IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (CIVIL) NO. OF 2019

IN

WRIT PETITION (CIVIL) No. 342 of 2017

IN THE MATTER OF:

WRIT PETITION (CIVIL) No. 342of 2017

1. SHANTHA SINHA, [redacted]

…PETITIONER REVIEW/ PETITIONER

2. KALYANI MENON SEN, [redacted]

…PETITIONER REVIEW/ PETITIONER

VERSUS

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

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 …RESPONDENT RESPONDENT

PETITION UNDER ARTICLE 137 OF THE CONSTITUTION OF INDIA READ WITH ORDER XLVII RULE 1 OF THE SUPREME COURT RULES, 2013

TO

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

THE HUMBLE PETITION OF THE
PETITIONERS ABOVENAMED.

MOST RESPECTFULLY SHEWETH:

1. That the present Review Petition under Article 137 of the Constitution of India read with Order XLVII of the Supreme Court Rules, 2013 by Ms. Shantha Sinha &Anr. (hereinafter "the Review Applicants"), has been filed by the Petitioners in order to seek a review of the impugned Majority judgment dated 26.09.2018 passed by the Hon'ble Supreme Court of India. The Impugned judgment was given in a batch of Petitions led by W.P.(Civil) 494 of 2012 that included W.P. (Civil) No. 342 of 2017 ("this Petitioner's Writ Petition").
2. Three judgments were rendered by this Hon'ble Court in the above matter. Dr. A.K. Sikri, J. (for himself as well as Dipak Mishra, CJI and A.M. Khanwilkar, J.) authored the majority judgment. Ashok Bhushan, J. rendered a separate judgment which broadly concurred with the majority judgment. These two judgments are together referred to as the 'Majority Judgments'.
3. The third judgment of the court was rendered by Dr. D.Y. Chandrachud, J. and is a dissent. The review petitioners

believe that the view taken by Justice Chandrachud is the correct view. Consequently, this petition seeks review of the Majority Judgments alone.

4. All the grounds raised here are covered by Order XLVII of the Supreme Court Rules, 2013. The Majority Judgments suffer from errors apparent on the face of the record as set out in detail in the grounds below.

5. That the Petitioners craves leave of this Hon'ble Court to refer to and rely upon the facts stated in the Writ Petition (Civil) No. 342 of 2017. The facts are reproduced here, in short.

6. The facts succinctly stated, leading to and culminating in the present Petition, are as follows:

   (i) The Union of India through the Planning Commission issued a Notification dated 28.01.2009, constituting the Unique Identification Authority of India (UIDAI) for the purpose of implementing the Unique Identity (UID) scheme. Notably, there was no mention of the collection of biometric information in the said notification. Furthermore, the notification did not provide any checks and balancesto govern the collection, storage, usage of the said information collected pursuant to the UID scheme.

(ii) The Aadhaar programme was launched in September 2010 in rural Maharashtra, without any statutory backing.

(iii) On 03.12.2010, the Union of India introduced the National Identification Authority of India Bill, 2010 ("NIA Bill") in Parliament. Notably, the NIA Bill was almost identical to the Aadhaar Act, 2016.

(iv) The NIA Bill was referred to the Parliamentary Standing Committee on Finance. The Standing Committee gave its report on 13.12.2011, where it noted several lacunas in the NIA Bill. Certain specific objections raised by the Standing Committee pertained to:

(i) Privacy issues,

(ii) Protection of the sensitive biometric information,

(iii) Private parties' involvement in the collection of the biometric information,

(iv) The lack of appropriate technology in India to sustain such a project,

(v) The possibility of fake Aadhaar numbers being generated due to the inadequate verification system under the UID scheme.

(v) Aggrieved by the violation of fundamental rights of the citizens of India, several PILs were filed before this Hon'ble Court. 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.

(vi) Writ petition, viz. W.P. (C) No. 829/2013, titled 'S.G. Vombatkere and Anr. vs. Union of India &Anr.' was filed, and while issuing notice, a 2-Judge Bench vide Order dated 23.09.2013, stated,

"All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Adhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Adhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant."

(vii) A 2-Judge Bench vide Order dated 26.11.2013, held,

"After hearing the matter at length, we are of the view that all the States and Union Territories have

to be impleaded as respondents to give effective directions. In view thereof notice be issued to all the States and Union Territories through standing counsel.

…

Interim order to continue, in the meantime."

(viii) In UIDAI's own SLP (Crl) No. 2524/2014 assailing a Bombay High Court order requiring UIDAI to disclose biometric details of an accused, a 2-Judge Bench vide Order dated 24.03.2014 directed,

"In the meanwhile, the present petitioner is restrained from transferring any biometric information of any person who has been allotted the Aadhaar number to any other agency without his consent in writing.

More so, no person shall be deprived of any service for want of Aadhaar number in case he/she is otherwise eligible/entitled. All the authorities are directed to modify their forms/circulars/likes so as to not compulsorily require the Aadhaar number in order to meet the requirement of the interim order passed by this Court forthwith."

(ix) A 3-Judge Bench vide Order dated 16.03.2015,

stated,

"In the meanwhile, it is brought to our notice that in certain quarters, Aadhar identification is being insisted upon by the various authorities, we do not propose to go into the specific instances.

Since Union of India is represented by learned Solicitor General and all the States are represented through their respective counsel, we expect that both the Union of India and States and all their functionaries should adhere to the Order passed by this Court on 23rd September, 2013."

(x) A 3-Judge Bench, vide Order dated 11.08.2015, while referring the matter to larger bench to decide the issue whether privacy is a fundamental right, passed the following interim order,

"Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA proceed in the following manner:-

1. The Union of India shall give wide publicity in the electronic and print media including radio and

television networks that it is not mandatory for a citizen to obtain an Aadhaar card;

2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen;

3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of foodgrains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme;

4. The information about an individual obtained by the Unique Identification Authority of India while issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation."

(xi) Vide Notification dated 12.09.2015, the Government revised the Allocation of Business Rules to attach the UIDAI to the Department of Electronics & Information Technology (DeitY) of the then Ministry of Communications and Information Technology.

