

**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 PETITON

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MR. SATISH DHANKAR  
**(PETITIONER)**  
V.  
UNION OF MANDIA  
**(RESPONDENT)**

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

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## LIST OF ABBREVIATIONS

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1.	IT ACT,2000	Information Technology Act,2002
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.	PIL	Public Interest Litigation
10.	Retd.	Retired
11.	PDS	Public Distribution
12.	v.	Versus
13.	Anr.	Another
14.	Ors.	Others
15.	NGOs	Non- Governmental Organization

## INDEX OF AUTHORITIES

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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.	Mr. X v. Hospital Z	1998 SUPP (1) SCR 723
3.	K.T. Plantation private Ltd. and Anr.	MANU/SC/0914/2011
4.	Binoy Viswam v. Union of India and Ors.	MANU/SC/0693/2017
5.	Mohd. Hanif Quareshi v. State of Bihar	AIR 1958 SC 731
6.	Ramesh Thapper v. State of Madras	AIR 1950 SC 124
7.	PUCL v. Union of India	(2011) 14 SCC 331
8.	Peoples union for civil liberties v. Union of India and Ors.	(2013) 2 SCC 705
9.	BPL/AAY Household Cards	(2013) 14 SCC 368
10.	State of Andra Pradesh and others v. McDowell and Co.	MANU/SC/0427/1996
11.	Municipal Corporation of Delhi v. Shiv Shanker	AIR1971SC815

## STATEMENT OF JURISDICTION

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### **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

## **STATEMENT OF ISSUE**

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1. SECTION 7 OF THE PEHCHAAN ACT, IS NOT 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 NOT 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 NOT VIOLATIVE OF RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY GUARANTEED UNDER ARTICLE 21 OF THE CONSTITUTION OF MANDIA.

## STATEMENT OF FACTS

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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 formulated a policy named '*Pehchaan*' for profiling of its citizens and to provide them a card called Pehchaan. The Pehchaan was meant to identify citizens for various benefits given by the government. It was also meant to save duplicity of identities. One of the objectives of Pehchaan was to identify illegal immigrants in the country and to deport them to their respective countries. The main aim of this policy was to check the leakage in government schemes and to prevent corruption happening in PDS and other subsidy providing schemes of the government. Basically, the philosophy behind this policy is '**Zero Tolerance for Corruption**'.
3. That the duplicity of election cards will also be checked through Pehchaan cards- which are based on latest cyber technology. Tax collection of the government will also increase with the linking of Pehchaan cards with pan and bank accounts. These

would be the future initiatives of the government. The policy document of the government clearly indicated all the above stated objectives.

4. As per government notification issued on 12th October, 2009, Pehchaan policy is also aimed at eliminating all forms of terrorism by finishing off sleeping modules and local support base of terrorists in the country. Terror finance will be curbed through Pehchaan and hawala transactions and foreign contributions to suspect NGOS can be checked by making payments, salaries and other financial transactions online and linking them with Pehchaan system. Pehchaan cards will be provided free of cost to the citizens and a network of cyber cells will be established throughout the country to facilitate the people to apply for the Pehchaan cards.
5. 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 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
6. 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.
7. The government of Mandia on 24th July, 2014 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.

8. The government of Mandia 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. 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.
9. The Petitioner filed a fresh application in the High Court to amend his petition for including the challenge to the Pehchaan Act, 2014. 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. 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.
10. 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. 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.

11. 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 and its outsourcing of data collection exercise is justified because of the reasons of lack of resources, expertise and staff with the government.
12. The Petitioner went to the Supreme Court of Mandia assailing the decision of the Hon'ble High Court of Nelhi. 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.

## **SUMMARY OF ARGUMENTS**

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**1. Section 7 Of The Pehchaan Act, Is Not 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?**

It is submitted that the Section 7 of the Pehchaan Act, 2014 is not violative of Right to Life including Right to Privacy guaranteed under Article 21. As Section 7 of Pehchaan Act, 2014 is nowhere makes it mandatory for the citizen to enroll under the Pehchaan Act, 2014 and it is upon the citizens to opt for it. Petitioner also submits that the Government of Mandia has formulated an enactment with name of Pehchaan Act, 2014 which is established by the due process of law and has provisions which clearly show the existence of law to justify an encroachment on privacy as express requirement of Article 21.

