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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.NO. /2017

IN

WRIT PETITION (CIVIL) NO. 494/ 2012

IN THE MATTER OF:

Justice K.S. Puttaswamy (Retd.)

... Petitioner

Versus

Union of India & Anr.

... Respondents

AND IN THE MATTER OF:

SWATANTRA

A registered Charitable Trust

Having its registered address at:

Mahabodhi Arogya Seva Kendra

Siddapura Main Road

Opposite Lalbagh, 1st Block, Jayanagar

Bangalore-560001

Karnataka

Represented by its Authorised Signatory

...APPLICANT

APPLICATION FOR IMPLEADMENT

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

THE HUMBLE APPLICATION OF THE ABOVE NAMED
APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner has filed the above mentioned Writ Petition challenging the constitutional validity of the Aadhaar Scheme. The said petition is the lead petition in the list of connected matters filed challenging the constitutional vires of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.
2. The Applicant herein is filing the present application seeking impleadment as party-Petitioner in the above referred writ petition filed by the Petitioner therein. The Applicant had earlier filed a Writ Petition being W.P.(C) No. 1123/2017 praying for the declaration that the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 violates Articles 14, 19 and 21 of the Constitution and is thus unconstitutional. However, owing to the nature of relief being the same as sought in the present writ petition and other connected matters, this Hon'ble Court vide order dated 01.12.2017 was pleased to dispose off the said writ petition filed by the Applicant herein while granting the liberty to

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implead / Intervene in the present Writ Petition. Hence the present Application for impleadment. True copy of the order dated 01.12.2017 in W.P.(C) 1123/2017 is annexed hereto and marked as ANNEXURE- A-1 (Pages 33 To.....)

3. The Applicant is a not for profit registered trust working with the transgender and sexual minorities community in Bangalore. The Applicant organization primarily works in the areas of advocacy and spreading awareness on issues pertaining to transgender rights In India. The Applicant organization is engaged with the members of the transgender and sexual minorities community belonging to the working class. The Applicant organization was founded by Akkai Padmashali who is a well-known transgender rights activist. In 2015, she was awarded the Karnataka Rajyotsava Award, which is the highest award in the State for her contribution as a social rights activist working for the rights of sexual minorities. She is also the first transgender woman in the State to be given this award. In 2016, she was awarded an honorary Doctorate by the Indian Virtual University for Peace and Education and has become the first transgender person in the country to be awarded a Doctorate. The Applicant organization has been working to educate the sexual minority community members about their rights and has also worked on issues concerning Right to Health and the right to access health services. The Applicant works on issues of gender and gender

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based violence with the community of gender and sexual minorities, media, civil society organisations, police, judiciary and the legislature, to bring awareness and change for the community. The Applicant organization among other things, has been working with the Karnataka State Government, which recently adopted a Policy for Transgender persons. It has also been working with doctors for drafting uniform guidelines in India for sex reassignment surgery (SRS) for transgender persons. True copy of the News and Media report dated 13.09.2017 documenting the efforts of the Applicant organization towards implementing guidelines in India for sex reassignment surgery (SRS) for transgender persons is annexed hereto and marked as **ANNEXURE – A-2_**(Pages 34. To 37)

Brief Facts:

4. It is submitted that on 03.03.2006, the Government of India through the Ministry of Communications & Information Technology granted administrative approval for a scheme to issue a unique identification for Below Poverty Line families. An Empowered Group of Ministers (EGoM) was constituted in December 2006 to consolidate two schemes of the National Population Register and a Unique Identification Scheme.
5. Thereafter on 28.01.2009, the Union of India notified the establishment of an executive body called the Unique