(xii) A Constitution Bench vide Order dated 15.10.2015, while partly modifying the aforesaid interim order, passed the following order,

"3. After hearing the learned Attorney General for India and other learned senior counsels, we are of the view that in paragraph 3 of the Order dated 11.08.2015, if we add, apart from the other two Schemes, namely, P.D.S. Scheme and the L.P.G. Distribution Scheme, the Schemes like The Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), National Social Assistance Programme (Old Age Pensions, Widow Pensions, Disability Pensions) Prime Minister's Jan Dhan Yojana (PMJDY) and Employees' Provident Fund Organisation (EPFO) for the present, it would not dilute earlier order passed by this Court. Therefore, we now include the aforesaid Schemes apart from the other two Schemes that this Court has permitted in its earlier order dated 11.08.2015.

4. We impress upon the Union of India that it shall strictly follow all the earlier orders passed by this Court commencing from 23.09.2013.

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.”

(xiii) Against the above backdrop, the Union of India, introduced the Aadhaar (Targeted Delivery of Financial and other subsidies, benefits and services) Act, 2016 (Aadhaar Act) as a Money Bill in the Budget Session, 2016 in the Lok Sabha.

The Aadhaar Act was in pith and substance identical to the earlier NIA Bill, 2009.

In spite of objections with regard to the Aadhaar Act being introduced as a Money Bill, the same came to be passed on 16.3.2016

(xiv) The Aadhaar Act received Presidential assent and was published in the official gazette on 26.3.2016.

(xv) Vide Notification dated 12.7.2016 certain provisions of the Aadhaar Act were brought into force w.e.f. 12.7.2016.

The Union of India vide Notification dated 12.7.2016 issued under Section 11 of the Aadhaar Act, established the 2nd Respondent/UIDAI.

(xvi) Vide Notification dated 12.9.2016, the remaining provisions of the Aadhaar Act was brought into force. Section 7 of the Aadhaar Act was brought into force

by this Notification.

(xvii) A number of PILs were filed before this Hon'ble Court challenging the Aadhaar Act.

(xviii) The Respondent No. 1, through its different Ministries, issued various Notifications under Section 7 of the Aadhaar Act, making the Aadhaar number a mandatory requirement for an individual to avail different benefits, services and subsidies.

(xix) In spite of 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.

(xx) 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.

(xxi) The Union of India introduced Section 139AA of the Income Tax Act, 1961 (by way of Section 56 of the Finance Act, 2017) making it mandatory to present an Aadhaar number for the following: - (a) obtaining a permanent account number (“PAN”); (b) continued

validity of a person's PAN; and (c) filing one's return of income under the Income Tax Act.

(xxii) The Department of Telecommunication vide Circular dated 23.03.2017 directed 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 8.02.2018.

(xxiii) Prevention of Money Laundering (Maintenance of Records) Second Amendment Rules, 2017 was passed by the Union of India making Aadhaar Number mandatory for eKYC.

Consequently, Aadhaar is mandatory for opening and maintaining of bank account, for carrying out any financial transaction equal to or exceeding Rs. 50,000/-, holding investments in mutual funds and holding insurance policies.

(xxiv) On 24.4.2017 the Writ Petition (C) No. 342 of 2017 titled '*Shantha Sinha &Anr. v. Union of India &Anr.*'was filed by the present review petitioners challenging the vires of the Aadhaar Act 2016.

(xxv) A 2-Judge Bench of this Hon'ble Court vide Judgment dated 9.06.2017 in the matter titled '*BinoyViswam v. Union of India &Ors.*', Writ Petition (Civil) No. 247 of

2017, upheld the validity of Section 139AA of the Income Tax Act, under Articles 14 and 19.

It directed that those who have already enrolled themselves under 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, the PAN cards of those who are not Aadhaar card holders, and do not comply with the provision of Section 139(2), can be not treated as invalid for the time being.

(xxvi) 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 for adjudication.

(xxvii) During the course of the arguments, three expert reports were submitted before this Hon'ble Court:

a. Affidavit dated 6.4.2016 by Dr. Samir Kelekar, was filed by the Petitioner herein in the W.P. (C) No. 797 of 2016. This described how the Aadhaar

enabled tracking, stating, *inter alia*, that a "*unique electronic path attaches to each transmission ... technically possible to track and trail the electronic route ... track down the location of every registered device in real time*".

b. Affidavit dated 22.11.2016 of Mr. Jude Terrence D'Souza was filed on behalf of the Petitioners herein, in IA No 934343 of 2016 in WP (Civil) No. 797 of 2016 filed on 16.12.2016. This stated, *inter alia*, that,

'At the time of each and every request for authentication / verification, the finger print reader is required to electronically indicate its unique identification number to the central depository server. Combining the unique number of the finger print reader with the in-built GPS, the location of the individual whose finger print is being verified becomes known, virtually in real time. The verification system is so designed that it can operate as a real time surveillance system of every individual who is required to give his / her finger print for the purpose of authentication."

c. The Expert Report of Dr. Manindra Agrawal, N. Rama Rao Professor at IIT Kanpur, dated 04.03.2018 which was filed on behalf of the UIDAI, along with their Additional Affidavit dated 09.03.2018. This stated, inter alia, that the verification log enabled them to log the location of individuals, and that third parties could also have access to this if they breached this log.

d. On the basis of all the expert evidence submitted in this case it can be unequivocally seen that the locational information of individuals enrolled in Aadhaar is available to the UIDAI, and that Aadhaar's architecture establishes a surveillance state.

(xxviii) Vide the impugned judgment dated 26.09.2018, this Hon'ble Court, has upheld the constitutional validity of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereinafter referred to as the 'Aadhaar Act') with the exception of a part of Section 57, which enables a body corporate and individuals to also seek Aadhaar authentication, specifically holding that the Aadhaar Act passes the four-pronged proportionality

test applied by it, and that it could be passed as a 'Money Bill' under Article 110 of the Constitution of India.