**2. Making Of Pehchaan Card Mandatory For Every Scheme And Program Is Not 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?**

It is submitted that making of Pehchaan card mandatory for every scheme and program is not violative of the Right of 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. The petitioner submits that “Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right”

**3. The Collection Of Data Under Pehchaan Act, 2014 Muchless By Private Entities Is Not Violative Of Right To Life Including Right To Privacy Guaranteed Under Article 21 Of The Constitution Of Mandia?**

It is submitted that collection of data under Pehchaan Act, 2014 by Private Entities is not violative of Right to Life including Right to Privacy guaranteed under Article 21

of the Constitution of India as it is governed by the Rules and Regulation laid down by National Unique Identification Authority and various Provisions laid down under the Pehchaan Act, 2014. Pehchaan (Authentication) Regulation, 2016 where it is clearly shows that data collected (herein biometric or demographic information) shall be immediately packed and encrypt so that it is only available to authority. Hence the data is safe, secured, cannot be copied or disclosure to anybody other than person authorized.

## ARGUMENTS ADVANCE

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### **I. SECTION 7 OF THE PEHCHAAN ACT, 2014 DOES NOT VIOLATE THE RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY GUARANTEED UNDER ARTICLE 21.**

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1. It is humbly submitted before this Hon'ble Court that the Section 7 of the Pehchaan Act, 2014 is not violative of Right to Life including Right to Privacy guaranteed under Article 21.
2. It is humbly submitted before this Hon'ble Court that as per Section 7 of the Pehchaan Act, 2014 it states that "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 therefrom 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 an 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."<sup>1</sup>
3. It is humbly submitted before this Hon'ble Court that it is clear from the above provision that it Section 7 of Pehchaan Act, 2014 is nowhere makes it mandatory for the citizen to enroll under the Pehchaan Act, 2014 and it is upon the citizens to opt for it.
4. 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*<sup>2</sup> it was stated that "The first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his

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<sup>1</sup> MANU/SC/1044/2017

<sup>2</sup> The Pehchaan Act, 2014

life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. Second, the requirement of a need, in terms of a legitimate state aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary state action. The pursuit of a legitimate state aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not re-appreciate or second guess the value judgment of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness. The third requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary state action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law. Hence, the three-fold requirement for a valid law arises out of the mutual inter-dependence between the fundamental guarantees against arbitrariness on the one hand and the protection of life and personal liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III, is subject to the same restraints which apply to those freedoms”<sup>3</sup>.

5. It is humbly submitted before this Hon’ble Court that the Government of Mandia has formulated an enactment with name of Pehchaan Act, 2014 which is established by the due process of law and has provisions which clearly show the existence of law to justify an encroachment on privacy as express requirement of Article 21. The law is made with the state aim to check the leakage in government schemes and to prevent corruption happening in PDS and other subsidy providing schemes of the government. It is even in proportion to encroachment of right as established by law. Hence it is not violative of Article 21 of the Right to Privacy.
6. It is humbly submitted before this Hon’ble Court that the Pehchaan Act, 2014 through its Preamble states that “An Act to provide for, as a good governance, efficient, transparent, and targeted delivery of subsidies, benefits and services, the expenditure for which is incurred from the Consolidated Fund of India, to individuals residing in India through assigning of unique identity numbers to such individuals and for

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<sup>3</sup>Justice K S Puttaswamy (Retd.), And Anr Vs Union of India and Ors. (MANU/SC/1044/2017)

matters connected therewith or incidental thereto”. It even has Chapter VI which deals with Protection of Data including Section 28 which is security and confidentiality information, Section 29 on restriction of sharing information, Section 33 on Disclosure of Personal information. It also in Chapter VII provide for Offences and Punishment of illegitimate use or procedure of data. Hence it clearly has justified reasons for encroachment on privacy and it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law.<sup>4</sup>

