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SG/UB

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION(CIVIL) NO. 494 of 2012, 797 of 2016 & 342 of 2016 Etc.

IN THE MATTER OF :

K.S. Puttaswamy(Retd) & Anr. ... Petitioners

Versus

Union of India & Others. ... Respondents

WITH

WRIT PETITION(CIVIL) NO. 1058 OF 2017

Mathew Thomas ... Petitioner

Versus

Union of India & Others. .... Respondents

(PART –I)

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT/ UIDAI IN MATHEW THOMAS AND STATE OF GUJARAT BY RAKESH DWIVEDI, SENIOR ADVOCATE.

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I. ANALYSIS OF PUTTASWAMY

1. Right to privacy is part of Article 21. Dignity is the foundation of the right to privacy. Privacy is also essential for the exercise of right to choice.

2. The autonomy of individual is associated over matters which can be kept private. These are concerns over which there is a reasonable expectation of privacy.

3. The reasonable expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas (Pr 297, 299 & 307) . However, privacy is not lost or surrendered merely because the individual is in a public place. The requirement of reasonable expectation of privacy is also supported by the observation of S.A. Bobde J (Pr 421). The only dissent on this aspect is that of R.F. Nariman J (Pr 491-494). However, the Ld judge in para 495 accepts that if a person was to post on facebook vital information about himself, the same being in public domain would not be entitled to claim of privacy right. Thus, in some ways even this judgment seems to accept that in certain contexts the right to privacy could be lost.

4. The right to privacy is not absolute. It is part of ordered liberty.

5. A law infringing the right to privacy must satisfy the three fold requirement of :

(i). legality, which postulates the existence of law ;

(ii). need defined in terms of a legitimate state aim ;

(iii). proportionality which ensures a rational nexus between the objects and the means adopted ;

(Pr 310,313,325, 638)

6. Three Ld Judges (Chelameshwar J, S.A.Bobde J and A. Sapre J) seem to endorse the compelling state interest instead of the legitimate interest test. But this a minority view. The judgments of Justice Chandrachud J, Nariman J (pr 526) and S.K. Kaul J accept the test of legitimate state interest. Further, Chelameshwar J recognizes that the standard of 'compelling state interest' is amorphous and does not have definite contours in the U.S. (Pr 378 and 380). Therefore, he emphasizes that it is critical that the standard be adopted with some clarity as to when and in what types of privacy claims it is to be used. This standard, he says, should be used ' only in privacy claims which deserve the strictest scrutiny'. As for others, he commends the test of 'just, fair and reasonable'. This would also depend upon the context of concrete cases.

7. Due process principles applied in USA have been rejected (Pr 296) . Only Nariman J accepts it (Pr 477)

8. Wherever a law is found to be intruding upon the Fundamental Right to privacy, the law will have to satisfy fair , just and reasonable test as laid down in Maneka Gandhi and for this purpose the right of the individual and public interest should be fairly balanced.

9. The exercise of individual choices in the zone of privacy would also be subject to the right of the others to lead orderly lives (Pr 299, 635 and 640)

II. REASONABLE EXPECTATION OF PRIVACY OVER IDENTITY INFORMATION :

1. All matters pertaining to an individual do not qualify as being an inherent part of right to privacy. Only those, which concern matters over which there can be a reasonable expectation of privacy would be protected by Article 21 [Pr 297-307 **(2017) 10 SCC 1 K.S. Puttaswamy Vs. UOI**]. While examining 'Essential nature of privacy', Dr Chandrachud J made following significant observations :-

(i). Privacy postulates the reservation of a private space, described as the right to be let alone. The integrity of the body and the sanctity of the mind can exist on the foundation of the individual's ' *right to preserve a private space in which the human personality can develop'* and this involves the ability to make choices. In this sense privacy is a postulate of human dignity itself. (Pr 297)

(ii). The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated 'over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy'. Thoughts and behavioral patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy an individual is not judged by others. Privacy protects the individual from the searching glare of publicity *'in matters which are personal to his or her life'*. It attaches to the person and not to the place where it is associated. (Pr 297)

(iii). Privacy is a sub-set of liberty. All liberties may not be exercised in privacy. It lies across the spectrum of protected freedoms. Destruction of a sanctified personal space whether of the body or of the mind would be arbitrary. The family, marriage, procreation and sexual orientation are all integral to the dignity. (Pr 298)

(iv). Privacy represents the core of the human personality and recognizes the ability of each individual to make choices and to take decisions governing matters intimate and personal. The lives of individuals are as much a social phenomena and they are constantly engaged in behavioral patterns and in relationships impacting on the rest of society. The life of the individual evolves in the relationship with the rest of society and this provides for rationale for reserving a zone of repose. (Pr 299)

(v). The notion of reasonable expectation of privacy has both subjective and objective elements. At a subjective level it means *' an individual desire to be left alone'*. On an objective plain privacy is defined by those Constitutional values which shape the content of the protected zone where the individual *'ought to be left alone'*. The notion of reasonable expectation of privacy ensures that while on the one hand, the individual has a protected zone of privacy, yet on the other 'the exercise of individual choices is subject the right of others **to lead orderly lives**'. The extent of the zone of privacy would therefore depend upon both the subjective expectation and the objective principle which defines a reasonable expectation. (Pr 299)

(vi). Dealing with informational privacy, the judgment notes that privacy concerns are seriously an issue in the age of information. It also notes the data mining processes together with knowledge discovery, and the age of big data. The court finds that data regulation and individual privacy raises complex issues requiring delicate balances to be drawn between the legitimate concerns of the State and individual interest in the protection of privacy, and in this sphere, data protection assumes significance. *'Data such as medical information would be a category to which a reasonable expectation of privacy attaches. There may be other data which falls outside the reasonable expectation paradigm.* Data protection regimes seek to protect the autonomy of the individual. This is a complex exercise involving careful balancing. One of the chief concerns is that *'while the web is a source of lawful activity – both personal and commercial, concerns of National security intervene since the seamless structure of the web can be exploited by terrorist to wreak havoc and destruction on civilized societies.*' Noting an article of Richard A. Posner, which says ' privacy is the terrorist's best friend..' It is observed that this formulation indicates that State has legitimate interest when it monitors the web to secure the Nation (Pr 307-309).

(vii). The legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas. However, 'the privacy is not lost or surrendered merely because the individual is in a public space' (Pr 323).

(viii). Apart from National security, State may have justifiable reasons for the collection and storage of data as where it embarks upon programs to provide benefits to impoverished and marginalized sections of society and for ensuring that scarce public resources are not dissipated and

diverted to non – eligible recipients. Digital platforms are a vital tool of ensuring good governance in a social welfare State and technology is a powerful enabler (Pr 311).

(ix). Like the right to life and liberty, privacy is not absolute. Any curtailment or deprivation of the right should take place under a regime of law. The procedure established by law must be fair , just and reasonable. Such law must also be subject to Constitutional safeguards (Pr 313).

(x). The judgment refers to the expert group report and identifies nine privacy principles pertaining to notice, choice and consent, collection limitation, purpose limitation, access and correction, non disclosure of information, security of data , openness or proportionality as to the scale, scope and sensitivity to the data collected , and accountability(Pr. 314).

2. Hence, it has first to be decided whether the identity data which Aadhaar Act seeks to recover and store in a database is such as would form part of the right to privacy protected by Article 21. For this purposes it has to be scrutinized whether the information sought are within the reasonable expectation paradigm.

2A. 'Reasonable Expectation' involves two aspects. Firstly, the individual or individuals claiming a right to privacy must establish that their claim involves a concern about some harm likely to be inflicted upon them on account of the alleged act. This concern ' should be real and not imaginary or speculative'. Secondly, 'the concern should not be flimsy or trivial'. It should be a reasonable concern. It has to be borne in mind that the concept of 'reasonable expectation' has its genesis in the US case laws. UK judgments adopted the test of reasonable expectation from the US jurisprudence. The ECHR and ECJ judgments reveal a little divergence with regard to right of privacy. The ECHR in general adopts the approach that ' a person's reasonable expectation as to privacy may be significant, although, not necessarily conclusive factor' (Pr 222 of 9 JJ). This perhaps explains the apparent conflict as regards finger prints.

2B. In the leading ***Katz Vs. US* 389 U.S. 347** (Reasonable Expectation was stated to embrace two discreet questions) . The first was whether the individual, by his conduct has exhibited an actual (subjective expectation of privacy) , and the second, whether the subjective expectation is one that could the society is prepared to recognize as reasonable. This was also followed in **Smith Vs Marlyand 442 US 735.** (Pr 185 9JJ) .

3. In the judgment of Court of Appeal in **(2010) 1 WLR 123 R.Wood Vs Commissioner [Compilation I Tab A], (Pr 24-25, 34,35,44-46,58,59 & 85).** the Appellant complained against taking and retention of his photograph in Central London in the context of a meeting by the police force to enable identification at a later time in the event of eruption of disorder and commission of offence. The concept of reasonable expectation was examined after surveying a series of judgments which sought to consider violation of Article 8 of the ECHR. The following pertinent aspects emerge:-

(i). Whether information related to private or public matter ?

(ii). Whether the material obtained was envisaged for a limited use or was likely to be made available to general public?

(iii). Private life was a broad term covering physical and psychological integrity of a person.

(iv). Storing of data relating to private life of an individual interferes with Article 8. However, in determining whether information retained involves any private life aspect would have to be determined with due regard to the specific context.

(v). Article 8, however protean should not be so construed widely that its claims become unreal and unreasonable. Firstly, the threat to individuals personal autonomy must attain a certain level of seriousness. Secondly, the claimant must enjoy **on the facts** a reasonable expectation of privacy. Thirdly, the breadth of Article 8(1) may in many instances be greatly curtailed by scope of justifications available to the State.

(vi). Reasonable expectation of privacy is a broad concept which takes into account all the circumstances of the case. They include attributes of the claimants, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence (or presence) of consent, the effect on the claimant and the purpose for which information is taken.

4. The aforesaid case was approved by the U.K Supreme Court in **In re JR 38 [2015] UK SC 42 [Compilation I Tab B],** (See para 85-88,91, 93, 97,98,101/105/109; 56,59,62,72,73) by 3:2 majority. This case involved publication of photograph of a child in rioting.

5. Therefore, when a claim of privacy seeks inclusion in Article 21 of the Constitution of India the Court needs to apply the reasonable expectation of privacy test. It should see:

(i). What is the context in which a privacy claim is set up?

(ii). Does the claim relate to private or family life, or a confidential relationship?

(iii). Is the claim a serious one or is it trivial?

(iv). Is the disclosure likely to result in any serious or significant injury and the nature and extent of disclosure?

(v). Is disclosure for identification purpose or relates to personal and sensitive information of an identified person?

(vi). Does disclosure relate to information already disclosed publicly to third parties or several parties willingly and unconditionally? Is the disclosure in the course of e-commerce or social media?

6. There are four types of information for providing Aadhaar number or unique identification number :-

(i). Mandatory demographic information comprising name, date of birth, address and gender [Section 2(k) read with Regulation 4(1) of the Aadhaar (Enrolment and Update) Regulations, 2016].

(ii). Optional demographic information [Section 2(k) read with Regulation 4(2) of the Aadhaar (Enrolment and Update) Regulations, 2016].

(iii). Non core biometric information comprising photograph.

(iv). Core biometric information comprising finger print and iris scan.

REASONABLE EXPECTATION OF PRIVACY AND AADHAAR ACT, 2016

7. The issue arises in context of Aadhaar Act, 2016. This Act operates in the relational sphere and not in the core, private or personal sphere of residents. It involves minimal identity information for effective authentication. The purpose is limited to authentication for identification. The Act operates in a public sphere. Section 29 of the Aadhaar Act, 2016 provides protection against disclosure of identity information without the prior consent of the ANH concerned. Sharing is intended only for authentication purposes.

8. It is submitted that by their very nature the demographic information and face photograph sought to be collected cannot be said to be of such a nature as would make it a part of a reasonable expectation paradigm. In particular, the demographic information both mandatory and optional, would not raise a reasonable expectation of privacy under Article 21. Historically, humans have been recognizing and identifying familiar persons by faces. Photographs serve the same purpose for strangers. Today, globally all ID cards and passports

contain photographs for identification alongwith address, date of birth, gender etc. The demographic information is readily provided by individuals globally for disclosing identity while relating with others; while seeking benefits whether provided by government or by private entities. People who get registered for engaging in a profession, who take admissions in schools/colleges/university, who seek employment in the government or private concerns , and those who engage in various trade and commerce are all required to provide demographic information and even photographs. Even mobile numbers and email addresses are likewise provided. These information are available in the public domain (telephone directories). Therefore, there cannot be a reasonable expectation of privacy with regard to such information. The Aadhaar Act justifiably makes a distinction between the facial photograph on the one hand and the finger prints and the iris scans on the other. While all the three would fall within the definition of 'biometrics information' [Section 2(g)]. The finger print and iris scan are considered to be 'core biometric information' (Section 2(j)]. This distinction is also apparent in Section 29.

DEMOGRAPHIC INFORMATION :

9. Some of the enactments which require disclosure of demographic information comprising name, address, email address etc. are being mentioned herein below. These legal requirements are accepted as routine requirement and no individual raises any reasonable expectation of privacy with respect to such demographic information.

(i). Companies Act, 2013- Section 7 (e) and (f) (address, name, nationality, proof of identity, Director identification number).

(ii). Special Marriage Act -Schedule II (Section 5) (name, condition, occupation , age, dwelling place, length of residence and age).

(iii). Supreme Court Rules Order XXXVIII Rule 12 (full name, complete postal address, e-mail address, phone number, proof regarding personal identification, occupation, and annual income, PAN number and National Unique Identity Card number).

(iv). Central Motor Vehicle Rules, 1989 - [(Form 2) See Rule 10] – name, father/husband's name, permanent address, temporary address, duration of stay at present address, date of birth, place of birth, educational qualification, identification marks, blood group RH factor, photograph, medical fitness certificate, signature of thumb impression. Similar requirement is several other forms under Central Motor Vehicle Rules. 1989.

(v). The Registration of Electoral Rules, 1960 – (Rule 28) name, age, residence, photograph .

(vi). The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2009- [Form 1 (Rule 3)] name, sex, place and country of birth, date of birth, mark of identification, father's and mother's full name, his and her citizenship, his and her occupation, passport particulars. Similar requirement is several other forms under these Rules.

(vii). The Passports Act and Passport Rules S. 5 r/w R. 5 Schedules III (Form 1), name, sex, date of birth, father/ legal guardian's name, mother's full name, current residential address, telephone number, mobile number , history of convictions, pendency of criminal proceedings, email id, profession etc.

