

UNITY LAW AND DEGREE COLLEGE, LUCKNOW
IV JUSTICE MURTAZA HUSAIN MEMORIAL MOOT COURT COMPETITION

IN THE HON'BLE SUPREME COURT OF MANDIA
UNDER ARTICLE 136 OF THE CONSTITUTION OF MANDIA
SPECIAL LEAVE PETITION

MR. SATISH DHANKAR

(PETITIONER)

V.

UNION OF MANDIA

(RESPONDENT)

SUBMITTED TO THE HON'BLE APEX COURT
MEMORIAL ON BEHALF OF PETITIONER

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LIST OF ABBREVIATIONS

1.	Information Technology Act,2002	IT ACT,2000
2.	AIDS	Acquired immunodeficiency syndrome
3.	SLP	Special Leave Petition
4.	PAN	Permanent Account Number
5.	Art.	Article
6.	No.	Number
7.	IIT	Indian Institute of Technology
8.	ICCPR	International covenant on Civil and Political Rights.
9.	Retd.	Retired
10.	PDS	Public Distribution System
11.	v.	Versus
12.	Anr.	Another's
13.	LPG	Liquefied Petroleum Gas
14.	Ors.	Others

INDEX OF AUTHORITIES

S. NO.	NAME OF THE CASE	CITATION
1.	Justice K.S. Puttaswamy and Ors. v. Union of India (UOI) and Ors.	MANU/SC/1044/2017
2.	In District Registrar and collector, Hyderabad v. Canara bank	(2005) 1 SCC 496
3.	Kharak singh v. State of Uttar Pradesh	(1964) 1 SCR 332
4.	Gobind v. State of Madhya Pradesh	(1975) 2 SCC 148
5.	M. Nagraj and Ors. v. Union of India and Ors.	MANU/SC/4560/2006
6.	R. Rajgopal	(1994)6 SCC 632
7.	Anuj Garg v. Hotel Association of India	(2008) 3 SCC
8.	Ram Jawaya Kapoor v. State of Punjab	(1955) 2 SCR 225
9.	Ram Jethmalani v. Union of India	(2011) 8 SCC 1
10.	V.K. Javali v. State of Mysore	AIR 1966 SC 1387

STATEMENT OF JURISDICTION

It is humbly submitted that the petitioner has approached this Hon'ble Court invoking its jurisdiction under Article 136¹ of the Constitution of India.

Article 136 in the Constitution of India 1949:

136. Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces

¹The Constitution of India, 1950

STATEMENT OF FACTS

1. The Republic of Mandia got independence from Britica on 15th September, 1946. Mandia was a colony for about 150 years. On getting independence, it enacted its Constitution which provided for a democratic parliamentary form of governance with a federal structure based on the principles of free and fair elections, equality, liberty, fraternity, transparency and accountability of the state and freedom of religion as its core values. Republic of Mandia has its independent and autonomous election commission. Judiciary of Mandia is also autonomous and independent in its own sphere and its independence is held to be the basic structure of the Mandian Constitution. The higher judiciary is made the guardian and interpreter of the Mandian Constitution and hence the power of judicial review of the laws and actions of the government is given to the higher judiciary. The State of Mandia is a union of states and is a secular state. The following developments took place in the Republic of Mandia, which resulted into a Special Leave Petition in the Supreme Court of Mandia.
2. That the government of Mandia constituted National Unique Identification Authority under the Chairmanship of Mr. Rajeev Khanna, IT specialist on 30th November, 2009. This Authority started its work of making Pehchaan cards and assigned this task to private entities having expertise in this field. These private entities further outsourced this work to private vendors in every district and block of Mandia to provide Pehchaan cards to the citizens by taking their basic and very intimate information like finger prints of both the hands, scanning of iris of the eyes, blood group, spouse and child(ren) details, their educational qualifications, number of spouses, the religion to which both spouse belong to, laws under which marriage is solemnized, details of life-threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female and criminal/civil cases pending in any court and government loan or any other liability on the citizen.
3. That the Petitioner, Mr. Satish Dhankar, challenged this policy of mandatory Pehchaan cards in the High Court of Nelhi, one of the states of the Republic of Mandia on 22nd January, 2010 through a Public Interest Litigation (PIL) contending that the Pehchaan policy violates right to life including the right to privacy and right to speech and expression- especially the right to remain silent and not to part with basic information about oneself. That the Petitioner

also challenged the policy as there is no law/statutory support for backing the mandatory making of Pehchaan cards by the government.

