SYNOPSIS

The Petitioner by way of the present Review Petition in the matter of *Justice K.S. Puttaswamy (Retd.) v. Union of India & Others.,* seeks a limited review of the decision passed by a Constitution Bench of this Hon'ble Court which came to be passed on 26.09.2018. The present Review Petition is filed under Article 137 of the Constitution of India read with Order XLVII RULE 2 of the Supreme Court Rules 2013, read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 seeking a review of the Order dated 26.09.2018 passed by a Constitution Bench of this Hon'ble Court wherein and whereby this Hon'ble Court was pleased to uphold the Constitutional validity of the Aadhaar program as well as the Aadhaar (Targeted Delivery of Benefits, Subsidies and Services) Act, 2016 sans a few provisions which were either held to be constitutionally invalid or were read down.

The present Petition has been preferred in a narrow compass seeking to challenge only those aspects of the Aadhaar program as well as the Aadhaar Act, 2016 which were held to be constitutionally valid.

The Petitioner herein had on 04.12.2017 preferred two Interim Applications bearing I.A. No. 131439 of 2017 for Impleadment and another I.A. being I.A. No. 131446 of 2017 for Directions in Writ Petition No. 494 of 2012, titled *Justice Puttaswamy (Retd.) v. Union of India & Others.*

It is the specific case of the Petitioner herein that various grounds urged in these Interim Applications for Directions were not considered by this Hon'ble Court whilst passing the judgment which is prayed to be reviewed. Some of the grounds that have been preferred by the Petitioner, on the basis of which the present Petition has been preferred are tersely surmised as under:

a. The error apparent on the face of the record is that the judgment sought to be reviewed has not considered an express provision in the Aadhaar Act, 2016 itself which is Section 2(k) which specifically prohibits any person from parting with any information which is pertaining to one's "income". This Hon'ble Court has failed to consider, much less

analyse the purport and scope of this provision which categorically states that the demographic information **shall not include** information pertaining to one's income statement. Despite a clear legislative mandate to the contrary, Section 139AA of the Income Tax Act, 1961 made it compulsory to ensure that PAN Card is linked with one's Aadhaar details. The Proviso to Section 139AA(2) further states that in case a person fails to intimate Aadhaar number, the PAN of the person shall be deemed to be invalid, and this failure to link will result into a situation wherein the person will be treated as if he had never applied for a PAN Card.

b. It is submitted that a specific legislative embargo engrafted in Section 2(k) of the Aadhaar Act, 2016 was never considered by this Hon'ble Court whist passing the judgment sought to be reviewed. Nor does this provision was discussed in the case of *Binoy Viswam v. Union of India* (2017) 7 SCC 59. In fact, the judgment in *Binoy Viswam* (supra) began on a demurrer that the Proviso to Section 139AA(2)

shall remain stayed until the larger issue of Right to Privacy is decided by the Constitution Bench (vide paragraph 90 and paragraph 128(v) passed in *Binoy Viswam* (Supra)). Both these judgments have failed to account that when there is an express prohibition in the plain language of the statute itself, then it must be given effect to, and on this ground alone, Section 139AA of the Income Tax Act, 1961 ought to have been struck down. The judgment under review has not considered this vital aspect, nor has it clarified on the fate of this Proviso, once the same was stayed by way of an earlier pronouncement in Binoy Viswam (Supra).

c. The judgment sought to be reviewed has also not considered a crucial aspect of PAN – Aadhaar Linkage, since it fails to satisfy the test laid down by the same Court in the very same judgment. The test laid down was that the thing for which Aadhaar sought by the State had to necessarily fall within the meaning of either a "benefit", "subsidy" or "Service". Thus, anything for which Aadhaar had to be required, had to first pass the muster of

qualifying within the meaning of a “benefit” “subsidy” or “Service”. Filing of Income Tax Returns under Section 139AA of the Income Tax Act, 1961 does not fall within either of the three descriptions, since filing of Income Tax is a statutory mandate, the violation of which could result in serious penalty. It is neither a benefit, subsidy or service. The judgment in *Binoy Viswam* as well as the present impugned judgment, which has drawn heavy reliance from the judgment cited above, have both failed to clarify as to how PAN – Aadhaar linkage falls within the description of “benefit” “subsidies” or “Service”. This is more so when the statute itself for the purposes of issuing Aadhaar Number, provides for three prerequisites: furnishing of unique identity number, furnishing of biometric information and furnishing of demographic information. It is submitted that “income” neither falls within the meaning of “biometric information” nor falls within the expression “demographic information” and in fact “income” is specifically excluded under the definition of demographic

information. That being so, Section 139AA which incorporates the linking of Aadhaar Number is therefore itself in contravention of the Aadhaar Act, 2016.