10. The various proof of identity documents and proof of address documents mentioned in Schedule I of the Aadhaar (Enrolment and Update Regulations) , 2016 contain demographic informations and some also photographs. These documents are widely used by the individuals. Consequently, also there can be no reasonable expectation of privacy in demographic information and photographs. This is particularly, so when the disclosure of demographic information and photograph are considered in the content identification in the context of establishment of relations in the public realm.

11. There are certain special contexts in which non disclosure of demographic information (even name) could be considered as raising a reasonable expectation of privacy such as where juveniles in conflict with law are involved (Section 21A Juvenile Justice Act,2000) or where a rape victim's identity is involved or medical information. Thus unless some such special context or aggravating factor is established, there would not be any reasonable expectation of privacy with respect to demographic information.

CASE LAWS :

12. In **Ohio Vs Akron Reprod. Health Centre 497 US 502 @ Pg 512-513 [Compilation I Tab H]**, a complaint form prescribed by Ohio Supreme Court requiring a pregnant minor seeking abortion (through judicial bypass procedure) to disclose her identity was challenged. Reversing the judgments of courts below the US Supreme Court court upheld requirement of such a disclosure. It rejected challenge and held that mere possibility of unauthorized, illegal disclosure by State employees cannot be a ground for striking down the statute.

It held that the statute requires the participants to ***provide indentifying information for administrative purposes and not for public disclosure.***

13. In **Doe Vs Reed 561 US 186 [Compilation II Tab IJ]**, a requirement of disclosure of names and addresses of individuals signing referendum petition for challenging State law was challenged. Washington Public Records Act also authorized private parties to obtain copies of government documents including referendum petitions. Petition signatories challenged the law saying giving of such petition would expose them publically and that violates First Amendment of US Constitution. The Petition contains signatures as wells as signor's address.

The Petition related to a State law extending certain benefits to same – sex couples, and therefore contention was that the compelled disclosure of signatory information could be aligned with the political matter contained in the petition. The court noted that the Public Records Act was not a prohibition on speech, but was instead a disclosure requirement. The court applied " exacting scrutiny criteria" (in India this test is not applicable) which requires a substantial relation between the disclosure requirement and a sufficiently important governmental interest. The State's interest was found to be sufficiently important based on the following –

> *"The State's interest is particularly strong with respect to efforts to root outfraud, which may not only produce fraudulent outcomes, but has a systemic effect as well : it "drives honest citizens out of the democratic process and breeds distrust of our government"* (Pg 5)
>
> *.. But the State's interest in preserving electoral integrity is not limited to combating fraud. That interest extends to efforts to ferret out invalid signature caused not by fraud but by simple mistake, such as duplicate signatures or signatures of individuals who are not registered to vote in the State... That the electoral process, which the State argues is " essential to the proper functioning of a democracy"*
>
> The court further held that in general such public disclosure of petition would not breach the first amendment. The breach would occur if the Petitioners could show "a reasonable probability that the compelled disclosure of personal information will subject them to threats, harassment or reprisals from either government officials or private party". (Pg 6-7)

14. In **McElrath Vs California 615 F.2d 434 [Compilation II Tab K]**, Section 402(a)(25) of the Social Security Act which mandated disclosure of social security number or to apply for one as a condition precedent for grant aid to families with dependent children aid was challenged as infringing right to privacy. The law was upheld relying on the earlier decisions in ***Cantor Vs Supreme Court of Pennsylvania* 353 F Suppl 1207[Compilation II Tab L]**.

PHOTOGRAPH :

15. Barring unpublished intimate photographs and photographs pertaining to confidential situations there will be no zone of privacy with respect to normal facial photographs meant for identification. It may be noted that today people are posting their photographs on facebook at the rate of 300 millions per day. Face photographs are given by people for driving license, passport, voter id, school admissions, examination admit cards, employment cards, enrolment in professions and even for entry in courts. In our daily lives we recognize each other by face which stands exposed to all, all the time.

The purpose behind taking face photograph is identification. When stepping out of homes and interacting in the society one cannot expect to be unidentifiable. The face photograph by itself reveals no further information.

Justice Nariman in 9 JJ privacy case has held that there can be no claim of right of privacy when private information are freely posted on facebook. (Pr 495). He was observing this generally. Hence, for face photographs for identification there can be no expectation of privacy at all.

CASE LAWS:

U.K.

16. In **(2010) 1 WLR 123, Regina(Wood) Vs. Commissioner of Police of the Metropolis (Court of Appeal U.K.) [Compilation I Tab A]**, after analyzing the earlier judgments in ***S.& Marper Vs. U.K.* [Compilation I Tab C]**, ***Von Hannover, Naomi Campbell*** held that mere taking of photograph will not violate Article 8 unless there are aggravating circumstances.(Pr 35 & 36). However, the court held that Article 8 was engaged only because the purpose of retention of photograph was not made known to the Petitioner (Pr 46) However, State's Article 8(2) justification was accepted.

17. In **[2015] UK SC 42 JR 38 [Compilation I Tab B]**, the UK Supreme Court on applying the test of reasonable expectation of privacy held that taking of photographs of juvenile involved in rioting does not engage Article 8. It was

held that overall facts and circumstances have to be seen while adjudging whether there is a breach of Article 8 or not. (Pr 97-101)

18. Courts in US have held that there is no reasonable expectation of privacy over one's photograph.

USA Vs. Andrew Emmet 321 F3d 669 [Compilation II Tab N],

Romano Vs Steelcase 2010 WL 3703242 (N.Y. Sup. Ct. Sept. 21, 2010) [Compilation II Tab PQ], (Pg 6-8)

CORE BIOMETRIC INFORMATION :

19. As regards the core biometric information, comprising finger prints and iris scans it would be pertinent to bear in mind that the Aadhaar Act is not dealing with the intimate or private sphere of the individual. The core biometrics are being collected from residents for authentication use in a public sphere and in relational context. They are needed for authentication either in Section 7 context or in the context of other Parliamentary enactments or in the context envisaged by Section 57. There is no reasonable expectation of privacy in relation to fingerprint and iris scan. Even if it exists, it would it not carry intensity. Privacy may not be lost in a public space , but its intensity would shrink and fade and would be weak.

It is also pertinent that iris scan is nothing but a photograph of the eyes taken from a camera. This photograph is taken in the same manner as the facial photograph. The extraction of the image of the iris is by the use of camera. In fact, Ld counsels on behalf of the Petitioners had asserted that the iris scan of the German Chancellor was taken from a distance by using a sophisticated camera. Ordinarily, there would be no reasonable expectation of privacy with respect to iris scan. More importantly, fingerprints and iris scans are not capable of revealing any personal information about the individual except for serving the purpose of identification.

20. As regards the finger prints are concerned, their use as evidence began in the beginning of 20th century in England (1902). In 1858, Sir William James Hersched initiated fingerprints in India. In 1877 the use of fingerprints on contract and deeds was instituted to prevent the then rampant repudiation of signatures. In India finger impressions were made admissible evidence by Act 5 of 1899 which amended Section 45 of the Evidence Act, 1872. Even in post independent India the use of thumb impressions has been prevalent generally for non literates and even for literates in many matters. Even today in registration of sale deeds the finger prints of all ten fingers are taken (See

Section 32A of the Registration Act, 1908). And they are kept in a database. The finger impressions are used by large number of persons in the operation of laptops and mobiles. Many employers both in public and private sectors mandatorily require biometric attendance (finger prints) . Consequently, the requirement of finger prints in the context of the Act would not attract the fundamental right of privacy. In any case it will not attract privacy right under Article 21 with any substantial intensity. The privacy right if any would be shrunken and weak.

21. With advent of science and technology finger print and iris scan have been considered to be the most accurate and non invasive mode of identifying an individual. They are taken for driving licenses, passports, visa and registration by the State and also used in mobile phones, laptops, lockers etc for private use. 120 countries have biometric passports. **ICAO (International Civil Aviation Organization)** has recommended use of biometric passports. A list of 92 such countries is enclosed as **Annexure A.** Several countries such as Germany, Estonia, Bulgaria, Argentina, Mauritius, Honkong, Bangaldesh etc have introduced biometric based identity cards.

CASE LAWS

USA

22. In **US VS Dinosio 410 U.S. 1 = 35 Led 2d 67 @ 79 & 80 [Compilation II Tab R]**, the US Supreme Court held that there is no reasonable expectation of privacy over physical characteristics or handwriting. It held: -

> ***"The physical characteristics of a person's voice, its tone and manner, as opposed to the content of a specific conversation, are constantly exposed to the public. Like a man's facial characteristics, or handwriting, his voice is repeatedly produced for others to hear. No person can have a reasonable expectation that others will not know the sound of his voice, any more than he can reasonably expect that his face will be a mystery to the world. As the Court of Appeals for the Second Circuit stated:***
>
> > ***"Except for the rare recluse who chooses to live his life in complete solitude, in our daily lives we constantly speak and write, and while the content of a communication is entitled to Fourth Amendment protection . . . the underlying identifying characteristics -- the constant factor throughout both public and private communications -- are open for all to see or hear.***

> ***There is no basis for constructing a wall of privacy against the grand jury which does not exist in casual contacts with strangers. Hence, no intrusion into an individual's privacy results from compelled execution of handwriting or voice exemplars; nothing is being exposed to the grand jury that has not previously been exposed to the public at large."***
>
> ***"...Rather, this is like the fingerprinting in Davis, where, though the initial dragnet detentions were constitutionally impermissible, we noted that the fingerprinting itself "involves none of the probing into an individual's private life and thoughts that marks an interrogation or search."***

23. In **US Vs Mara 410 US 19 = 35 Led 2d 99 @ 102-103 [Compilation II Tab S]**, the US Supreme Court held as follows :-

> *"We have held today in Dionisio that a grand jury subpoena is not a "seizure" within the meaning of the* ***Fourth Amendment*** *and, further, that that* ***Amendment is not violated by a grand jury directive compelling production of "physical characteristics" that are "constantly exposed to the public."*** *Ante at* 410 U. S. 9, 410 U. S. 10, 410 U. S. 14. ***Handwriting, like speech, is repeatedly shown to the public, and there is no more expectation of privacy in the physical characteristics of a person's script than there is in the tone of his voice****. See United States v. Doe (Schwartz), 457 F.2d 895, 898-899; Bradford v. United States, 413 F.2d 467, 471-472; cf.* 388 U. S." [Pr 1,2]

24. In **Davis Vs Missipi 395 US 721= 22 Led 2d 676 @ 681 [Compilation II Tab T]**, the US Supreme Court held: -

> ***"fingerprinting involves none of the probing into an individual's private life and thoughts that marks an interrogation or search.*** *Nor can fingerprint detention be employed repeatedly to harass any individual, since the police need only one set of each person's prints. Furthermore, fingerprinting is an inherently more reliable and effective crime-solving tool than eyewitness identifications or confessions, and is not subject to such abuses as the improper line-up and the "third degree."*

NON CRIME CONTEXT :

25. In **Perkey Vs Department of Motor Vehicles** [**Compilation II Tab U**], the Supreme Court of California was confronted with the question whether the State can compel an individual to provide fingerprints as a condition for granting driver's license. The Court held **that taking finger print alone does not violate IVth Amendment rights.** (Pg 5-6) .

26. In **Miller Vs Murphy** [**Compilation II Tab V**], the question before the Court of Appeals of California was whether the Pawnbroker Regulations adopted by the city and county of San Francisco requiring the pawnbrokers to obtain finger print of the customers on the transaction slip is constitutionally valid. The court observed that at least in California , finger printing is frequently used in non –criminal context. The Court held that the intrusion was minimal and did not require strict scrutiny test. Court followed the judgment in **People Vs Stuller** [**Pg 126-146 Note on Use of Biometrics Identification by AG**]

27. In **Thom Vs Stock Exchange** [**Pg 78-90 Note on Use of Biometrics Identification by AG**], a New York Statute requiring compulsory fingerprinting as a condition of employment was challenged. The Court held that right of marital privacy at the core of ***Griswold's*** ruling is not analogous to instant claim of privacy. The court rejected the contention that fingerprinting is an affront to dignity and invasion of privacy. It observed that the public has long recognized it as a valuable and reliable means of identification and to suggest that a stigma is attached when it is used is to fly in the face of reality. The court refused to apply the least intrusive test. The court also held that collection of fingerprints for authentication doesn't indicate that there will be surveillance.

28. **Heller Vs. District of Columbia (Manu/ UDCC/0189/2015)** [**Compilation II Tab M**] involved a challenge to a requirement of fingerprinting and giving of photograph in the gun law of Columbia. The court held that requirement is valid as it will advance public safety and will facilitate identification of owner.

BREATH ANALYSIS :

29. In **Birchfield Vs. North Dakota 579 US (___) 2016 [Compilation II Tab O]** the U.S. Supreme Court rejected the challenge based on IVth Amendment to use of breath analysers to check the alcohol content in motorists.

EUROPE:

30. In **Kinnuen**(1996) [**Compilation II Tab Z**], the complainant claimed breach of Article 8 on account of retention of photograph and fingerprints. The European Commission of Human Rights held that *"retention complained of cannot be considered to amount to an interference with his right to respect for his private life."* [Pr 2 (ii)]

31. In **Michael Schwarz Vs. Stadt Bochum** [**Compilation II Tab Y**], requirement of giving of photograph and fingerprints for grant of passports was upheld. (Pr 33,36,38-40,42-44,47,48,54,55,59 & 62)

32. So far as ***Kinnuen Vs. Finland*** is concerned it involved collection of photograph and fingerprints only. The cases which Petitioners have relied are also in crime context and involved stigma. They involved collection and retention of cellular samples, DNA profiles and fingerprints. They also involved use of this personal data in the future for prevention of crime. Collection and retention of cellular samples and DNA profiles are vastly different from collection and retention of fingerprints and iris scans. The former, reveals knowledge about the person and is widely used today in determining the relation of an accused to the crime. It also reveals the past history of the person. On the other hand fingerprints and iris scans are ***neutral identifying features***. In ***Van Der Velden Vs Netherlands***, **[Compilation II Tab AA] (Pg 8)** the European Commission brought out the distinction between the DNA profiles and fingerprints. It held that 'given the use to which cellular material could in particular conceivably be put in the future , the systematic retention of that material goes beyond the scope of ***neutral identifying features*** such as fingerprints ' and would constitute interference with Article 8.

U.K.

33. **In (2015) UK SC 29 Gaughran Vs. Chief Constable of the Police Service of Northern Ireland** [**Compilation I Tab E**], the UK court considered the retention of the applicant's photograph, fingerprints and DNA profile derived from a buccal swab. The retention was of indefinite duration. The court held that while Article 8 was engaged (as conceded by the State) yet the retention in this case was different from ***S & Marper Vs U.K.*** . The amended scheme excluded those who were acquitted and it also excluded the cellular sample (which was to be destroyed after extracting DNA profile). The court noted that the DNA

profile is digitized information representing a very small part of the person's DNA and apart from indicating the gender it does not include any information about person's wider characteristics. It also noted that the DNA data base was held on a standalone computer which could not be accessed from outside FSNI, and access within FSNI is restricted to a small number of FSNI staff and access is audited. Police officers do not have access to the computer center (NIDNAD). Police forces could only request for searches. The court upheld the new scheme of retention despite the retention being for indefinite period (Pr 35,38,40,42).