7. 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.* It stated that “Apart from national security, the state may have justifiable reasons for the collection and storage of data. In a social welfare state, the government embarks upon programmes which provide benefits to impoverished and marginalized sections of society. There is a vital state interest in ensuring that scarce public resources are not dissipated by the diversion of resources to persons who do not qualify as recipients. Allocation of resources for human development is coupled with a legitimate concern that the utilization of resources should not be siphoned away for extraneous purposes. 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. This will ensure that the legitimate concerns of the state are duly safeguarded while, at the same time, protecting privacy concerns”<sup>5</sup>
8. It is humbly submitted before this Hon’ble Court that in the present case Government of Mandia constituted National Unique Identification Authority on 30th November, 2009. This Authority started its work of making Pehchaan cards and to provide Pehchaan cards to the citizens by taking 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

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<sup>4</sup> The Pehchaan(Targeted Delivery of Financial And Other Subsidies, Benefits And Services) Act, 2014

<sup>5</sup>Justice K S Puttaswamy (Retd.), And Anr Vs Union of India and Ors, 2017

female and criminal/civil cases pending in any court and government loan or any other liability on the citizen.<sup>6</sup>

9. It is further humbly submitted before this Hon'ble Court that all these details have justifiable reasons for the collection and storage of data. There is a vital state interest in ensuring that scarce public resources are not dissipated by the diversion of resources to persons who do not qualify as recipients. Allocation of resources for human development is coupled with a legitimate concern that the utilization of resources should not be siphoned away for extraneous purposes. The state Pehchaan Act, 2014 even has chapter VI which deals with Protection of Data and a chapter VII for Offences and Punishment. Hence it ensures that the legitimate concerns of the state are duly safeguarded while, at the same time, protecting privacy concerns.
10. It is humbly submitted before this Hon'ble Court that in that case of *Justice K S Puttaswamy and Anr. Vs Union Of India and Ors.* It is stated that "Privacy involves hiding information whereas anonymity involves hiding what makes it personal. An unauthorized parting of the medical records of an individual which have been furnished to a hospital will amount to an invasion of privacy. On the other hand, the state may assert a legitimate interest in analyzing data borne from hospital records to understand and deal with a public health epidemic such as malaria or dengue to obviate a serious impact on the population. If the State preserves the anonymity of the individual it could legitimately assert a valid state interest in the preservation of public health to design appropriate policy interventions on the basis of the data available to it."
11. It is humbly submitted before this Hon'ble Court that in the Article 8 of the European Convention on Human Right which defines this right as follows: "(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."<sup>7</sup>
12. It is humbly submitted before this Hon'ble Court that the Government of Mandia through Pehchaan Cards takes details of life-threatening diseases like AIDS, Cancer

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<sup>6</sup> Factsheet

<sup>7</sup> Mr. X vs Hospital Z



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 for the interests of National Security, Public Safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

13. It is humbly submitted before this Hon'ble Court that in the case of <sup>1</sup>*Justice K S Puttaswamy (Retd.), And Anr Vs Union of India* and Ors, 2017 it is stated that "What must be a reasonable restriction in the interest of a legitimate State interest or in public interest cannot determine whether the intrusion into a person's affairs is or is not a fundamental right. Every State intrusion into privacy interests which deals with the physical body or the dissemination of information personal to an individual or personal choices relating to the individual would be subjected to the balancing test prescribed under the fundamental right that it infringes depending upon where the privacy interest claimed is founded. According to them, since these statutes already protect the privacy rights of individuals, it is unnecessary to read a fundamental right of privacy into Part III of the Constitution."

14. It is humbly submitted before this Hon'ble Court that on 13<sup>th</sup> 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 and takes 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. These are reasonable restriction in the interest of a legitimate State interest or in public interest cannot determine whether the intrusion into a person's affairs is or is not a fundamental right. Every State intrusion into privacy interests which deals with the physical body or the dissemination of information personal to an individual or personal choices relating to the individual would be subjected to the balancing test prescribed under the fundamental right that it infringes depending upon where the privacy interest claimed is founded. According to them, since Pehchaan act statutes already protect the privacy rights of individuals, it is unnecessary to read a fundamental right of privacy into Part III of the Constitution.