4. Petitioner contended that the information sought under Pehchaan scheme is very intimate and integral to one's personality and hence making it mandatory to provide basic and intimate information is unconstitutional and violative of his fundamental rights. Pehchaan Act, 2014 is violative of right to privacy guaranteed by the Constitution of Mandia and that data collected by government is not safe and it can be leaked to private entities very easily threatening the life and liberty of the citizens.
5. The data of 13 crore citizens was leaked from Pehchaan database and now this data is in the hands of the private companies, which can use this data for telemarketing, making the life of the consumers/citizens hell by influencing them to buy their products. Such information can also be used for any other work which is unauthorized by law. Recently an IIT passed graduate hacked into Pehchaan database to use its data for his online payment App, this indicates that the private entities appointed to collect the data from common people are not capable of protecting this very intimate data and one can easily use this data for his personal benefits. The most intimate information/data demanded under Pehchaan scheme is integral to personality and hence violation of right to life under Article 21 of the Mandian Constitution.
6. Also this data can be used by majoritarian governments for communal profiling of communities and hence depriving them of basic rights and amenities provided by the government. This can result into massacre, if some dictator assumes power in the Republic of Mandia.
7. That the Petitioner, Mr. Satish Dhankar, challenged this policy of mandatory Pehchaan cards in the High Court of Nelhi, one of the states of the Republic of Mandia on 22nd January, 2010 through a Public Interest Litigation (PIL) contending that the Pehchaan policy violates right to life including the right to privacy and right to speech and expression- especially the right to remain silent and not to part with basic information about oneself. That the Petitioner also challenged the policy as there is no law/statutory support for backing the mandatory making of Pehchaan cards by the government.
8. The government of Mandia on 24th July, 2014 during the pendency of this PIL made Pehchaan card compulsory for seeking benefits under different social welfare schemes of the government. That while hearing the case by the High Court of Nelhi, the petitioner contended

that during the pendency of the case government cannot make Pehchaan cards mandatory for seeking benefits under government's social welfare schemes. On this High Court on 27th July, 2014 passed an interim order directing the government not to make Pehchaan cards mandatory.

9. The government of Mandia the next day i.e. on 28th July, 2014 filed an application for the clarification of the interim order and to make a plea that Pehchaan cards be allowed to be made mandatory for non-benefit schemes or programmes of the government like making of PAN Cards, Mobile connections, applying for gas connection and opening of bank accounts. The High Court allowed government's plea permitting it to make Pehchaan cards mandatory for non-benefit schemes, programmes and initiatives of the government.
10. In the monsoon session of the Parliament of Mandia on 11th August, 2014, the government of Mandia enacted a law called the Pehchaan Act, 2014 making mandatory the Pehchaan cards for all schemes (benefit and non-benefit both). This law also provided a statutory basis to the National Unique Identification Authority. The Act of 2014 also has a whole chapter on data protection and penalties and punishments for data leakage. The Petitioner filed a fresh application in the High Court to amend his petition for including the challenge to the Pehchaan Act, 2014. The High Court allowed his plea to challenge the Pehchaan Act, 2014 along with his original prayers for quashing the whole Pehchaan project of the government of Mandia.
11. On 13th January, 2015, the government of Mandia issued a notification making Pehchaan mandatory for every scheme and programme. The notification said that Pehchaan card is mandatory for issuing PAN card, Driving Licence, Passports, opening bank account and existing bank accounts would be linked with Pehchaan Cards. The government of Mandia fixed March, 2016 as the deadline for linking Pehchaan cards with bank accounts and PAN cards and asked every citizen to comply with it and in the absence of compliance penal actions are to be initiated.
12. The Petitioner prayed for the stay on above notification of the government till the final Disposal of the PIL but High Court refused to stay the notification but agreed for day to day hearing of the case keeping in view the urgency of the matter.
13. That the Respondent also promised during the proceedings that it will soon bring a substantive law for the protection of data. after hearing the matter in detail and going through

the materials and documents submitted by Petitioner and the Respondent, the High Court of Nelhi rejected the PIL and held that Pehchaan Act, 2014 is constitutional and government can make mandatory the making of Pehchaan cards.

14. It further held that right to privacy is a common law right and right to deny information to the government cannot be held to be fundamental right in the light of the necessity to protect the state from terrorism and other security related problems. Since the state of Mandia is surrounded by hostile neighbours it becomes incumbent on the part of the government to provide Pehchaan cards to all its citizens.
15. The High Court of Nelhi also held that making Pehchaan mandatory is essential for the benefits of schemes to reach to citizens as it will eradicate the problem of duplicity of identities. It will further help in making elections free and fair by eliminating double election cards and voting rights at two or more than two places. the High Court of Nelhi also justified the collection of data by private entities for the Pehchaan as government of Mandia is not having adequate resources and staff for this purpose and hence its outsourcing of data collection exercise is justified because of the reasons of lack of resources, expertise and staff with the government.
16. The Petitioner went to the Supreme Court of Mandia assailing the decision of the Hon'ble High Court of Nelhi. That the Petitioner came to the Supreme Court of Mandia through a Special Leave Petition under the provision of the Constitution of Mandia. He prayed for quashing the judgment of the Hon'ble High Court of Nelhi and to declare the Pehchaan Act, 2014 and previous policy of providing Pehchaan cards as violative of various provisions of the Constitution of Mandia.

STATEMENT OF ISSUE

1. SECTION 7 OF THE PEHCHAAN ACT, 2014, IS VIOLATIVE OF RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY GUARANTEED UNDER ARTICLE 21 AND RIGHT TO SPEECH AND EXPRESSION INCLUDING RIGHT TO REMAIN SILENT UNDER ARTICLE 19(1)(A) UNDER THE CONSTITUTION OF MANDIA.
2. MAKING OF PEHCHAAN CARD MANDATORY FOR EVERY SCHEME AND PROGRAM IS VIOLATIVE OF THE RIGHT TO SPEECH AND EXPRESSION INCLUDING RIGHT TO REMAIN SILENT UNDER ARTICLE 19(1) (A) AND RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY UNDER ARTICLE 21 OF THE CONSTITUTION OF MANDIA.
3. THE COLLECTION OF DATA UNDER PEHCHAAN ACT, 2014 MUCHLESS BY PRIVATE ENTITIES IS VIOLATIVE OF RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY GUARANTEED UNDER ARTICLE 21 OF THE CONSTITUTION OF MANDIA.