COURT AS 'REASONABLE PERSON':

34. The very test of 'reasonable expectation of privacy' introduces the element of reasonableness in what an individual may subjectively expect as an aspect of privacy. It is not enough that the individual raises a claim or expectation of privacy. The court would, acting as reasonable person and bearing the context in mind examine whether the claim put forward would implicate the Fundamental Right to privacy under Article 21. In the context of the Aadhaar Act which seeks to introduce a system of digital authentication for identification in the context of Section 7 and utilizable in certain other contexts in public sphere, the court would necessarily have to examine whether the claim of privacy with respect to the four different categories of identity information is reasonable or not. The court would have to take note of the stage of development of the society, the growing use of digital technology, the global use of biometrics for identification for establishing unique identity and the disclosure of identity information by vast masses to different digital platforms freely and frequently.

35. The Constitutional validity of the Aadhaar Act should be examined bearing the aforesaid aspects in mind. It is submitted that there is no reasonable expectation of privacy with respect to identity information collected under the Aadhaar Act for the purposes of authentication and therefore Article 21 is not attracted. Further, if this is coupled with the restriction of non-disclosure as provided in Section 29 there would be no reasonable expectation of privacy. Alternatively, the applicability of Article 21 has to be confined and limited to core biometric information.

III. CASES RELIED BY PETITIONERS:

STORAGE AND RETENTION OF PERSONAL DATA IN CRIME CONTEXT.

1. The Petitioners relied upon **S & Marper Vs U.K. [Compilation I Tab C]**, a judgment of Grand Chamber of ECHR (4.12.2008). This judgment differed from the judgment of the House of Lords in **R(S) Vs Chief Constable (2004) 4 ALL ER 193 [Compilation I Tab D]**, which had rejected the appeal of S & Marper. This was a case where S & Marper had been acquitted of criminal charges but the Police had retained the cellular samples, DNA profiles and finger prints collected pursuant to law. The Strasbourg court held that these were personal data, and "private life was a broad term" which would include storing of these data. The court distinguished the retention of fingerprints from the retention of cellular samples and DNA profiles and held that the latter was sufficiently intrusive, highly personal in nature and contained much sensitive information. It noted that DNA profiles themselves contained a more limited amount of personal information extracted from cellular samples. Nonetheless their processing through automated means allows the authorities to go well beyond "neutral identification" . Hence, it would engage Article 8. Referring to the fingerprints the court observed that the finger prints do not contain as much information as either cellular samples or DNA profiles and they contain certain external identification features much in the same way as personal photographs and voice samples. It also agreed that fingerprints , unlike photographs were unintelligible to the untutored eye and without a comparator finger print. Nevertheless, the court held that since the fingerprints contain unique information about the individual they are capable of affecting his/ her private life and its retention without the consent cannot be regarded as neutral or insignificant. Retention gives rise to important private life concerns when recorded on a nation-wide data base for being permanently kept and regularly processed by automated means for criminal identification. (Pr 66-86).

Furthermore, on proportionality the court acknowledged that the level of interference with the applicant's right to private life may be different for each of the three different categories of personal data retained. Yet, in view of the blanket and indiscriminate nature of the power of retention of fingerprints, cellular samples and DNA profiles as applied to ***S and Marper*** who were not convicted of offences, the court found that the retention was disproportionate (Pr 120 & 125).

power ' as applied in the case of the present applicants' fails to strike a fair balance between the competing public and private interest and that State has overstepped. For this reason, the retention was disproportionate interference with the right under Article 8. It follows that proportionality test, for ECHR , is fair balance test. This case did not involve adjudgment of any Act as ultra vires.

5. In **MK VS France** (Pg 549-562 Vol IXB Shyam Divan), the applicant who had been charged with book theft and who was acquitted by the Appellate Court had applied for removal of his finger prints from the National fingerprint database. The request had been rejected on the ground that its retention was necessary for prevention of crime. The finger print could be retained for 25 years. The ECHR referred ***to S & Marper*** to hold that the '***domestic law must afford appropriate safeguards to prevent use of personal data in a manner inconsistent with Article 8***'. It also noted that the particular concern of the court was the risk of stigmatization notwithstanding the presumption of innocence which attached to a person not convicted. The court found that the law did not distinguish convicts and non convicts and serious offences and minor offences. It was therefore found to be disproportionate. This case has no relevance in adjudging the validity of Aadhaar Act.

6. In **R Vs Commissioner of Police [2011] UK SC 21 [Pg 122-174 Compilation Vol IV by Shri K. Vishwanathan]** in the context of detection of crime a National data base had been created. The biometric data comprising DNA samples, DNA profiles and fingerprints of those involved in crime were collected and stored in the database. There was no time limit for retention of data. This also involved a case where the applicants had been acquitted. The court referred to S & Marper and held that indefinite retention of Appellant's data interfere with Article 8. The court found that indefinite retention was only discretionary and such retention was not intended for all cases. It did not allow collection and retention of as many as sample as possible (Pr 33). Section 64 was found to be compatible with Article 8. This again was not a case of identity card or electronic identification.

7. The three cases (***S & Marper*** , ***M.K. Vs, France*** and **R Vs Commissioner of Police**) are distinguishable for the following reasons :-

(i). They do not involve collection and retention of data in a centralized data base for the limited use of identification by authentication under a law which prohibits disclosure and sharing of core biometrics and also

specifically prohibits the authority and any entity under its control from collecting, keeping or maintaining any information about the purpose of authentication (Section 29 and 32 of Aadhaar Act).

(ii). These cases pertained to storage of fingerprints, photograph, DNA profile (or cellular sample) in a centralized data. In ***S & Marper***, the police forces had access to the data for processing. Under the Aadhaar Act, 2016 the cellular samples and DNA profiles are not being and cannot be collected. Hence, the nature of collection of data is different. As noticed in the two cases , the fingerprint does not disclose any information to an untutored and also requires a comparator signature and it reveals less than a photograph.

(iii) There is an important distinction between identity of an individual for establishing that he is the person who he claims to be and those cases which in the crime / criminal context involve the identification of the arrestee for determining his link to the crime. The former is based on the principle of determining ' you are you' , and the latter is based on the principle of determining ' are you that criminal'. In the crime context 'identification encompasses not merely a person's name, but also other crimes to which the individual is linked. Knowledge of identity may inform that a suspect is wanted for another offence, or has a record of violence or mental disorder.

159 L Ed 2d 292 @ 303 Hiibal Vs. Sixth Judicial District Court [Compilation II Tab W]

In Maryland Vs King 569 US (___) 2013 [Compilation II Tab X] , the U.S. Supreme Court observed ' a suspect's criminal history is a critical part of his identity that officers should know when processing him for detention' and ' by identifying not only who the arrestee is but also what other available records disclose about his past to show who he is , the police can ensure that they have the proper person under arrest..', and also that ' there can be little reason to question the legitimate interest of the government in knowing for an absolute certainty that identity of the person arrested **(Pg 12 & 23)**

Haskell Vs. Harris 669 F.3d 1049 (2012) (Pg 243-291 Note on Use of Biometrics Identification by AG)

In crime cases another distinction is cases finger prints are taken or retained along with DNA profiling because it is seen that criminals can easily hide their finger prints, but they cannot mask their DNA. DNA testing has capacity to identify or to exclude individuals quickly and

accurately (Pg 263 A.G.'s Compilation). The retention of DNA is considered to be a tool for solving and preventing future crimes. (Pg 265).

(iv). These cases deal with collection and retention of personal information for the purposes of criminal identification. The Aadhaar Act in comparison provides that the identity information other than core biometric information/ authentication record would be disclosed only pursuant to an order of a court of District Judge or above, or core biometric when authorized in the interest of National security by a senior official under review of oversight committee. More importantly, the ordinary use of identity information is only for identification. Therefore, in the present case, this Hon'ble Court will have to independently examine whether collection and retention of identity information involves a reasonable expectation of privacy so as to implicate Article 8.

8. In ***Rotaru Vs. Romania (ECHR)*** dated 04.05.2000 (***Pg 515-548 Module IX B of Shri Shyam Divan***) is another cases of retention of stale crime data for purposes of surveillance. The applicant, a lawyer by profession, had been convicted by people's court in 1948 under Communist regime. After the end of the Communist Rule, the said data was still retained although a part of the data was found to be mistaken. In this context, ECHR examined the Romanian domestic law and ruled that the law neither defines the kind of information nor the categories of people against whom information may be taken nor the circumstances in which the measures may be taken or the procedure, nor lays down any limit on the age of information or the length of storage time. In these circumstances violation of Article 8 was recorded. The court held that 'respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings and activities of a professional or business nature could not be excluded from the notion of private life'. In this case the information included applicant's ' studies, his political activities and his criminal record...gathered more than 50 years earlier' . This case has no bearing to adjudgment of Aadhar Act.

9. In ***MM Vs. UK (ECHR)*** 29.04.2013 ***(Pg 563-612 Module IXB by Shri Shyam Divan)*** is again a matter arising from Northern Ireland which involved retention of the applicant's criminal record and formal administration of caution for child abduction on 17.11.2000. In this case the applicant had been offered an employment. But when her disclosure about conviction and caution was

confirmed, the offer of employment had been withdrawn. The data in this case was twelve years old. In this context the court examined the systematic storage of such data in police records. It was held that although data in the criminal record was public information , their systematic storing in central records with availability of disclosure even long after the event is likely to have been forgotten would be considered as private. Court observed ' as the conviction or caution itself recedes into the past it becomes a part of the person's private life which must be respected. The court found that such data could be stored for upto 100 years and the system for retention and disclosure was extensive. There was also no law for collection and retention of cautions. This judgment apart from being patently erroneous on facts has no bearing on adjudgment of Aadhaar Act. This case has been distinguished in ***(2015) 2 WLR 664 R(Catt) Vs ACPO*** **[Compilation IV Tab E]** . The retention of data for crime purpose in this case had been upheld by the U.K. Supreme Court (See para 11-17, 26-32).The court noted the criticism of Strasbourg court but stuck to the characterization of interference which were "minor". It observed 'the information stored is personal information because it relates to individuals but it is in no sense intimate or sensitive information like, for example DNA material or fingerprints. It is information about the overt activities in public cases of individuals whose main object in attending the events in question was to draw public attention to their support for a cause'. The court further, observed that even minor interferences call for justification. On facts, it was found that organized crime, terrorism , drug distribution and football hooliganism were examples because of which one cannot look at such issues simply in relation to the applicant. Long term consequences of restricting resource to the police would be very serious.

CENSUS CASES RELIED BY PETITIONERS :

10. On behalf of some Petitioners, Shri Gopal Subramanium relied upon a commentary on a German Court decision in Microcensus case (1969) reported in 27 BVerfG 1 **(Pg 61 Technology Volume)**. It is submitted that the commentary does not give the full picture about the judgment, though whatever is extracted does not really support the case of the Petitioners. The full judgment is available and included in compilation **[Compilation I Tab F]**. The Microcensus Act which was challenged had contemplated collection of representative statistics on population and work life. The information was to be obtained from one percent of the population selected on a randomized basis. The information to be gathered included number and names of persons in a

household, gender, age, relationships, family status, number of children, Nationality, place of residence, disabilities and their causes, area under agriculture and cultivation, work life , work hours and insurance coverage, holiday and recreational travel, child care etc. This information was to be processed for economic and sociological significance. The first Senate rejected the challenge, while explaining the limits of statistical survey of personal life data as that interfered with dignity human personality and with his self determination. The court held that if this interference was in the most intimate sphere of one's life then it would be in breach of basic law. But where a statistical survey is connected only to a person's conduct in the outside world, as a general rule it does not capture human personality in the inviolable sphere of private life choices. It was held that the information sought did not belong to the inner most sphere. Even with regard to the element of holiday and recreational travel, it was noted that, the information was required for economic and sociological purpose in the backdrop of increasing importance of tourism and hospitality industry. There was no possibility of misuse for other purposes as the anonymity of its processing was sufficiently assured by statute. There was also no breach of principle of equality.

11. It is also an important distinction that the nature of information being collected under the Aadhaar Act has a much smaller dimension and it does not involve processing for economic and sociological purposes. In case of Aadhaar Act, the purpose of collection and its use for authentication is specifically and precisely defined and the same is hedged with clear and specific prohibition backed by penal provisions. Further, in the data center de-duplication process is based on anonymization and what is stored in the servers for authentication process are simply templates and encrypted information of Aadhaar number and demogrpahics. The identity data collected is stored offline. There is no internet connectivity. Thus, there is more than a reasonable security protection under the Act.

12. The other judgment mentioned in the commentary [Pg 64 Technology Volume, full judgment (**Compilation I Tab F**)] again pertains to Census Act case. The statistics being collected were of a dimension wider than the Microcensus case. The 1983 Act purported to collect personal information even about religious affiliation and it provided for transmission of data to local governments for regional planning etc. In this case also the First Senate reiterated that informational privacy is not entirely unrestricted and the right is

not absolute with respect to the person's data, as human person develop within social community. The court observed that in such cases it is not possible to limit consideration exclusively to the nature of information. The usefulness and possible uses of the information are of decisive importance. The purpose of survey and possibilities of processing and collating which is inherent in information technology are also significant. The court said that compulsory collection of personal data without restriction is not permissible, in particular if such data are to be used for administrative enforcement purposes. The intended area of use should be specifically and precisely defined. Where the use and collation of data is for a wide variety of purposes the collection and processing of information must be accompanied by appropriate restrictions and conditions for processing. Processing should be through anonymization of data. The 1983 Census Act was upheld as Constitutionally valid and as satisfying the principle of proportionality. The court however struck down the transmission of data to local governments as the purpose of transmission was not narrowly defined. The combination of census with cross checks with population register was also disfavoured. This case again has no bearing to the Aadhaar Act for the reasons already mentioned in the previous paragraph.

JUDGMENTS OF CJEU RELIED BY PETITIONERS:

13. Basing reliance on two judgments of the Court of Justice of European Union, the Petitioners have contended that the Aadhaar Act is ultra vires Article 21 of the Constitution of India because its architecture involves permanent storage of personal data, including metadata posing grave risk to the individuals. The cases are :-

Digital Rights Ireland Ltd. Vs. Minister for Communications [2015] QB ECJ (Pg 69-121 Compilation IV By Mr K.V. Vishwanathan)

Tele 2 Sverige AB Vs. Post –Och Telestyrelsen **(Pg 1-30 Ms. Meenkashi Arora Compilation)**

14. The second case actually follows the dictum of the first case. In order to adjudge the applicability of these judgments it needs to be noted that the nature and extent of personal data involved in the said cases was different. Further, the scheme of the Directives under consideration in ***Digital Rights Ireland Ltd case*** involved access to the data by several National authorities. Furthermore, the retention of data was by the providers of publicly available electronic communication services or public communication networks. Yet further, the retention and use of the personal data was in the context of organized crime

and terrorism. The Directives had been found to be in breach of the proportionality principle. While applying the test of proportionality, the court had emphasized the need for clear and precise rules governing the scope and application of the measure, imposition of minimum safeguards assuring that the data has been retained with sufficient guarantees for protecting personal data.

