

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2017

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

BETWEEN

1. DR KALYANI MENON SEN
D/O LATE SHRI KG MENON
J-1229,PALAM VIHAR,
GURGAON-122017
kmenonsen@gmail.com

...PETITIONER

Versus

1. UNION OF INDIA, THROUGH THE
SECRETARY, MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI-110001.

2. UNIQUE IDENTIFICATION AUTHORITY OF
INDIA A STATUTORY AUTHORITY
ESTABLISHED UNDER THE AADHAAR
(TARGETED DELIVERY OF FINANCIAL AND
OTHER SUBSIDIES, BENEFITS AND
SERVICES) ACT, 2016 HAVING ITS ADDRESS
AT 3RD FLOOR, TOWER-II, JEEVAN BHARATI
BUILDING, CONNAUGHT CIRCUS, NEW
DELHI-110001.

3. MINISTRY OF COMMUNICATIONS,
DEPARTMENT OF TELECOMMUNICATIONS,
SANCHAR BHAWAN, 20 ASHOKA ROAD,
NEW DELHI- 110001

4. RESERVE BANK OF INDIA

C/O CGM AND SECRETARY
SECRETARY'S DEPARTMENT
RESERVE BANK OF INDIA
16TH FLOOR, CENTRAL OFFICE BUILDING
SHAHIDBHAGAT SINGH MARG
MUMBAI - 400 001

...RESPONDENTS

**WRIT PETITION UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA**

TO,

THE HON'BLE THE CHIEF JUSTICE OF
INDIA AND HIS OTHER COMPANION
JUSTICES OF THE HON'BLE THE
SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE PETITIONERS
NAMED ABOVE,

MOST RESPECTFULLY SHOWETH:

A. Parties

The Petitioner

1 (a). The Petitioner No. 1 is a citizen of India. She is a feminist researcher who has been working for over 25 years on issues of women's rights. Her work focuses on the impacts of economic policies on the lives of women from marginalised and disadvantaged groups. Her work on the impacts of eviction and resettlement on the lives of urban poor communities is documented in her book Swept off the Map. She has been involved with the Mahila Samakhya programme for women's education and empowerment since 1995, and has contributed to strengthening the village-level women's groups initiated by this programme. She has written extensively on the Aadhaar experience, in particular its impacts on migrant communities and women workers in the informal sector. She is well-known internationally for her work on gender and women's rights in organizational and institutional settings. The Petitioner has no Civil, criminal or revenue litigation involving the Petition, which could have a legal nexus with the issues involved in the present Writ Petition (PIL). The Petitioner has no personal or private interest in the matter. The PAN Number of the Petitioner is APJPS7746F. The Petitioner's annual income in last AY is Rs. 18 Lac. (approx) Petitioner Email is kmenonsen@gmail.com, and Mob.

9910306382. A resume of the Petitioner's professional work and a copy of the article is annexed hereto and marked as **ANNEXURE - P/1 – (PAGES 56 TO 59)**

The Respondents

2(a). The 1st Respondent is the Union of India.

2(b). The 2nd Respondent is the Unique Identification Authority of India (UIDAI), a statutory authority established under Section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereinafter, 'the Aadhaar Act'). It was initially established under an executive notification dated 28.01.2009 and thereafter brought under the 2016 statute.

2(c) The 3rd Respondent is the Ministry of Communications, Department of Telecommunications.

3. The Respondents are amenable to the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India. The Respondents are "State" within the meaning of Article 12 of the Constitution of India.

B. Related matters pending before the Court

4. The Writ Petitioner here are aware that certain other Petitioners had earlier filed writ petitions challenging the Aadhaar project as being unconstitutional on diverse grounds. The lead petition in the said batch of writ petitions is WP No. 494/2012 titled '*Justice K.S.Puttaswamy(retd) & Anr vs. Union of India & Ors*'. This Hon'ble Court vide Order dated 11.8.2015, referred this petition together with other connected cases to a Constitution Bench of this Hon'ble Court.

5. A Constitution Bench of this Court has passed an interim Order dated 15.10.2015 in the writ petitions mentioned above. The matters are still pending adjudication before this Court.
6. Thereafter, certain other Petitioners filed a writ petition challenging the Aadhaar Act as being unconstitutional on diverse grounds. The writ petition is WP No. 797/2016 titled '*S.G. Vombatkere and Anr. vs. Union of India & Anr.*'. This Hon'ble Court vide Order dated 26.10.2016, issued rule nisi, and tagged the matter with the above-mentioned petitions, which are pending adjudication.
7. The Petitioners herein has earlier filed Writ Petition (C) No. 342/2017 challenging the Aadhaar Act and the Notification issued under Section 7 of the Aadhaar Act. This Court vide Order dated 9.05.2017, issued rule nisi, and tagged the matter with the above-mentioned petitions, which are pending adjudication.
8. A 9-Judge Constitution Bench of this Court vide Judgment dated 24.08.2017 in WP No. 494/2012 titled '*Justice K.S.Puttaswamy(retd) & Anr vs. Union of India &Ors*' along with other matters, decided the referred issue relating to the existence of the fundamental right to privacy. This Court unanimously held that there exists a fundamental right to privacy, and remitted the matter back to the original bench for adjudication.
9. Extensive documents concerning the Aadhaar project have already been filed by the Petitioners No. 1 and 2 in their previous petition, viz. WP No. 342/2017, and are part of the record of this Court. The

Petitioners crave leave to refer to and rely upon the pleadings, annexures and record in the previous writ petitions. 'Convenience compilations' of documents have been prepared for the benefit of the Court in the previous cases. In the circumstances, so as to save paper and not needlessly burden the record, the Petitioners are advised not to file further sets of documents with this petition at this stage, but will do so if directed by this Hon'ble Court.