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Identification Authority of India ("UIDAI") vide Notification No-A-43011/02/2009-Admn.I. The UIDAI was set up as an attached office of the Planning Commission. The role of the UIDAI was to develop and implement the necessary institutional, technical and legal infrastructure to issue unique identity numbers ("UID") also known as "Aadhaar" to Indian residents. The UIDAI recommended the collection of biometric information for collection of identity details of residents which included face recognition by collection of photographs, ten fingerprints and Iris scans of each person. True copy of the Notification dated 28.01.2009 is annexed hereto and marked as ANNEXURE- A-3 (Pages 39 To 40)

6. Despite there being no legislation in place for the Aadhaar, the UIDAI started issuing UIDs or Aadhaar numbers with the first Aadhaar number being issued on 29th September 2010. When Aadhaar enrolment started, it was always the stated position of the Government of India that enrolment with Aadhaar was voluntary and not mandatory.
7. After Aadhaar numbers were being issued and enrolment process was well underway, the National Identification Authority of India Bill, 2010 ("NIA Bill") was introduced in the Rajya Sabha on 3.12.2010 to provide legislative backing for the Aadhaar. True copy of the National Identification Bill is

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annexed herein and is marked as **ANNEXURE – A-4** (Pages
41. To 94)

8. Thereafter on 13.11.2011, the Standing Committee on Finance submitted its Forty Second Report on the NIA Bill, 2011 in which it concluded that the issuance of Aadhar or UID numbers, pending passing of the Bill by Parliament, does not satisfy the Committee. The Report expressed serious concerns on the issues relating to privacy and security of UID data and the necessity of collection of iris images. It noted that although the Aadhaar scheme is claimed to be voluntary, if services and benefits are linked to it, it could end up becoming mandatory. It also stated that the enactment of a national data protection law would be a pre-requisite when such large scale collection of personal information from individuals is being collected, with linkages of such data across separate databases. In the absence of such data protection legislation, it would be difficult to deal with access and misuse of personal information, surveillance, profiling, linking and matching of databases and securing confidentiality of information. True copy of the 42nd Parliamentary Standing Committee Report dated 13.11.2011 on the NIA Bill is annexed hereto and marked as **ANNEXURE –A-5** (Pages 95 To 143)

9. Following this, the Union of India subsequently started issuing several notifications making the Aadhaar mandatory for

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accessing several benefits without any law providing for such mandatory enrollment with Aadhaar. Aggrieved by this, the present Writ Petition by way of Public Interest Litigation was filed before this Hon'ble Court challenging the Aadhaar Scheme alleging several infringements of fundamental rights, including the deprivation of benefits of welfare schemes in the absence of Aadhar. In this and other petitions, this Hon'ble Court passed an interim order dated 23.09.2013 and directed that no person should suffer for not having an Aadhaar card, even if it has been made mandatory by certain authorities to avail benefits. True copy of the Interim Order of this Hon'ble Court in W.P.(C.) No. 494/2012 dated 23.09.2013 is annexed hereto and marked as **ANNEXURE -A-6 (Pages 144 To 147)**

10. During this time a Special Leave Petition being SLP(Cr) 2524/2014 was filed by the 2nd Respondent, the Unique Identification Authority of India against the Criminal Bureau of Investigation. The case has subsequently been tagged with the present writ petition. This Hon'ble Court in the aforesaid case issued an order dated 24.3.2014 restraining the Unique Identification Authority from transferring any biometric information of any person to any other agency. This Hon'ble Court also ordered that no person should be denied any service or benefit to which he/she is entitled/eligible because of want of an Aadhar card. This Hon'ble Court directed all agencies to modify their forms or circulars to not compulsorily

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require an Aadhar number. True copy of the Interim Order of this Hon'ble Court in SLP(Crl.) 2524/2014 dated 24.03.2014 is annexed hereto and marked as **ANNEXURE – A-7 (Pages 148. To 149)**

11. That during this time, on 15.4.2014 this Hon'ble Court passed its judgement in *National Legal Services Authority Vs. Union of India & Ors.* recognising the rights of transgender persons to self identify their gender as male / female or third gender and held that the right to gender identity was a right under the right to life, liberty and autonomy and that the right to privacy was an integral part of their right to life.