**II. MAKING OF PEHCHAAN CARD MANDATORY FOR EVERY SCHEME AND PROGRAM IS NOT VIOLATIVE OF THE RIGHT OF SPEECH AND EXPRESSION INCLUDING RIGHT TO REMAIN SILENT UNDER ARTICLE 19(1)(A) , RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY UNDER ARTICLE 21 AND ARTICLE 14 OF THE CONSTITUTION OF MANDIA.**

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1. It is humbly submitted before this Hon'ble Court that making of Pehchaan card mandatory for every schme and program is not violative of the Right of 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.
2. It is humbly submitted before this Hon'ble Court that structure of Article 19, were not the absolute freedoms and subject to reasonable restrictions, as provided under Sub-Article (2) to (6) of Article 19. It cannot be challenge only on the ground of freedom of speech and expression as in the case of *K.T. Plantation Private Limited & Anr*<sup>8</sup>. In the following words: "Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right. Otherwise the court will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy."
3. It is humbly submitted before this Hon'ble Court that in the present case the Pehchaan was meant to identify citizens for various benefits given by the government. It was also meant to save duplicity of identities. One of the objectives of Pehchaan was to identify illegal immigrants in the country and to deport them to their respective countries. The main aim of this policy was to check the leakage in government schemes and to prevent corruption happening in PDS and other subsidy providing schemes of the government. Hence it clearly shows the object of the Pehchaan act,

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<sup>8</sup> MANU/KA/0449/2002

2014 and even the Plea of unreasonableness, arbitrariness, proportionality cannot make the court to strike down the Pehchaan Act,2014 and if the court strikes down Pehchaan it will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy.

15. It is humbly submitted before this Hon'ble court that in the case of *Binoy Viswam v. Union of India and Ors*<sup>9</sup> it is stated that it is now almost accepted that there are no absolute constitutional rights and all such rights are related. In fact, such a provision in Article 19 itself on the one hand guarantees some certain freedoms in clause (1) of Article 19 and at the same time empower the State to impose reasonable restrictions on those freedoms in public interest. This notion accepts the modern constitutional theory that the constitutional rights are related. This relativity means that a constitutional licence to limit those rights is granted where such a limitation will be justified to protect public interest or the rights of others. It is humbly submitted that the act of government comes under the arena of Article 19(2) of the Constitution of India under the purview of Public Order. In *Ramesh Thapper v. State of Madras*<sup>10</sup> the Apex Court explained the meaning of Public Order as the state of tranquility, which prevails amongst the members of a political society as a result of internal regulation, enforced by the government, which they have established.
4. It is humbly submitted before this Hon'ble Court that in the case of *Mohd. Hanif Quareshi v. State of Bihar* it is held that reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations<sup>11</sup>
5. It is humbly submitted before this Hon'ble Court that in the present case. The Pehchaan was meant to identify citizens for various benefits given by the government. It was also meant to save duplicity of identities. One of the objectives of Pehchaan was to identify illegal immigrants in the country and to deport them to their respective countries. Tax collection of the government will also increase with the linking of Pehchaan cards with PAN and bank accounts. . Terror finance will be curbed through Pehchaan and Hawala transactions and foreign contributions to suspect NGOs can be

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<sup>9</sup> MANU/SC/0693/2017

<sup>10</sup> AIR 1950 SC 124

<sup>11</sup> AIR 1958 SC 731

checked by making payments, salaries and other financial transactions online and linking them with Pehchaan system and hence even if reasonable restrictions are imposed, the determination of the objective must take the standpoint of general public or abstract consideration and not from the point of view of the persons upon whom the restrictions are imposed.

