. The contention of the Petitioner that there could be misuse of the Pehchaan Database by the government holds no ground as adequate provisions have been provided under the Aadhar Act against its misuse. Further, the Project has been brought as per ‘procedure established by law’ and its objectives are just, fair and reasonable and it is the duty of the government to ensure that no misuse of the data collected under the scheme takes place.

80. Moreover, Section 29(1) of the Act strictly provides that **no core biometric information, collected or created under this Act, shall be shared with anyone for any reason whatsoever; or used for any purpose other than generation of Aadhaar numbers and authentication under this Act.**

¹²⁹ 28(4)(c), Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

¹³⁰ 28(5), Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

¹³¹Public Private Partnerships: A Global Review, (Akintola Akintoye, Mattihias Beck and Mohan Kumaraswamy eds., 25 Routledge, Taylor and Francis Group, London and New York, 2015).

PRAYER FOR RELIEF

Wherefore it is prayed, in light of the issues raised, arguments advanced, and authorities cited, that this Hon'ble Supreme Court may be pleased to **hold that:**

1. the Special Leave Petition is not maintainable.
2. the Hon'ble High Court of Nelhi didn't err in rejecting the Public Interest Litigation against the Pehchaan policy.
3. the 'Pehchaan Policy and The Pehchaan Act, 2014' of the government of Mandia is constitutional and does not violate fundamental rights of its citizens.

And Pass any other Order, Direction, or Relief that it may deem fit in the Best Interests of Justice, Fairness, Equity and Good Conscience.

For This Act of Kindness, the Respondent Shall Duty Bound Forever Pray.

Sd/-

(Counsel for the Respondent)