12. That vide its order dated 11.08.2015, this Hon'ble Court directed the Union of India to widely publicise the non-mandatory nature of Aadhar scheme, and ordered that it will not be a mandatory requirement to obtain any benefits otherwise due and held that Aadhaar will not be used for any scheme besides the Public Distribution Scheme and the LPG Distribution Scheme. True copy of the Order dated 11.8.2015 passed by this Hon'ble Court in W.P.(C) 494/2012 is annexed hereto and marked **ANNEXURE –A-8 (Pages 152 To 166)**

13. That on 03.03.2016, the Union of India introduced The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 in the Lok Sabha as a Money

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Bill. The Bill was passed in the Lok Sabha on 11.03.2016 and subsequently in the Rajya Sabha on 16.03.2016. The Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 ("Aadhaar Act") came into force on 25.03.2016. True copy of the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 is annexed hereto and marked as **ANNEXURE -A-9 (Pages 167 To 198)**

14. It is submitted that the Aadhaar Act provides in Sections 3, 6, and 7 the mandatory nature of enrolment for the Aadhaar, the requirement of personal demographic and biometric identification details and the powers of the central and State governments to require the Aadhaar for the grant of any benefit or scheme. These Sections are as follows:

"Sec. 3. (1) Every resident shall be entitled to obtain an Aadhaar number by submitting his demographic information and biometric information by undergoing the process of enrolment:

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

Sec. 6. The Authority may require Aadhaar number holders to update their demographic information and biometric

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information, from time to time, in such manner as may be specified by regulations, so as to ensure continued accuracy of their information in the Central Identities Data Repository.

Sec. 7. The Central Government or, as the case may be, the State Government may, for the purpose of establishing identity of an individual as a condition for receipt of a subsidy, benefit or service for which the expenditure is incurred from, or the receipt therefrom forms part of, the Consolidated Fund of India, require that such individual undergo authentication, or furnish proof of possession of Aadhaar number or in the case of an individual to whom no Aadhaar number has been assigned, such individual makes an application for enrolment: Provided that if an Aadhaar number is not assigned to an individual, the individual shall be offered alternate and viable means of identification for delivery of the subsidy, benefit or service."

15. Since then, the central and state governments have been issuing numerous notifications and circulars making the Aadhaar mandatory for availing of several benefits and amenities and even for provision of services and statutory and fundamental rights including access to health care, HIV treatment, schemes for SC/ST persons among others.

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16. On 16.02.2017, the Ministry of Social Justice and Empowerment issued a Notification stating that the Aadhaar has been made mandatory for those seeking to receive financial assistance under the various education schemes for Scheduled Caste and Other Backward Class students wishing to avail scholarships. True copy of the Notification F. No. 14016/3/2017-DBT issued by the Ministry of Social Justice and Empowerment dated 16.02.2017 is annexed hereto and marked as **ANNEXURE -A-10 (Pages 199 To 203)**

17. Thereafter on 28.2.2017, the Ministry of Health and Family Welfare issued a Notification mandating all individuals eligible for benefits under the National Health Mission to furnish proof of possession of Aadhaar or to undergo the Aadhaar authentication. True copy of the Notification F. No. Z-14018/1/2017-MCH (JSY) issued by the Ministry of Health and Family Welfare dated 28.02.2017 is annexed hereto and marked as **ANNEXURE- A-11 (Pages 204 To 207)**