d. The Aadhaar Program, which had been in existence prior to the enactment of the Aadhaar Act, 2016 had itself become an instrument of transfer of sensitive personal data belonging to the citizens of this country into foreign entities which acted as Biometric Service Providers or BSP's at a time when UIDAI in 2010 had no cyber or technical infrastructure to store the sensitive personal information. This information was already retained, collected, stored as well as processed by these BSP's much before the Aadhaar Act, 2016 ever came into existence. This has resulted into a massive national security risk which is being posed to the nation, more so when as per the Press Information Bureau Notification, 100 Crore enrollments had already taken place before 04.04.2016. This clearly demonstrates that even before the Aadhaar Act, 2016 was passed, the data was already in the hands

of Private players. No retrospective validity could be accorded to this systematic illegality which had been perpetrated from 2010 to 2016.

e. The judgment sought to be reviewed on the aspect of Biometric Service Providers states that it is only the source code of the software which is retained by the BSP's and not the data stored on it which is even otherwise stored offline, thereby disabling any information from ever being passed into the hands of these private entities. However, what has not been taken into account is the date specified earlier, i.e. 04.04.2016, which is the date when the Press Information Bureau Release of the Ministry of Telecommunication reveals that as on this date 100 Crore enrolments had already been carried out even before a statutory regime was in place. Which is to say, at the time when Aadhaar Act, 2016 came into force, the sensitive data of 100 Crore citizens of this country was already in private hands and there was no law to protect the privacy of the individuals who were induced to part with their sensitive personal data. When Right to Privacy is already recognized as

a Constitutional Right under Article 19 and 21 by a Constitution Bench of Nine Honourable Judges and when it has been specifically held that it is only the State or its instrumentality which can store collect or retain the data then the collection, retention or storage, processing of information in private hands not only goes against the Right to Privacy Judgment, but also against Section 29 of the Aadhaar Act, 2016 which in no uncertain terms prohibits the collection or creation of core biometric information. The information which is retained by private players will also fall foul of the interpretation accorded to Section 57 of the Aadhaar Act, 2016 which expressly precludes any information to be used, collected or stored in any manner by private entities or body corporates.

f. Recourse to Section 23(3) was taken by the UIDAI to give a retrospective validity to the contracts that pre- date the Aadhaar Act, 2016 itself. It is submitted that if these MoU's are in sheer abrogation of the Right to Privacy, then none of the statutory protections as envisaged under the

Aadhaar Act, 2016 could come to the rescue of UIDAI, since no statutory provision could cure a retrospective breach of a constitutional right.

g. The judgment prayed to be reviewed has not considered another consequential direction, which ought to have been issued pursuant to reading down of Section 57 of the Aadhaar Act, 2016. If private entities were prohibited from storing or collecting or otherwise using sensitive personal data, then a necessary sequitur would have to be a consequential direction for the deletion of every such Aadhaar data which already is in possession of the private companies, entities, schools, colleges, work places, banks, post offices, telecommunication service providers etc. The impugned judgment has not given any such direction to these various private players or corporate bodies to delete such a data. A consequence of this omission is that all these private players continue to retain the sensitive personal data of the citizens of this country.

h. The judgment prayed to be review has also not considered the crucial distinction between a

“citizen” and a “Resident” since de hors any statutory protocol, enrollments had been carried out by UIDAI prior to the enactment of Aadhaar Act, 2016. Therefore, before 04.04.2016, which is only seven days after the Aadhaar Act, 2016 came to be enacted, 100 Crore “individuals” had already enrolled with the Aadhaar program. There is no way to identify the citizens from residents who are not citizens, as Aadhar has been the singular tool to dilute the said distinction. Needless to say, all the benefits, subsidies or services that are solely the Rights of the citizen, are being given away to residents who are not citizens. The impugned judgment only dismisses this pertinent claim by holding that this may arise in some probable future, and appropriate steps may be taken by UIDAI as and when the situation arises. However, there is clear and convincing evidence to suggest to the contrary that as on 26.03.2016, 100 Crore individuals had already been enrolled into the Aadhaar Program and there is no way to ascertain

how many of these individuals are citizens, and how many are residents.

On these grounds amongst others, the Petitioner craves indulgence of this Hon'ble Court to reconsider its decision.