15. The expanse and category of data which was collected, retained and stored by private service providers is ascertainable by reference to Article 5 (Pg 108/109 **Compilation IV By Mr K.V. Vishwanathan**) and paragraph 26 - 29(Pg 114 **Compilation IV By Mr K.V. Vishwanathan**). It is in this context that the court held that there was breach of Article 7 and 8 of Charter of Fundamental Rights (Pr 32-36) . Significantly, however the court found that the Directive though a serious interference with rights, was 'not such as to adversely affect the essence of those rights' as 'the Directive did not permit the acquisition of the knowledge of the content of the electronic communications of the rights as such. Even the retention of data was not found to be such as to 'adversely affect the essence of the Fundamental Right. This principle of 'adverse effect on the essence of the Fundamental Right' emanates from Article 52(1) of the Charter(Pr 38-40).

16. It is submitted that the aforesaid cases are distinguishable. The Aadhaar Act does not involve retention of personal data by private communications service providers with access to several National authorities. Even the data which is collected and stored in CIDR for authentication is for the limited purpose of authentication which involves comparison of the data of ANH with his own data. The authentication process does not allow drawing of *'very precise conclusion concerning the private lives of the persons whose data has been retained'*. The data collected under Regulation 26 is of a very limited nature and knowledge about the purpose of authentication is not only not possible but actually prohibited by Section 32(3). Most importantly, the Aadhaar Act is about storing data for authentication purpose in the context of benefits and services and subsides, and where there is need for authentication.

17. In ***Tele 2 Sverige AB Vs. Post –Och Telestyrelsen*** was delivered on 21.12.2016 i.e. after the enforcement of Regulation (EU) 2016/679 of the European Parliament and of the Council dated 27.04.2016 (Pg 1-30 Compilation Ms. Meenakshi Arora) .This Regulation relates to protection of

natural persons with regard to the processing of personal data and on the free movement of such data. Clauses 1, 2 and 3 of Article 1 are as quoted below :-

"Article 1 Subject-matter and objectives

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.

2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.

3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

"

18. From Regulation 3 it is apparent that the objective of Regulation is to ensure free movement of data within the Union and that is neither to be restricted nor prohibited for reasons connected with the protection of natural persons. Article 4 defines profiling. The various Articles deal with processing of personal data in different context. The case was in the context of this Regulation. It is submitted that this is yet another reason why the aforementioned judgments would have no relevance to the adjudgment of Constitutionality of Aadhaar Act. These judgments do not deal with legal provisions relating to establishment of identity or schemes pertaining to identity card.

EMPLOYMENT CONTEXT :

19. In ***Surikov Vs Ukraine*** **(ECHR)** dated 26.01.2017 (Pg 71-103 Vol II Compilation by Shri Anand Grover) the applicant was denied promotion based on some data pertaining to his mental health which originated in the year 1981 whilst he was serving in the military office. After being released from service, he was working with a corporation called Tavrida. The issue of promotion arose in the year 1997 and 2000. The court held that this data was highly sensitive, personal data and was very stale for being considered in the year 1997 and 2000. It also did not disclose present medical condition. It was retained under domestic law of Ukraine which entitled every employer to keep such data. In the opinion of the court its retention and use after such a long time was unrelated to the original purpose. It emphasized that retention of data should be 'proportionate' in relation to the purpose of collection and envisaged limited periods of storage'. The Aadhaar Act does not involve storage of such highly

personal data relating to mental health. The storage period depends upon the purpose for which it is collected.

20. Reliance placed on ***Leander Vs. Sweden*** **1987 ECHR 4** ***(Pg 253-286 Vol II Mr. K.V. Vishwanathan)*** is completely misplaced. This was a case where the applicant had been denied employment in a naval museum located within the naval base on security considerations and as per decision of the Supreme Commander of Armed Forces. The court upheld the denial saying that there was a wide margin of discretion and the action was supported by law (Pg 274)

BODIYLY INVASION :

21. In **YF Vs Turkey (ECHR)** dated 22.10.2003 ***(Pg 243-252 Vol II of Mr. K.V. Vishwanathan)*** , in the context of accused wife's allegation of rape in custody, ill treatment etc , the police got her examined by a doctor who reported that there had been no sexual intercourse in the days preceding the examination. After, being acquitted, the lady applied to the courts complaining that she was subjected to a forced medical examination without her consent and that was in breach of her right to physical integrity under Article 17 of the Domestic law and Article 8 was also violated. It is in this context held that a person's body concerns the most intimate aspect of private life and therefore a compulsory medical intervention, even if minor would constitute interference. The court found that the medical necessity was not demonstrated and examination was done without request from public prosecutor, and hence it was not supported by law. This case has no bearing for the purposes of judging validity of Aadhaar Act.

SURVEILLANCE :

22. Reliance was placed on **Amann Vs Switzerland,** judgment dated 16.02.200***(Pg 287-315 of K.S. Vishwanathan Vol II)***; also relied by Shri Anand Grover). A telephone call made to the applicant business man had been intercepted by the public prosecutor and an investigation had been directed. Based upon the investigation report, a National Security card index on the applicant had been drawn (1981). The existence of a card index was learned by the public in 1990. The applicant asked for an opportunity to consult his card. Upon which the applicant was provided a photocopy of his card which mentioned that he was in contact with Russian Embassy and does business of various kinds with Russian company. The applicant filed a request for

compensation and the complaint was about interception of the call. The court held that there was breach of Article 8. The court found that power of interception/ tapping was unguided as the conditions of exercise of discretionary power were not indicated in the law with sufficient clarity (Pr 62). It was of the view that the interception pertained to his private life. The storing of information in the cards was held to be violative of Article 8.

23. In **Roman Zakharov Vs. Russia (Grand Chamber ECHR)** dated 04.12.2015 ***(Pg 106-196 Module VIIA , Shri Shyam Divan)*** , the applicant was an editor –in –chief of a publishing company and of an Aviation magazine. He was also Chairperson of Glasnost Defense Foundation, an NGO which monitored the state of media freedom and promoted independence of media. He brought a case against three mobile network operators claiming interference with the privacy of his telephone communications. The operators had permitted security service, to plant an equipment for interception of communications. The right to privacy of telephone communications was found to be protected by the Constitution. The court held that a law interfering with liberty under Article 8 must pursue legitimate aims and should be necessary in a democratic society to achieve such aim. It must meet quality requirement: it must be accessible to the person concerned and forseeable as to its effects. Importantly, it was observed : " the court has held that in several occasions that the reference to forseeability in the context of interception of communications cannot be the same as in many other fields. Forseeability in the special context of secret measures of surveillance cannot mean that an individual should be able to forsee when his communication would be intercepted". It emphasized that since the power in such cases is exercised in secret, the risks of arbitrariness are evident and therefore there should be detailed rules of interception. The citizens must know in what circumstances the power can be invoked. The power could not be unfettered. The scope and manner of exercise should be specified with sufficient clarity (Pr 229-232) . The court also said that in cases of secret surveillance ' the court must be satisfied that there are adequate and effective guarantees against abuse'. The nature, scope and duration of the measures , the grounds required for ordering them , the authorities competent to authorize and the available remedy would be considered in the assessment. It is submitted that this case has been relied in view of the contention that the Aadhaar Act makes surveillance possible by tracking the electronic trails. It has been submitted that the Aadhaar Act does not authorize any surveillance nor does it make surveillance possible in the manner suggested. Therefore, this

judgment is not relevant , the field of operation of Aadhaar Act is different from the laws relating to surveillance being considered in **Roman Zakharov Vs. Russia.** Further, the Aadhaar Act meets the test of accessibility and forseebility (assuming these principles are applicable). There are sufficient and adequate safeguards coupled with punitive provisions for protecting biometrics.

CURRENT TREND IN EUROPE AS REGARDS EID CARDS:

24. With respect to electronic identification and electronic transactions the European Parliament and its Council have enacted Regulation (EU) No. 910/2014 dated 23.07.2014 (**Compilation VI Tab B**). Vide Article 52(2) this Regulation is to apply from 01.07.2016. Article 1 of the Regulation states that the Regulation aims to ensure the proper functioning of the internal market while aiming at '**an adequate level of security of electronic identification**'. Article 3 defines electronic identification, personal identification data , electronic identification scheme and authentication. The Regulation shows that each member State has its own electronic identification scheme and this Regulation seeks to bring about a mutual recognition of the said schemes for interoperability. Article 8 envisages different assurance levels keeping in view the electronic identification means which have been deployed. The significant aspect is that it does not envisage full proof guarantees or complete assurances. At the higher levels there is either to be substantial assurance level or high assurance level.

In this context, it is also important to note the Council Regulation (EC) No. 2252/2004 on standards for security features and biometrics in passports and travel documents **[Compilation VI Tab].** Article 1(2) provides for inclusion of facial image and fingerprints.

25. In the aforesaid backdrop, the policy department for Citizen's rights and Constitutional Affairs of the European Parliament had commissioned a study to enable a decision for issuance of a European identity card (**Compilation VI Tab C**). This study was completed in May, 2016. The Executive Summary records that the lack of harmonization of National Identity cards creates some obstacles for the enjoyment of EU citizenship rights. The study focuses on the exercise of EU political rights and assesses the role a European Id card might play in enhancing the participation of EU citizens in decision making processes at the EU level. It notes that data protection is key issue for all documents containing personal data (See also para 1.1, Pg 11). Chapter 3 mentions the rationale behind the introduction of a European Id card. It notes that different member

States were issuing different types of National Id cards, and in some member States Id cards were issued by one single centralized body whereas in some others Id cards were issued by decentralized body. Atleast 19 member States out of 28 have centralized issuing authorities (See Pg 22-23) . At present only 2 member States , Denmark and Ireland do not have National Id cards. UK has left the EU but even U.K. has introduced a centralized verification system gov.uk.verify. In 13 member States it is mandatory for citizens above 15 years of age to obtain a National Id card.

The study notes in para 3.1.5 that the Estonia has the most advanced Eld card system and data security issues are given paramount consideration. It uses a 2048 Bit public key encryption and no major data information leaks have occurred. In many countries services can be accessed only by those holding a valid National Eld card.

The study examines the concept of proportionality whose compliance was considered to be essential (para 5.1.1 Pg 47). It also considered data protection issue in the light of Article 7 and 8 of the European Charter of Fundamental Rights. It notes that under the Directives of the European Parliament, biometric data is considered to be sensitive personal data but they have to be included in the European Id card. Its use would require explicit and informed consent from the data subject and also rules for access (Pg 47-50). Chapter VI deals with the data to be stored on a European Id card. It is noted that introducing biometric identifiers would allow for more reliable identification. In particular para 6.4 records as below –

> *"As highlighted by Section 3.1.2 (Types of national ID card) in a large majority of Member States, national ID cards allow for electronic functionalities. Moreover, the introduction of such ID cards seem to be a trend, driven amongst others by constant developments in the ICT sector and the adoption of EU legislative and policy developments promoting the use of electronic identification schemes. Thus the desk research seems to confirm the stakeholder views in that it suggests the necessity of integrating electronic identification technologies into a European ID card, should that be adopted."*

26. The aforesaid material goes to show that the use of biometrics for establishing National identity or identification is growing at a fast pace throughout the world. Authentication in all these cases is based on 1:1 Matching algorithm. In large number of countries biometric identity cards are being issued in a centralized manner. In all these cases personal data is bound to be stored,

though the centralized storage may not be used for authentication. Neither of the two aforementioned judgments adjudged the validity of any scheme of any member State pertaining to National Id cards using biometric. The only case that deals with is ***Michael Schwarz.***

U.S. CASES :

27. In ***US Vs Westinghouse Electric Corporation*** relied upon by ***Shri Anand Grover,Sr.Adv.*** [**Compilation by Shri Anand Grover II Pg 1-13]** related to a petition by U.S. for a direction against the corporation for producing certain documents pertaining to medical records of employees for facilitating research designed to improve occupational safety and health as per Act of 1970. The government did not challenge the assertion of employees's privacy interest. In this context the collection, recording and dissemination of individualized information was noted along with the growing concern that accumulation of such data by the government which was sensitive information relating to personal lives and activities would affect privacy rights. The court followed **Whalen Vs. Roe 429 US 489 [Compilation by Shri Anand Grover II Pg 30-42], Paul Vs. Davis 424 US 693** for emphasizing individual interest in avoiding disclosure of personal matters and the interest in independence in making certain important decisions. The right involved was said to be 'the right not to have an individual private affairs made public by the government'. The medical records contain intimate facts of a personal nature which are within the ambit of privacy protection (Pr 10 & 11). The court, following ***Whalen Vs. Roe*** held that right of an individual to control access to their medical history is not absolute, and intrusion into the zone of privacy surrounding medical records could be allowed if societal interest in disclosure outweighs the privacy interest on the specific facts of the case. On facts it was found that the medical record including x rays, blood tests, pulmonary function tests, hearing and visual test, although private is generally not regarded as sensitive. Its examination by NIOSH is meant for protecting employees from potential hazards, and therefore disclosures are not likely to inhibit the employee from undergoing periodic examinations in future.

Court then examined whether there were effective provisions for security of information against subsequent unauthorized disclosure. As in ***Whalen Vs. Roe***, the court in this case also found that there were adequate safeguards against disclosure. The court clearly applied the test of 'sufficiently adequate assurance'. In the context, it emphasized the existence of physical security and provisions in the Regulation relating to non- disclosure. It did not agree to

impose the requirement of securing written consent of employees. However, court provided for issuance of prior notice to the employees whose medical records were to be examined to enable objections based on privacy claim. The notice was to make it clear that if reply was not filed within specified time their consent to disclosure would be assumed.

28. ***Whalen Vs. Roe*** also related to medical information of patients. Physicians and patients had brought an action challenging constitutionality of New York statute which required that State be provided with a copy of every prescription for certain drugs. The statute provided for security measures. The court held that disclosure of private medical information to representatives of the State having responsibility for the health of community does not automatically amount to an impermissible invasion of privacy (Para 8). The Act also did not deprive any individual the right to decide independently, with the advice of his physician to acquire and use needed medication. Neither the threatened nor the immediate impact on reputation or independence is sufficient to constitute an invasion of any right or liberty. The court also found that the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks is offset by the duty to avoid unwarranted disclosures and evidencing of a proper concern with and protection of , the individual's interest of privacy.