18. That the National Aids Control Organisation ("NACO") has also made Aadhaar mandatory. It has initiated a requirement to link all the persons living with HIV to the Aadhaar Card. This linkage with Aadhaar will be mandatory for persons living with HIV to access the benefits being provided under Central and State Government's, health, financial assistance and social sector schemes including to access treatment and

drugs and for remittance of financial benefits directly to their bank accounts. Currently this is already initiated in a few other States and already registered patients at ART Centres are requested to provide their Aadhaar Card details and in many centres across the country, treatment and drugs are not being provided to persons living with HIV if they have not enrolled under Aadhaar. There is a large transgender and sexual minorities population living with HIV and such denial of HIV drugs and treatment for non-enrolment with Aadhaar amounts to a violation of their fundamental right to health and life as they will not be able to afford medical treatment without support from the State. This mandatory linking with Aadhaar is driving patients away from treatment due to apprehensions of identity disclosure and the resulting social stigma. True copy of the notification for registration of Aadhaar as obtained from the NACO website dated 01.04.2017 is annexed hereto and marked as **ANNEXURE A-12 (Pages 2.08 To 2.09)** True Copy of the news report published in Hindustan Times on 03.04.2017 documenting the privacy concerns arising out of the mandatory linking of Aadhaar for HIV persons is annexed hereto and marked as **ANNEXURE – A-13 (Pages 2.10 To 2.12)** True copy of the media report dated 29.03.2017 recording the consequences of the mandatory linking of Aadhaar for HIV persons is annexed hereto and marked as **ANNEXURE – A-14 (Pages 2.13 To 2.14)**

19. That the Aadhar was also made mandatory for availing benefits under schemes under the Protection of Civil Rights Act, 1955 and SC & ST Prevention of Atrocities Act, 1989 and a Notification was issued on 1.3.2017 in this regard. True copy of the Notification dated 01.03.2017 is annexed hereto and marked **ANNEXURE – A-15 (Pages 2.15 To 2.18)**
20. Other Acts of Parliament were also amended to make Aadhaar mandatory. The Finance Act 2017 made Aadhaar a requirement for filing income tax returns, and applying for and retaining a Permanent Account Number (the identification issued by India's Income Tax Department).
21. During this time, it has also been reported widely that personal demographic and biometric data of persons enrolled under Aadhaar has been made public and also misused by private persons and several instances of fraud have also been widely reported in the media. In April 2017, the Aadhaar numbers and bank details of more than a million pension beneficiaries in the state were displayed on a state government website. This kind of publication of personal data and its misuse amounts to a huge privacy infringement of persons whose data has been obtained under Aadhaar enrolment. The Aadhaar Act also allows for private sector use of Aadhaar. Any public or private entity may use Aadhaar to establish the identity of an individual. It is in foresight of these security

concerns and breaches on account of private companies having access to data collected under Aadhaar that the Rajya Sabha had proposed the deletion of Clause 57 of the Aadhaar Bill which stated that "*nothing contained in this Act shall prevent the use of the Aadhaar number for establishing the identity of an individual for any purpose, whether by the state or any body, company or person.*" This amendment however was not accepted by the Lok Sabha. Today, Aadhaar is being used by several private sector entities for uses ranging from e-KYC for SIM card issuance to background verification of potential employees. It makes the transgender community particularly vulnerable as they are the most marginalised and vulnerable to violence and surveillance. True copy of the media report of the Wire dated 23.03.2017 recording the public availability of personal data of lakhs of Indians is annexed hereto and marked as **ANNEXURE – A-16 (Pages 221 To 222)** True copy of the media report dated 01.05.2017 published by the WIRE recording data leaks of over a 130 million Aadhaar numbers is annexed hereto and marked as **ANNEXURE – A-17 (Pages 222 To 224)**. True copy of the news article dated 19.07.2017 of the Hindustan Times reporting the publication of details of over a million Aadhaar numbers on the Jharkhand State Website is annexed hereto and marked as **ANNEXURE – A-18 (Pages 225 To 226)**

22. That pursuant to the order dated 11.08.2015 in W.P. (C) 494/2012 wherein this Hon'ble Court referred the question of the right to privacy to a larger Bench, a nine-judge Constitutional Bench of this Hon'ble Court vide its judgment, dated 24.08.2017 declared fundamental right to privacy under Part III of the Constitution. The Constitutional Bench of this Hon'ble Court held that the right to privacy is a fundamental right and an intrinsic part of the right to life and liberty under Article 21 of the Constitution. The Bench shed light on the significance of a privacy right particularly in case of transgender persons recording that *"a miniscule fraction of the country's population constitutes lesbians, gays, bisexuals or transgenders (as observed in the judgment of this Court) is not a sustainable basis to deny the right to privacy. The purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities, whether legislative or popular."*

23. Thus, the Aadhaar Act amounts to a serious violation of the constitutional guarantees under Article 14, 19 and 21 of transgender persons and sexual minorities.