CHRONOLOGY OF EVENTS

04.12.2006	An empowered group of Ministers (EGoM) was constituted and the twin proposals to create both a National Population Register by an amendment to the Citizenship Rules and UID were brought into the purview of this empowered group of Ministers (EGoM).
04.11.2008	The Committee of Secretaries and the Empowered group of Ministers' made recommendations for the

	constitution of the Unique Identification Authority of India..
28.01.2009	The Planning Commission notified the recommendations for the constitution of the Unique Identification Authority of India as an attached office under the aegis of Planning Commission with an initial core team of 115 officials vide Gazette Notification (bearing No. A-43011/02/2009- Admn I). The Unique Identity Project (the "UID"), a brainchild of the Planning Commission, was announced with the ambitious agenda of collecting and documenting biomatrix and other information of the entire Indian population.
29.01.2009	The government came with a notification creating the Unique Identity Authority of India:

	(U.I.D.A.I.). an agency established under the aegis of the Planning Commission to issue Unique Identity Numbers (UID) to every Indian citizen.
03.12.2010	National Identification Authority of India Bill, 2010 was introduced in the Rajya Sabha.
March 2011	In great haste and without waiting for the National Identification Authority of India Bill, 2010, to be passed by Parliament or without collection of any statistic on working of the Aadhaar system, Aadhaar Enabled Payment System (AEPS) was introduced. AEPS is an Online developed payment service empowering a bank customer to use Aadhaar as his/her identity to access his/ her respective Aadhaar enabled bank account and perform

	basic banking transactions like balance enquiry, cash deposit, cash withdrawal, remittances through a Business Correspondent.
13.12.2011	In its 42nd Report of Standing Committee on Finance, it was categorically stated that the Executive Action is in complete variance with the Constitution and the same is neither financially viable nor in the best interest of the citizens.
24.04.2012	The 53rd Report of the Standing Committee on Finance further expressed its concerns in the manner in which Budgetary allocations were being made in exercise of executive powers under Article 73, especially when there was no statute which was passed that would govern the field.

16.10.2012	Pursuant to the Notification issued by the Planning Commission, a Report came to be submitted by a Group of Experts under the Chairmanship of Justice A.P. Shah which highlighted serious concerns on lack of coordination amongst different agencies in the collection, storing, retention, substitution, addition and deletion of electronic data which is in the nature of personal and sensitive information.
06.12.2012	The 62nd Report of the Standing Committee on Finance presented to the Parliament on 06.12.2012 expressed its dissatisfaction that the enrolment process of Aadhaar was underway despite the fact that the same had not be passed by the Parliament. Similar observations were made in the 69th Report of the

	Standing Committee on Finance dated 22.04.2013.
23.09.2013	An order came to be passed by this Hon'ble Court in the matter of Justice K.S. Puttaswamy & Anr. v. Union of India & Ors. In Writ Petition (C) No. 494 of 2012, explicitly stating that "*In the meanwhile, no person should suffer for not getting the Adhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Adhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant.*".
January 2014	The "Committee on Comprehensive Financial Services for Small Businesses and Low Income

Households" was set up by the RBI in Sep 2013 under the chairmanship of Nachiket Mor, an RBI board member. RBI released the voluminous and detailed Report of this committee in Jan 2014 which recommended that every adult Indian (18 years and above) resident should be given a universal electronic bank account (UEBA) by Jan 1, 2016, and the Bank Accounts so created, i.e. UEBA could only be accessed by way of Aadhaar. Another perturbing feature of the report is that the UEBA is supposed to be given to every adult Indian "resident", instead of adult Indian "citizen".

24.03.2014 Another order came to be passed by this Hon'ble Court in Special Leave Petition (Crl.) No. 2524 of 2014 in the matter of Unique - Identification

Authority of India & Anr. v. Central Bureau of Investigation, restraining the UIDAI from transferring any biometric information of any person who has been allotted the Aadhaar number to any other agency without his consent in writing. Further it was also held that no person shall be deprived of any service for want of Aadhaar number in case he / she is otherwise eligible/entitled.

11.08.2015 This Hon'ble Court speaking through a Division Bench of Three Hon'ble Judges in the matter of Justice K.S. Puttaswamy & Anr. v. Union of India & Ors. in Writ Petition (C) No. 494 of 2012 were pleased to refer the matter to a Constitution Bench in view of the divergence of judicial opinions on interpretation of Article 21 of the Constitution to include Right to

Privacy. After recording the submissions of the Ld. Attorney General of India, this Hon'ble Court was pleased to pass the following order, the excerpts of which are reproduced herein: "*The learned Attorney General further stated that the respondent Union of India would ensure that Aadhaar cards would only be issued on a consensual basis after informing the public at large about the fact that the preparation of Aadhaar card involving the parting of biometric information of the individual, which shall however not be used for any purpose other than a social benefit schemes. Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA*

proceed in the following manner:- 1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card; 2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen; 3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of food grains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme; 4. The information about an individual obtained by the Unique Identification Authority of India while

issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation."