SUMMARY OF ARGUMENTS

- I. SECTION 7, OF THE PEHCHAAN ACT, 2014 IS VIOLATIVE OF THE RIGHT TO LIFE INCLUDING THE RIGHT TO PRIVACY GUARANTEED UNDER ARTICLE 21 OF CONSTITUTION OF MANDIA.

It is humbly submitted before this Hon'ble Court that Section 7, of the Pehchaan Act, 2014 is violative of the Right to life including Right to Privacy guaranteed under Article 21 of Constitution of Mandia. As the information provided in through the Pehchaan Act, 2014 which requires to intimate and very personal details therefore violative of Article 21 of the Constitution of Mandia.

- II. MAKING OF PEHCHAAN CARD MANDATORY FOR EVERY SCHEME AND PROGRAM IS VIOLATIVE OF THE RIGHT TO SPEECH AND EXPRESSION INCLUDING RIGHT TO REMAIN SILENT UNDER ARTICLE 19(1) (A) AND RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY UNDER ARTICLE 21 OF THE CONSTITUTION OF MANDIA.

Petitioner's humbly submits that as collecting of personal information like blood group, spouse and child(ren) details, their educational qualifications, number of spouses, the religion to which both spouse belong to, laws under which marriage is solemnized, details of life-threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female and criminal/civil cases pending in any court and government loan or any other liability on the citizen makes making of Pehchaan card violative of Article 21 of the Constitution of Mandia. Collection of such intimate and personal information does not have nexus to the objective of the Act. And also as intimate and private information is given for making of Pehchaan Cards and linking the card with the Pan Card and bank Account, Driving license it violates the Right to Life including Right to Privacy under the Constitution of Mandia and personal information can be used by these entities for personal purpose. Therefore, making of Pehchaan card mandatory for every scheme and program violate the right to speech and expression including right to remain silent under article 19(1) (a) and right to life including right to privacy under article 21 of the Constitution of Mandia.

III. THE COLLECTION OF DATA UNDER PEHCHAAN ACT, 2014 MUCHLESS BY PRIVATE ENTITIES IS VIOLATIVE OF RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY GUARANTEED UNDER ARTICLE 21 OF THE CONSTITUTION OF MANDIA.

The petitioner contends that the collection of information by private entities is excessive then the information mentioned in the Pehchaan Act, 2014 and therefore is Violative of Article 21 of the Constitution of Mandia and also is not safe and stringent data protection laws should be complied with, since a large data is already loosed. Government should take measures to somehow protect the privacy of citizens and since data is leaked hence, it violates of Article 21 i.e., Right to Life under which Right to Privacy is infringed.

ARGUMENTS ADVANCED

I. SECTION 7, OF THE PEHCHAAN ACT, 2014 IS VIOLATIVE OF THE RIGHT TO LIFE INCLUDING THE RIGHT TO PRIVACY GUARANTEED UNDER ARTICLE 21 OF CONSTITUTION OF MANDIA.

1. It is humbly submitted before this Hon'ble Court that Section 7, of the Pehchaan Act, 2014 is violative of the Right to life including Right to Privacy guaranteed under Article 21 of Constitution of Mandia.
2. The Petitioner's Submits that In Mandia, for the purpose of data protection, a body corporate is subject to section 43A of the Information Technology Act, 2000 ("IT Act") and subsequent Rules, i.e. -The Information Technology (Reasonable security practices and procedures and sensitive personal data or Information) Rules, 2011. Rule 5(7)² of the aforesaid rules requires that the individual must be provided with the option of 'opting out' of providing data or information sought by the body corporate. Also, they must have the right to withdraw consent at any point of time. Whereas in the present, The Pehchaan Act, 2014 no such condition is fulfilled and therefore does not provide an opt- out provision and also does not provide an option to withdraw consent at any point of time. Section 7 of the Pehchaan Act actually implies that once the Central or State government makes pehchaan authentication mandatory for receiving a benefit then the individual has no other option but to apply for a pehchaan number. The only concession that is made is that if a Pehchaan number is not assigned to an individual then s/he would be offered some alternative viable means of identification for receiving the benefit.
3. It is humbly submitted that the honorable Supreme Court held that: "The state must ensure that information is not used without the consent of users and that it is used for the purpose and to the extent it was disclosed."³ Whereas even Rule 5⁴ of the Information Technology Rules, 2011 requires that prior to the collection of sensitive personal data;

² THE INFORMATION TECHNOLOGY (REASONABLE SECURITY PRACTICES AND PROCEDURE AND SENSITIVE PERSONAL DATA OR INFORMATION) RULES, 2011.