24. The impleading Applicant is an organization working for the rights and protection of transgender persons and sexual minorities, whose right to gender identity, autonomy and privacy as read into Article 14, 15, 19 and 21 by the

judgement of this Hon'ble Court in **NALSA** (supra) and **Justice K.S. Puttaswamy** (supra) are adversely affected and violated by the continued existence and enforcement of the Aadhaar Act particularly against transgender persons.

25. Transgender persons more often than not hail from poor economic backgrounds and rely on Government benefits and welfare schemes for access to basic facilities of healthcare and livelihood. The aforesaid provisions of the Aadhaar Act, 2016 amount to a violation of the Right to Life of members of the Transgender Community who have been granted the status of a socially and economically backward class by this Hon'ble Court vide its decision in **NALSA** (supra) by imposing on them an arbitrary condition of procuring an Aadhaar Card in order to avail the benefits they are entitled to under the Constitution.

26. The Aadhaar Act impacts the Transgender community disproportionately as transgender persons have suffered violence at the hands of the State owing to criminalization of their gender identity and the provisions of Section 3, 6 and 7 of the Aadhaar Act, making it mandatory to declare one's demographic information which includes one's gender identity, address and other details exposes transgender persons and sexual minorities to further violence and surveillance at the hands of the State and private persons,

thus violating their right to life and dignity under Article 21 of the Constitution.

27. Even as per international treaties being the United Nations Declaration on Bioethics and Human Rights adopted on October 19, 2005, it is clearly established that a person's identity includes the biological, the psychological, social, cultural and spiritual dimensions. Therefore the mandatory nature of Aadhaar, which requires under Section 3 to provide demographic and biological identity information has a significant adverse psychological and social implications on the transgender and sexual minority community and a violation of their constitutional rights.

28. It is submitted that this Hon'ble Court having declared that the right to privacy is a constitutional right under Article 14, 19 and 21 of the Constitution and this includes a right to autonomy over one's personal choices in *Justice K.S. Puttaswamy (supra)*, the action of State to mandate the furnishing of personal information and demographic details for the purposes of availing basic amenities and services of healthcare and education is manifestly arbitrary, particularly so in the case where such details are being shared with private entities. The impugned provisions and notifications of the 1st respondent are therefore violative of transgender persons' right to privacy.

29. The Aadhaar Act has no safeguards for the protection of personal data provided by person enrolling for the same and in the absence of an effective legal framework to ensure data protection, once the personal demographic information is shared by transgender persons, it can also be used by various agencies, both public and private, as provided for under the Aadhaar Act, exposing them to surveillance and further violence and discrimination and a deprivation of their fundamental rights including their right to life and liberty, right to equality and freedom of speech and expression, freedom of movement and other fundamental freedoms guaranteed under Articles 19 and 21 of the Constitution.

30. It is submitted that Section 7 of the Aadhaar Act empowering the Central as well as State Governments to require the Aadhaar for benefits and provisions would amount to a deprivation of these benefits and adversely impacts the transgender community, such as accessing medical care and treatment for HIV/AIDS and health care and benefits for SC/ST persons. The transgender community faces stigma and discrimination due to their gender identity and sexual orientation and making the Aadhaar mandatory for accessing schemes and health benefits including for accessing HIV / AIDS treatment and drugs amounts to an arbitrary deprivation of their right to health, which has been recognised as a

fundamental right, and an integral facet of the right to life under Article 21 by this Hon'ble Court in *Consumer Education and Research Centre and Ors. Vs. Union of India*, AIR 1995 SC 42.