10. The present writ petition may be treated as complementary to the previous writ petition and the averments, grounds and submissions set out in the previous writ petition may be treated as being part of this writ petition. This request is made in the interest of brevity and since the challenge in this writ petition builds upon grounds set out in the previous writ petition

C. Public Interest Litigation

11. The present writ petition, under Article 32 of the Constitution of India, is being filed in public interest, to raise issues which endanger Fundamental Rights of citizens of India, protected under Articles 14, 19 and 21 of the Constitution. The present petition challenges Rule 2(b) of the Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017 (hereinafter, "**Impugned Provision**") which seeks to amend Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 ('PMLA Rules') which have been issued under the Prevention of Money-laundering Act 2005 (hereinafter, "PMLAAct"). The petition further seeks to challenge the Circular dated 23.03.2017 ('**Impugned**

Circular’) issued by the Department of Telecommunication wherein it has been made mandatory for all mobile phone holders to link their mobile phone numbers with Aadhaar.

12. By virtue of the Impugned Provision, submission of an Aadhaar Number has been made mandatory for individual clients, companies, partnership firms and trusts for: a) opening of bank accounts; b) maintaining existing bank accounts; c) making any financial transactions of and above Rs. 50,000; and c) crediting foreign remittance into ‘small accounts’. Existing bank account holders have been directed to furnish Aadhaar Numbers before 31stDecember 2017. Non-compliance with the Impugned Provision will render the concerned bank accounts in-operational indefinitely, subject to submission of the Aadhaar Number and the Permanent Account Number (hereinafter, “**PAN**”).
13. The Petitioner approach this Hon’ble Court *bona fide* to prevent the violation of basic human rights that have already occurred as a result of the UID project and violations which will escalate in the future, *inter alia*, pursuant to the impugned provision. Furthermore, unless the relief sought is granted, a further loss of funds, in addition to the funds already wasted, will continue to be caused to the public exchequer.

D. Challenges and some of the Issues involved

14. This petition challenges the Impugned Provision and the Impugned Circular in as much as it violates the fundamental rights of the Petitioner and other citizens of India.

15. The Petitioner, *inter alia*, seek appropriate declarations to the effect that the Impugned Provision and Impugned Circular is *ultra vires* the Constitution of India.
16. The Impugned Provision was introduced pursuant to a notification dated 01.06.2017, issued by the Ministry of Finance making amendments to the Prevention of Money Laundering (Maintenance of Record) Rules, 2005. A copy of the Notification dated 01.06.2017 as published in the Gazette of India is annexed and marked as **ANNEXURE - P/2– (PAGES 60 TO 69)**.
17. The Impugned Circular dated 23.03.2017 was issued by the Department of Telecommunication, directing all mobile companies to carry out re-verification of existing customers (both postpaid and prepaid) by carrying out e-KYC, which requires the customer to provide his or her Aadhaar number on or before 23.03.2017. A copy of the Circular dated 23.03.2017 issued by the Department of Telecommunication is annexed and marked as **ANNEXURE – P/3- (PAGES 70 TO 75)**

E. Brief Facts

18. The Union of India, through the Planning Commission issued a Notification dated 28.01.2009, constituting the Unique Identification Authority of India (UIDAI) Act for the purpose of implementing of Unique Identity (UID) scheme wherein a UID database was to be created from information collected from the residents of India. Notably, there was no mention of collection of biometric information in the said Notification. Furthermore, the Notification did not provide

any checks and balances with regard to the collection, storage, usage of the said information collected pursuant to the UID scheme.

19. Pursuant to the said Notification the Government of India appointed Shri Nandan Nilekani as the Chairman of the UIDAI on 02.07.2009. The UID scheme contemplated that an Aadhaar Number, which is a random, unique 12-digit number be issued to all residents of India. This Aadhaar Number was generated after collecting the biometric information i.e. finger prints and iris scan, along with demographic information about the individual.
20. The scheme was launched in September 2010 in the rural areas of Maharashtra. Thereafter it was extended all over India. Approximately, 100 crore individuals have been enrolled under the UID scheme, till date. Although Aadhaar was supposed to be voluntary, the government has carried out a concerted and sustained campaign to make the enrolment virtually mandatory. This was done by various offices across the country insisting upon the Aadhaar Number for the purposes of providing a service, even where alternative methods of identification were available.
21. When the programme was launched in September 2010 there was no statutory backing for the same. On 03.12.2010, the Union of India introduced the National Identification Authority of India Bill 2010 (NIA Bill) in Parliament. The NIA Bill was very similar to the Aadhaar Act, 2016.