15.10.2015 The Constitution Bench of this Hon'ble Court in the matter of Justice K.S. Puttaswamy & Anr. v. Union of India & Ors. in Writ Petition (C) No. 494 of 2012 whilst hearing some interim applications in the above captioned matter categorically pointed out in Para 5, the following: "*We will also make it clear that the Aadhaar Card Scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other*".

28.12.2015 The Reserve Bank of India through its Executive Director Mr. Deepak

	Mohanty submitted a Report of the Committee on Medium-term Path on Financial Inclusion which suggests that the Reserve Bank of India is considering the linking of all essential bank services with Aadhaar Card.
03.03.2016	The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016 was introduced before the Lok Sabha as a Money Bill being Bill No. 47 – F of 2016.
11.03.2016	The Aadhaar Bill 2016 was passed by the Lok Sabha.
16.03.2016	The Aadhaar Bill 2016 was returned by the Rajya Sabha with recommendations, which have been reproduced as under: “CLAUSE 3 *That at page 3, after line 35, the following proviso be inserted,*

namely:- "Provided that if an individual so chooses and does not wish to continue as a holder of Aadhaar number, such individual shall be entitled and permitted to have his Aadhaar number deleted from the Central Identities Data Repository and on such deletion, all his data including the demographic and biometric information as well as all his authentication records shall be destroyed forthwith and a certificate to that effect shall be issued by the authority within fifteen days from the making of such request".

25.03.2016 The Aadhaar Bill, 2016 received Presidential Assent on the 25.03.2016 and became an Act. No. 18 of 2016 as the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

04.04.2016	A Press Information Bureau Release dated this day made a claim that over 100 Crore individuals have been enrolled into the Aadhaar program. This is within seven days of the legislation coming into force.
05.04.2016	The Ministry of Electronics and Information Technology vide office Memorandum dated 05.04.2016 has admitted that the demographic information and other sensitive information in the nature of personal data has been leaked online and can be found by way of an easy online search.
01.02.2017	The Finance Bill, 2017 was introduced in Lok Sabha vide Bill No. 12-C of 2017 and was categorized as Money Bill.
22.03.2017	The Finance Bill was passed by the Lok Sabha.

31.03.2017	The Bill received the Presidential Assent on 31.03.2017 and became the Finance Act, 2017 (Act No. 7 of 2017). Section 56 of the Finance Act incorporated a new provision being Section 139AA in the Income Tax Act, 1961 which makes it mandatory for every person who files an Income Tax Return to link their Aadhaar Number with the Income Tax Authorities on or before 1st of July 2017.
21.04.2017	This Hon'ble Court heard a matter questioning the vires of Section 139AA of the Income Tax Act, 1961 as incorporated by Section 56 of the Finance Act, 2017 in the case of *Binoy Visman v. Union of India,* W.P. (C) No. 247 of 2017 reported as (2017) 7 SCC 59.

24.08.2017	The Hon'ble Supreme Court of India through a Constitution Bench of Nine Honourable Judges held the Right to Privacy to be a facet of personal liberty and recognized it as a fundamental right. This Hon'ble Court also recognized various facets of privacy to be guaranteed to a citizen.
04.12.2017	The Petitioner herein filed two Interim Applications bearing I.A. No. 131439 of 2017 for Impleadment and another I.A. being I.A. No. 131446 of 2017 for Directions in Writ Petition No. 494 of 2012, titled *Justice Puttaswamy (Retd.) v. Union of India & Others.*
26.08.2018	The Hon'ble Supreme Court of India through its constitution bench passed a detailed judgment, which is prayed to be reviewed through the

	present petition. In the judgment prayed to be reviewed the Aadhaar Act, 2016 was held to be constitutionally valid barring a few provisions which were struck down by the Hon'ble Court.
15.12.2018	Hence, the present review petition.

IN THE SUPREME COURT OF INDIA

REVIEW JURISDICTION

REVIEW PETITION (C) NO. OF 2018

IN

I.A. NO. 131446 OF 2017

IN

WRIT PETITION (C) NO. 494 OF 2012

(To reconsider Final Order dated 26.09.2018 passed by this Hon'ble Court in WP (C) No. 494 of 2012)

IN THE MATTER OF:

IMTIYAZ ALI PALSANIYA

Petitioner

Versus

UNION OF INDIA & ORS.

Respondents

REVIEW PETITION UNDER ARTICLE 137 OF THE CONSTITUTION OF INDIA

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner by way of the present Review Petition has challenged a decision passed by a Constitution Bench of this Hon'ble Court in the matter of *Justice K.S. Puttaswamy (Retd.) v. Union of India & Others.,* in Write Petition (C) No. 494 of 2012, whereby this Hon'ble Court was pleased to uphold the constitutionality of both the Aadhar Program as well as various provisions of the

successor legislation, i.e. Aadhaar (Targeted Delivery of Benefits, Subsidies, and Services) Act, 2016).