31. It is submitted that the transgender community in India continues to be economically and socially backward and marginalized due to systematic discrimination at the hands of both the State and society. This Hon'ble Court in **NALSA** (supra) directed that the transgender community in India should be treated as an economically and socially backward class for the purposes of grant of benefits of reservation in employment and other beneficiary welfare schemes implemented to alleviate the weaker sections of society. The deep discrimination and social stigma faced by the transgender and sexual minorities community places them in a more vulnerable position increasing dependence on State sponsored programs in order to enable their inclusion in society and the mandatory linking of such benefits with Aadhaar which attacks their privacy and amounts to a complete deprivation of their constitutional rights. They would be forced to choose between either enrolling under Aadhaar by disclosing their personal demographic details and exposing themselves to violence or not accessing benefits and schemes which would enable them to fulfill their right to

health, livelihood, education and employment which are also components of the right to life and dignity.

32. It has been accepted that personal data cannot be collected by governments without adequate data protection measures in place for the protection of person's right to privacy. The Principles of Convention 108 to the Collection and Processing of Biometric Data (2005) issued by the Council of Europe recognizes that as soon as biometric data is collected with the view of being automatically processed in order to be linked to an identified or identifiable person, it becomes personal data and is thus eligible for data protection and privacy. The United Nations Declaration on Bioethics and Human Rights adopted on October 19, 2005, also clearly establishes that a person's identity includes the biological, the psychological, social, cultural and spiritual dimensions. Thus, biometric data of an individual is his / her / their personal identifiable data, cannot be collected by the Respondents for the UID scheme without proper and effective data protection and privacy legislation authorizing the collection of such data and regulating the use and safety of such data. The Aadhaar Act has no such safeguards and this would lead the personal and biometric data of individuals to be used by private parties and government agencies without any regulation, and would amount to a serious violation of the constitutional right to privacy of persons who have registered with Aadhaar.

33. With regard to international conventions and treaties, General Comment No. 16 on the Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, issued under Article 17 of the International Covenant on the Civil and Political Rights, which India has ratified, states explicitly in Paragraph 10 that, "*The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant.*" The Aadhaar Act does not have any safeguards and the collecting of personal information under Aadhaar without such safeguards would be a serious violation of India's obligations as a State Party under the ICCPR and a violation of its international obligations under Article 51 of the Constitution.

34. That even in other international jurisdictions governments are realizing the possible ramifications of requiring its citizens to submit their personal data and biometric information. The Philippines Supreme Court in "*Ople v/s Torres*" quashed the Administrative Order No. 308 entitled as "Adoption of a

National Computerized Identification Reference System" on the grounds of it being violative of the Right to Privacy. The Administrative order No. 308 aimed to provide the citizens and foreign residents of Philippines with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities. In order to achieve this goal it was decided that a computerized system would be required to properly and efficiently identify persons seeking basic services on social security and reduce, if not totally eradicate, fraudulent transactions and misrepresentations. Pursuant to this, the notification directed the generation of a Population Reference Number (PRN) generated by the National Statistics Office, which would serve as the common reference number to establish a linkage among concerned agencies through the use of "Biometrics Technology" and "computer application designs". The Hon'ble Philippines Supreme Court ultimately held that Administrative order No. 308 had to be set aside since it allowed impermissible intrusion into the citizenry's protected zone of privacy. It was observed that:

"The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark

of the absolute state. In contrast, a system of limited government safeguards, a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society.”

35. The Aadhaar Act allows private agencies in being involved in the process of enrollment and use of data, without any legislation and guidelines being prescribed for the confidentiality of the information collected by them. Such provisions of the Aadhaar Act would expose transgender persons to their identity related information being used by private agencies, and in many cases it has been reported that such information is also misused and made publicly available which amounts to a serious violation of an individual's right to privacy guaranteed under the Constitution.