29. ***US Vs Jones (Pg 85-106 Module VIIA , Shri Shyam Divan)*** was relied by ***Shri Divan***. It pertained to attachment of a GPS tracking device to an individual's vehicle and its use to monitor the vehicle's movement. Question was whether it constituted a search or seizure within the IVth Amendment of the Constitution. The vehicle was considered to be an 'effect under the IVth Amendment'. The planting of the electronic tracker was held to constitute a search. Scalia J held that mere visual observation does not constitute a search and that was constitutionally permissible. Justice Sotomayer, referred to use of GPS technology and drew a distinction between long term monitoring and short term monitoring, though acknowledging that such monitoring creates a precise, comprehensive record that reflects a wealth of details about her familial, political, professional, religious and sexual associations. However, no final view was expressed. Justice Alito and three other judges also alluded to the computer age and the use of GPS and found, in dissent that the GPS violated IVth Amendment.

None of the above cases have any bearing to the storing of minimal identity information only for the purposes of authentication with the help of CIDR. Two cases pertained to medical information and the third pertained to GPS pertaining. But even in these cases the right to personal medical information was not found to be absolute, and on the facts of each case the court examined whether the societal interest outweighed the privacy interest and whether there were sufficiently adequate safeguards. Physical security coupled with adequate security provisions in the law were considered to be sufficient protection.

30. Significantly, this Hon'ble Court in 9JJ has struck a note of caution in mechanically adopting judgments of foreign courts. The court in para 155 held ' *Each country is governed y its own constitutional and legal structure. Constitutional structures have an abiding connection with history, culture, political doctrine and values which a society considers as its founding principle. Foreign judgments must hence be read with circumspection ensuring that the text is not read isolated from its context'.*

IV. INALIENABLE RIGHTS :

What is the concept of inalienable Fundamental Right under the Constitution of India, given the conclusion in the Privacy case that the Fundamental Right are not absolute, and further as held by Khanna J., in Kesavanand Bharati and Indira Gandhi case that Fundamental Right being a basic feature could be abridged but not abrogated or destroyed ?

1. The depiction of Fundamental Rights enshrined in Articles 14, 19 and 21 as inalienable human rights, and not as rights conferred by the Constitution is currently established by authoritative judgments in ***Kesavanad Bharati* (1973) 4 SCC 225, *Nagraj* (2006) 8 SCC 212, *I.R. Coelho* (2007) 2 SCC 1** and ***Puttaswamy.*** The judgment by 9JJ in Puttaswamy had relied upon the observations in ***Kesavanad Bharati*** and ***I.R. Coelho***. It needs to be understood that this depiction in ***Kesavanad Bharati*** and ***I.R. Coelho*** was made in the context of adjudgment of Constitutional amendments made under Article 368 of the Constitution and the limitation of the doctrine of basic structure thereupon. The resultant was that even the Constitutional Amendment cannot abrogate or destroy the basic features of the Constitution, including the Fundamental Rights, though the basic features could be abridged or restricted.

2. The concept of inalienability, however, would not mean that the Fundamental Rights as enshrined in the Constitution of India cannot be abridged or restricted, notwithstanding that it is permitted specifically. The 9JJ judgment in ***Puttaswamy*** equally emphasizes that the Fundamental Rights are not recognized by the Constitution of India in absolute terms. The idea of absoluteness is foreign to our Constitution.

(2017) 10 SCC 1,K.S.Puttaswamy Vs. Union of India
Pr 47 & 313 (Chandrachud J)
Pr 377 (Chelameshwar J)
Pr 419 (Bobde J)
Pr 488 & 526 (Nariman J)
Pr 565 & 567 (Sapre J)
Pr 583 & 639 (Sanjay K. Kaul J)

***Common Cause Vs UOI* (Passive Euthanasia case judgment dated 09.03.2018 in W.P. (C) 215/05 [(2018) 4 SCALE 1]**

Pr 138 & 159 Dipak Misra CJ
Pr 89 D.Y. Chandrachud J (Pr 423 of SCALE)

3. The several rights recognized in Article 19 are specifically made subject to legislations having relation to Article 19(2) to 19(6). The equality right in Article 14 is not only subject to the provisions of Article 15 and 16 but is also subject to the concept of classification and reasonableness. Similarly, Article 21 expressly envisages deprivation by laws which seek to carry out legitimate objectives and are reasonable and proportionate. The very fact that Fundamental Rights can be abridged and restricted shows that there is an element of alienability though a qualified one, and such that would not destroy or abrogate the fundamental right.

(2007) 2 SCC 1, I.R.Coelho Vs. State of T.N.(Pr. 43,97,106)

V. PRIVACY AND DIGNITY :

Section 7 of Aadhaar Act protects human dignity recognized by Article 21 :

1. The rationale of Section 7 lies in ensuring targeted delivery of services, benefits and subsidies which are funded from the Consolidated Fund of India. In discharge of its solemn Constitutional obligation to enliven the Fundamental Rights of life and personal liberty (Article 21 to ensure Justice, Social, Political and Economic) and to eliminate inequality (Article 14) with a view to ameliorate the lot of the poor and the Dalits, the Central Government has launched several welfare schemes. Some such schemes are PDS, scholarship, mid day meals, LPG subsidies, etc. free education (Article 21 A).

These schemes involve 3 % percentage of the GDP and involve a huge amount of public money.

The requirement to undergo authentication on the basis of Aadhaar number is made mandatory by Section 7. This requirement is only for " undergoing authentication". However, if authentication fails , despite more than one attempt then the possession of Aadhaar number can be proved otherwise i.e. by producing the Aadhaar card. And those who do not have Aadhaar number can make an application for enrolment and produce the enrolment id number (EID). This takes care of non exclusion. Neverthless, the Petitioners contend that the obtaining of entitlements cannot be made subject to the giving of identity information and obtaining Aadhaar number so as to enable authentication, as that would be violative of the Fundamental Right to privacy and dignity of the individuals who are entitled to benefits under Section 7. For this, the Petitioners rely on the judgment of this court in ***K.S. Puttuswamy*** **(2017) 10 SCC 1** . One aspect of the argument is that the mere taking of the finger prints and the iris scan is destructive of the Fundamental Right to dignity. It is also said that the individuals are being are reduced to digital existence or numbers and that is contrary to human dignity. It is therefore necessary to understand the concept of human dignity as explained by the Supreme Court in various judgments including K.S. Puttuswamy.

2. The Constitution does not exist for a few or minority of the people of India, but "We the people". The goals set out in the Preamble of the Constitution do not contemplate statism and do not seek to preserve justice, liberty, equality and fraternity for those who have the means and opportunity to ensure the exercise of inalienable rights for themselves. These goals are predominantly or atleast equally geared to" secure to all its citizens", especially, to the downtrodden, poor and exploited, justice, liberty , equality and "to promote" fraternity assuring dignity.

3. The Aadhaar Act truly seeks to secure to the poor and deprived persons an opportunity to live their life and exercise their liberty. By ensuring targeted delivery through digital identification, it not only provides them a nationally recognized identity but also attempts to ensure the delivery of benefits, service and subsidies with the aid of public exchequer/ Consolidated Fund of India. And it does so without impacting the Fundamental Right to privacy of the Indians or at best minimally impacting it with adequate safeguards.

4. In the above context, there is a paradigm shift in addressing the problem of security and eradicating extreme poverty and hunger. The shift is from the welfare approach to a right based approach. As a consequence, right of everyone to adequate food no 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. This Constitutional obligation is reinforced by obligations under International Convention. The Universal Declaration of Human Rights (Preamble, Article 22 & 23 **Pg 616-624 @ Pg 620 Vol IX C by Shri Shyam Divan**) and International Covenant on Economic, Social and Cultural Rights (**Pg 625-632 Vol IX C by Shri Shyam Divan)** , to which India is a signatory, also casts responsibilities on all State parties to recognize the right of everyone to adequate food (See paras 150,154 & 462 of 9JJ) . Eradicating extreme poverty and hunger is one of the goals under the Millennium Development Goals of the United Nations. The Parliament enacted the National Security Food Act, 2013 to address the issue of food security at the household level. The scheme of the Act designs a targeted public distribution system for providing food grains to those below BPL. The object is to ensure to the people adequate food at affordable prices so that people may live a life with dignity. The reforms contemplated under Section 12 of the Act include, application of information and communication technology tools with end to end computerization to ensure transparency and to prevent diversion, and leveraging Aadhaar for unique biometric identification of entitled beneficiaries. The Act imposes obligations on the Central Government, State Government and local authorities vide Chapter VIII, IX and X. Section 32 contemplates other welfare schemes. It provides for nutritional standards in Schedule II and the undertaking of further steps to progressively realize the objectives specified in Schedule III.

5. Identically, the MGNREGA Act, 2005 has been enacted for the enhancement, livelihood, security of the households in rural areas of the country. It guarantees at least 100 days of wage employment in every financial year to at least one able member of every household in the rural area on assets creating public work programme. Sections 3 and 4 of the Act contain this guarantee. The minimum facilities to be provided are set out by Section 5 read with Schedule II. Section 22 provides for funding pattern and Section 23 provides for transparency and accountability. This Act is another instance of a rights based approach and it enlivens the Fundamental Right to life and personal liberty of Below Poverty Line people in rural areas.

6. In the 9JJ in K.S. Puttaswamy, Dr D.Y. Chandrachud J referred to the Article of Warren and Brandeis, Cooley and Roscoe Pound. The judgment observes that "the right to be let alone is a part of the right to enjoy life. The right to enjoy life is, in its turn a part of the Fundamental Right to Life of the individual" (Pr 38).

7. The court then proceeded to formulate the doctrinal basis of the right to privacy. In the process the judgment noted that dignity as a Constitutional value finds expression in the Preamble and the precepts enshrined in the Preamble " exist in unity to facilitate a humane and compassionate society" with the individual as the focal point of the Constitution. Human dignity is the integral part of the Constitution and its reflections are found in Article 14, 19 and 21. The judgment then refers to *Prem Shankar Sharma, FC Mullin* and *Bandhua Mukti Morcha* which expanded the right to life to include the right to live with human dignity and all that goes along with it, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading , writing and expressing oneself in diverse forms, freely moving about and mixing and commingle with fellow human beings.. Every act which offend against or impairs human dignity would constitute deprivation pro tanto of this right to live. These cases also held that the right to live with human dignity in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42. The minimum requirements must exist in order to enable a person to live with human dignity.

8. In para 125, the court noted the observations in ***Minerva Mills Vs UOI* (1980) 2 SCC 591** which held that both Parts III and IV of the Constitution had emerged as inseparably intertwined, without a distinction between the negative and positive obligations of the State. The Constitution, in this view, is founded on "the bedrock of the balance between Parts III and IV" and to give absolute primacy to one over the other would be to disturb the harmony of the Constitution.

9. The judgment also approvingly refers to ***M. Nagraj* (2006) 8 SCC 212** which says that " it is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that directions. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot be given. It simply is.

Every human being has dignity by virtue of his existence...". A similar observation in *Shabnam (2015) 6 SCC 602* was referred to.

10. Finally, the judgment concludes that the right to life in Article 21 " comprehends one's being in its fullest sense. That which facilitates the fulfillment of life is as much within the protection of the guarantee of life". It goes on to say that " to live is to live with dignity...Dignity is the core which unites the Fundamental Right because the Fundamental Rights seek to achieve for each individual the dignity of existence... It is only when life can be enjoyed with dignity can liberty be of true substance. Privacy ensures the fulfillment of dignity and is a core value.."(Pr 118-119) .

11. This judgment marks a new high point in the evolution of the concept of human dignity. It emphatically establishes that the right to life and personal liberty in Article 21 contains a dynamic positive aspect which obligates the State to provide those minimum conditions which are absolutely essential for enjoying the life with dignity, and without which the inherent worth of the human being is not possible. Article 21 therefore becomes a fountain of new poverty jurisprudence.

12. In **Common Cause Vs. UOI** , Dr A.K. Sikri J , made a scholarly inquiry about the concept of human dignity (Pr 72-99). (Pr 269-296 of SCALE)

13. **Christopher McCrudden** ,an Oxford Academic in his article, " Human Dignity and Judicial Interpretation of Human Rights" published in the European Journal of International Law on 01.09.2008 traces the evolution of concept of human dignity **[Compilation III Tab L]**. The substance of it is summarized below.

It is noteworthy that in the early stages of social evolution, human dignity was understood as a concept associated with "status". Only those individuals were considered worthy of respect who enjoyed a certain status within the social construct. Though one finds statements about dignity of humans as human beings on account of the human being the highest creation of God and his possession of mind and the power of reason in the Oration of **Marcus Tullius Cicero,** a Roman Politician and Philospher, (63 BC) and in the works of **Pico della Mirandola**, a Reformation humanist (1486) " On the dignity of man" , yet there existed human beings who were not considered as human beings. There were slaves who were treated at par with animals. So it was in India.

Hinduism too attached divinity to human being. [See Dr. A.K. Sikri J's pr 72-78 (Pr 269-296 of SCALE in ***Common Cause Vs. UOI*** (passive euthanasia case) and Pr 640-644(Jeevan Reddy J);399-405 (Sawant J); Pr 12-18,22-28 (Pandian J) Pr 276,277 & 283 (Thommen J) , 322-327 (Kuldip Singh) **Indra Sawney (1992) Suppl 3 SCC 217**]. But we had casteism side by side which condemned human beings by birth. The real thrust towards recognition of dignity as a concept belonging to all human beings sprung forth during the French Revolutions of 1749 and 1848. The German philosopher **Immanuel Kant** expounded the theory that humans should be treated as an end in themselves and not merely as a means to an end with ability to choose their destiny. Emphasis was laid on the intrinsic worth of the human being. Based on this philosophy emerged the initial declaration of rights. **Kant** wrote thus :-

'*Humanity itself is a dignity; for a human being cannot be used merely as a means by any human being [...] but must always be used at the same time as an end. It is just in this that his dignity (personality) consists, by which he raises himself above all other beings in the world that are not human beings and yet can be used, and so overall things*' (Pg 174 Kant on Human Dignity by Oliver Sensen) **[Compilation III Tab S]**

Charles Bernard Renouvier, a French Philosopher, said " Republic is a State which best reconciles dignity of individual with dignity of everyone." Dignity extended to all citizens involves the idea of Communitarism. A little earlier in 1798, **Friedrich Schiller,** a German poet of freedom and Philosophy brought out the connection between dignity and social condition in his work "*Würde des Menschen*". ***He said "*[g]ive him food and shelter; When you have covered his nakedness, dignity will follow by itself.**" It was during this period that abolition of slavery became an important political agenda. Slavery was considered as an affront to human dignity.