2. The Petitioner herein had filed two Interim Applications bearing I.A. No. 131439 of 2017 for Impleadment and another I.A. being I.A. No. 131446 of 2017 for Directions in Writ Petition No. 494 of 2012, titled *Justice Puttaswamy (Retd.) v. Union of India & Others* which had come up for consideration before the Constitution Bench, however the issues raised therein were not considered by the Hon'ble Court while adjudicating on the dispute, particularly so, when these issues have a significant bearing on the fate of the citizenry itself.

3. The present Petition has been preferred in a narrow compass seeking to challenge only those aspects of the Aadhaar program as well as the Aadhaar Act, 2016 which were held to be constitutionally valid. It is the specific case of the Petitioner herein that various grounds urged in these Interim Applications for Directions were not considered by this Hon'ble Court whilst passing the judgment which is prayed to be reviewed.

4. The petitioner is not repeating the entire set of facts as set out in the Interim Application bearing No. 131446 of

2017 in W.P. (C) No. 494 of 2012 for the sake of brevity. The said facts may be treated as part and parcel of the present petition.

5. It is further humbly submitted that it is apparent that the Impugned Judgment is self-contradictory on some of the issues as detailed herein below constituting an error apparent on the face of the record and the same require a review and/or a clarification from this Hon'ble Court.

6. Considering the aforementioned submissions, the instant Petition for reviewing the Impugned Judgment is necessitated on inter alia the following grounds, each of which are taken both cumulatively and without prejudice to one another. The Petitioner craves the liberty to urge additional grounds at a later stage of this proceeding including at the time of oral arguments.

7. <u>GROUNDS:</u>

A. BECAUSE this Hon'ble court has not dealt with the issue as to whether Section 139 AA is in direct and absolute contravention of Section 2(k) of Aadhaar Act, 2016 which reads "*the expression "Demographic Information" shall not include any details pertaining*

to "race, religion, caste, tribe, ethnicity, language, record of entitlements, ***income*** *or medical history""* of a person. The provision prayed to be reviewed however would force citizens to give away such information as relating to their 'income' and 'entitlements', thereby violating Section 2(k) of Aadhaar Act, 2016. This aspect has nowhere been discussed either in the judgment prayed to be reviewed, nor has it been dealt with in the matter of *Binoy Viswam & Others v. Union of India & Ors.* W.P. (C) No. 247 of 2017, despite the fact that the judgment passed in *Binoy Viswam* W.P. (C) No. 247 of 2017, clearly began on a demurrer that the larger issue of the Right to Privacy was not been canvassed since the same was pending before a larger bench.

B. BECAUSE this Hon'ble court has not dealt with the issue whether Section 139 AA of the Income Tax Act, 1961 will be in derogation of Section 29 of the Aadhaar Act which explicitly suggests that the information pertaining to Aadhaar Card shall only be used for the purpose of the Act, and shall not be

used for any other purpose. Section 139 AA casts a statutory obligation on every income tax assessee to link the Aadhaar and PAN Card, thereby furnishing his statement of income, which is expressly forbidden within the mandate of Section 29 of the Aadhaar Act, 2016.

C. BECAUSE payment of Tax to the state is statutory obligation under the mandate of the Income Tax Act, 1961. If the Tax is not paid to the government and its authorities then penalty provision under the Income Tax Act, 1961 applies. The levy of such penalty in case the tax is not paid makes it a statutory compulsion on the person to pay the tax. A statutory compulsion cannot be classified as a Benefit under Section 7 of the Aadhaar Act, 2016 and this makes Section 139 AA of the Income Tax Act, 1961 invalid.

D. BECAUSE, the judgment under review has also not considered a crucial aspect of PAN – Aadhaar Linkage, since it fails to satisfy the test laid down by the same Court in the very same judgment. The test laid down was that the thing for which Aadhaar was

required to be mandatorily given to the State had to fall within the meaning of either a "benefit", "subsidy" or "Service". Filing of Income Tax Returns under Section 139AA of the Income Tax Act, 1961 does not fall within either of the three descriptions, since filing of Income Tax is a statutory mandate, the violation of which could result in serious penalty. It is neither a benefit, subsidies or service. The judgment in *Binoy Viswam v. Union of India* as well as the present judgment under review, which has drawn heavy reliance from the judgment cited above, have both failed to clarify as to how PAN – Aadhaar linkage falls within the description of "benefit" "subsidy" or "Service".