36. It is submitted that the Aadhaar scheme has been made mandatory in order to access welfare schemes and services across the country, which the residents were otherwise entitled to. Not only has the mandatory requirement resulted in forceful extraction of personal information, but it is in complete inconsistency with the intent behind the UID initiative to facilitate the identification of those residents who have no means of establishing their identity, so as to empower them to receive the benefits due to them from the State. The fact that presently a resident, especially someone from the transgender or sexual minority community, who is marginalized, has to forego a welfare benefit or is otherwise subject to detriment due to his or her failure to procure a UID number, despite having other valid IDs to prove his/her identity is a gross violation of the Right to Life under Article 21 of the Indian Constitution.

37. Thus the Aadhaar Act results in undue and arbitrary intrusion into the personal lives of transgender persons and sexual minorities. The very fact that the Respondents intend to facilitate linkages with several schemes and provides a database that connects with every other database pertaining to an individual, creates a compulsory access to personal data, thereby perpetuating undue Government surveillance and breach of residents' Right to live with dignity, which is an integral part of the right to life guaranteed under Article 21 of

the Indian Constitution. There is absolutely no justifiable state interest that could allow such gross transgression into the private rights of a citizen and thus the Aadhaar Act deserves to be set aside.

38. That the Right to Privacy under Article 21 has particular relevance for the biometric information being collected under the Aadhaar Act. The right to respect for private life and dignity implies respect for a person's body, which may be interfered with in the collection and use of bodily features. Collection of biometric data might also reveal sensitive data about a person and lead to its misuse, which especially in light of no legal regulation monitoring any illegalities, is a gross violation of the Right to Life under Article 21 of the Constitution.
39. The Aadhaar Act and the enrolment under Aadhaar creates an undue intrusion into the personal lives of the residents and amounts to large scale Government surveillance which is in violation of Article 21 of the Constitution of India and the violation of the right to privacy and the right to life cannot be made without due process and compelling state interest. This Hon'ble Court in *Justice K.S. Puttaswamy* (supra) has held that "*The right to privacy is an element of human dignity. The sanctity of privacy lies in its functional relationship with dignity. Privacy ensures that a human being can lead a life of*

dignity by securing the inner recesses of the human personality from unwanted intrusion. Privacy recognises the autonomy of the individual and the right of every person to make essential choices which affect the course of life. In doing so privacy recognises that living a life of dignity is essential for a human being to fulfill the liberties and freedoms which are the cornerstone of the Constitution....Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy"

40. Noting the privacy concerns that may arise in the age of information in the absence of an effective legal framework of data protection laws, this Hon'ble Court in **Justice K.S. Puttaswamy** (supra) has held that "*Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the state but from non-state actors as well. We commend to the Union Government the need to examine and put into place a robust regime for data protection.*" Therefore, the collection of personal data of every resident person in India, without any legislation or data protection law being in place is a gross

violation of the Right to Privacy enshrined in Article 21 of the Indian Constitution.

41. That in *S and Marper v United Kingdom*, (2009) 48 EHRR 50, a case where the applicants were arrested and charged with criminal offences in the UK, deciding on whether it was permissible for the UK police to retain fingerprints, cellular samples and DNA samples collected from the applicants, the Grand Chamber of the European Court of Human Rights observed that this data fell within the realm of 'personal data' and the retention and storage of these data was an interference with the applicants' right under Article 8(1) which protects the right to a private life under the European Convention on Human Rights (ECHR). The Court ultimately found that this interference was disproportionate. The European Court of Human Rights (ECHR) held that: "[T]he mere retention and storing of personal data by public authorities, however obtained, are to be regarded as having direct impact on the private-life interest of an individual concerned, irrespective of whether subsequent use is made of the data."