(xxix) The Majority Judgement was given by Justice A.K. Sikri, on behalf of Justices Dipak Misra and A.M. Khanwilkar (hereinafter referred to as *"impugned judgement"*). The dissenting judgement was given by Justice D. Y. Chandrachud, and Justice Bhushan gave a partly concurring judgement. The Hon'ble Court, vide its judgment, has also upheld the constitutional validity of Section 139AA of the Income Tax Act, 1961 requiring the quoting of Aadhaar number in the application form for allotment of permanent account number and in the return of income, but has held that the Circular dated 23rd March, 2017 issued by the Department of Telecom requiring linking of Aadhaar with mobile phones, as well as Rule 9(a)(17) of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and the notifications issued thereunder, which mandate linking of Aadhaar with bank accounts, are unconstitutional.

7. The Petitioners humbly seek a review of the impugned judgment as it has internal inconsistencies which are

errors on the face of the record, and as such necessitates review.

8. The impugned judgement has omitted to consider several factual averments and Grounds urged in the Writ Petitions, which are amount to errors apparent on the face of the record.

9. It is further submitted that the impugned judgement contains certain contradictions with respect to its reasoning which amount to an error apparent on the face of the record, and the same would necessitate a review or clarification from the Hon’ble Court.

10. It is humbly submitted that the impugned judgement proceeded without considering material evidence which is a violation of the principles of natural justice and as such lays the grounds for a review.

11. It is submitted that the Review Applicants have not filed any other review petition before this Hon'ble Court or any other Court against the said judgment praying for the same relief.

12. It is most humbly prayed that this Hon’ble Court may be pleased to review its judgment dated 26.09.2018 in WP (C) No. 494 of 2012 on the following, amongst other grounds, which submitted in the alternative and without prejudice to each other:-

GROUNDS

A. The impugned Judgement is rife with internal inconsistencies, which amount to an error on the face of the record in holding that the Aadhaar Billfalls within the ambit of a **"Money Bill,"**as defined in Article 110(1), at the time of its introduction in the Lok Sabha.

i. This Hon'ble Court did not note that the Aadhaar Act in fact and law goes beyond the provisions of Article 110(1),as it allows for an expansion of the use of the Aadhaar number for purposes which were not related to the Consolidated Fund of India, or to the disbursal of subsidies, benefits or services which are funded by the Consolidated Fund of India.

ii. There is an error apparent on the face of the record in the contradiction between the impugned Judgement's finding that the Aadhaar Act was rightly certified as a Money Bill at the time of its introduction in the Lok Sabha, while also noting that Section 57, which was present in the Bill as Clause 57, contained terms that had no nexus with the provisions of Article 110(1)(g). The impugned Judgement's

finding on the issue of whether the Act was validly introduced as a Money Bill was, as stated in Para 412,

> "For all the aforesaid reasons, we are of the opinion that Bill was *rightly introduced* as Money Bill." [emphasis added]

However, this directly contradictsthis Hon'ble Court's finding with respect to Section 57. While accepting that this section was not related to Article 110(1), the impugned Judgement held in Para 412,

> "In any case, a part of Section 57 has *already declared* unconstitutional whereby even a body corporate in private sector or person may seek authentication from the Authority for establishing the identity of an individual." [emphasis added].

This is a contradiction, and an error apparent on the face of the record. If the Bill is held to be valid at the *time that it was introduced*, as is required by Article 110, then this finding

cannot be arrived at by subsequently removing the offending portions from the Act.

iii. When determining thatthe Bill was validly introduced as a Money Bill, the impugned Judgementincorrectly noted crucial submissions by the Petitioners. This amounts to an error apparent on the face of the record. The Majority judgement held, in Para 406, thatthe Petitioners accepted that the delivery of, “welfare, benefits and subsidies” is the main purpose of the Aadhaar Bill;that Section 7 has some of the elements of a Money Bill; andthat Section 7 is the main provision of the Act. This is contrary to the facts on the record, and to the submissions made before this Hon’ble Court. The Petitioners have consistently held that Section 7 is not the core of the Aadhaar Act, and that the Act’s principal objective is to establish a national, digital identification system based on biometrics,whichis evident from the Aadhaar Act’s similarity to its predecessor, the NIA Bill.Not noting these submissions,

particularly,the similarities between the Aadhaar Act and the National Identification Authority of India Bill, 2010, ("*NIA Bill*"), is an error apparent on the face of the record.

iv. A narrow determination of the types of legislation which can be allowed to be a Money Bill is necessary in the interests of justice. The Judgement rightly notes the important role played by the Rajya Sabha in a bicameral system of Parliament. Bypassing the Rajya Sabha amounts to depriving the citizenry of an essential safeguard under the Constitutional scheme to preserve and protect the fundamental rights. By finding the Aadhaar Act was validly certified as a Money Bill the impugned judgement risks upsetting the delicate balance of bicameral governance. This decision runs the risk of diluting this principle, which would lead to a grave miscarriage of justice and imperil our constitutional structure.

v. This has also been noted by the Minority judgement, which noted in Para 109 that [merely], "*Introducing one provision - Section*

7 – does not render the entirety of the Act a Money Bill where its other provisions travel beyond the parameters set out in Article 110. Section 57 of the Act in particular (which creates a platform for the use of the Aadhaar number by the private entities) can by no stretch of logic be covered under Article 110(1)." It further noted the grave consequences of this. See Para 117,"*Passing of a Bill as a Money Bill, when it does not qualify for it, damages the delicate balance of bicameralism which is a part of the basic structure of the Constitution.*"

B. There is an error apparent on the face of the record in not appreciating how the architecture of Aadhaar, in fact and law,creates a surveillance state. Key evidence submitted before the Court substantiating this was ignored in the impugned Majority judgement. The judgement also proceeded without referring to, or on a misapprehension of several pleadingsmade by the Petitioners and admissions made by the Respondents, which illustrated how the Aadhaar architecture created a surveillance state, and the lack of sanctity of the data in the CIDR.

i. The factual position substantiating this was summarized in the Petitioner's Rejoinder Submissions dated 15.05.2018. The Judgement states, in Para 62, that, "The Petitioners challenge on the grounds of surveillance is that the architecture of the project comprises the CIDR which stores and maintains authentication transaction data." This is contrary to the facts on the record. The Petitioners had pointed out how AUAs such as the Kerala Dairy Welfare Board stored authentication data, which permitted the identification of the requesting entity, and the location of the request. This key evidence was not considered by this Hon'ble Court when concluding that the authentication process under Aadhaar did not permit tracking.