E. BECAUSE in the *Binoy Viswam* W.P. (C) No. 247 of 2017, the courts did not examine Section 139 AA of the Income Tax Act, 1961 in the context of Privacy Rights, specifically Article 21 of the Constitution though this aspect was argued. This Hon'ble Court in Binoy Viswam proceeded on a demurrer that subject to the larger Right of Privacy to be decided by a Constitution Bench, there shall be stay

operation of the Proviso to Section 139 AA which was echoed as under in Para 136.5 *"The validity of the provision upheld in the aforesaid manner is subject to passing the muster of Article 21 of the Constitution, which is the issue before the Constitution Bench in Writ Petition (Civil) No. 494 of 2012 and other connected matters. Till then, there shall remain a partial stay on the operation of the proviso to sub-section (2) of Section 139 AA of the Act, as described above. No costs."* Right to Privacy has already been considered as a fundamental right under Article 21 of the Constitution of India.

F. BECAUSE, the newly incorporated Section 139AA of the Income Tax Act, 1961 is in absolute contravention of Article 21 as the very incorporation of this provision is against the provisions of Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, as a statutory duty imposed on a tax payer to furnish his Income Tax Returns does not fall either in the category of "benefit" as defined under Section 2(f) or under "Service" as defined under Section 2(w) or a

"Subsidy" within the meaning of Section 2(x) of the Aadhaar Act, 2016. The Legislature has therefore acted in complete obliviousness to another pre-existing statute and has gone beyond the contours of the Aadhaar Act, 2016 by conferring excessive and wide import to Section 56 of the Finance Act 2017 incorporating Section 139AA of the Income Tax Act, 1961 to an extent that it is squarely in contravention of the Aadhaar Act, 2016.

G. BECAUSE the provision impugned herein, i.e. Section 139AA is clearly in violation of the Aadhaar Act, 2016. For the purposes of issuing Aadhaar Number, there are three prerequisites: furnishing of unique identity number, furnishing of biometric information and furnishing of demographic information. It is pertinent to note that the impugned provision, i.e. Section 139AA which incorporates the linking of Aadhaar Number is in itself contrary to Section 2(k) of the Aadhaar Act, 2016 since it has been specifically stated that the expression "Demographic Information" shall not include any details pertaining to "*race, religion,*

caste, tribe, ethnicity, language, records of entitlement, income or medical history" of a person. The legislature has acted in a colourable manner by trying to subvert the explicit language contained in the Aadhaar Act, 2016, by introducing Section 139AA in the Income Tax Act, 1961 so as to render the effect and frustrate the object of Section 2(k) of the Aadhaar Act, 2016.

H. BECAUSE the judgment prayed to be reviewed has upheld the Section 139 AA of the Income Tax Act, 1961 under Right to Privacy under para 447, page 565: *"The matter has also been examined keeping in view that manifest arbitrariness is also a ground of challenge to the legislative enactment. Even after judging the matter in the context of permissible limits for invasion of privacy, namely: (i) the existence of a law; (ii) a 'legitimate State interest'; and (iii) such law should pass the 'test of proportionality', we come to the conclusion that all these tests are satisfied. In fact, there is specific discussion on these aspects in Binoy Viswam's case as well."* There is no discussion on how "information pertaining to one's

income" would fall within the ambit of benefits, subsidy or service, which is a test laid down by this Hon'ble Court itself, as a sine qua non for procuring an Aadhaar by the State.

I. BECAUSE, the judgment prayed to be reviewed has not taken into consideration that UIDAI had already entered into various Memorandum of Understanding and contractual arrangements with a host of private companies, agencies, and private players in the intervening period between 2009 and 2016 to collect, collate, store and retain digitally sensitive information. These Private companies have not followed any rule or procedure whilst carrying out such collection or collation of data, and it is the case of the Petitioners, and which has also been revealed from the RTI response which clearly states that over 49, 000 such companies were blacklisted. An Act which comes into effect from 26th March 2016 cannot give retrospective validity to or otherwise save systematic illegalities committed during such period by private agencies, who only enjoyed a contractual relationship with the UIDAI

but were nonetheless custodians of sensitive personal data of the citizens of this country.

J. BECAUSE the judgment prayed to be reviewed has not considered another vital aspect, since the UIDAI in exercise of its powers under Section 23(3)(a) of the Aadhaar Act, 2016 had already entered into a series of memorandum of understanding (MOUs) with a range of agencies including banks, state governments, private players and other agencies such as the Life Insurance Corporation of India to be "registrars", who had insisted their customers to enrol on the UID to receive continued service. Thus, whilst UIDAI has directly avoided any liability, it has nonetheless been achieving the so called objective of mandatory registration by way of the MOU's with other agencies, banks, departments etc. The judgment under review has not given the option to a citizen to "opt – out" in all such cases where the Aadhaar card has already been linked to the services provided by these private players. As a result of which, private players continue to retain control of the private data of the citizens. Telecom

Providers, schools, colleges, CBSE, insurance companies, still continue to retain the data, despite the judgment dated 26.09.2018. The minority opinion in paragraph 218 recognizes that the individual must have a discretion to "opt – out" whether the collection may be made at the instance of UIDAI or a private player, however the majority opinion is silent on this vital aspect.