6. 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* it is stated that right to privacy is subject to reasonable regulations made by the State to protect legitimate State interests or public interest. However, when it comes to restrictions on this right, the drill of various Articles to which the right relates must be scrupulously followed. For example, if the restraint on privacy is over fundamental personal choices that an individual is to make, State action can be restrained under Article 21 read with Article 19(1) (a) if it is arbitrary and unreasonable; and under Article 21 read with Article 19(1) (a) only if it relates to the subjects mentioned in Article 19(2) and the tests laid down by this Court for such legislation or subordinate legislation to pass muster under the information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”<sup>12</sup>
7. It is humbly submitted before this Hon'ble Court that in the present case the petitioner challenges Right to Privacy under Article 21 of constitution of India but it clearly stated in above submitted judgment that right to privacy is subject to reasonable regulations made by the State to protect legitimate State interests or public interest. It is stated that the Pehchaan policy was meant to identify citizens for various benefits given by the government. It was also meant to save duplicity of identities. . The main aim of this policy was to check the leakage in government schemes and to prevent corruption happening in PDS and other subsidy providing schemes of the

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<sup>12</sup> MANU/SC/1044/2017

government. Pehchaan policy is also aimed at eliminating all forms of terrorism by finishing off sleeping modules and local support base of terrorists in the country. Terror finance will be curbed through Pehchaan and Hawala transactions and foreign contributions to suspect NGOs can be checked by making payments, salaries and other financial transactions online and linking them with Pehchaan system. It cannot be also denied as the Pehchaan Act, 2014 is enacted by the Parliament of India which wants disclosure of information as it has larger public interest justification.

8. It is humbly submitted before this Hon'ble Court that in the case of *Mr X v Hospital Z*<sup>13</sup> the Justice Saghir Ahmad, speaking for a Bench of two judges of this Court, adverted to the duty of the doctor to maintain secrecy in relation to the patient but held that there is an exception to the rule of confidentiality where public interest will override that duty.<sup>14</sup> This was further stated in the case of *Justice K S Puttaswamy (Retd.), And Anr. Vs Union of India and Ors.*
9. It is humbly submitted before this Hon'ble Court that in the present case the authority can demand details of life-threatening diseases like AIDS, Cancer and Hepatitis-B is not violative of fundamental right as it is done in Public interest to make all scheme beneficial and non-beneficial.
10. 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* it is stated that Statutory provisions that deal with aspects of privacy would continue to be tested on the ground that they would violate the fundamental right to privacy, and would not be struck down, if it is found on a balancing test that the social or public interest and the reasonableness of the restrictions would outweigh the particular aspect of privacy claimed. If this is so, then statutes which would enable the State to contractually obtain information about persons would pass muster in given circumstances, provided they safeguard the individual right to privacy as well.
11. It is humbly submitted before this Hon'ble Court that in the present case The Pehchaan was meant to identify citizens for various benefits given by the government. It was also meant to save duplicity of identities. One of the objectives of Pehchaan was to identify illegal immigrants in the country and to deport them to their respective

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<sup>13</sup> 1998 Supp(1) SCR 723

<sup>14</sup> MANU 1044 SC 2017

countries. The main aim of this policy was to check the leakage in government schemes and to prevent corruption happening in PDS and other subsidy providing schemes of the government. Tax collection of the government will also increase with the linking of Pehchaan cards with PAN and bank accounts. These would be the future initiatives of the government also. Pehchaan policy is also aimed at eliminating all forms of terrorism by finishing off sleeping modules and local support base of terrorists in the country.

12. It is even submitted before this Hon'ble Court that the Pehchaan Act, 2014 even has chapter VI which deals with Protection of Data including section 28 which is security and confidentiality information, section 29 on restriction of sharing information, section 33 on Disclosure of Personal information. It also in chapter VII provide for Offences and Punishment of illegitimate use or procedure of data. Hence if it is found that the social or public interest and the reasonableness of the restrictions would outweigh the particular aspect of privacy claimed and statutes should enable the State to contractually obtain information about persons in given circumstances as they safeguard the individual right to privacy as well.
13. It is humbly submitted before this Hon'ble Court that This Court in the case of *PUCCL v. Union of India*<sup>15</sup> has approved the recommendations of the High Powered Committee headed by Justice D.P. Wadhwa, which recommended linking of Pehchaan with PDS and encouraged State Governments to adopt the same.
14. It is humbly submitted before this Hon'ble Court that While monitoring the PILs relating to night shelters for the homeless and the right to food through the public distribution system, this Court has lauded and complimented the efforts of the State Governments for inter alia carrying out bio-metric identification of the head of family of each household to eliminate fictitious, bogus and ineligible *BPL/AAY household cards*.<sup>16</sup> In *People's Union for Civil Liberties (PDS Matter) v. Union of India & Ors.*<sup>17</sup> has held that computerization is going to help the public distribution system in the country in a big way and encouraged and endorsed the digitalization of database including bio-metric identification of the beneficiaries. In fact, this Court had requested Mr. Rajeev Khanna to suggest ways in which the computerization process