ii. The expert evidence submitted to this Hon'ble Court was not referred to at all in the impugned Majority judgment. This amounts to a violation of the principle of natural justice. The evidence submitted was: an affidavit of Samir Kelekar, dated 06.10.2016, affidavit of Mr. J.T. D'Souza dated 22.11.2016, and an

Expert Report submitted by the Respondents, by Dr. Maninder Agarwal, Officiating Director IIT Kanpur, dated 04.03.2018. These all relate to the nature of data which was collected during the process of authentication and how this enabled real time and long term tracking. This Hon'ble Court dismissed the expert evidence as "conflicting issues of fact," without engaging with it any further. Treating expert evidence in this manner is against the principle of natural justice. At the very least, this Hon'ble Court should have applied the rule of evidence regarding the value to be accorded to expert evidence when assessing these sources of evidence. None of this evidence was referred to in the impugned judgement at all, but instead the power-point presentation shown by the Respondent authority was relied upon to arrive at material findings on the nature of the Aadhaar architecture, including on whether Aadhaar enabled tracking. This was neither on oath nor in the form of an affidavit. That such material should be solely relied up in the face of reliable expert evidence goes

against all established rules of evidence, and is against the principles of natural justice.

iii. This Hon'ble Court found in Para 51, that there were sufficient safeguards because of the oversight by the Technology and Architecture Review Board (TARB) and Security Review Committee. In that case, to not refer to a report by Prof. Maninder Agarwal, who is on the TARB, is a manifest error apparent on the face of the record.

iv. This was also noted in the Minority Judgement which stated in Para 230, "…*Through meta data and in the light of the observations made in the Professor Manindra Agarwal Report, it can easily be concluded that it is possible through the UIDAI database to track the location of an individual*."

C. When holding that enrollment in the Aadhaar programme can be made mandatory under Section 7, the impugned judgement makes several errors on the face of the record. This Hon'ble Court rightly notes that welfare rights are constitutional rights,

but didn't appreciate how mandating Aadhaar runs the risk of creating a second class of citizens,which is impermissible under our Constitutional structure.

i. It was submitted before this Hon'ble Court that from a stand point of personal autonomy, exclusion and self-protection, the State is duty bound to ensure that a person is not required to place her finger prints at dozens of PoS machines, but that alternative methods of identification be allowed, which leaves the choice to the individual. However, the Judgement proceeds on the basis of a bare averment made by the government that they will ensure that people are permitted alternative ways to identify themselves. As per the law laid down by this Supreme Court in *Shreya Singhal v Union of India 2015 5 SCC 1*, "The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as being unreasonable cannot be saved by its being administered in a reasonable manner." [emphasis added]. The mandatory linkage of

Aadhaar to peoples' welfare benefits has had many adverse implications, including causing starvation deaths, which was not noted by this Court.

ii. This Hon'ble Court's findings on the invalidity of the Department of Telecom's notification mandating cellphone linkage, cannot be read harmoniously with the findings upholding Section 7. On the notifications issued by the Department of Telecom, the Court found in Para 442:

> "It does not meet 'necessity stage' and 'balancing stage' tests to check the primary menace which is in the mind of the respondent authorities. There can be other appropriate laws and less intrusive alternatives. **For the misuse of such SIM cards by a handful of persons, the entire population cannot be subjected to intrusion into their private lives.** It also impinges upon the voluntary nature of the Aadhaar scheme. We find it to be disproportionate and unreasonable state compulsion." [emphasis added].

However, when upholding Section 7, the impugned Judgement proceeded on the basis that the Aadhaar programme met a legitimate state aim of ensuring that welfare benefits reach beneficiaries, stating in Para 279 that, “There have been cases of duplicate and bogus ration cards, BPL cards, LPG connections etc. Some persons with multiple identities getting those benefits manifold. Aadhaar scheme has been successful, to a great extent, in curbing the aforesaid malpractices.” The Respondents did not submit any studies that showed how widespread this form of fraud is, and the word “some” indicates that it is a fraction. If “a handful of persons” committing fraud cannot justify the entire population being subjected to this intrusion into their private lives, there is an inherent contradiction in requiring all persons who are accessing their welfare rights to subject themselves to such an “intrusion into their private lives,” which occurs when Aadhaar enrollment and authorization is made mandatory.

iii. The Respondent's assertion that persons with multiple identities are the main, or even a significant form of corruption within public welfare benefits is not supported by evidence. These broad averments with respect to the source of corruption within welfare schemes were accepted by the Court. In contrast, a different standard was applied when holding that the impugned Rules under the Prevention of Money Laundering Act failed to meet the proportionality test:

> Para 234
>
> "…The Rules are disproportionate for the following reasons:
>
> (a) **a mere ritualistic incantation of "money laundering", "black money" does not satisfy the first test;**
>
> (b) no explanations have been given as to how mandatory linking of every bank account will eradicate/reduce the problems of "money laundering" and "black money";

(c) there are alternative methods of KYC which the banks are already undertaking, the state has not discharged its burden as to why linking of Aadhaar is imperative. We may point out that RBI's own Master Direction (KYC Direction, 2016) No. DBR.AML.BC. No. 81/14.01.001/2015-16 allows using alternatives to Aadhaar to open bank accounts."[emphasis added]

In contrast, the idea of widespread welfare fraud and people not being able to access their welfare rights because of a lack of identification were accepted without question by this Court. The Hon'ble Court should have applied a similar logic when examining whether there was a rational connection between the stated aim of the Aadhaar Act and its architecture.

iv. Forcing all welfare recipients to give over their biometric details to cure one purported form of fraud, is contrary to the principle applied by the judgement when examining the validity of the PMLA Rules. This Hon'ble Court held that the "Presumption of criminality is treated as

disproportionate and arbitrary." This is the standard that should be applied to Section 7, and the presumption with regard to Section 7, which purports to treat recipients of welfare schemes as if they were trying to trick the system.