³ Justice K.S. Puttaswamy and Ors. v. Union of India (UOI) and Ors. (24.08.2017 - SC)

⁴ THE INFORMATION TECHNOLOGY (REASONABLE SECURITY PRACTICES AND PROCEDURE AND SENSITIVE PERSONAL DATA OR INFORMATION) RULES, 2011.

the body corporate must obtain consent, either in writing or through fax regarding the purpose of usage before collection of such information. Whereas the Pehchaan Act is silent regarding consent being acquired in case of the enrolling agency or registrars. However, section 8 provides that any requesting entity will take consent from the individual before collecting his/her Pehchaan information for authentication purposes, though it does not specify the nature. But if the enrolling agency is a body corporate, they will also be required to take consent prior to collecting and processing biometrics. It is possible that since the Pehchaan Act envisages a scheme which is compulsory in nature under Section 7 of the Act, a consent provision is deliberately left out. This circumstance would give the enrolling agencies the power to collect the data without the consent of the individual, because given consent is of no more value. The compulsory nature of the Pehchaan scheme would mean that they are not required to take consent of the individuals before enrolment. Since, very sensitive personal information is collected not taking the consent of the concerned person is also violative of Right to Life Including Right to Privacy under Article 21 of the Constitution of Mandia. And therefore the petitioners contend that Section 7 of the Pechaan Act, 2014 does not have compliance with the IT Rules, 2011 and also collection of such personal information at a mandatory basis is violative of Article 21 of the Constitution of Mandia.

4. It is humbly submitted before this Hon'ble Court that the doctrine of harmonious construction applies when there is an accidental collision or conflict between two enactments and the Supreme Court has repeatedly read down one provision to give effect to other. Thus, both the provisions have to be given effect to. But if the collision or conflict is such that one provision cannot co-exist with another, then the latter provision must be struck down.
5. It is humbly submitted before this Hon'ble Court that the term Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights.⁵

⁵ JUSTICE K S PUTTASWAMY (RETD.), AND ANR VS UNION OF INDIA AND ORS, 2017

6. It is humbly submitted before this honorable bench that “Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty; Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes the plurality and diversity of our culture”⁶
7. It is humbly submitted before this Hon’ble Court that The Pehchaan Act, 2014 has encroached our Right to Privacy included under the Right to Life by taking excessive details of the citizen which are very personal in nature. The citizens have to provide their basic details like finger prints of both the hands, scanning of iris of the eyes, blood group, spouse and child(ren) details, their educational qualifications, number of spouses, the religion to which both spouse belong to, laws under which marriage is solemnized, details of life-threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female and criminal/civil cases pending in any court and government loan or any other liability on the citizen. It is submitted that these information provided under Pehchaan scheme is very intimate and integral to one’s personality. Hence intimating such information is unconstitutional and violative of our fundamental Right to Life including the Right to Privacy guaranteed under Article 21 of the Constitution of India which ensures and protect the life and liberty of every citizen.
8. It is humbly submitted before this Hon’ble court that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks as Article 17 of the International Covenant on Civil and Political Rights Act, 1966, to which India is a party also protects that right and states as

⁶ JUSTICE K S PUTTASWAMY (RETD.), AND ANR VS UNION OF INDIA AND ORS, 2017

follows: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence nor to unlawful attacks on his honour and reputation.”⁷

9. It is humbly submitted before this Hon’ble Court that in the case of M. Nagaraj & Ors. v. Union of India & Ors.⁸, this Court has, thus, elucidated the concept of Right to Dignity in which it states that “This Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part III on the principle that certain unarticulated rights are implicit in the enumerated guarantees. It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot give (sic be given). It simply is. Every human being has dignity by virtue of his existence.
10. It is humbly submitted before this Hon’ble Court that the information provided in through the Pehchaan Act, 2014 which requires to intimate and personal details as of spouse and child(ren) details, their educational qualifications, number of spouses, the religion to which both spouse belong to, laws under which marriage is solemnized, details of life-threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female and criminal/civil cases pending in any court and government loan or any other liability on the citizen amounts to arbitrary interference with the privacy of family, home and correspondence and are against the virtue of human dignity and It cannot be taken away. It is the basic right which is encroached by the Pehchaan card Act, 2014. It also amounts to the attack upon the honor and reputation which is sought to be protected by law as provided under Article 17 of the International Covenant on Civil and Political Rights Act, 1966, to which India is a party⁹; are against the virtue of human dignity and it cannot be taken away. It is the basic right which is encroached by the Pehchaan card Act, 2014.