22. The said NIA Bill was referred to the Parliamentary Standing Committee on Finance. The Standing Committee gave its report on 13.12.2011, wherein it found several fallacies/ lacunae in the NIA Bill. Certain specific objections raised by the Standing Committee pertained to:

- (i) Privacy issues,
- (ii) Protection of sensitive biometric information,
- (iii) Private parties' involvement in the collection of biometric information,
- (iv) Lack of appropriate technology in India to sustain such a project,
- (v) Possibility of fake Aadhaar Numbers being generated due to the inadequate verification system under the UID scheme.

23. Despite the Standing Committee Report, the Government of India failed to correct/cure defects in the UID scheme. The NIA Bill never got passed, and the UID scheme continued to operate without any statutory basis. Private enrollers continued to collect private biometric and demographic information from citizens under the UID scheme, without any authority in law. No written consent, much less informed consent, was taken from the individuals who were made to part with their private information. There is no mention in the application forms specifying the biometrics to be captured. Neither was there any information in the application forms regarding the potential use of the said biometric information by the government, nor was there any

general public awareness programme carried out by the government to explain the UID programme to the citizens and the associated risks.

24. The enrolment centres were run by private parties. There was absolutely no government presence in any of the enrolment centres, where the individuals were made to part with their personal biometric information. The UID programme was operated on the basis of MoUs of doubtful legality between UIDAI and the registrars.
25. The Respondents do not possess the requisite technology for implementing the core biometric identification system. In fact, under the 2009 Notification regime, the UIDAI had entered into arrangements with three consortia, to implement the core biometric identification system in support of the Aadhaar project. These consortia were entrusted with the task of designing, supplying, commissioning, maintaining and supporting the Biometric Identification System. The leaders of these three consortia are:- (i) Accenture; (ii) Mahindra Satyam & Morpho joint venture, and (iii) L1-Identity Solutions.

L1 Identity Solutions is a large American Defence Contractor based in Connecticut, specializing in biometric technology system. Several of its officers and directors have served with the Central Intelligence Agency (CIA) and other American Defence organisation. The former director of CIA, Mr. George Tenet, is on the Board of Directors of L1 Identity Solutions. L1 Identity Solutions has various contractual

relationships with US Department of Defence and other intelligence agencies. This is relevant to note, since the biometric information of an Indian resident/citizen can be easily transmitted to a foreign government, compromising India's sovereignty, national security and severely undermining the privacy and autonomy of individuals.

26. The Reserve Bank of India (hereinafter, the "**RBI**") on 25.02.2016 issued a Master Direction – Know Your Customer (KYC) Direction, 2016 (the "**RBI Master Direction**"). According to this direction, banks are required to accept one of the six enlisted official documents for authentication of their customers. This list includes the PAN card and the Aadhaar Number issued by the UIDIA. There is no requirement under the RBI direction for an individual to produce both the documents for the purposes of authentication. A copy of the Know You Customer (KYC) Direction, 2016 dated 25.02.2016 is annexed hereto and marked as **ANNEXURE - P/4 – (PAGE NO. 76 to 134)**.
27. Aggrieved by the violation of fundamental rights of the citizens of India, several PILs were filed before this Hon'ble Court and in High Courts. The lead petition before this Hon'ble Court was *Justice K. S. Puttaswamy (Retd) v. Union of India & Ors.*, W.P. (C) No.494/2012. This Hon'ble Court vide order dated 30.11.2012 issued notice in the said petition.
28. This Hon'ble Court on being apprised of the unconstitutional nature of the UID scheme and the gross abuse by the government in refusing essential benefits /services to the citizens if they did not

possess an Aadhaar Card, passed an Interim Order dated 23.09.2013 where it directed that the Aadhaar card should not be made mandatory for providing governmental benefits. True copy of the order dated 23.09.2013 passed by this Hon'ble Court in W.P. (C) No.494/2012 is annexed hereto and marked as **ANNEXURE - P/5 (PAGES 135 TO 137)**.

29. In spite of the express direction by this Hon'ble Court to not make the use of the Aadhaar card a mandatory requirement, various government authorities, both Central and State, continued to insist upon Aadhaar card as a mandatory condition for providing services and/or benefits.
30. This Hon'ble Court, on being apprised of the continuing violations by the governmental authorities, passed another interim order dated 26.11.2013, reiterating its earlier interim order and also impleaded all States and Union territories for effective implementation/enforcement of this Hon'ble Court's interim directions. True copy of the order dated 26.11.2013 passed by this Hon'ble Court in W.P. (C) No.494/2012 is annexed hereto and marked as **ANNEXURE - P/6 (PAGES 138 TO 139)**.
31. The UIDAI, themselves filed a Special Leave Petition, viz. SLP (Cri.) No.2524 of 2014, challenging an order passed by the Bombay High Court requiring them to provide biometric information to CBI for investigation purposes in a criminal trial. This Hon'ble Court vide order dated 24.03.2014 issued notice in the said SLP and restrained the UIDAI from transferring any biometric information to any agency,

without the written consent of the concerned individual. It was further reiterated that Aadhaar should not be made mandatory for availing any service. True copy of the order dated 24.03.2014 passed by this Hon'ble Court in SLP (Crl.) No.2524/2014 is annexed hereto and marked as **ANNEXURE - P/7 – (PAGES 140)**.