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<sup>15</sup> (2011) 14 SCC 331

<sup>16</sup> 2013) 14 SCC 368

<sup>17</sup> 2013) 2 SCC 705

of PDS can be expedited. This Court has also endorsed bio-metric identification of homeless persons so that the benefits like supply of food and kerosene oil available to persons who are below poverty line can be extended to the correct beneficiaries.

15. It is humbly submitted before this Hon'ble Court that in the case of *State of Andhra Pradesh and ors. v. McDowell and Co.*<sup>18</sup> while dealing with the challenge to an enactment based on Article 14, this Court stated in paragraph 43 of the Report as follows: "A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. ... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein..(6)No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."

16. It is humbly submitted before this Hon'ble Court 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. Tax collection of the government will also increase with the linking of Pehchaan cards with PAN and bank accounts. These would be the future initiatives of the government. Terror finance will be curbed through Pehchaan and Hawala transactions and foreign contributions to suspect NGOs can be checked by making payments, salaries and other financial transactions online and linking them with Pehchaan system. Hence it could not be struck down only by saying it is arbitrary and unreasonable or unjustified as it is not violative of article 14 as making mandatory would apply for everyone and not for few individuals. It is further submitted that the

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<sup>18</sup> MANU/SC/0427/1996

above stated judgment clearly shows the benefits of linking Pehchaan cards with other scheme hence it cannot be made struck down.

17. It is humbly submitted before this Hon'ble Court that in the case *Binoy Viswam vs Union of India and Ors of Another*<sup>19</sup> it was held that creating a class of have and have-not's is a fallacious argument. Validity of a legislative act cannot be challenged by creating artificial classes by those who are objecting to the said provision and predicating the argument of discrimination on that basis. When a law is made, all those who are covered by that law are supposed to follow the same. No doubt, it is the right of a citizen to approach the Court and question the constitutional validity of a particular law enacted by the Legislature. However, merely because a section of persons opposes the law, would not mean that it has become a separate class by itself. Two classes cannot be created on this basis, namely, one of those who want to be covered by the scheme, and others who do not want to be covered thereby. If such a proposition is accepted, every legislation would be prone to challenge on the ground of discrimination. As far as plea of discrimination is concerned, it has to be raised by showing that the impugned law creates two classes without any reasonable classification and treats them differently.

18. It is humbly submitted before this Hon'ble Court that In case of *Municipal Corporation of Delhi v. Shiv Shanker*<sup>20</sup>, if the objects of two statutory provisions are different and language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface.

19. It is humbly submitted before this Hon'ble Court that in the present case if any statute is violative with the Pehchaan Act, 2014 as the object would not be same as that of Pehchaan. Then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface with Pehchaan Act.

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<sup>19</sup> MANU/SC/0693/2017

<sup>20</sup> AIR1971SC815



### III. THE COLLECTION OF DATA UNDER PEHCHAAN ACT, 2014 BY PRIVATE ENTITIES IS NOT VIOLATIVE OF RIGHT TO LIFE INCLUDING RIGHT TO PRIVACY GUARANTEED UNDER ARTICLE 21 OF THE CONSTITUTION OF MANDIA.