⁷ JUSTICE K S PUTTASWAMY (RETD.), AND ANR VS UNION OF INDIA AND ORS, 2017

⁸ MANU/SC/4560/2006

⁹ JUSTICE K S PUTTASWAMY (RETD.), AND ANR VS UNION OF INDIA AND ORS, 2017

11. It is humbly submitted before this Hon'ble Court that it was also stated in the case of R. Rajgopal¹⁰ that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It also has a 'right to be let alone'. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.
12. It is humbly submitted before this Hon'ble court that in the case of Justice K S Puttaswamy (Retd.), and Anr v. Union Of India And Ors, 2017 it was stated that what is contained in that person's bank account could perhaps be stated to be information over which he expects a reasonable expectation of privacy and would, if divulged by the bank to others, constitute an infraction of his fundamental right to privacy.¹¹
13. It is humbly submitted before this Hon'ble Court that the government of Mandia issued a notification and said that Pehchaan card is mandatory for opening bank accounts and the existing bank accounts should be linked with the Pehchaan Card. This amounts to an unreasonable interference, encroachment and constitutes to an infraction on our Fundamental Right to Privacy.
14. It is humbly submitted before this Hon'ble Court that in the case of Justice K S Puttaswamy (Retd.), and Anr v. Union Of India And Ors, 2017 it was stated that An individual's rights to refuse life prolonging medical treatment or terminate his life is another freedom which fall within the zone of the right of privacy.¹²
15. It is humbly submitted before this Hon'ble Court that under the Pehchaan Scheme required intimation of personal information like details of life threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female. Such intimation can be refused by an individual as it violates the freedom and falls within the zone of Right to Privacy. Such information disclosure is made mandatory and it violates the Fundamental Right to Life including Right to Privacy guaranteed under Article 21 of The Constitution of Mandia.
16. It is humbly submitted before this Hon'ble Court that in the case of Justice K S Puttaswamy (Retd.), and Anr vs Union of India and Ors, 2017 it was stated that statutory

¹⁰ (1994) 6 SCC 632(SCC pp. 649-50

¹¹ JUSTICE K S PUTTASWAMY (RETD.), AND ANR VS UNION OF INDIA AND ORS, 2017

¹² JUSTICE K S PUTTASWAMY (RETD.), AND ANR VS UNION OF INDIA AND ORS, 2017

law can be made and also unmade by a simple Parliamentary majority. In short, the ruling party can, at will, do away with any or all of the protections contained in the statutes mentioned hereinabove. Fundamental rights, on the other hand, are contained in the Constitution so that there would be rights that the citizens of this country may enjoy despite the governments that they may elect. This is all the more so when a particular Fundamental Right like privacy of the individual is an “inalienable” right which inheres in the individual because he is a human being. The recognition of such right in the fundamental rights chapter of the Constitution is only a recognition that such right exists notwithstanding the shifting sands of majority governments. Statutes may protect fundamental rights; they may also infringe them. In case any existing statute or any statute to be made in the future is an infringement of the inalienable right to privacy, this Court would then be required to test such statute against such fundamental right and if it is found that there is an infringement of such right, without any countervailing societal or public interest, it would be the duty of this Court to declare such legislation to be void as offending the fundamental right to privacy.¹³

17. It is humbly submitted before this Hon’ble Court that the parliament made a statutory law and enacting an Pehchaan Act, 2014 under the said Act it was made mandatory to provide personal information like finger prints of both the hands, scanning of iris of the eyes, blood group, spouse and child(ren) details, their educational qualifications, number of spouses, the religion to which both spouse belong to, laws under which marriage is solemnized, details of life-threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female and criminal/civil cases pending in any court and government loan or any other liability for obtaining Pehchaan card. There was even a Notification issued which made Pehchaan Card mandatory to obtain PAN Cards, Mobile connections, gas connection, driving license and opening of bank accounts and all other schemes (benefit and non-benefit both).
18. It is submitted that making such a statutory law like Pehchaan act can be made by a simple majority in the parliament but the fundamental rights like Right to life including Right to Privacy which are provided in the Constitution of India is a ‘Inalienable

¹³ JUSTICE K S PUTTASWAMY (RETD.), AND ANR VS UNION OF INDIA AND ORS, 2017

Right' right which one inherits from the sake of being a human being. The infringement done by Pehchaan act is violative of Right to Privacy guaranteed under Article 21 of The Constitution of Mandia. Hence as there is no reasonable interest to collect the personal details like religion to which both spouse belong to, laws under which marriage is solemnized, details of life-threatening diseases like AIDS, Cancer and Hepatitis-B and also notification making it mandatory for opening bank accounts ,linking with bank accounts & pan cards is void. Such legislation/statues infringe the fundamental rights and should be struck down.

II. MAKING OF PEHCHAAN CARD MANDATORY FOR EVERY SCHEME AND PROGRAM IS VIOLATIVE OF THE RIGHT TO SPEECH AND EXPRESSION INCLUDING RIGHT TO REMAIN SILENT UNDER ARTICLE 19(1) (A) AND RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY UNDER ARTICLE 21 OF THE CONSTITUTION OF MANDIA.

1. The petitioner humbly submits that the challenge is to this compulsive nature of provision inasmuch as with the introduction of the aforesaid provision, no discretion is left with the citizens insofar as enrolment under the Pehchaan (targeting delivery of financial and other subsidies, benefits and services) Act, 2014 (hereinafter referred to as the 'Pehchaan Act') is concerned. According to the petitioners, Pehchaan Act, 2014 makes making of Pehchaan card mandatory for the citizens and by the virtue of this provision of Pehchaan Act, 2014, Notifications are issues by the departments of the government making Pehchaan Card mandatory for availing every scheme and program which violates the Right to Privacy and Right to remain silent of the citizens under Article 21 and Article 19(1) (a) of the Constitution of Mandia.
2. It is humbly submitted before this honorable Court that the impugned provision in effect treats an individual's finger prints, iris scan, blood group, spouse and child(ren) details, their educational qualifications, number of spouses, the religion to which both spouse belong to, laws under which marriage is solemnized, details of life-threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female and criminal/civil cases pending in any court and government loan or any other liability on

the citizen as belonging to the state, blurring the distinction between the individual and the state. A statutory provision that completely takes away the voluntary nature of Pehchaan policy and compels *expropriation* of a person's finger prints, iris scan and other personal and very intimate information is per se violative of Article 21.