32. The aforesaid batch of the writ petitions came up for hearing before a Bench of 3 judges of this Hon'ble Court, wherein vide order dated 11.08.2015, the petitions were referred to a Constitution Bench. However, this Hon'ble Court, passed an interim order directing that *"The production of an Aadhaar Card will not be a condition for obtaining any benefits otherwise due to a citizen"*.
33. Subsequently, a Constitution Bench of this Hon'ble Court passed an Interim Order dated 15.10.2015 and held that,
"5. We will also make it clear that the Aadhaar card scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other."
34. Despite the repeated directions passed by this Hon'ble Court to not make Aadhaar card mandatory for availing benefits of any type, various authorities from time to time have continued to disobey the directions of this Hon'ble Court.
35. Thereafter, the Union of India, passed the Aadhaar Act as a Money Bill in the Budget Session, 2016 in the Lok Sabha. Even though the Aadhaar Act was similar to the earlier NIA Bill, 2009 and sought to create the UIDAI authority, in order to qualify it as a Money Bill, the

object and purpose was stated be in relation to expenditures arising out of the Consolidated Fund of India. Notably, under section 57 of the Aadhaar Act, the said UID data base shall be available to any private and non-governmental authorities to use for verification/authentication.

36. Another group of Petitioners, filed a writ petition titled *S. G. Vombatkere & Anr. v. Union of India & Ors.*, W.P. (C) No. 797/2016, challenging the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 before this Court. This Court vide Order dated 26.10.2016 issued *rule nisi* in the said writ petitions and tagged it with the earlier pending writ petitions.
37. Notably, the Telecom Regulatory Authority of India (TRAI) had approached this Hon'ble Court by way of an interim application in WP No. 494/2012, making a specific prayer for variation of the Order dated 11.8.2015, to permit them to use the Aadhaar platform for the e-KYC verification for sim cards. This prayer was expressly rejected by the Constitution Bench of this Court vide Order dated 15.10.2015. However, in spite the specific direction by this Court to not use the Aadhaar platform, TRAI launched the Aadhaar based e-KYC for mobile connections of 16.8.2016. As a matter of fact, the Respondent No. 1/Union of India in a separate proceeding before this Hon'ble Court, has sworn on affidavit that they are using the Aadhaar platform for verification of sim cards. This Hon'ble Court vide Order dated 6.2.2017 in the matter of '*Lokniti Foundation v. Union of India and Anr.*', WP No. 607/2016', has taken note of the same. Copy of the

Order dated 6.2.2017 passed by this Hon'ble Court in WP No. 607/2016 is enclosed herewith as **ANNEXURE - P/8 (PAGES 141 TO 144)**

38. It is submitted that in continuation of its complete disregard of this Court's orders, the Department of Telecommunication vide Impugned Circular dated 23.03.2017 directing all mobile companies to carry out re-verification of existing customers (both postpaid and prepaid) by carrying out e-KYC, which requires the customer to provide his or her Aadhaar number on or before 23.03.2017.
39. The Petitioner herein have earlier filed Writ Petition (C) No. 342/2017 challenging the Aadhaar Act and the Notification issued under Section 7 of the Aadhaar Act. This Court vide Order dated 9.05.2017, issued rule nisi, and tagged the matter with the above-mentioned petitions, which are pending adjudication. A copy of the Order dated 9.05.2017 in WP (C) No. 342/2017 passed by this Court is annexed hereto and marked as **ANNEXURE - P/9– (PAGES 145 TO 146)**.
40. This Hon'ble Court on 9.06.2017 passed an order in the matter titled *Binoy Viswamv. Union of India & Ors.*, Writ Petition (Civil) No. 247 of 2017 (Reported as 2017 (7) SCC-59) wherein, Section 139AA of the Income Tax Act was challenged. This Hon'ble Court directed that those who have already enrolled themselves under the Aadhaar scheme would comply with the requirement of sub-section (2) of Section 139AA of the Income Tax Act. Those who still want to enrol are free to do so. However, those who are not Aadhaar card holders

and do not comply with the provision of Section 139(2), their PAN cards not be treated as invalid for the time being.

A 9-Judge Constitution Bench of this Court vide Judgment dated 24.08.2017 in WP No. 494/2012 titled '*Justice K.S. Puttaswamy (retired) & Anr vs. Union of India & Ors*' (Reported as 2017 SCC Online SC 996) along with other matters, decided the referred issue relating to the existence of the fundamental right to privacy. This Court unanimously held that there exists a fundamental right to privacy, and remitted the matter back to the original bench for adjudication.

42. Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017 was passed by the Union of India mandating compulsory, the submission of the Aadhaar Number issued by UIDAI by virtue of amendment 2(b) of the Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017 (hereinafter, "**Impugned Provision**"), amending the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 to the Prevention of Money-laundering Act 2005 (hereinafter, "**PMLA**").

F. GROUNDS

43. It is submitted that the Impugned Provision and the Impugned Circular is unconstitutional for the following grounds:
- I. The Impugned Provision seeks to create an impermissible artificial distinction between present and potential bank account holders who have parted with their private, biometric information and those who

have not; and compels the latter to part with their biometrics for opening and maintaining bank accounts.

II. The punishment prescribed for non-compliance with the Impugned Provision is disproportionate and violates Article 14 of the Constitution of India. Non-compliance with the Impugned Provision incurs the same liability as Section 5 of the PMLA (for involvement in money laundering), that is rendering the concerned bank account in-operational.