v. In addition, it was submitted before this Hon'ble Court that the correct perspective to examine the reach of the notifications under Section 7, is by applying the benchmark of "non-retrogression" which is an evolving norm in human rights law. As of May 2018, the number of section 7 notification was 144 covering 252 schemes. Once the State assures its citizens a certain level of social and economic rights, there ought not to be any conditionality by which there is a regression. TheJudgement held that schemes which relate to children, and to evaluating merit, such as the awarding of scholarships, would not be subject to Aadhaar enrollment and verification. However, the Court didn't address the arguments of the State's duty to non-

retrogression with respect to core socio-economic rights.

vi. The Majority judgement has noted that in some cases there could be a reasonable expectation of greater privacy. An illustrative but non-exhaustive list of “sensitive” schemes which are covered by the government’s notifications, which have not been noticed by this Hon’ble Court, are reproduced below. However, the Majority judgement has not noted that such data, which is even excluded under the Act is being brought in, by mandating Aadhaar linkage to avail these schemes. For instance:

    1. Any scheme for rehabilitation that involves an element of stigma and therefore demands a full protection of privacy of the individual examples: bonded labour, manual scavenging, rescue from trafficking, abandoned women, child labour.

    2. Any scheme relating to health of the citizen, including for HIV positive patients.

3. The public distribution system in so far as it applies to old persons, persons with mental illness, persons with physical disability, persons whose biometrics do not register, persons engaged in manual labour.

4. Caste based schemes and religious minority-based schemes.

vii. The impugned Majority judgement has held that dignity includes both the right to privacy and access to fundamental rights like food and shelter. However, given the large failure rate of biometric authentication, which has been admitted to be around 12% of the total population, the impact on people is that they are being denied both types of dignity. As the Minority judgement notes, in Para 253, "…Exclusion from these schemes defeats the rationale for the schemes which is to overcome chronic hunger and malnutrition. Exclusion is violative of human dignity."

viii. The impugned Majority judgement notes that while the prevention of black money and

money laundering is a legitimate aim, there was a lack of “serious thinking” of the implications of making the provision applicable for every bank account,” and struck the provision down on that account. However, the Court didn’t appreciate that there was a similar “lack of serious thinking” of the implications of making Aadhaar mandatory for everyone to file taxes, or access their welfare rights. These “implications”, that mandating Aadhaar for Section 7 would prevent people from exercising their inalienable right to privacy, and would also prevent them from accessing their socio-economic rights, were demonstrated before the Court in the form of expert evidence, but were not referred to at all. The Judgement’s findings with respect to the constitutionality of Section 139AA of the Income Tax Act, and the unconstitutionality of Rule 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2017 cannot be harmoniously read together, and that the former should also be struck down as unconstitutional in the grounds that it also fails

to meet the standard of proportionality as articulated with respect to the latter.

ix. This was also noted in the Minority Judgement. In Para 217, Justice Chandrachud stated, "… *It needs no reiteration that an entire population cannot be presumed to be siphoning huge sums of money in welfare schemes or viewed through the lens of criminality, and therefore, considered as having a diminished expectation of privacy.*"

D. This Hon'ble Court in the impugned Majority judgement failed to note that the creation of a database on the basis on self-authentication, unverified by any government official, is foundationally absurd.

i. The fact that there was no validation of the information submitted to Aadhaar was accepted by the Respondents. This was not addressed in the Majority judgement at all.

ii. For instance, in noting that illegal immigrants had to be removed from the Aadhaar database, this Hon'ble Court has accepted the position of the Respondents that no system of checking

was adopted by the Respondent Authority to ensure the authenticity of data submitted to it. The "residence" requirement under the Aadhaar programme is based on self-declaration, and before the Aadhaar Act came into force on 12.09.2016, even this declaration was not required to be made. However, this Hon'ble Court does not address this larger contention that none of the data within the Aadhaar database has been subjected to any level of scrutiny or checking by the Authority.

iii. This, too was noted by the Minority judgement, which stated in Para 222, "…Our analysis indicates that the correctness of the documents submitted by an individual at the stage of enrolment or while updating information is not verified by any official of UIDAI or of the Government. UIDAI does not take institutional responsibility for the correctness of the information entering its database."

E. The impugned Majority judgement's findings on the validity of actions taken by the Respondentsin the pre-statute regime, before the Act was introduced in

2016, were arrived at without considering crucial facts of how the Aadhaar programme were carried out. These omissions amount to an error on the face of the record.The wording of Section 59 contains the limiting words “action taken by the Central Government”. Thus, it does not cover actions taken by private entities, State governments or independent corporations in relation to the Aadhaar programme. Failing to address this fact is another error apparent on the face of the record.

F. The repeated violations of interim ordersshould have been dealt with as pertaining to the rule of law and basic structure of the Constitution, and not merely as a matter of contempt.The impugned Majority judgement dealt with the issue of repeated violations interim order as being satisfactorily covered by the enactment of the Aadhaar Act, and Section 7.It should have appreciated how the failure of the Respondent authority and State to follow the repeated interim orders of the government betrays a blatant disregard for the solemnity of the constitutional structure and is a matter which required separate adjudication in the interests of

natural justice. It is submitted that the foundation of the power of judicial review power is the duty of every court exercising judicial review to ensure that interim orders passed are faithfully complied with. Unless this is done, the citizenry and the bureaucracy will lose faith in the efficacy of judicial review, which threatens to dent the image of Constitutional Courts in India.