3. It is humbly submitted that in the case of *Anuj Garg v. Hotel Association of India*¹⁴ Supreme Court held that The essential facet is to demonstrate 'narrow tailoring', i.e., that the State must demonstrate that even if a compelling interest exists, it has adopted a method that will infringe in the narrowest possible manner upon individual rights. The petitioner submits that neither is there any compelling State interest warranting such a harsh mandatory provision, nor has it been narrowly tailored to meet the object, if any since the information collected is of very private nature therefore mandatory provision makes it violative of Article 21 and 19(1)(a) of the Constitution of India.
4. It is humbly submitted before that Section 7¹⁵ makes making of Pehchaan Card mandatory for receiving any Government benefit of any Scheme or Subsidy. The Central Government or, as the case may be, the State Government may, for the purpose of establishing identity of an individual as a condition for receipt of a subsidy, benefit or service for which the expenditure is incurred from, or the receipt there from forms part of, the Consolidated Fund of India, require that such individual undergo authentication, or furnish proof of possession of Pehchaan number or in the case of an individual to whom no Pehchaan number has been assigned, such individual makes an application for enrolment: Provided that if a Pehchaan number is not assigned to an individual, the individual shall be offered alternate and viable means of identification for delivery of the subsidy, benefit or service.
5. It is humbly submitted before this honorable bench that reading Section 7, Section 2(h) and Section 2(c) of the Pehchaan Act, 2014 together, it becomes clear that Section 7 makes proof of Pehchaan No. mandatory for subsidies, benefits or services from the Government the actions defeat the very purpose of the ideal of Sovereign Socialist Democratic Republic Welfare State as enshrined in the Preamble.

¹⁴ (2008) 3 SCC

¹⁵ The Pehchaan Act, 2014

6. It is humbly submitted before this Hon'ble Court that in the case *Ram Jawaya Kapoor v. State of Punjab*¹⁶, It was held that executive and legislative powers are co-extensive under the Constitutional scheme, unless the basis of the judgment is removed by a subsequent enactment, it cannot be argued that a decision based on executive instruction is less binding than other judgments/orders of the Supreme Court, or that the judgment/order loses force if the executive instruction is replaced by law.
7. It is humbly submitted before this Hon'ble Court that the High Court on 27th July, 2014 passed an interim order is directing the government not to make Pehchaan cards mandatory and on 28th July, 2014 The High Court allowed government's plea permitting it to make Pehchaan cards mandatory for non-benefit schemes, programmes and initiatives of the government. Then the Government of Mandia enacted a law called Pehchaan Act making it mandatory for all schemes without removing the basis of Judgment of High Court. Hence the judgment of high court cannot lose force even if it is replaced by Pehchaan Act. In any event, such coercion cannot be imposed on legitimate tax payers and assesses and LPG Recieptants or for making driving license or linking with bank account. In a digital world, the right to life includes maintaining personal autonomy through informational self determination. An individual must be allowed to limit what he or she wants to put out because otherwise her personal autonomy could get compromised.
8. It is humbly submitted that In *Ram Jethmalani v Union of India*¹⁷, This Court held that the revelation of the details of the bank accounts of individuals without the establishment of a *prima facie* ground of wrongdoing would be a violation of the right to privacy. This Court observed thus: "Right to privacy is an integral part of right to life. This is a cherished constitutional value, and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner. We understand and appreciate the fact that the situation with respect to unaccounted for monies is extremely grave. Nevertheless, as constitutional adjudicators we always have to be mindful of preserving the sanctity of constitutional values, and hasty steps that derogate from fundamental rights, whether urged by Governments or private citizens,

¹⁶ (1955) 2 SCR 225

¹⁷ (2011) 8 SCC 1

howsoever well meaning they may be, have to be necessarily very carefully scrutinised.”¹⁸

9. In case of *V.K. Javali v. State of Mysore*, it was held that: Under Article 19(2), a restriction can be imposed ‘In the interest of’ public order. The expression ‘In the interest of’ gives a greater leeway to the legislature to curtail freedom of speech and expression, for a law penalizing activities having a *tendency* to cause, and not *actually* causing public disorder, may be valid as being ‘in the interest of’ public order. However, the restriction imposed must have a reasonable and rational relation with the public order, security of state, etc. If the nexus between the restriction and the public order etc is farfetched, then the restriction cannot be sustained as being in the ‘interest’ of public order, etc.¹⁹ As has been stated earlier, this introduces the concept of proportionality in the area of Fundamental Rights. The coercion amounts to compelled speech. The freedom of speech includes the right to remain silent. Here, the citizen is being compelled to speak or part with his or her demographic information as well as finger prints and iris scan and from there other personal information.
10. It is humbly submitted that the impugned provision violates Article 19(1) (a). The impugned provision is wholly disproportionate and excessive. The so called state interest is minuscule compared to the massive invasion on person liberty and freedom. Whenever a person voluntarily entrusts his finger prints and iris scan to the state, the ‘property’ and entitlement is retained with that individual throughout his life. The state merely acts as a trustee or fiduciary. The trustee or fiduciary cannot compel the “beneficiary” to part with such sensitive person information. The framework of the Pehchaan Act, 2014 and the Pehchaan policy was founded on voluntary enrolment. This was a foundational premise of the policy. According to the state, “free informed consent” is the essence of Pehchaan. The state cannot alter this basic premise based on which individuals were asked to enroll, by making it mandatory through statute.
11. Petitioner’s humbly submits that as collecting of personal information like blood group, spouse and child(ren) details, their educational qualifications, number of spouses, the religion to which both spouse belong to, laws under which marriage is solemnized,