#### I.

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1. It is humbly submitted before this Hon'ble Court that collection of data under Pehchaan Act, 2014 by Private Entities is not violative of Right to Life including Right to Privacy guaranteed under Article 21 of the Constitution of Mandia as it is governed by the Rules and Regulation laid down by National Unique Identification Authority and various Provisions laid down under the Pehchaan Act, 2014<sup>21</sup>
2. It is humbly submitted before this Hon'ble Court that as per Chapter II of the The Pehchaan (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 which deals with Enrolment of citizens under the Pehchaan Act in which Section 3 has stated. "(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<sup>22</sup>: Provided that the Central Government may, from time to time, notify such other category of individuals who may be entitled to obtain an Pehchaan number. (2) The enrolling agency<sup>23</sup> shall, at the time of enrolment, inform the individual undergoing enrolment of the following details in such manner as may be specified by regulations". Hence it is clear that the information collected is through the process as specified to the enrolling agencies and the manner is also specified.
3. It is humbly submitted before this Hon'ble Court that the 'Enrolling Agency' means an agency appointed by the Authority or a Registrar, as the case may be, for collecting demographic and biometric information of individuals under the Pehchaan Act, 2014; is selected through a process as prescribed by pehchaan (enrolment and update) regulations,

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<sup>21</sup> The Pehchaan (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016

<sup>22</sup> (m) "enrolment" means the process, as may be specified by regulations, to collect demographic and biometric information from individuals by the enrolling agencies for the purpose of issuing Pehchaan numbers to such individuals under this Act;

<sup>23</sup> (l) "enrolling agency" means an agency appointed by the Authority or a Registrar, as the case may be, for collecting demographic and biometric information of individuals under this Act;

2016 under Section 23 of this Act. Thus the private entities are appointed by the Authority and are certified agencies as prescribed in the above section 23. This shows that the Agencies appointed to collect data are regulated by the National Unique Identification Authority and cannot disclose, misuse, publish the data collected from the citizens.

4. Under the section 23(9) of the PEHCHAAN (ENROLMENT AND UPDATE) REGULATIONS, 2016 states that “the enrolling agencies shall at all times abide by the Code of Conduct for service providers as specified in Schedule V of these regulations.” Hence the Code of conduct clearly states the way in which the information shall be taken and sent to the authority and there is proper manner in which data is transferred and is secured with the authorities.
5. It is humbly submitted before this Hon’ble Court that under notification of PEHCHAAN (ENROLMENT AND UPDATE) REGULATIONS, 2016 section 25 Testing and certification of staff appointed for enrolment which clearly state that operators, supervisors, and other enrolment staff employed or engaged by it are duly certified for carrying out enrolment.
6. It is humbly submitted before this Hon’ble Court that as per Section 7 PEHCHAAN (AUTHENTICATION) REGULATIONS, 2016 (No. 3 of 2016). “A requesting entity shall capture the biometric information of the number holder using certified biometric devices as per the processes and specifications laid down by the Authority.(2) A requesting entity shall necessarily encrypt and secure the biometric data at the time of capture as per the specifications laid down by the Authority.(3) For optimum results in capturing of biometric information, a requesting entity shall adopt the processes as may be specified by the Authority from time to time for this purpose.” Hence the Biometric Data collected is as per the processes and specifications laid down by the Authority through secured, authenticated devices and cannot be used for any purpose other than specified by the Act.
7. It is humbly submitted before this Hon’ble Court that as per Section 9<sup>24</sup> of Pehchaan (Authentication) Regulation, 2016 where it clearly states that the process through which

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<sup>24</sup> 9. Process of sending authentication requests.—

(1) After collecting the Pehchaan number or any other identifier provided by the requesting entity which is mapped to Pehchaan number and necessary demographic and / or biometric information and/ or OTP from the Pehchaan number holder, the client application shall immediately package and encrypt these input parameters into PID block before any transmission, as per the specifications laid down by the Authority, and shall send it to server of the requesting entity using secure protocols as may be laid down by the Authority for this purpose.

(2) After validation, the server of a requesting entity shall pass the authentication request to the CIDR, through the server of the Authentication Service Agency (ASA) as per the specifications laid down by the Authority.

data is sent and authentication is done. It is clearly shows that data collected (herein biometric or demographic information) shall be immediately packed and encrypt so that it is only available to authority. Hence it clearly shows that though data is collected by private entities the data is still secured, cannot be copied or disclosure by anybody else other than the person of the authority authorize to do so.