- a. According to Section 5 of the PMLA, where the concerned authority has reason to believe that a property is involved in money-laundering, the property can be provisionally attached for a period which does not exceed one hundred and eighty days, from the date of the order.
- b. As per Section 2(d) of the PMLA, attachment means prohibition of transfer, conversion, disposition or movement of property. Therefore, attachment of property under Section 5 of the PMLA renders the concerned bank account in-operational. The same punishment is prescribed for non-submission of the Aadhaar Number under the Impugned Provision. Present and potential bank account holders, who do not wish to part with their biometric information, are therefore treated on par with alleged offenders under the PMLA.
- c. In fact, the punishment contemplated under the Impugned Provision is more severe than Section 5 of the PMLA. The in-operability of the account concerned under the Impugned

Provision is indefinite, in comparison to Section 5 of PMLA which imposes a time limit on the attachment of the property concerned. The Impugned Provision is disproportionate and violates Article 14 of the Constitution of India.

d. The preamble to the PMLA states that it is:

"An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto."

The offence of money laundering has been defined as a direct or indirect attempt to indulge or knowingly assist or be a party or get involved in any process or activity connected with the proceeds of crime and projecting it as untainted property. It is entirely unlawful to mandate that non-submission of the Aadhaar Number is equivalent to the offence of money-laundering.

III. The Impugned provision is in violation of Article 300A of the Constitution. The Constitution protects the right to not be deprived of property, without due process of law. Rendering bank accounts inoperational, without the authority of law, is a violation of this constitutional right.

IV. The Impugned Provision is in contravention of Article 266 of the Constitution of India since private bank accounts are outside the scope of the Consolidated Fund of India. Making the Aadhaar Number a mandatory condition for opening and maintaining bank accounts is *ultra vires* Article 266 of the Constitution.

- V. The object of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter, "**Rules**") is to maintain records for the name and value of transactions, the procedure of maintaining and time for furnishing of information and verification of records of the identity of the clients. The power to make rules has been conferred by sub-section (1) read with clause (h), clause (i), clause (j) and clause (k) of sub-section (2) of Section 73 of PMLA. The aforesaid provisions grant power to make rules for identification of clients and maintenance of information. The use of the aforesaid provisions and the power granted therein to enact the Impugned Provision is arbitrary. The power granted by the aforesaid provisions has been used to coerce submission of private biometric information, provide disproportionate punitive consequences and compromise international legal obligations, financial security and integrity of the country.
- VI. The Impugned Provision is in conflict with the provisions of the Aadhaar Act
- a. Section 7 of the Aadhaar Act limits the purposes for which authentication through the Aadhaar Number is to be used. It states that Aadhaar Number can be used for the purposes of establishing the identity of an individual as a condition for receipt of a subsidy, benefit or service, where the expenditure is incurred from, or the receipt is a part of the Consolidated Fund of India (CFI).

- b. Services provided by public or private banks in operating bank accounts do not constitute "*subsidy, benefit or service*", vide definitions laid down under Section 2 (f), (w) and (x) of the Aadhaar Act.
- c. Section 7, further states that even for receipt of "*subsidies, benefits and services*" the AadhaarNumber is a substitutable means of establishing identity. It states that where an AadhaarNumber is not assigned, the individual shall be offered an alternate means of identification for the delivery of the concerned subsidies, benefits and/or services.
- d. On the contrary, the Impugned Provision makes it compulsory for everyone to procure an Aadhaar Number for opening and maintaining bank accounts.

VII. It is submitted that the Impugned Circular also violates the fundamental rights and constitutional rights of persons, by requiring any mobile subscriber to link their mobile phone number with Aadhaar number as part of e-KYC requirement. It is submitted that there is no justification provided by the government which requires Aadhaar as the sole identifying proof without providing any alternative.

VIII. Not only does the AadhaarNumber not add anything to the informational database on a customer, the AadhaarNumber compromises the efficacy of the KYC procedures and the customer database thus generated.

- a. The information to be retrieved through the AadhaarNumber is the same as that provided by any of the six 'Officially Valid

Documents' (OVDs) outlined by the RBI in Section 3(d)(vi) of Chapter I of the 'Know Your Customer Guideline'(KYC) dated 25.02.2016. This information includes the identity and address of the client. The Aadhaar Number does not provide any additional information regarding the client.

- b. There is already an obligation on banks to record and maintain records of all transactions as per Rule 3 of The Prevention of Money-laundering (Maintenance of Records) Rules 2005. Linking the AadhaarNumber to the bank accounts will not contribute to the existing procedure.
- c. The AadhaarNumber is generated with lower levels of scrutiny than other eligible OVDs. For instance, an Aadhaar card has no expiry date. It is a document to be used indefinitely. Unlike a passport, it does not make mandatory a periodic renewal and compromises obligatory periodic due diligence to meet KYC standards. It is harmful for anti-money laundering efforts, the privacy of the concerned account holder as well as for the banks and their statutory obligations in delivering banking services including correspondent banking.
- d. In a previous circular of the RBI dated 27.01.2011 it was observed that accounts opened with exclusive reliance on Aadhaar should be limited to small accounts. By a circular dated 28.09.2011 this limitation was then removed, without giving reasons for the change. In the same circular however, it

was advised that for such accounts, banks should additionally verify proof of address.