¹⁸ (2011) 8 SCC 1

¹⁹ AIR 1966 SC 1387

details of life-threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female and criminal/civil cases pending in any court and government loan or any other liability on the citizen makes making of Pehchaan card violative of Article 21 of the Constitution of Mandia. Collection of such intimate and personal information does not have nexus to the objective of the Act. And also as intimate and private information is given for making of Pehchaan Cards and linking the card with the Pan Card and bank Account, Driving license it violates the Right to Life including Right to Privacy under the Constitution of Mandia and personal information can be used by these entities for personal purpose. Therefore, making of Pehchaan card mandatory for every scheme and program violate the right to speech and expression including right to remain silent under article 19(1) (a) and right to life including right to privacy under article 21 of the Constitution of Mandia.

IV. THE COLLECTION OF DATA UNDER PEHCHAAN ACT, 2014 MUCHLESS BY PRIVATE ENTITIES IS VIOLATIVE OF RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY GUARANTEED UNDER ARTICLE 21 OF THE CONSTITUTION OF MANDIA.

1. It is humbly submitted before this Honorable bench that collection of data under the Pehchaan Act, 2014 much less by Private entities is violative of Right to Privacy under Article 21 of the Constitution of Mandia.
2. It is humbly submitted that “Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Personal choices governing a way of life are intrinsic to privacy. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the

individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being”²⁰

3. It is humbly submitted that: As stated by this Honorable Court “The state must ensure that information is not used without the consent of users and that it is used for the purpose and to the extent it was disclosed. Thus, for e.g., if the posting on social media websites is meant only for a certain audience, which is possible as per tools available, then it cannot be said that all and sundry in public have a right to somehow access that information and make use of it.”²¹
4. It is humbly submitted on behalf of the petitioners that data collected by government is not safe and it can be leaked to private entities very easily threatening the life and liberty of the citizens. The petitioner also wants to contend that 13 Crore data of citizens was leaked from pehchaan database and now this data is in the hands of the private companies, which can use this data for telemarketing, making the life of the consumers/citizens hell by selling all sorts of products to them. Also recently an IIT passed graduate hacked into Pehchaan database to use its data for his online payment app. That the petitioners also contends that such data can be used by majoritarian governments for communal profiling of communities and hence depriving them of basic rights and amenities provided by the government. It is important to understand that this will result into massacre, if some dictator assumes power in the republic of Mandia. Hence, as the most intimate information/data is demanded under Pehchaan scheme and is integral to personality and hence violation of right to life under Article 21 of the Mandian Constitution. Also that the collection of data by private entities for the making of Pehchaan card as government of Mandia is not having adequate resources and staff for this purpose .
5. The petitioner humbly submits that the government cannot just delegate its work to private entities when privacy of the citizen can be violated in case on any misuse. *In District Registrar and collector, Hyderabad v. Canara bank*²² The Right to Privacy was construed as a right which attaches to the person. The significance of this is that the Right to privacy is not lost as a result of confidential documents or information being parted

²⁰ MANU/SC/1044/2017

²¹ Justice K.S. Puttaswamy and Ors. v. Union of India (UOI) and Ors.

²² (2005) 1 SCC 496

with by the customer to the custody of the bank. Access to bank records to the collector does not permit a delegation of those powers by the collector to a private individual. Information provided by an individual to a third party (in that case a bank) carries with it a reasonable expectation that it will be utilized only for the purpose for which it is provided. Parting with information (to the bank) 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.

6. The petitioner humbly submits that: “Data mining with the object of ensuring that resources are properly deployed to legitimate beneficiaries is a valid ground for the state to insist on the collection of authentic data. But, the data which the state has collected has to be utilized for legitimate purposes of the state and ought not to be utilized unauthorized for extraneous purposes”.²³
7. It is humbly submitted before this honorable bench that the executive authority is deriving excessive power then delegated by the Act, as the information asked from the individual for making of pehchaan card is much more then mentioned in the Act. As to provide Pehchaan cards to the citizens their basic details like finger prints of both the hands, scanning of iris of the eyes, blood group, spouse and child (ren) details, their educational qualifications, number of spouses, the religion to which both spouse belong to, laws under which marriage is solemnized, details of life-threatening diseases like AIDS, Cancer and Hepatitis-B, permanent infertility both in male and female and Criminal/civil cases pending in any court and government loan or any other liability on the citizen are being taken by the Private vendors for making of Pehchaan Cards. Whereas Pehchaan Act, 2014 states that for enrolling for Pehchaan Card one has to submit their Biometrics and Demographic information as stated below:
Section 3: (1) Every resident shall be entitled to obtain a Pehchaan number by submitting his demographic information and biometric information by undergoing the process of enrolment:

²³ Justice K.S. Puttaswamy and Ors. v. Union of India (UOI) and Ors. (24.08.2017 - SC)

Provided that the Central Government may, from time to time, notify such other category of individuals who may be entitled to obtain a Pehchaan number.