K. BECAUSE a novel system of induction has been envisaged in the Aadhaar Scheme which is the "introducer". This introducer can affix his own documents in a case where the applicant does not have any address in his own name. Similarly, Aadhaar Cards have been made on affidavits and attestations by local MLA's as well as by any Class II Government Officer or Gazetted Servant. There have been innumerable instances reported and recorded where these introducers as well as affidavits have been procured for paltry amount so as to get the benefit of enrolment. Regulation 10(4)(a) of the Aadhaar (Enrolment and Update) Regulations 2016 defines an introducer to range from elected local

members, to registrar's own employees who can be private players, representatives of local NGO's, post men and influencers such as teachers, doctors, Aanganwadi/Asha Workers.

L. BECAUSE the judgment prayed to be reviewed has not considered that Aadhaar (Targeted Delivery of Financial and other subsidies, Benefits and Services) Act, 2016 does not make any distinction between a 'resident' and 'citizen' for the purpose of Section 3(1) of the Aadhaar Act; which entitles any resident to obtain an Aadhaar card who has resided for at least a period of 182 days thereby entitling any person who is an illegal immigrant to obtain Aadhar Card for himself which has hindered both the interest of national security as well as the preservation of general public law and order.

M. BECAUSE by linking Aadhaar Card to other departments, services, benefits, and subsidies, even a non-citizen or an illegal immigrant would become eligible to the countless social welfare schemes which the State and the Central Governments have brought in for the benefit of the citizens, and there

would absolutely be no way by which an Indian citizen could possibly be distinguished from an immigrant who manages to obtain the Aadhaar Card. This measure undertaken by the Parliament is self – defeatist in as much as it would serve as a tool enabling a non – citizen or an illegal migrant to avail all the regular benefits and services that are only earmarked for a citizen, and would afford the ease to generate new identification cards on the strength of Aadhaar Card. In later course, these people will also encroach into other domains, for instance procure Voter ID Cards, and exercise their right to vote, which is only available to citizens of this country. Aadhaar Card would be the singular feature that would be the cause of diminishing the very distinction between citizens and residents.

N. BECAUSE, the judgment prayed to be reviewed has not considered this vital aspect, since Aadhaar program had began its enrolment process, including collection and collation of data, much before the Aadhaar Act, 2016 came into being, i.e. from 01.01.2010 itself. Therefore, there is no tangible

way to ascertain as to how many Aadhaar cards have already been distributed to these illegal immigrants much before the Aadhaar Act, 2016 came into force. The judgment prayed to be reviewed has worked on the assumption that in future, if such a situation arises, the enrolling agencies would find out suitable mechanism to cope up with such a situation. What has been omitted is that there already may exist a vast number of residents who are not citizens of this country, but who have, nonetheless obtained Aadhaar, and now stand at the same footing as a citizen of this country, claiming equal entitlement to benefits, subsidies, or services.

O. BECAUSE in law, there is a clear and specific distinction made between “resident” and “citizen”, and they cannot be used interchangeably or synonymously. The Welfare State is committed to protect the rights and interests of its citizens, and therefore it is the citizens who are entitled to the benefits, services, and subsidies that the Welfare State provides to them. Residents, on the other

hand have no such vested rights, or legitimate expectations, nor can they claim parity with the citizens. However, the Aadhaar Act, 2016 makes no distinction between the two categories, and thereby dilutes the fine distinction, which is not only arbitrary and against the spirit of the Constitution, but is also antithetical to the commitment of any welfare state.

P. BECAUSE the judgment of this Hon'ble Court insufficiently addresses the concern and records at para 335, page 412 of the judgment prayed to be reviewed that, *"Insofar as Section 2(v) is concerned which defines resident, there is nothing wrong with the definition. The grievance of the petitioners is that the Aadhaar Act creates no credible machinery for availing a claim that a person has been residing in India for 182 days or more. Apprehension is expressed that this expression may also facilitate the entry of illegal immigrants. These aspects can be taken care of by the respondents by providing appropriate mechanism. We direct the respondents to do the needful in this behalf. However, that would*

not render the definition unconstitutional.". It is most respectfully submitted that this is not a future possibility, but a concrete reality, since prior to the passing of the Aadhar Act, 2016, i.e. as on 01.04.2016, the Central Government had already made a claim that over 100 Crore people had already enrolled themselves with the Aadhaar Program. That staggering number of people may well include both "Residents" who are not citizens as well as "Citizens" and there is no way of ascertaining the distinction, because on the strength of Aadhaar numbers, other identification cards such as voter id cards, driving licenses, PAN Cards, could have been obtained by those people.