- e. Furthermore, the efficacy of Aadhaar is dependent on other OVDs, and is not based on any independent verification of identity. It is not an independent verification of identity and is linked to and therefore dependent upon, other proofs of identity. This is outlined in the UIDAI Demographic Data Standards and Verification Procedure (DDSVP) Report at 3.1, and Aadhaar Enrolment Form. Verification undertaken is limited to a review of documents which are *a 'Proof of Identity' (POI) and those which are a 'Proof of Address' (POA)*. These documents include Passports and PAN cards, amongst others, as listed under 3.6.1 and 3.6.2 of the DDSVP.
- f. Even linking of biometrics, does not verify the identity of the person concerned. Biometrics don't give the identity of the individual, they are only a part of it. The biometric information is only linked to the official document relied upon and does not initiate an additional enquiry into the efficacy of the information therein. For instance, if the PAN cards or passports are forged (as the Respondent has repeatedly argued), it would compromise the authenticity of the AadhaarNumber as well. Building a database dependent on AadhaarNumbers and information linked there under constitutes an unreasonable risk for financial autonomy and privacy of account holders, banks and financial sovereignty of the nation.

- IX. It is relevant to note that as per Section 139AA of the Income Tax Act, the State has sought to link the Aadhaar Number with PAN. In such a situation providing both Aadhaar Number and PAN for opening and maintaining a bank account is arbitrary in so far as it constitutes an unjustifiable risk to privacy, financial security and sovereignty.
- X. The impugned provision puts banks in an especially disadvantageous position when facilitating the e-KYC service by use of the AadhaarNumber. To initiate the e-KYC procedure, banks are required to sign the KYC User Agency (KUA) Agreement with UIDAI to enable the bank concerned to specifically access the KYC service. This agreement makes the party bank exceptionally legally vulnerable as the UIDAI denies any responsibility for potential misuse of information shared, unauthorised transaction through use of e-KYC and so on, vide clause 8 of this agreement.
- XI. Moreover, reliance on Aadhaar and its use for meeting KYC obligations constitutes a serious compromise of India's commitments under international law and policy as enlisted below. Under these, banks were advised to follow certain customer identification procedures for opening of accounts and monitoring transactions of a suspicious nature for the purposes of reporting it to appropriate authority. These 'Know Your Customer' guidelines have been made a part of domestic law through legislation such as the PMLA and periodic circulars and guidelines issued by the RBI. The Impugned Provision compromises

India's international law obligations which are required to be respected under Article 51 of the Constitution of India.

These commitments arise under the following:

- a. Recommendations made by the Financial Action Task Force (FATF) on Anti Money Laundering (AML) standards and on Combating Financing of Terrorism (CFT)
- b. the Recommendations of the Financial Action Task Force and the paper issued on Customer Due Diligence (CDD) for banks by the Basel Committee on Banking Supervision
- c. United Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- d. Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations in February 1990
- e. Political Declaration adopted in Special Session of the United Nations General Assembly in June 1998

XII. The Impugned Provision is arbitrary and violates Article 14 of the Constitution of India. In *ShayaraBano vs. Union of India* W.P. (C.) No. 118 of 2016 (Judgment dated August 22, 2017), this Hon'ble Court has held that arbitrariness is a distinct doctrine on which State action may be struck down as being violative of Article 14. This Hon'ble Court further held:

As per RF Nariman J.,

"379. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14...The arbitrariness doctrine would ... involve a law being

disproportionate, excessive or otherwise being manifestly unreasonable."

"392...(a) subordinate legislation can be struck down on the ground that it is arbitrary and is therefore violative of Article 14 of the Constitution of India."

In view of this authoritative pronouncement by a Constitution Bench of this Court, the Impugned Provision and the Impugned Circular being grossly disproportionate and arbitrary is liable to be struck down.

XIII. Intimately related to the fundamental principle that a person has full dominion and control over her core biometrics - just as she has over her body and personal autonomy - any collection of personal biometrics can only be done through free and informed written consent on the part of the individual. At a minimum, free consent would mean that a proposed enrollee is informed that the issuance of an Aadhaar Number is voluntary and no person can suffer any adverse consequence by not enrolling for an Aadhaar Number. There can be no question of free consent in a situation where an individual is being coerced to part with its biometric information under the threat of penal consequences.

XIV. The primary reason for this is that the biometric information sought to be taken from an individual is his or her most valuable or precious information. This biometric information can be hacked and stolen from the CIDR, as has happened the world over from several highly protected data repositories. Where centralized biometric data is

stolen, the identity of a person is severely compromised since (a) biometric information of an individual can never be replaced; and (b) the wrongdoer coming to access this information can impersonate the real individual without the system detecting any mischief. The Aadhaar project makes every person in India highly vulnerable to identity theft and the Impugned Provision furthers this possibility by seeking to expand the Aadhaar database.

- XV. Further, the core biometrics stored in the CIDR may be accessed and planted either with or without the connivance of the respondents and with no reasonable or realistic manner of the individual being able to disprove the misuse of the biometric information and the planting of say a finger print at a particular location.
- XVI. The biometric information is extremely sensitive and without prejudice to the Petitioner's contention that the Respondents have no authority in law to *en masse* collect biometrics of the citizenry, at a minimum, this information is given with trust. The respondents while engaging in the exercise of collecting biometrics act as trustees at every stage. This role of a trustee, given the sensitive nature of the information must be exercised by the State or organs of the State alone and cannot, under any circumstances be delegated to private parties operating without any governmental supervision. The crucial stage of obtaining informed consent is entirely in the hands of private players even under the Aadhaar Act. Obtaining free consent from a citizen or resident by which he or she agrees to part with his or her biometrics is a non-delegable fiduciary exercise under the Constitution of India

(assuming it is permissible at all). There is no manner whatsoever of the State satisfying itself that free and informed consent was secured and in the event of a dispute in this regard, there is no manner of verifying the existence and nature of the consent.