(2) The enrolling agency shall, at the time of enrolment, inform the individual undergoing enrolment of the following details in such manner as may be specified by regulations, namely:—

(a) The manner in which the information shall be used;

(b) The nature of recipients with whom the information is intended to be shared during authentication; and

(c) the existence of a right to access information, the procedure for making requests for such access, and details of the person or department in-charge to whom such requests can be made.

(3) On receipt of the demographic information and biometric information under subsection (1), the Authority shall, after verifying the information, in such manner as may be specified by regulations, issue a Pehchaan number to such individual.

Whereas Section 2(g), Section 2(j) and Section 2(k) of the Pehchaan Act, 2014 defines the Biometric and Core- Biometric and Demographic information as:

2(g) “biometric information” means photograph, finger print, Iris scan, or such other biological attributes of an individual as may be specified by regulations;

Section 2(j) “core biometric information” means finger print, Iris scan, or such other biological attribute of an individual as may be specified by regulations;

Section 2(k) “demographic information” includes information relating to the name, date of birth, address and other relevant information of an individual, as may be specified by regulations for the purpose of issuing an Pehchaan number, but shall not include race, religion, caste, tribe, ethnicity, language, records of entitlement, income or medical history ;

8. The petitioner’s humbly submits that reading the provisions it is crystal clear that excessive information is being asked for the purpose of making Pehchaan Card which is prohibited in the Provision itself. And also the information being collected is of very personal nature and therefore violative of Article 21 of the Constitution of Mandia.

9. The Petitioners submits that In *District Registrar and collector, Hyderabad v. Canara bank*²⁴ it was reaffirmed that the right to privacy as emanating from the liberties guaranteed by Article 19 and from the protection of life and personal liberty under Article 21. The court finds the foundation for the reaffirmation of this right not only in the judgments in *Kharak singh v. State of Uttar Pradesh*²⁵ and *Gobind v. State of Madhya Pradesh*²⁶ and the cases which followed, but also in terms of India's international commitments under the universal declaration of Human Rights and International Covenant on Civil and Political rights (ICCPR).
10. The petitioner contends that it is also necessary to highlight that a large section of citizens feel concerned about possible data leak. This is a concern which needs to be addressed by the government. It is important that the aforesaid apprehensions are assuaged by taking proper measures so that confidence is instilled among the public at large that there is no chance of unauthorized leakage of data whether it is done by tightening the operations of the private entities who are given the job of enrollment, they being private persons or by prescribing severe penalties to those who are found guilty of leaking the details, is the outlook of the government. However, petitioner emphasize that measures in this behalf are absolutely essential and it would be in the fitness of things that proper scheme in this behalf is devised at the earliest as once the data is leaked it can be transferred easily so just severe penalties are not sufficient. As information which is already leaked cannot be protected further and therefore violates right to privacy of citizen.
11. Therefore, the petitioner contends that the collection of information by private entities is excessive then the information mentioned in the Pehchaan Act, 2014 and therefore is Violative of Article 21 of the Constitution of Mandia and also is not safe and stringent data protection laws should be complied with, since a large data is already loosed. Government should take measures to somehow protect the privacy of citizens and since data is leaked hence, it violates of Article 21 i.e., Right to Life under which Right to Privacy is infringed.

²⁴ (2005) 1 SCC 496

²⁵ (1964) 1 SCR 332

²⁶ (1975) 2 SCC 148

PRAYER

In light of the issues raised, arguments advanced and authorities cited, the counsel for the petitioner humbly prays that the Hon'ble Supreme Court be pleased to adjudge, hold and declare that:

1. Section 7 of the Pehchaan Act, 2014 is violative of right to life including right to privacy guaranteed under Article 21 and right to speech and expression including right to remain silent under Article 19(1)(a) under the Constitution of India.
2. Making of Pehchaan card mandatory for every scheme and program is violative of the right to speech and expression including right to remain silent under Article 19(1) (a) and right to life including right to privacy under Article 21 of the Constitution of India.
3. The collection of data under Pehchaan Act, 2014 muchless by private entities is violative of right to life including right to privacy guaranteed under Article 21 of the Constitution of India.
4. Stay the effect and operation of the judgment of Nelhi dated _____ passed by the high court of Nelhi in petition no. _____ till the decision of this petition.
5. Stay the effect and operation of Pehchaan Act, 2014 and notification dated 13th January 2015 in so far as it relates to the making of pehchaan card mandatory.
6. Grant ex-parte ad- interim / ad- interim relief in terms of prayer clause 4 & 5.

And pass any order that this hon'ble apex court may deem fit in the interest of equity, justice and good conscience. And for this act of kindness, the counsel for the petitioner shall duty bound forever pray.