G. There were also several internal inconsistencies in the impugned Majority judgement, which are errors apparent on the face of the record, and must be resolved in the interests of natural justice. There have been listed in the table below:

<table>
<tr>
<td><u>AUTHENTICATION FAILURE RATE</u>

In <u>Para 319</u> the Court proceeds on the basis that the authentication failure rate is 0.232%:

“It would be appropriate if a suitable provision be made in the concerned regulations for establishing an identity by alternate means, in such situations.</td>
<td>However in <u>Para 53</u>, when noting the UIDAI’s response to questions put to it by the Petitioners, the Authentication failure rates are actually much higher:

<table>
<tr><th>Modality</th><th>UniqueUID Participated</th><th>Failed Unique ID</th><th>Failed %</th></tr>
<tr><td>IRIS</td><td>1,08,50,391</td><td>9,27,132</td><td>8.54%</td></tr>
<tr><td>FINGER</td><td>61,63,63,346</td><td>3,69,62,619</td><td>6.00%</td></tr>
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</td>
</tr>
</table>

Furthermore, if there is a 0.232% failure in authentication, it also cannot be said that all these failures were only in those cases where authentication was for the purpose of utilising for the benefit of the welfare schemes, i.e. with reference to Section 7 of the Act. It could have happened in other cases as well…The Authority has claimed that biometric accuracy is 99.76% and the petitioners have also proceeded on that basis."	
RECOGNIZING WELFARE AS A RIGHT **The Court recognized that right to food has attained the status of a Constitutional fundamental right, but also held that Aadhaar enrolment can be a basis for that:** ***See* Para 263:** "The shift is from the welfare approach to a right based approach. As a consequence, right of everyone to adequate food no	**This cannot be read harmoniously with how the Court deals with the right to education. It held that constitutional rights cannot be made conditional on the requirement of holding an Aadhaar card, and cannot be treated as a benefit.** ***See* Para 324:** "Article 21A of the Constitution guarantees right to education and makes it fundamental right of the children between 6 years and 14 years of age.Such a right cannot be taken away by imposing requirement of holding Aadhaar card, upon the children." ***And also*, Para 447, Issue 3, (c)** "..Further, having regard to the fact that a child between the age of 6 to 14 years has the fundamental right to education under Article 21A of the Constitution, school admission

more remains based on Directive Principles of State Policy (Art 47), though the said principles remain a source of inspiration. This entitlement has turned into a Constitutional fundamental right." ***Also see*Para 447, in response to Issue No. (2)(c), at pg. 547:** "…(c) Right to receive these benefits, from the point of view of those who deserve the same, has now attained the status of fundamental right based on the same concept of human dignity, which the petitioners seek to bank upon." **However, these benefits are then made conditional on Aadhaar authentication. *See* "Conclusions," para 447, Issue 6, at pg. 563** (d) ….We may record here that such an enrolment is of voluntary nature. However, it becomes compulsory for those who seeks to receive any subsidy, benefit	cannot be treated as 'benefit' as well."

or service under the welfare scheme of the Government expenditure whereof is to be met from the Consolidated Fund of India. **It follows that authentication under Section 7 would be required as a condition for receipt of a <u>subsidy, benefit or service</u> only when such a subsidy, benefit or service is taken care of by Consolidated Fund of India.**	
<u>STATED AIM OF THE ACT</u> **The Court upheld the Act on the grounds that the main aim of the Act was to ensure that benefits actually reach their intended recipients.** ***See* Para 266:** "By no stretch of imagination, therefore, it can be said that there is no defined State aim in legislating Aadhaar Act. We may place on record that even the petitioners did not seriously question the purpose bona fides of the legislature in	**However, the Court also affirmed the used of Aadhaar for other reasons, including curbing black money, in reference to Section 139AA of the Income Tax Act.** ***See*Para 105** Unearthing black money or checking money laundering is to be achieved to whatever extent possible. Various measures can be taken in this behalf. If one of the measures is introduction of Aadhaar into the tax regime, it cannot be denounced only because of the reason that the purpose would not be achieved fully. ***Also see* Para 423** Thus, linking of PAN with Aadhaar will significantly enhance legitimate collection of country's revenue.

enacting this law. In a welfare State, where measures are taken to ameliorate the sufferings of the downtrodden, the aim of the Act is to ensure that these benefits actually reach the populace for whom they are meant. This is naturally a legitimate State aim." ***Also see* Para 406**: "In fact, Introduction to the Act as well as the Statement of Objects and Reasons very categorically record that the main **purpose** of Aadhaar Act is to ensure that such subsidies, benefits and services reach those categories of persons, for whom they are actually meant." ***And* Para 407** "As all these three kinds of welfare measures are sought to be extended to the marginalised section of society, a collective reading thereof would show that the **purpose** is to expand the coverage of all kinds	

of aid, support, grant, advantage, relief provisions, facility, utility or assistance which may be extended with the support of the Consolidated Fund of India with the objective of targeted delivery." **And Para 417, at pg. 548** (a)"….It also serves legitimate State aim, which can be discerned from the Introduction to the Act as well as the Statement of Objects and Reasons which reflect that the aim in passing the Act was to ensure that social benefit schemes reach."	
<u>VOLUNTARINESS</u> **Contradictory statements were made with reference to the voluntary nature of the Aadhaar Act. *See* Para 277** "It may be	**However, the Court says, in "Conclusions," para 447, Issue 6, at pg. 563:** "(d) ….We may record here that such an enrolment is of voluntary nature. **<u>However, it becomes compulsory for those who seeks to receive any subsidy, benefit or service under the welfare scheme of the Government expenditure whereof is to be met from the Consolidated Fund of India</u>**. It

mentioned that the scheme for enrolling under the Aadhaar Act and obtaining the Aadhaar number **is optional and voluntary**. It is given the nomenclature of unique identity." **In para 336, when dealing with Section 3, the Court referred to the ruling in *BinoyVisvam*, which stated:** "However, it is a moot question as to whether for obtaining benefits as prescribed under Section 7 of the Aadhaar Act, it is mandatory to give Aadhaar number or not is a debatable issue which we are not addressing as this very issue is squarely raised which is the subject-matter of other writ petition filed and pending in this Court. Therefore, the apprehension of the petitioners that	follows that authentication under Section 7 would be required as a condition for receipt of a subsidy, benefit or service only when such a subsidy, benefit or service is taken care of by Consolidated Fund of India."

Section 3 is mandatory stands assuaged.” **Again, when determining the constitutionality of the linkage to cellphone connections, in Para 442, the Court stated:** “It does not meet ‘necessity stage’ and ‘balancing stage’ tests to check the primary menace which is in the mind of the respondent authorities. There can be other appropriate laws and less intrusive alternatives. **It also impinges upon the voluntary nature of the Aadhaar scheme.”**	

H. This Hon’ble Court has also acted in error in fact and law, in addition to several internal inconsistencies, when applying the proportionality test to the various Sections of the Act.

i. The proportionality test with respect to Article 21 violations should have been applied afresh when considering Section 139AA of the Income

Tax Act. The Judgement relied on the findings in *BinoyViswam v. Union of India &Anr. 2017 7 SCC 59*, to uphold the Section. However, the judgement in *BinoyViswam* was given before the right to privacy judgement was passed in *Puttaswamy v. Union of India 2017 10 SCC 1*,and therefore its findings on whether the proposed measures met the proportionality test cannot be relied upon. The measures were not tested against the right to privacy, and the presence of a less invasive alternative was not even considered. This is a violation of the principles of natural justice.