8. It is humbly submitted before this Hon'ble Court that as section 26 of The PEHCHAAN (AUTHENTICATION) REGULATIONS, 2016(No. 3 of 2016) which deals with Storage and Maintenance of Authentication Transaction Data. The data is stored with the authority is saved and properly maintained.
9. It is humbly submitted before this Hon'ble court that as per section 29<sup>25</sup> of the Pehchaan Act which clearly states that no core information collected shall be shared. The information collected for identification cannot be used for any other purpose other than specified by the Pehchaan Act, 2014; no information collected can be published, displayed or posted publically. This provision shows that even if the data is collected by private entity it would not infringe the privacy of an individual and would only be used for public interest.
10. It is humbly submitted before this Hon'ble Court that as per section 28 of the Pehchaan Act which deals with the Security and confidentiality of information states that, the

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The authentication request shall be digitally signed by the requesting entity and/or by the Authentication Service Agency, as per the mutual agreement between them.

(3) Based on the mode of authentication request, the CIDR shall validate the input parameters against the data stored therein and return a digitally signed Yes or No authentication response, or a digitally signed e-KYC Authentication response with encrypted e-KYC data, as the case may be, along with other technical details Related to the authentication transaction.

1. (4) In all modes of authentication, the Pehchaan number is mandatory and is submitted along with the input
2. parameters specified in sub-regulation (1) above such that authentication is always reduced to a 1:1 match.
3. (5) A requesting entity shall ensure that encryption of PID Block takes place at the time of capture on the
4. authentication device as per the processes and specifications laid down by the Authority

<sup>25</sup>“(1) No core biometric information, collected or created under this Act, shall be—

(a) shared with anyone for any reason whatsoever; or

(b) used for any purpose other than generation of Pehchaan numbers and authentication under this Act.

(2) The identity information, other than core biometric information, collected or created under this Act may be shared only in accordance with the provisions of this Act and in such manner as may be specified by regulations.

(3) No identity information available with a requesting entity shall be—

(a) used for any purpose, other than that specified to the individual at the time of submitting any identity information for authentication; or (b) disclosed further, except with the prior consent of the individual to whom such information relates.

(4) No Pehchaan number or core biometric information collected or created under this Act in respect of an Pehchaan number holder shall be published, displayed or posted publicly, except for the purposes as may be specified by regulations

Authority shall ensure confidentiality of identity information and authentication records of individuals. The Authority shall take all necessary measures to ensure that the information which is stored in the Central Identities Data Repository is secured and protected against access, use or disclosure other than specified for the purpose of the Act. Hence the Act clearly shows that though the data is collected by private entities measures are taken to ensure that the data is protected and not accessible for use other than specified and thus the private is not violated.

11. It is humbly submitted before this Hon'ble Court that Chapter VII of The Pehchaan Act, 2014 entitled 'Offences And Penalties' deals with various acts which have been declared as offence and various penalties for the said offence have been stipulated in the said chapter. Specifically Sections 37-40 of the said Act deals with Penalty for disclosing identity information, Penalty for unauthorized access to the Central Identities Data Repository, Penalty for tampering with data in Central Identities Data Repository and Penalty for unauthorized use by requesting entity respectively. The aforesaid provisions made under Pehchaan Act, 2014 clearly shows that if the data collected is misused or used for the purpose other than specified by the Act then such misconducts would be considered as the offence and various penalties has been imposed over such offences. Thus even if the private entities appointed by authority to collect data, misuses the data collected then such act of the private entities shall be punishable with imprisonment which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to One Lakh rupees or with both and this creates a reason for security to protect the privacy of individuals from disclosure of data.

## **PRAYER**

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In light of the issues raised, arguments advanced and authorities cited, the counsel for the Respondents humbly prays that the Hon'ble Supreme Court be pleased to dismiss the petition. And pass any other 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 Respondent shall duty bound forever pray.