XVII. There are numerous, less invasive and less disruptive methods of verifying the identity of the concerned account holders. According to the RBI Master Direction, banks can accept any one of the six official documents for opening a bank account. These include the PAN card and the Aadhaar Number. There is no requirement under the RBI direction for an individual to produce both the documents for the purposes of authentication.

XVIII. Furthermore, information gathered for a specific purpose cannot then be used for another purpose without free consent of the owner of such information. As S.K. Kaul J. notes at paragraph 70 in the Judgment dated 24.08.2017 in the case of *Justice K. S. Puttaswamy (Retd) v. Union of India & Ors.*, W.P. (C) No.494/2012:

"The State must ensure that information is not used without the consent of the users and that it is used for the purpose and to the extent it was disclosed. Thus for e.g., if 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."

XIX. There is no 'opt out' provision and the enrollee cannot require all information and records of authentication and usage to be destroyed.

- XX. The Petitioner submit that this objective of creating a single pervasive identification over time, is itself illegal. There are several facets to the illegality and amongst them is the very negation of an individual citizen's freedom to identify through different means. The State cannot compel identification in one manner alone and make the discharge of legal obligations conditional upon the use of such method of identification.
- XXI. An Aadhaar Number is a random 12-digit unique Number assigned by the UIDAI upon collection of biometric and demographic information from enrolees. An individual's biometrics, specifically finger prints and iris scan (which are covered by the definition of 'core biometric information' contained in section 2(j) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016) are the personal property of that individual and are part of his or her bodily integrity. The Petitioners submit that biometric information relating to a person is owned by that person alone and no third party specifically the State can force or coerce or compel a person to part with core biometric information save and except in exceptional circumstances.
- a. Any taking of an individual's fingerprints and iris scan without his or her express informed consent in writing amounts to a physical invasion and assault to his or her body.
 - b. Personal bodily integrity is guaranteed under Article 21 of the Constitution of India and each person has a fundamental right to self-determine as to what he or she would like to do with his

or her body and images and impressions such as finger prints and iris scan that are biometric impressions of a body.

XXII. Under the Constitution of India, the State has a limited role. There are two facets that the Petitioners seek to emphasize here. The first facet is that the State cannot place itself in a position whereby it collects information over the lifetime of a citizen or resident and is in a position to dominate that individual on the basis of the profile of the individual now known to the State. The second facet of the constitutional role of the State is that it is a benign and benevolent State and not a police or authoritarian State. This aspect of a benevolent State is clearly derived from the Independence movement, the constitutional history leading to the framing and adoption of the Constitution of India and the preamble of the Constitution by which the People of India have given themselves the Constitution. A direct obligation on the State that flows from this is that the State must act in recognition of its limited role and is under an active constitutional duty to preserve and protect the fundamental rights of the citizens. This implies that the State cannot enact a law or create a system in the form of the Aadhaar project which by design and operation will place the State in an extremely dominant position in relation to every citizen.

XXIII. The Aadhaar project is issuing Numbers to new born children immediately upon registration of birth, frequently in conjunction with the hospital or maternity facilities. There are several situations where a new born child or the mother may be in need of the benefit or

service which would be covered by the scope of these expressions in the Aadhaar Act. Later, children would be entitled to benefits for food, education, scholarships, health interventions, etc. and in each of these situations, the Aadhaar Act envisages authentication through the Aadhaar system. As a person attains adulthood and his or her societal interactions increase, the Number of occasions for receiving benefits, services and subsidies may likely increase -- for example every payment of salary or pension or indeed attendance at a government work place may require Aadhaar authentication. The Central Identities Data Repository (CIDR) that conducts authentication will electronically retain a record of every such authentication in respect of every resident. The scope of surveillance is worsened by the Impugned Provision which links a person's bank account to his Aadhaar Number and causes details relating to a person's income and expenditure pattern to become available to the state with each Aadhaar authentication. Furthermore, the scope of surveillance increases by linking every mobile number with Aadhaar number.

XXIV. In this manner, the State is empowered by the Aadhaar Act to collect information of an individual over the course of his or her lifetime and retain such information throughout its lifetime. It is respectfully submitted that this centralized collection of information completely alters the relationship between citizen and State. This not only destroys the privacy of an individual with respect to his or her personal activities but it also places the State in a position whereby merely on the basis of aggregate authentication records it can build

an entire profile of the individual, community and segment of the citizenry. The Aadhaar project inasmuch as it enables lifetime records of every individual to be maintained at a centralized data base is destructive of personal freedoms and allows the State to dominate over the people of India.