PRAYER

13. In the circumstance mentioned above it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

a) Review the impugned judgment dated 26.09.2018 in Writ Petition (Civil) No. 342/2017 passed by this Hon'ble Court to correct and clarify the errors apparent on the face of the record as highlighted in the present Review Petition;

b) Pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the interest of Justice and the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE REVIEW APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY: -
Ria Singh Sawhney,
Sugandha Yadav, Samiksha Godiyal
and Udayaditya Banerjee,
Advocates

SETTLED BY: -
Mr. Shyam Divan,
Senior Advocate

FILED BY:

_____
VIPIN NAIR
ADVOCATE-ON-RECORD
FOR THE REVIEW PETITIONERS

NEW DELHI
FILED ON:09.01.2019

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

REVIEW PETITION (CIVIL)NO._____OF 2019
IN

WRIT PETITION (CIVIL) NO. 342 OF 2017

IN THE MATTER OF: -

SHANTHA SINHA AND ANOTHER …PETITIONERS

VERSUS

UNION OF INDIA AND ANOTHER …RESPONDENTS

CERTIFICATE

Certified that the present Review Petition is the first application for the review of the impugned Order dated 218.2017 and it is based on the grounds admissible under the Rules No. additional facts, documents or grounds have been taken therein or relied upon the Review Petition which were not part of the Civil Appeal earlier. All the parties to this review petition are same as those in the Civil Appeal.

FILED BY:

_____
VIPIN NAIR
ADVOCATE-ON-RECORD
FOR THE REVIEW PETITIONERS

NEW DELHI
FILED ON:10.01.2019

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA NO. _____OF 2019

IN

REVIEW PETITION NO. _____OF 2019

IN

WRIT PETITION NO. 342/2017

IN THE MATTER OF:

SHANTHA SINHA AND ANR. …PETITIONERS

VERSUS

UNION OF INDIA AND ANR. …RESPONDENTS

AND IN THE MATTER OF:

APPLICATION FOR GRANT OF PERSONAL HEARING

To,

The Hon'ble Chief Justice of India
and his companion Judges of the
Supreme Court of India, New Delhi.

The humble petition of thepetitioner above named.

MOST RESPECTFULLY SHOWETH :

1. The present review petition has been filed under Article 137 of the Constitution of India read with Order XLVII Rule 1 of the Supreme Court Rules, 2013, requests the Supreme Court of India to review the Majority Judgments rendered by it on 26.9.2018 in what is popularly known as the Aadhaar case (Justice K.S. Puttaswamy v. Union of India). This judgment disposed of a batch of writ petitions filed under Article 32 of the Constitution as well as transfer

petitions. The Aadhaar case was heard and decided by a Constitution Bench of five Learned Judges.

2. Three judgments were rendered by this Hon'ble Court. Dr. A.K. Sikri, J. (for himself as well as Dipak Mishra, CJI and A.M. Khanwilkar, J.) authored the majority judgment. Ashok Bhushan, J. rendered a separate judgment which broadly concurred with the majority judgment. These two judgments are together referred to as the 'Majority Judgments'.

3. The third judgment of the court was rendered by Dr. D.Y. Chandrachud, J. and is a dissent. The review petitioners on legal advice believe that the view taken by Justice Chandrachud is the correct view. Consequently, this petition seeks review of the Majority Judgments alone.

4. All the grounds raised here are covered by Order XLVII of the Supreme Court Rules, 2013. The Majority Judgments suffer from errors apparent on the face of the record as set out below.

5. This review petition is being filed on the grounds that there are serious errors, and internal inconsistencies within the Majority Judgements, which necessitate correction in the interests of justice. A program such as Aadhaar has a serious, long standing, impact on the constitutional structure of our country. At the outset, the

Aadhaar Bill was incorrectly certified as a Money Bill, as it failed to meet the strict standard laid out in Article 110(1). For a legislation that has serious implications on the rights of citizens to be passed without consideration of the Rajya Sabha is nothing but a fraud on the Constitution, as the Minority Judgement notes. Second, the Majority judgement committed a serious error on the face of the record in not appreciating how the architecture of Aadhaar creates a surveillance state. The Majority judgement did not even refer to the expert evidence submitted by both the Petitioner and the Respondent, which demonstrated how locational tracking was possible under Aadhaar. The Majority Judgement also didn't address the fact that the Aadhaar database carried very little value as there is no verification of the information submitted to it. Third, the Majority judgement commits an error in holding the use of Aadhaar under Section 7 was permissible, despite the deleterious impact it had on the rights of the most marginalized and vulnerable, who had been resigned to the status of second class citizens. The Majority judgement ignored evidence submitted before the Hon'ble Court which showed that mandating Aadhaar authentication to access welfare benefits had caused exclusion to the extent of starvation deaths. There are

also several internal inconsistencies within the judgement, listed below, including the manner in which the proportionality test was applied to the different applications of Aadhaar. These findings cannot be read together harmoniously, and require resolution in the interests of justice.

6. The Petitioners submit that in these circumstances it is prayed that the Petitioners should be granted an opportunity of personal hearing in the matter in order to put forward the contentions regarding the need for review of the impugned Judgment.

P R A Y E R

It is therefore most respectfully prayed that this Hon'ble Court be graciously pleased to:

i) GRANT an opportunity of personal hearing to the petitioner;

ii) PASS any other Order or such further orders as may be deemed fit in the facts of the present case.