14. Subsequent political developments are marked with the emergence of the thoughts of Schopenhauer, Karl Marx and Nietzsche who considered human dignity to be "shibboleth of all perplexed and empty-headed moralists." The thoughts of Karl Marx led to the Russian Revolution during World War I and then the World War II which witnessed the emergence of an Axis between Germany, Italy and Japan and the suppression of the Jews in Fascist Germany as also the totalitarianism of Stalinist Russia. With the defeat of the Axis powers in World War II , the United Nations came into being and the Nations adopted UDHR. New Constitutions were established in many Nation States. The Constitution of India also came into being at about the same time.

15. Whilst,shattering the hopes of the socialists, the Russian revolution degenerated into totalitarianism and finally the breakup of the Soviet Union, it cannot be overlooked that the Russian revolution of 1918 has a positive impact on the evolution of the American society. It is in 1929 that America suffered the great suppression and lasted a few years. That brought President Roosevelt at the helm. And in this context came the realization that not only dignity of human being had to be recognized as a human right but the State had to ensure freedom from fear and want and had to create conditions therefore. This thought pioneered by Roosevelt came to be embedded in UDHR.

16. The Universal Declaration of Human Rights (UDHR) recorded in the Preamble recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace. It included freedom from fear and want as amongst the highest aspirations of the common people. It reaffirmed faith in Fundamental Human Rights , in the dignity and worth of the human person and in the equal rights of men and women. Articles 1, 3, 4, 22, 23 and 26 are significant. Article 22 & 23 in particular recognize that the realization of the economic, social and cultural rights of everyone is indispensable for his dignity and the free development of his personality. This is of course subject to resources of each State. But the realization is contemplated through National effort and international cooperation. Evidently, the UDHR adopts a substantive or communitarian concept of human dignity. The realization of intrinsic worth of every human being, as a member of society through National efforts as an indispensable condition has been recognized as an important human right. Truly speaking this is directed towards the deprived down trodden have nots.

17. Pursuant to the UDHR the States including India adopted the International Covenant on Economic, Social and Cultural Rights [Also See Section 2(1) (f) of Protection of Human Rights Act, 1993 and Pr 149 **(2017) 10 SCC 1**].In the Preamble of the Covenant it is stated " recognizing that in accordance with the UDHR, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby every person may enjoy his economic, social and cultural rights, as well as his civil and political rights". Article 7 and 11 in particular recognize the right of everyone to an adequate standard of living including food, clothing and housing.

18. Pre Independence India had a history of invasions, especially that by Mugals and the British Imperialists who occupied the country over long periods. There may be differences in the nature and expanse of their occupation. But during this period human dignity was associated with status – Kings , Princes, Subedars, Taluqdars, Zamindars and those who were associated with the Darbars or wealth. So much so that during the British period the generality of Indians were considered to be second grade citizens. During the era of British Imperialists that was the position in South Africa too. Whilst South Africa suffered apartheid, in India there was a large section of Indians who actually suffered double apartheid- the downtrodden whom Gandhi ji called Harijans. They were considered more akin to non humans. This was as a result of the continuity of the caste system in India and the horrific thoughts of those who equated the women and Shudras with animals. Our freedom struggle against the British envisaged the emancipation of the women and the Dalits also. The freedom struggle was founded on the **humanistic concept of the human dignity**. It recognized that through positive actions conditions had to be created for ensuring human dignity to these vast sections of our society. This spirit of the freedom struggle permeates the Constitution of India. It is this which has been noticed and brought out in the majority judgment of Dr. D.Y.Chandrachud, J.

19. This Hon'ble Court has recognized the socio economic rights are to be read into the Fundamental Rights envisaged in Part III of the Constitution. There cannot be enjoyment of civil and political rights without strengthening the socio economic rights. It is the duty of a welfare State to ensure that each citizen at least has access to the basic necessities of life.The idea of a 'Socialist State" under a mandate to secure Justice social, economic and political will be completely illusory if it fails to secure for its citizens the basic necessities in life. There cannot be any dignity for those who suffer starvation, subjugation, deprivation and marginalization and those who are compelled to do work which is intrinsically below human dignity.

20. This Hon'ble Court in **(1973) 4 SCC 225, Kesavananda Bharati Vs. State of Kerala** emphasized on the attainment of socio economic rights and its interplay with fundamental rights.

Shelat & Grover J. :

489. According to Granville Austin, directive principles of State policy set forth the humanitarian socialist precepts that were the aims of the Indian social revolution. Granville Austin, while summing up the inter-relationship **of fundamental rights and directive principles, says that it is quite evident that the fundamental rights and the directive principles were designed by the members of the Assembly to be the chief instruments in bringing about the great reforms of the social revolution. He gives the answer to the question whether they have helped to bring the Indian society closer to the Constitution's goal of social, economic and political justice for all in the affirmative.**

533. The other part of the Preamble may next be examined. The sovereign democratic republic has been constituted to secure to all the citizens the objectives set out. The attainment of those objectives forms the fabric of and permeates the whole scheme of the Constitution. While most cherished freedoms and rights have been guaranteed the Government has been laid under a solemn duty to give effect to the directive principles. **Both Parts III and IV which embody them have to be balanced and harmonised — then alone the dignity of the individual can be achieved. It was to give effect to the main objectives in the Preamble that Parts III and IV were enacted**. The three main organs of Government, legislative, executive and judiciary and the entire mechanics of their functioning were fashioned in the light of the objectives in the Preamble, the nature of polity mentioned therein and the grand vision of a united and free India in which every individual high or low will partake of all that is capable of achievement. He must, therefore, advert to the background in which Parts III and IV came to be enacted as they essentially form a basic element of the Constitution without which its identity will completely change.

Hedge & Mukherjee J :

713. Part IV of the Constitution is designed to bring about the social and economic revolution that remained to be fulfilled after independence. **The aim of the Constitution is not to guarantee certain liberties to only a few of the citizens but for all. The Constitution visualizes our society as a whole and contemplates that every member of the society should participate in the freedoms guaranteed.** To ignore Part IV is to ignore the sustenance provided for in the Constitution, the

hopes held out to the Nation and the very ideals on which our Constitution is built. **Without faithfully implementing the directive principles, it is not possible to achieve the Welfare State contemplated by the Constitution. A society like ours steeped in poverty and ignorance cannot realize the benefit of human rights without satisfying the minimum economic needs of every citizen of this country.** Any Government which fails to fulfil the pledge taken under the Constitution cannot be said to have been faithful to the Constitution and to its commitments.

MATTHEW J,

1865. The philosophy of Mahatama Gandhi was rooted in our ancient tradition; the philosophy of Jawaharlal Nehru was influenced by modern progressive thinking. But the common denominator in their philosophies was humanism. The humanism of the Western Enlightenment comprehended mere political equality; the humanism of Mahatama Gandhi and Jawaharlal Nehru was instinct with social and economic equality. The former made man a political citizen; the latter aims to make him a 'perfect' citizen. This new humanist philosophy became the catalyst of the National Movement for Swaraj.

1867. In sum, the National Movement was committed: (1) to work for social, economic and political equality of the weaker sections of the people; (2) to disperse concentration of wealth in any form in a few hands; and (3) to acquire property in accordance with law. Payment of compensation would be determined by equitable considerations and not by market value. The men who took the leading part in framing the Constitution were animated by these noble ideals. They embodied them in the Preamble to the Constitution; they proliferated them in the Directive Principles of the State Policy; they gave them ascendancy over the rights in Part III of the Constitution. [See Articles 15(3), 16(4), 17, 19(2) to (6), 24, 25(*a*)and (*b*), 31(4), (5) and (6)]. They made them 'fundamental' in the governance of the country. Pandit Govind Ballabh Pant called them 'vital principles'. And indeed so they are, for when translated into life, they will multiply the number of owners of fundamental rights and transform liberty and equality from a privilege into a universal human right.

KHANNA, J.

1477. I may also refer to another passage on p. 99 of *Grammar of Politics* by Harold Laski:

> "The state, therefore, which seeks to survive must continually transform itself to the demands of men who have an equal claim upon that common welfare which is its ideal purpose to promote.
>
> We are concerned here, not with the defence of anarchy, but with the conditions of its avoidance. Men must learn to subordinate their self-interest to the common welfare. The privileges of some must give way before the rights of all. Indeed, it may be urged that the interest of the few is in fact the attainment of those rights, since in no other environment is stability to be assured."

1478. A modern State has to usher in and deal with large schemes having social and economic content. It has to undertake the challenging task of what has been called social engineering, the essential aim of which is the eradication of the poverty, uplift of the downtrodden, the raising of the standards of the vast mass of people and the narrowing of the gulf between the rich and the poor. As occasions arise quite often when the individual rights clash with the larger interests of the society, the State acquires the power to subordinate the individual rights to the larger interests of society as a step towards social justice.

1481. Apart from what has been stated above, we find that both before the dawn of independence as well as during the course of debates of the constituent assembly stress was laid by the leaders of the nation upon the necessity of bringing about economic regeneration and thus ensuring social and economic justice. The Congress Resolution of 1929 on social and economic changes stated that "the great poverty and misery of the Indian people are due, not only to foreign exploitation in India but also to the economic structure of society, which the alien rulers support so that their exploitation may continue. In order therefore to remove this poverty and misery and to ameliorate the condition of the Indian masses, it is essential to make revolutionary changes in the present economic and social structure of society and to remove the gross inequalities". The resolution passed by the Congress in 1931 recited that in order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Objectives Resolution which was moved by Pt. Nehru in the Constituent Assembly on

December 13, 1946 and was subsequently passed by the Constituent Assembly mentioned that there would be guaranteed to all the people of India, "justice, social, economic, and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality". It would, therefore, appear that even in the Objectives Resolution the first position was given to justice, social economic and political. Pt. Nehru in the course of one of his speeches, said:

"The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over."

Granville Austin in his book "*Extracts from the Indian Constitution: Comerstone of Nation*" after quoting the above words of Pt. Nehru has stated:

"Two revolutions, the national and the social, had been running parallel in India since the end of the First World War. With independence, the national revolution would be completed, but the social revolution must go on. Freedom, was not an end in itself, only 'a means to an end', Nehru had said, 'that end being the raising of the people ... to higher levels and hence the general advancement of humanity".

The first task of this Assembly (Nehru told the members) is to free India through a new Constitution, to feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity.

K. Santhanam, a prominent southern member of the Assembly and editor of a major newspaper, described the situation in terms of three revolutions. The political revolution would end, he wrote, with independence. The social revolution meant 'to get (India) out of the medievalism based on birth, religion, custom, and community and reconstruct her social structure on modern foundations of law, individual merit, and secular education'. The third revolution was an economic one: 'The transition from primitive rural economy to scientific and planned agriculture and industry'. Radhakrishnan (now President of India) believed India must have a 'socio-economic revolution' designed not only to bring about 'the real satisfaction of the fundamental needs of the

common man', but to go much deeper and bring about 'a fundamental change in the structure of Indian society'.

On the achievement of this great social change depended India's survival. 'If we cannot solve this problem soon' Nehru warned the Assembly, 'all our paper Constitutions will become useless and purposeless.... '

* * *

1508. I am, therefore, of the opinion that the majority view in the *Golak Nath case* that Parliament did not have the power to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights cannot be accepted to be correct. Fundamental rights contained in Part III of our Constitution can, in my opinion, be abridged or taken away in compliance with the procedure prescribed by Article 363, as long the basic structure of the Constitution remains unaffected.

Dwivedi, J :

2120 '....The Nation stands to-day at the cross-roads of history and exchanging the time-honoured place of the phrase, **may I say that the Directive Principles of State Policy should not be permitted to become "a mere rope of sand". If the State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish. In order, therefore, to preserve their freedom, the privileged few must part with a portion of it.**

21. This Hon'ble Court has over the years in various judgments held that Article 21 envisages positive obligations of the State towards its citizens.

(i). **(1981) 1 SCC 608 F.C. Mullin VS. U.T. Delhi** (Pr. 8)

8. "But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. **We think that the right to life includes the right to live with human dignity** <u>**and all that goes along with it, namely, the bare necessaries of life**</u> **such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings**. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, **but it must, in any view of the matter,**

include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

(ii) ***Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545* (Pr. 32)**

"32... Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching...That is but one aspect of the right to life. An equally important facet of **that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood** to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. **They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood.** That is the context in which it was said by Douglas, J. in *Baksey*–that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn* v. *Illinois*[5] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life

is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh* v. *State of U.P.*"

(iii). **(1999) 6 SCC 667 Common Cause Vs. UOI** (Pr.175)

175. "Right to Life", set out in Article 21, means something more than mere survival or animal existence. (See: *State of Maharashtra* v. *Chandrabhan Tale.*) This right also includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in different forms, *freely moving about and mixing and commingling with fellow human beings.* [See: *Francis Coralie Mullin* v. *Administrator, Union Territory of Delhi*; *Olga Tellis* v. *Bombay Municipal Corpn.*AIR (paras 33 and 34); *Delhi Transport Corpn.* v. *D.T.C. Mazdoor Congress* AIR (paras 223, 234 and 259).] In *Kharak Singh* v. *State of U.P.*domiciliary visit by the police was held to be violative of Article 21.".

(iv). **(1995) Suppl 2 SCC 182 P.G. Gupta Vs. State of Gujarat** (Pr 9-11)

As stated earlier, the right to residence and settlement is a fundamental right under Article 19(1)(*e*) and it is a facet of inseparable meaningful right to life under Article 21. **Food, shelter and clothing are minimal human rights**. The State has undertaken as its economic policy planned development of the country and has undertaken massive housing schemes. As its part, allotment of houses was adopted, as is enjoined by Articles 38, 39 and 46, Preamble and 19(1)(*e*), facilities and opportunities to the weaker sections of the society of the right to residence, make the life meaningful and liveable in equal status with dignity of person. It is, therefore, imperative of the State to provide permanent housing accommodation to the poor in the housing schemes undertaken by it or its instrumentalities within their economic means so that they could make the payment of the price in easy instalments and have permanent settlement and residence assured under Articles 19(1)(*e*) and 21 of the Constitution....

(v). **(1996) 2 SCC 549 Chameli Singh Vs. State of U.P. (Pr. 8)**

"8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured

only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. **The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.** To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.

(vi). **(1990) 1 SCC 520 Shantistar Builders Vs. N.K. Totame** (Pr. 9)

9. Basic needs of man have traditionally been accepted to be three — food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect — physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.

22. In **(2013) 2 SCC 688 PUCL Vs. UOI** this Court held that the prevention of starvation of is the duty of the State under Article 21.

23. Following observation in **(2014) 5 SCC 438 National Legal Services Authority India Vs UOI** are important **(Pr 98,100,102,103 & 105)**

"102. The most remarkable feature of this expansion of Article 21 is that many of the non-justiciable directive principles embodied in Part IV of the Constitution have now been resurrected as enforceable fundamental rights by the magic wand of judicial activism, playing on Article 21 e.g.:

(*a*). Right to pollution-free water and air (*Subhash Kumar* v. *State of Bihar*).