XXV. The Constitution of India, specifically Articles 14, 19, 20 and 21 proscribe the creation of a surveillance State. The Constitution does not allow any system or programme to be implemented by the State that results in *en masse* surveillance. The State is under an obligation under Article 13(2) of the Constitution of India to ensure that it shall not make any law which takes away or abridges the rights conferred under Part III of the Constitution of India. Nevertheless, the Aadhaar Act purports to provide legal sanction to a programme that lays the framework for real time surveillance and that enables surveillance of every Indian. The Impugned Provision further facilitates such surveillance, extending it to violate economic privacy of every citizen.

XXVI. A citizen's right to privacy is a fundamental right that is constitutionally protected. The right to privacy in the context of the impugned provision has, *inter alia*, the following dimensions (i) a citizen's complete right over ownership and control of his core biometric information to the exclusion of all others including the State; (ii) a right to self-determination with respect to core biometric information without fear of penal consequences, which right extends even after a person has (voluntarily or otherwise) parted with his or her core biometric information; and (iii) the right to ensure that the

personal biometric information cannot potentially be utilized for surveillance, tracking or tagging or profiling of the individual.

Each of these dimensions of privacy are actively violated by the Impugned Provision and Impugned Circular. The Impugned Provision and the Impugned Circular violates the fundamental constitutional right to privacy.

It is in the above facts and circumstances the Petitioners are constrained to file the present writ petition under Article 32 of the Constitution of India, challenging the Impugned Provision as being *ultra vires* the Constitution of India.

G. JURISDICTION

XXVII. This petition is being preferred to this Hon'ble Court under Article 32 of the Constitution of India having regard to the violation of Article 14, 19 and 21 of the Constitution of India as explained above. Having regard to the nationwide implications of the important issues raised in this petition, this Hon'ble Court ought to entertain and hear the present petition. The Petitioner states that she has not filed any other similar petition challenging the impugned provision and impugned circular before this Hon'ble Court or any High Court. However, as set out above, the Petitioner herein has challenged the Aadhaar project and the Aadhaar Act in a previous writ petition.

A. PRAYERS

In the premises, this Hon'ble Court may be pleased to issue appropriate declarations, writs, orders and directions as set out below:

- a) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of a mandamus to declare that Rule 2 (b) of the Prevention of Money Laundering (Maintenance of Records) Second Amendment Rules, 2017 is *ultra vires*, unconstitutional, null and void and in particular violates Articles 14, 19 and 21 of the Constitution of India;
- b) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus declaring that the accounts of current bank account holder will not be made in-operational, and future applicants will not be coerced to submit their AadhaarNumbers;
- c) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of a mandamus to declare that impugned Circular dated 23.03.2017 issued by the Department of Telecommunication is *ultra vires*, unconstitutional, null and void and in particular violates Articles 14, 19 and 21 of the Constitution of India;
- d) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus declaring that pursuant to the Impugned Circular the mobile phone numbers of subscribers will not be made in-operational, and future

applicants will not be coerced to submit their Aadhaar Numbers;

- e) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus against the Respondents directing them to forthwith forbear from implementing or acting pursuant to or in implementation of the Impugned Provision and Impugned Circular.
- f) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus against the Respondents directing them to forthwith clarify by issuing appropriate announcements, circulars and/or directions that no citizen of India is required to obtain an Aadhaar Number/Aadhaar card and that the program under the Aadhaar Act is entirely voluntary;
- g) This Hon'ble Court may be pleased to declare that body of the Petitioner and other such citizens belongs to themselves and not to the State.
- h) This Hon'ble Court may be pleased to declare that the control and dominion over the biometric and personal information in respect of the Petitioner's body more specifically fingerprints and iris scans are the personal property of the Petitioners.
- i) This Hon'ble Court may be pleased to award costs relating to the present petition to the Petitioners; and
- j) This Hon'ble Court may be pleased to issue any other writ/order/direction in the nature of mandamus as this Hon'ble

Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS **SHALL, AS IN**

DUTY BOUND, EVER PRAY

DRAWN BY:

Samiksha Godiyal and
Udayaditya Banerjee
Advocates

FILED BY:

VIPIN NAIR
ADVOCATE-ON-RECORD
FOR THE PETITIONER

FILED ON:- 12.10.2017
NEW DELHI

ANNEXURE P-2

Resume of Dr. Kalyani Menon-Sen

Dr Kalyani Menon Sen is a feminist scholar and activist who has been working for 25 years on issues of women's rights.

She is an internationally-known expert on gender mainstreaming and is consulted by several development organisations including the United Nations Development Programme, where she is a long-term advisor to the UNDP global gender team.

She is a member of Gender at Work, a global collective of practitioners on gender equality in organisational and institutional settings. Her work focuses on the impact of economic policies on marginalised women, particularly migrant women, women farmers, and women in the informal sector.

She is the author of several books including "Women in India: How Free? How Equal?" and "Swept Off the Map: Eviction and Resettlement in Delhi".

She has been a member of the National Resource Group for the MahilaSamakhya ('MS') programme for women's education and empowerment, and has worked with MS in Kerala, Uttar Pradesh and Telengana. She is in the forefront of movements on violence against women and has researched, written and campaigned on the issue.

Her work as an independent researcher has focused on building links between advocacy for change in macroeconomic policies, and communities who are directly experiencing a crisis of survival. She has developed tools and methodologies for economic literacy for use by grassroots groups including rural women's groups and urban poor communities. She has been studying and documenting the effects of Aadhar on migrant women, women workers in the informal sector and urban poor communities.

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