FILED BY:

_____
VIPIN NAIR
ADVOCATE-ON-RECORD
FOR THE REVIEW PETITIONERS

NEW DELHI
FILED ON:10.01.2019

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA NO. _____OF 2019

IN

REVIEW PETITION NO. _____OF 2019

IN

WRIT PETITION NO. 342/2017

IN THE MATTER OF:

SHANTHA SINHA AND ANR. …PETITIONERS

VERSUS

UNION OF INDIA AND ANR. …RESPONDENTS

AND IN THE MATTER OF:

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED JUDGMENT

_____

To,

The Hon'ble Chief Justice of India
and his companion Judges of the
Supreme Court of India, New Delhi.

The humble petition of the petitioner above named.

MOST RESPECTFULLY SHOWETH :

1. The present review petition has been filed under Article 137 of the Constitution of India read with Order XLVII Rule 1 of the Supreme Court Rules, 2013, requests the Supreme Court of India to review the Majority Judgments rendered by it on 26.9.2018 in what is popularly known as the Aadhaar case (Justice K.S. Puttaswamy v. Union of India). This judgment disposed of a batch of writ petitions filed under Article 32 of

the Constitution as well as transfer petitions. The Aadhaar case was heard and decided by a Constitution Bench of five Learned Judges.

2. The Petitioner have applied for a certified copy of the impugned judgment. However, the same has not yet been received from the Registry. In these circumstances, the Petitioner is filing the true copy of the said judgment, which may be taken on record. The petitioner undertakes to file the certified copy of the judgment as and when the same is received.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court be graciously pleased to:

i) EXEMPT the Petitioner from filing the certified copy of the impugned Judgment passed by this the Hon'ble Court, dated 26.09.2018 in Writ Petition No. 342 of 2017;

ii) PASS any other Order or such further orders as may be deemed fit in the facts of the present case.

FILED BY:

_____
VIPIN NAIR
ADVOCATE-ON-RECORD
FOR THE PETITIONERS

NEW DELHI
FILED ON:10.01.2019

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA NO. _____OF 2019
IN
REVIEW PETITION NO. _____OF 2019
IN
WRIT PETITION NO. 342/2017

IN THE MATTER OF:

SHANTHA SINHA AND ANR. …PETITIONERS

VERSUS

UNION OF INDIA AND ANR. …RESPONDENTS

AND IN THE MATTER OF:

APPLICATION FOR CONDONATION OF DELAY IN FILING THE REVIEW PETITION

To,

The Hon'ble Chief Justice of India
and his companion Judges of the
Supreme Court of India, New Delhi.

The humble petition of the petitioner above named.

MOST RESPECTFULLY SHOWETH :

1. The present review petition has been filed under Article 137 of the Constitution of India read with Order XLVII Rule 1 of the Supreme Court Rules, 2013, requests the Supreme Court of India to review the Majority Judgments rendered by it on 26.9.2018 in what is popularly known as the Aadhaar case (Justice K.S. Puttaswamy v. Union of India). This judgment disposed of a batch of writ petitions filed under Article 32 of the Constitution

as well as transfer petitions. The Aadhaar case was heard and decided by a Constitution Bench of five Learned Judges.

2. Three judgments were rendered by this Hon'ble Court. Dr. A.K. Sikri, J. (for himself as well as Dipak Mishra, CJI and A.M. Khanwilkar, J.) authored the majority judgment. Ashok Bhushan, J. rendered a separate judgment which broadly concurred with the majority judgment. These two judgments are together referred to as the 'Majority Judgments'.

3. The third judgment of the court was rendered by Dr. D.Y. Chandrachud, J. and is a dissent. The review petitioners on legal advice believe that the view taken by Justice Chandrachud is the correct view. Consequently, this petition seeks review of the Majority Judgments alone.

4. All the grounds raised here are covered by Order XLVII of the Supreme Court Rules, 2013. The Majority Judgments suffer from errors apparent on the face of the record as set out below.
5. This review petition is being filed on the grounds that there are serious errors, and internal inconsistencies within the Majority Judgements, which necessitate correction in the interests of justice. A program such as Aadhaar has a serious, long standing, impact on the constitutional structure of our country. At the outset, the Aadhaar Bill was incorrectly certified as a Money Bill, as it failed to meet the strict standard laid out in Article

110(1). For a legislation that has serious implications on the rights of citizens to be passed without consideration of the Rajya Sabha is nothing but a fraud on the Constitution, as the Minority Judgement notes. Second, the Majority judgement committed a serious error on the face of the record in not appreciating how the architecture of Aadhaar creates a surveillance state. The Majority judgement did not even refer to the expert evidence submitted by both the Petitioner and the Respondent, which demonstrated how locational tracking was possible under Aadhaar. The Majority Judgement also didn't address the fact that the Aadhaar database carried very little value as there is no verification of the information submitted to it. Third, the Majority judgement commits an error in holding the use of Aadhaar under Section 7 was permissible, despite the deleterious impact it had on the rights of the most marginalized and vulnerable, who had been resigned to the status of second class citizens. The Majority judgement ignored evidence submitted before the Hon'ble Court which showed that mandating Aadhaar authentication to access welfare benefits had caused exclusion to the extent of starvation deaths. There are also several internal inconsistencies within the judgement, listed below, including the manner in which the proportionality test was applied to the different applications of Aadhaar. These

findings cannot be read together harmoniously, and require resolution in the interests of justice.

6. There is a short delay in filing the review petition; and in view of the important issues being raised therein, the petitioners request this Hon'ble Court to condone the delay. The petitioners required long hours of analysis and to consult technically qualified persons so as to understand and appreciate the full impact of the majority and minority views in the impugned Judgments, which were also voluminous.

7. It is therefore most respectfully submitted that the delay was due to the above reasons and was neither willful nor deliberate; and it is in the interest of justice that this Hon'ble Court be pleased to condone the delay.

P R A Y E R

It is therefore most respectfully prayed that this Hon'ble Court be graciously pleased to:

i) CONDONE the delay of _____ day in preferring the present REVIEW PETITION AGAINST THE impugned judgment dated 26.09.2018 in Writ Petition (Civil) No. 342/2017, and

ii) PASS any other Order or such further orders as may be deemed fit in the facts of the present case.

FILED BY:

_____
VIPIN NAIR
ADVOCATE-ON-RECORD
FOR THE REVIEW PETITIONERS

NEW DELHI
FILED ON: 10.01.2019