42. That the German Federal Constitutional Court in the *Census Act Case* (BVerfG 15 December 1983, BVerfGE 65, 1, 43) which involved a challenge to the National Census Act 1983 and placed an obligation on every household to fill in and

return a census form for the collection of statistical data, held that the protection of 'informational self-determination' fell within the ambit of the 'right to the free development of one's personality' under article 2(1) of the German Constitution: It held that *"Individual self-determination, however, presupposes – even under the conditions of modern information processing techniques – that the individual has the freedom to decide whether to perform or omit actions, including the possibility of acting according to this decision. A person who cannot safely tell what information about him regarding certain areas is known to his social environment, and cannot to some extent assess the knowledge of potential partners of communication, can be essentially inhibited in his freedom to make autonomous plans and decisions. It follows that the free development of one's personality under the modern conditions of data processing presupposes the protection of the individual against unlimited collection, storage, use and transmission of his personal data."*

43. That in view of the facts and circumstances narrated herein above, it is respectfully submitted that the applicant herein may kindly be allowed to be impleaded as an additional Petitioner, and that unless impleaded the Applicant shall be severally prejudiced.

44. It is respectfully submitted that, the Applicant is similarly placed as the Petitioners and has challenged the constitutional

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validity of the Aadhar Act on behalf of transgender persons and any order passed by this Hon'ble Court shall have a direct bearing on the Applicant, and unless this Hon'ble Court may kindly permit the Applicant to be made party to the present proceedings, the Applicant shall be severely prejudiced. It is submitted that the Applicant is a proper party to the present petition and as such may be kindly be impleaded in the present petition as a Petitioner.

45. In view of the above it is most respectfully prayed that the Applicant herein may kindly be impleaded as a Petitioner in Writ Petition No. (Civil) 494 of 2012. That the interest of justice would be served, if the present application is allowed and the prayers made herein below are granted by this Hon'ble Court. That no prejudice would be caused to the parties to the Writ Petition, if the Applicant herein is impleaded in the matter.

PRAYER

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

- a. Allow the present application for impleadment and implead the Applicant herein as a Petitioner in Writ Petition (Civil) No. 494 of 2012 titled Justice K.S. Puttaswamy (Retd.) vs. Union of India Anr; and

b. Pass such further order/orders as this Hon'ble Court may deem fit & proper in the facts of this case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT SHALL AS IN DUTY BOUND, FOREVER PRAY.

DRAWN AND FILED BY:

ANINDITA PUJARI

(ADVOCATE FOR THE APPLICANT)

SETTLED BY:

JAYNA KOTHARI, ADVOCATE

DRAWN ON:13.12.2017

FILED ON:21.12.2017

NEW DELHI

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A.NO. /2017

IN

WRIT PETITION (C) NO. 494/ 2012

IN THE MATTER OF:

Justice K S Puttaswamy (Retd.)

... Petitioner

Versus

Union of India & Anr.

... Respondents

AND IN THE MATTER OF:


Swatantra

...Applicant

AFFIDAVIT

I, Siddapa Alagonda (Siddama), D/o S.G Alagonda aged about 46 years, Resident of Swatantra, C/o Mahaboodi Arogya Kendra, Siddapura Main Road, Jayanagar 1st Block, Opposite Lalbagh, Bangalore-560011, presently at New Delhi am the President of the Applicant organization in the above named petition do hereby solemnly affirm and state as under:

1. That I am the President and authorised representative of the Applicant in the above application and I am well conversant with the facts and circumstances of the case and as such competent to swear this affidavit.
2. That I have read the contents of the accompanying applications and understand the contents thereof. That the statement of facts contained therein are true and correct to my knowledge and legal submissions made therein are as per the legal advice received and believed by me to be true and correct.
3. That the annexure annexed to the applications are true and correct copies of their respective originals.

S. C. G. J. R. O.

DEPONENT

VERIFICATION

Verified at New Delhi, on this 13th day of day of December, 2017. I have the above named deponent do hereby verify that the contents of above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

S. C. P. 
DEPONENT