(*b*). Right to a reasonable residence (*Shantistar Builders* v. *Narayan Khimalal Totame*).

(*c*). Right to food, clothing, decent environment; and even protection of cultural heritage (*Ramsharan Autyanuprasi* v. *Union of India*[50]).

(*d*). Right of every child to a full development (*Shantistar Builders* v. *Narayan Khimalal Totame*).

(*e*). Right of residents of hilly areas to access to roads (*State of H.P.* v. *Umed Ram Sharma*).

(*f*). Right to education (*Mohini Jain* v. *State of Karnataka*), but not for a professional degree (*Unni Krishnan, J.P.* v. *State of A.P.*).

103. A corollary of this development is that while so long the negative language of Article 21 and use of the word "deprived" was supposed to impose upon the State the negative duty not to interfere with the life or liberty of an individual without the sanction of law, the width and amplitude of this provision has now imposed a positive obligation (*Vincent Panikurlangara* v. *Union of India*) upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity e.g.:

(*i*). Maintenance and improvement of public health (*Vincent Panikurlangara* v. *Union of India*).

(*ii*). Elimination of water and air pollution (*M.C. Mehta* v. *Union of India*).

(*iii*) Improvement of means of communication (*State of H.P.* v. *Umed Ram Sharma*).

(*iv*). Rehabilitation of bonded labourers (*Bandhua Mukti Morcha* v. *Union of India*).

(*v*). Providing human conditions in prisons (*Sher Singh* v. *State of Punjab*) and protective homes (*Sheela Barse* v. *Union of India*).

(*vi*) Providing hygienic condition in a slaughterhouse (*Buffalo Traders Welfare Assn.* v. *Maneka Gandhi*).

104. The common golden thread which passes through all these pronouncements is that Article 21 guarantees enjoyment of life by all citizens of this country with dignity, viewing this human right in terms of human development.

105. The concepts of justice social, economic and political, equality of status and of opportunity and of assuring dignity of the individual incorporated in the Preamble, clearly recognise the right of one and all amongst the citizens of these basic essentials designed to flower the citizen's personality to its fullest. The concept of equality helps the citizens in reaching their highest potential. Thus, the emphasis is on the development of an individual in all respects.

FOREIGN JURISPRUDENCE :

24. There are several other countries such as Germany, Hungary, South Africa , Italy which read socio economic rights into human dignity and right to life. Hungary and South Africa have express provisions in their Constitutions [See Article 70E (Constitution of Hungary) and Section 26 (Constitution of South Africa)] **[Compilation III Tab A & B]**

GERMANY :

25. The Federal Constitution Court of Germany in a decision dated 09.02.2010 **[Compilation III Tab C] (Pg 24-26)** while deciding the question whether the amount of standard benefit aid is compatible with the Basic Law held that the " *.The Fundamental Right to the gurantee of a subsistence minimum is in line with human dignity emerges from Article 1.1 of the Basic Law in conjunction with Article 20.1 of the Basic Law... Article 1.1 of the Basic Law established this claim. The principle of the social welfare State contained in Article 20.1 of the Basic Law, in turn grants to the Legislature the mandate to ensure a subsistence minimum for all that is in line with human dignity".*

It further held that " *if a person does not have the material means to guarantee an existence that is in line with human dignity because he or she is unable to obtain it either out of his or her gainful employment, or from own property or by benefits from third parties , the State is obliged within its mandate to protect human dignity and to ensure, in the implementation of its social welfare state mandate,* ***that the material prerequisites for this are at the disposal of the person in need of assistance..***"

26. Similarly, in a later judgment dated 18.07.2012 (Pg 12-14) **[Compilation III Tab D]** while deciding the whether the amount of the cash benefit provided for in the Asylum Seekers Benefits Act was constitutional it reiterated that " *the direct constitutional benefit claim to the guarantee of a dignified minimum existence does only cover those means that are absolutely necessary to maintain a dignified life. It guarantees the entire minimum existence as a comprehensive fundamental rights guarantee, that encompasses both humans' physical existence, that is food, clothing, household items, housing, heating, hygiene, and health, and guarantees the possibility maintain interpersonal relationships and a minimal degree of participation in social, cultural and political life, since a human as a person necessarily exists in a social context..*"

SOUTH AFRICA :

27. The Constitutional Court of South Africa in ***Government Of the Republic of South Africa and Others Vs Grootboom*** **[2000] ZACC 19, [Compilation III Tab E]** held that ".. *these rights need to be considered in the context of the socio-economic rights enshrined in the Constitution. They entrench the right to access to land, to adequate housing and to health care, food , water and social security..*" (Pr 20)

28. In 1995, Hungary's Constitutional Court ruled that the right to social security as contained in Article 70/E of the Constitution obligated the state to secure a minimum livelihood through all of the welfare benefits necessary for the realization of the right to human dignity. **(See Pg 33 Compilation III Tab N of the Article)**

29. Even in Italy the courts have emphasized on the right to social security. **(See Pg 40 Compilation III Tab N of the Article)**

30. In ***Budina Vs Russia*** **[Compilation III Tab F]** the European Court of Human Rights has recognized, in principle, that inadequate benefits could fall under Article 3 of the European Convention on Human Rights (ECHR) on the right to be free from inhuman and degrading treatment.

31. In 1996, the Swiss Federal Court **[Compilation III Tab G]** ruled that three Czechs illegally residing in Switzerland are entitled to social benefit in order to have a minimal level of subsistence for a life in dignity to prevent a situation where people "are reduced to beggars, a condition unworthy of being called human. It held :

> "*..The federal constitution does not (though the 1995 draft new constitution is now different) explicitly provide for a fundamental right to a subsistence guarantee. One can however also derive unwritten constitutional rights from it. A guarantee of freedoms not mentioned in the constitution by unwritten constitutional law was assumed by the Federal Court in relation to powers constituting a prerequisite for the exercise of other freedoms (mentioned in the constitution), or otherwise evidently indispensable components of the democratic constitutional order of the Federation...*"
>
> "*..The guaranteeing of elementary human needs like food, clothing and shelter is the condition for human existence and development as such. It is at the same time an indispensable component of a constitutional, democratic polity.*" (Pg 2 & 3)

32. In his speech at the Parliament House " tryst with destiny" , Shri **Jawahar Lal Nehru [Compilation III Tab H]** said "*... it is fitting at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.... the service of India means the*

service of millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity" ..

Referring to **Mahatma Gandhi** he said ".. *ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering , so long our work will not be over"*

".. The future beckons to us. Whither do we go and what shall be our endeavour? To bring freedom and opportunity to the common man, to the peasants and workers of India; to fight and end poverty and ignorance and disease; to build up a prosperous, democratic and progressive nation, and to create social, economic and political institutions which will ensure justice and fullness of life to every man and woman"

33. **Nelson Mandela** in his speech at Trafalgar Square in London in 2005 **[Compilation III Tab IJ]** said ***"....Massive poverty and obscene inequality are such terrible scourges of our times - times in which the world boasts breathtaking advances in science, technology, industry and wealth accumulation - that they have to rank alongside slavery and apartheid as social evils...And overcoming poverty is not a gesture of charity. It is an act of justice. It is the protection of a fundamental human right, the right to dignity and a decent life. While poverty persists, there is no true freedom."***

34. Franklin D. Roosevelt in his speech on 11.01.1944 **[Compilation III Tab K].**

> "..And an equally basic essential to peace is a decent standard of living for all individual men and women and children in all Nations. Freedom from fear is eternally linked with freedom from want."

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "**Necessitous men are not free men.**" People who are hungry and out of a job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all regardless of station, race, or creed.

Among these are:

The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

The right of every family to a decent home;

The right to adequate medical care and the opportunity to achieve and enjoy good health;

The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;

The right to a good education.

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.

35. Following passages by James Griffin in his book On "Human Rights" are worth noting **[Compilation III Tab O]** :

10.1 THE HISTORICAL GROWTH OF RIGHTS :

Contrary to widespread belief, welfare rights are not a twentieth-century innovation, but are among the first human rights ever to be claimed. When in the twelfth and thirteenth centuries our modern conception of a right first appeared, one of the earliest examples offered was the right of those in dire need to receive aid from those in surplus. This right was used to articulate the attractive view of property prevalent in the medieval Church. God has given all things to us in common, but as goods will not be cared for and usefully developed unless assigned to particular individuals, we creatures have instituted systems of property. In these systems, however, an owner is no more than a custodian. We all thus have a right, if we should fall into great need, to receive necessary goods or, failing that, to take them from those in surplus.

One finds, every occasionally, what seem to be human rights to welfare asserted in the Enlightenment, for example, by John Locke, Tom Paine, and William Cobbett. Following the Enlightenment, rights to welfare have often appeared in national constitutions; for example, the French constitutions of the 1790s, the Prussian Civil Code (1794), the constitutions of Sweden (1809), Norway (1814), The Netherlands (1814), Denmark (1849), and, skipping to the

twentieth century, the Soviet Union (1936)-though it is not always clear that the drafters of these various documents thought of these fundamental civil rights as also human rights. By the end of the nineteenth century, political theorists were beginning to make a case that welfare rights are basic in much the sense that Civil and political rights are. But it was **Franklin Roosevelt** who did most to bring welfare rights into public life. The Atlantic Charter (1941), signed by Roosevelt and Churchill but in this respect primarily Roosevelt's initiative, declared that in addition to the classical civil and political freedoms there were also freedoms from want and fear. In his State of the Union message of 1944, Roosevelt averred :

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. 'Necessitous men are not free men'....

In our day these economic truths have become accepted as self evident. We have accepted, so to speak, a second Bill of Rights...

Among these are : The right to a useful and remunerative job.... The right to earn enough to provide adequate food and clothing and recreation....

The United Nations committee charged with drafting the Universal Declaration of Human Rights (1948), chaired by Eleanor Roosevelt, included most of the now standard welfare rights; rights to social security, to work, to rest and leisure, to medical care, to education, and 'to enjoy the arts and to share in scientific advancements and its benefits'. The Universal Declaration is a good example of how extensive-some would say lavish-proposed welfare rights have become.

.....If human rights are protections of a form of life that is autonomous and free, they should protect life as well as that form of it. But if they protect life, must they not also ensure the wherewithal to keep body and soul together-that is, some minimum material provision? And as mere subsistence-that is, keeping body and soul together-is too meager to ensure normative agency, must not human rights guarantee also whatever leisure and education and access to the thought of others that are also necessary to being a normative agent ?

That is the heart of the case. It appeals to our picture of human agency and argues that both life and certain supporting goods are integral to it. Life and certain supporting goods are necessary conditions of being autonomous and free. Many philosophers employ this necessary – condition argument to establish a human right to welfare-or, at least, to establish the right's being as basic as any other rights.

I too want to invoke the necessary-conditions arguments; I should only want to strengthen it. It is now common to say that liberty rights and welfare rights are 'indivisible'. But that, also, is too weak. It asserts that one cannot enjoy the benefits of liberty rights without enjoying the benefits of welfare rights, and vice versa. But something stronger still may be said. **There are forms of welfare that are empirically necessary conditions of a person's being autonomous and free, but there are also forms that are logically necessary-part of what we mean in saying that a person has these rights.** The value in which human rights are grounded is the value attaching to normative agency. The norm arising from this value, of course, prohibits persons from attacking another's autonomy and liberty. But it prohibits more. The value concerned is being a normative agent, a self-creator, made in god's image..... The value resides not simply in one's having the undeveloped, unused capacities for autonomy and liberty but also in exercising them-not just in being able to be autonomous but also in actually being so. The norm associated with this more complex value would address other ways of failing to be an agent. It would require protecting another person from losing agency, at least if one can do this without great cost to oneself; it would require helping to restore another's agency if it has already been lost, say through giving mobility to the crippled or guidance to the blind, again with the same proviso. All of this is involved simply in having a right to autonomy or to liberty. **Welfare claims are already part of the content of these rights.** What, then, should we think of the common division of basic rights into 'classical' liberty rights and welfare rights ? Into which of these two classes does the right to autonomy or to liberty go ? Into which of the two classes do the difficult, apparently borderline cases go, such as rights to life, to property, to the pursuit of happiness, to security of person, and to privacy ? The sensible response would be to drop the distinction. **What is more , a right to welfare is a human right.**

36. **Amartya Sen** in his book " Development as Freedom" **[Compilation III Tab PQ]** says "-

Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states. Despite unprecedented increases in overall opulence, the contemporary world denies elementary freedoms to vast numbers-perhaps even the majority-of people. Sometimes the lack of substantive freedoms relates directly to economic poverty, which robs people of

the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water or sanitary facilities. In other cases, the unfreedom links closely to the lack of public facilities and social care, such as the absence of epidemiological programs, or of organized arrangements for health care or educational facilities, or of effective institutions for the maintenance of local peace and order. In still other cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.

37. In **NALSA (2014) 5 SCC 438** Dr. Justice A.K.Sikri made an important analysis of far reaching significance (Pr. 100 to 105). He observes : "*The most remarkable feature of this expansion of Article 21 is that many of the non-justiciable directive principles embodied in part IV of the Constitution have now been resurrected as enforceable fundamental rights by the magic wand of judicial activism, playing on Article 21*". He characterized this as a "*positive obligation upon the state to take steps for ensuring to the individual a better enjoyment of his life and dignity*." This was termed as *human right for human development.*

38. When Kesavanand Bharti Minerva Mills, et. Others talked about balancing of Fundamental Rights and Directive Principles they did so in the context of doctrine of Basic Structure. They were not considering the parallel dynamics underlying the recognition of several aspects of Directive Principles as being really a part of Article 21 itself. This dynamics was not under consideration before the 9 JJ privacy case (Pr 266) . The only issue there was whether privacy was a Fundamental Right, when a privacy claim would implicate Article 21, and what are the limitation on the legislature. Neverthless, Dr. Justice DY Chandrachud adverted to the principles laid down in FC Mulin's case and acknowledged the new dynamics which read Article 21 expansively.

NUMERICALIZATION :

39. Regarding the numerization or numercalization of individual argument, It is submitted that the Aadhaar number does not convert the human being into a number. The objective of the Aadhaar number is to enable authentication which is done on a 1:1 matching basis i.e. to say when the requesting entity feeds the Aadhaar number along with some identity information then the CIDR picks up

the template having that Aadhaar number automatically and matches identity information with the encrypted information in the template. This Aadhaar number is therefore absolutely essential for the technological success of authentication. It is therefore a technology requirement and it does not amount to numerization or numercalization. The contention of the Petitioners ignores the distinction between identity and identification. The 12 digit Aadhaar number is not given by UIDAI to alter the identity of the individual. It is provided to the enrolled individual to enable his identification through authentication. Authentication is a multi dimensional identifying process. The Aadhaar number is one element or one identifier in the process of identification through authentication. It is identificational in nature . Section 2(a) of Aadhaar Act defines Aadhaar number to mean " an identification number" , Section 2(c) defines authentication as a process requiring submission of Aadhaar number to CIDR for verification . Further, Section 4(2) provides that the Aadhaar number shall be a random number and shall bear no relation to the attributes or identity of the Aadhaar number holder. It is proof of identity and not identity itself. It is notable that even the Hon'ble Supreme Court allocates a code to every Advocate on Record for administrative convenience. When the AOR files a petition it has to be given. Similarly, roll numbers are given to students for examination. In fact , numbers have become a part of our life from cradle to grave. In his book "The Universal History of Numbers" , Georges Ifrah has traced the history of numbers from the prehistory to the invention of the computer. To quote :-

> *"Numbers are so elemental that it seems inconceivable we could have lived without them, yet numbers are only an abstract idea that gradually dawned on humans. The evolution of numbers as they inhabited cultures, then faded, and erupted again, diversifying in hundreds of filigreed variations, is really a history of thinking itself. Beginning with numbers-even more than letters-we began living in our heads. Thousands of years later a restless man sets out to answer an almost childlike question; where did numbers come from? In his pursuit-becoming a world expert along the way-he uncovers this exponentially complex, infinitely fascinating, and forever enlightening history. This is the ultimate archive about the culture of numbers. No other source knows as much about numberhood."*

BALANCING OF FUNDAMENTAL RIGHTS WITHIN ARTICLE 21:

VI. Assuming there is conflict of right to privacy and right to food , shelter etc, does Aadhaar Act strike a fair balance ?

1. Courts in India and world over have been dealing with cases requiring harmonizing fundamental Rights and resolving conflict of Fundamental Rights of two sections of society or even two individuals. In **Mr X Vs Hospital Z (1998) 8 SCC 296** , Supreme Court held that in case of clash of Fundamental Right , that which advances the public interest and public morality will override.

(1998) 8 SCC 296 Right to Health will override Right to Privacy(Mr. X Vs. Hospital Z)

(2013) 16 SCC 82,Thalappalam Service Coop. Bank Ltd. Vs. State of Kerala(Pr. 61)

(2003) 4 SCC 399,PUCL Vs. Union of India (Pr. 121)

Right to privacy has to be balanced with right to know

(2005) 5 SCC 733 ,Noise Pollution (I) In re Vs. Union of India (Pr 11)

(2013) 6 SCC 620 G. Sundarrajan Vs. UOI Pr 198,200-206

(2016) 7 SCC 221,Subramaniam Swamy Vs. Union of India (Pr. 132-147)

(2017) 4 SCC 1 397 Asha Ranjan Vs. State of Bihar Pr 53 -63

[2005] 1 AC 593 In re S (A Child) Pr 16,17,25-31 [Compilation II Tab T]

2. A similar conflict of claims arose within the concept of '*justice, social, economic and political*' in the case **M. Nagraj Vs UOI (2006) 8 SCC 212**. The CB found that the concept of social and political justice existed not in part IV (Directive Principles) of the Constitution but also in Part III (Fundamental Rights). Such a conflicting claim had to be balanced. (Pr 42 & 43).

3. In the above context, it is important to note the solemn resolve stated in the Preamble to the Constitution of India. Whilst Justice, Social, Economic and Political; Liberty of Thought, Expression, Belief, Faith and Worship ; and Equality of Status and of Opportunity are mentioned for being secured to all citizens, the Fraternity assuring the dignity of the individual is mentioned for being promoted amongst all citizens. The distinction between 'secure' and 'promote' is notable. The clear intent is that the dignity of the individual of all citizens is possible only by securing, justice liberty and equality.

4. Even the 9JJ has in para 299 & 635 held that right of privacy is subject to rights of others.

5. The people with whom an individual relates, also have an identical interest in right to life and personal liberty and Articles 14 & 19 which give them the right to know or right to information. When an individual deals with an individual, or deals with a collectivity of individuals under an institutional umbrella then Article 21 also would impose a requirement to disclose identity information.

6. James Griffin in his book "On Human Rights" says " .. *There are, however, constraints on the content of the right to liberty. The ground for my liberty is a ground for your equal liberty; the ground cannot justify my being more at liberty than you are. That identifies a formal constraint on the content of the right ; each person's liberty must be compatible with the same liberty for all..."* **(Pg 58 of the Book) [Compilation III Tab O]**

7. Significantly, the jurisprudence on harmonizing the rights of one with another is not new. *Griffin* notes **Kant** in " The Universal Principle of Right" and says " *if it can co-exist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with universal law.."* **(Pg 59 of the Book) [Compilation III Tab O]**

8. Therefore, the content of a right will be limited not only by the express limitations but also the rights of others.

CONFLICT BETWEEN TWO ASPECTS OF SAME PERSON'S FUNDAMENTAL RIGHT :

9. Can the State while enlivening right to food, right to shelter etc envisaged under Article 21 encroach upon the right of privacy of the beneficiaries? Has the Act struck a fair balance between the right of privacy and right to life of beneficiaries ?

10. Targeted Delivery of the social welfare schemes, benefits and subsidies is the theme of the Act. To ensure that the benefits and subsidies actually reach those for whom it is meant is as important as the scheme itself. In absence of proper implementation and targeted deliveries of the benefits and subsidies the

State will fail in its duty to secure socio economic justice to its citizens and protect their right to life and human dignity (the most cherished right). In doing so if the State non invasively is collecting and minimal information for identification purposes , this minimal encroachment needs to be upheld.

11. Medical Termination of Pregnancy Act presents one such example where the Legislature has struck a balance between the right to reproductive choice of a woman and her right to health. This Hon'ble Court has while exercising jurisdiction u/A 32 and 142 refused to permit termination of pregnancy where it poses threat to the health/life of the woman. Therefore, although right to privacy also emanates from Article 21, one has to examine the qualitative difference between the different rights.

(2017) 14 SCC 525, Indu Devi Vs. State of Bihar(Pr. 10)

12. Another example can be Section 129 of Motor Vehicles Act, 1988 which mandates wearing of protective hear gear in public place. In order to protect right to life, the State does interfere with the right to choice of not wearing a helmet.

13. Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 is another such instance. Right to practice any profession, occupation, trade or business under Article 19(g) is curtailed in order to enliven Article 21 and 17. This Hon'ble Court in ***Safai Karamchari Andolan Vs. UOI (2014) 11 SCC 224*** has been passing direction from time to time to alleviate the conditions of the manual scavengers including direction for implementation of the Act.

14. Certain choices are restricted /prohibited by the Constitution itself (Articles 17,18, 23 and 24).Article 23 abolishes forced labour so it prohibits even those choosing to indulge in forced labour from doing so. The aforesaid articles prohibiting certain acts truly speaking do not involve any conflict of rights. They actually result in enhancement of the Fundamental Right. The person is emancipated from a social condition which is below human dignity. Similarly, Section 7 involves an identification condition which essentially enhances the human dignity of the ANH (Aadhaar Number Holder) . In the context, in which the condition is imposed, the identification requirement is actually a matter of human dignity. However, even if one views the conditionality in Section 7 as conflictarian, still the condition would be a very

minimal requirement and in as much as it ensures human dignity and the right to life and liberty , there would be no reasonable expectation of privacy and autonomy.

15. Similar examples can be found in foreign jurisprudence also. The practice of dwarftossing was banned by France. The order banning dwarftossing was challenged on the ground that it interferes with the economic right of the one practicing it. The challenge was negatived on the ground that permitting such a practice even though voluntary will be degrading of human dignity by Human Right Committee on 15.07.2002 **(Manuel Wackenheim Vs. France (Human Rights Committee 75th Session 8-26 July 2002) U.N.Doc. CCPR/C/75/D/854/1999) [Compilation III Tab H]**

16. The Constitutional Court of South Africa while deciding constitutional validity of criminalization of prostitution held that the provision was valid and engaging in prostitution amounts to violation of human dignity **S vs. Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae [2002] ZACC 22.[Compilation III Tab IJ] (Pr 74)**

17. Additionally, it has become increasingly recognized by this court that each of the Fundamental Rights recognized by the Constitution of India contains seeds of conflict in the matter of exercise of the Fundamental Rights. That is to say in certain situations two individuals may appear to be exercising or invoking the same fundamental right or different fundamental rights of equal stature and then their exercise or invocation may stand in conflict. The resolution of such conflicts is done by the courts by ascertaining the right balance in the interplay of invocations. The striking of balance approach purports to leave enough space for both to exercise their fundamental rights.

VII. INVOCATION OF TRUST :

18. The Petitioners contend that the State is of the people , by the people and for the people as India is a democratic State , the State must therefore trust its people. In the name of fakes and ghosts the State cannot treat 1.2 Billion as rogues and thugs. Requiring all the people to have Aadhaar number and to undergo authentication at various places demonstrates a complete lack of trust in the people. The provisions of Aadhaar Act is against democracy which is a basic feature.

19. The entitlement or requirement to obtain Aadhaar number under the Aadhaar Act is not on account of any lack of trust in the people. The object in introducing the Aadhaar programme is to ensure targeted delivery by eliminating fakes and duplicates, and ensuring that the person for whom the benefit is meant actually receives the benefit. The provisions are regulatory in nature and the Regulation is on account of the fact that there is no other effective method by which the State can discover who amongst the 1.2 Billion people is the blacksheep.

20. The Aadhaar programme has some similarity with the checks and frisking which are done at the airport and for entry into institutions/ office. The object of this exercise is that terrorist/ criminals do not sneak into airports/ offices. This does not mean that the State by introducing such measures is actually considering all the persons who are entering the airport/ offices as terrorist/ criminals. It is like a filtration process which eliminates the impure from entering into the premises.

21. When everyone is frisked while entering the Supreme Court or airport premises that is also done to filter out the undesired elements who may be carrying arms etc. and those who do not carry the required identity document.

22. In a catena of cases the U.S. Supreme Court has consistently held that individualized suspicion or probable cause is not a condition precedent under the IVth Amendment of the U.S. Constitution for conducting a search and seizure exercise. It has been held that there is no such Constitutional floor test for upholding drug tests in schools in relation to children taking part in sports activities or where custom officers charged with duty to prevent drug trafficking are required to undergo urine test for examining drug use or where permanent check points are set up for stopping/ questioning and searching vehicles for determining whether it was carrying a illegal immigrants. Probable cause or individualized suspicion is required in criminal contexts and not in the context of administrative measures where the objective is to deter, prevent and detect.

Vernonia School Dist Vs. Acton 515 U.S. 646 @ 653 = 132 L Ed 2d 564 @ 574 [Compilation IV Tab A]

Board of Education of Independent School Vs. Earls 532 US 822 @ 829= 153 L Ed 2d 735 @ 743[Compilation IV Tab F]

Treasury Employees Vs. Von Raab 489 US 656 (667-668) = 103 L Ed 2d 685 @ 702 &703 [Compilation IV Tab D]

US Vs Martinez- Fuerte 428 U.S. 543 @ 561 = 49 L Ed 2d 1116 @ 1130 & 1131 [Compilation IV Tab G]

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BIOMETRIC PASSPORTS

S.NO.	COUNTRY	PHOTOGRAPH	FINGERPRINTS	IRIS
1.	Albania	Yes	Yes	
2.	Algeria	Yes		
3.	Argentina	Yes	Yes	
4.	Armenia	Yes		
5.	Azerbaijan	Yes	Yes	Eye colour, Blood Type, Height
6.	Australia	Yes		
7	Austria	Yes	Yes	
8	Bosnia and Herzegovina	Yes	Yes	
9	Botswana	Yes		
10	Brunei	Yes	Yes	
11	Brazil	Yes	Yes	
12	Bulgaria	Yes	Yes	
13	Cambodia	Yes		
14	Canada	Yes		
15	Cape Verde			
16	China	Yes	Thumb Fingerprints	
17	Chile	Yes	Yes	
18	Colombia	Yes	Yes	
19	Croatia	Yes	Yes	
20	Dominion Republic	Yes	Yes	
21	Egypt	Yes		
22	Finland	Yes		
23	France	Yes	Yes (8 Fingerprints)	
24	Germany	Yes	Yes (2 Fingerprints)	
25	Gabon			
26	Ghana	Yes		
27	Hong Kong	Yes		
28	Iceland	Yes	Yes	
29	Indonesia	Yes	Yes	
30	Iran	Yes		
31	Iraq	Yes	Yes	
32	Ireland	Yes		
33	Israel	Yes	Yes (OPTIONAL)	
34	Japan	Yes	Yes	Yes
35	Kazakhstan	Yes		
36	Kenya	Yes	Yes	
37	Kosovo	Yes	Yes	
38	Kuwait	Yes	Yes	
39	Laos	Yes	Yes	
40	Lebanon	Yes	Yes	
41	Lesotho	Yes		
42	Luxembourg	Yes	Yes (2 Fingerprints)	
43	Macau	Yes	Yes	
44	Macedonia	Yes	Yes	
45	Madagascar	Yes	Yes	
46	Maldives	Yes		
47	Malaysia	Yes	Yes (2 Thumb Prints)	
48	Sovereign Military of	Yes		

	Malta			
49	Moldova	Yes	Yes	Blood type
50	Montenegro	Yes		
51	Morocco	Yes		
52	Mozambique			
53	Namibia	Yes		
54	New Zealand	Yes		
55	Netherlands	Yes	Yes	
56	Nigeria	Yes	Yes (Thumb and Forefinger)	
57	Norway	Yes	Yes	
58	Oman	Yes	Yes	
59	Pakistan	Yes		
60	Panama	Yes	Yes	
61	Peru	Yes	Yes	
62	Philippines	Yes		
63	Qatar	Yes		
64	Russia	Yes		
65	Serbia	Yes		
66	Singapore	Yes		
67	Somalia	Yes		
68	South Korea	Yes	Yes	
69	South Sudan	Yes		
70	Slovakia	Yes	Yes	
71	Bahamas	Yes	Yes	
72	Sri Lanka	Yes	Yes	
73	Sudan	Yes	Yes	
74	Switzerland	Yes	Yes (2 Index Fingers)	
75	Taiwan	Yes		
76	Tajikistan	Yes		
77	Thailand	Yes	Yes (Right and Left fingers separately twice)	
78	Togo	Yes		
79	Turkey	Yes	Yes	
80	Turkmenistan	Yes		
81	Ukraine	Yes	Yes (OPTIONAL)	
82	United Arab Emirates	Yes	Yes	
83	Uzbekistan	Yes	Yes	
84	Venezuela	Yes	Yes	
85	Zimbabwe	Yes		
86	Czech Republic	Yes	Yes	
87	Denmark	Yes	Yes	
88	Estonia	Yes	Yes	
89	Finland	Yes	Yes	
90	Greece	Yes	Yes	
91	Hungary	Yes	Yes	
92	Ireland	Yes		