Q. BECAUSE this Hon'ble Court has failed to consider the crisis of illegal immigration, as well as its possibility in future without affording any reason or clarity on the problem as it exists on 110 crore people of this country. The judgment of the Hon'ble court in Para 447, Page 558 directs the respondents to ensure that illegal immigrants are not able to *take such benefit*s. But such direction fails to

address the problem of non-citizens which might be illegal immigrants, gaining a permanent identity which leads to various other benefits not listed in the Aadhaar Scheme itself, who have already acquired Aadhaar cards even prior to the date on which the Act came into force. Assuming that the benefits of the Aadhaar Scheme are taken away from the immigrants at a later point of time, having a Unique Identity itself is a benefit to these illegal immigrants which has already enabled them to procure other identification cards, much before the Aadhaar Act, 2016 was even passed, i.e. between the intervening period of 01.01.2009 to 01.04.2016, which has already placed them at the same pedestal as an Indian citizen.

R. BECAUSE the State is the custodian of resources that belong to the citizens of this Country. The State cannot deprive its own citizens the access to these resources on one hand, and make them available to residents on the other, who neither have a vested right, nor a legitimate expectation to avail the benefits, or services, or subsidies.

S. BECAUSE the Petitioner has also challenged the creation of National Population Register (NPR) under Section 14A of the Indian Citizenship Act, 1955, which is not only in violation of the provisions of the Constitution but is also against the Indian Citizenship Act, 1955. Section 14A (1) of the Indian Citizenship Act, 1955 states that *"The Central Government may compulsorily register every citizen of India and issue national identity card to him."*. However the judgment prayed to be reviewed has not decided the issue.

T. BECAUSE Section 14-A of the Citizenship Act, 1955 which makes it compulsory for every citizen to get his details entered into National Register of Indian Citizens is ultra vires of the Constitution of India. It is not the mandate of the Citizenship Act to collect statistics and details of residents and citizens in India which detail is to be collected only under the Census Act. Section 14- A does not fit in in the scheme of the Citizenship Act, 1955, and whether or not a person's name has to be included as a citizen in the NRIC cannot be decided by the officer

entering such details in the National Population Register; and further, it seeks to collect private data of the citizens without providing for any restriction on its disclosure, use and transmission.

U. BECAUSE the judgment prayed to be reviewed has failed to consider this submission by the petitioners. The judgment prayed to be reviewed ignores the possibility of discrepancies in the National Population Register while addressing Section 2(v) of the Aadhaar Act, 2016 as it fails to make a distinction between 'residents' and 'citizens'. The National Population Register shall consist of the citizens only.

V. BECAUSE this Hon'ble Court in the judgment which is prayed to be reviewed has upheld the Aadhaar Act, 2016 as a Money Bill. The fact that the bill has been classified as "Money Bill" eliminates the possibility of a discussion or debate before the Upper House. Section 56 of the Finance Act, 2017 incorporated a new provision being Section 139 AA in the Income Tax Act, 1961. It makes it mandatory for every person who files an Income Tax Return to

link their Aadhaar Number with the Income Tax Authorities on or before 1st of July 2017. This requirement affects the very Right of Free Trade and Profession.

W. BECAUSE specific provisions of Aadhaar Act, 2016 read with the mandatory requirement as per the Finance Act, 2017 are targeted and aimed at depriving the citizens of their right to privacy, right to trade, business and profession or compelling them to mandatorily enrol in the identification procedure which has myriad flaws both in principle as well as on operational basis. The contention regarding Aadhaar Act, 2016 upheld as Money Bill by the Lok Sabha speaker was addressed by Hon'ble Justice Bhushan at paragraph 364 by way of separate but concurring majority opinion in the order prayed to be reviewed, states: '*The disbursement of subsidies, benefits and services from the Consolidated Fund of India is in substance, the main object of the Act for which Aadhaar architecture has been envisaged and other provisions are only to give effect to the above main theme of the*

Act. Other provisions of the Act are only incidental provisions to main provision". Whereas as per para 447, page 564 of Hon'ble Justice Sikri's judgment holds "*It follows that authentication under Section 7 would be required as a condition for receipt of a subsidy, benefit or service only when such a subsidy, benefit or service is taken care of by Consolidated Fund of India. Therefore, Section 7 is the core provision of the Aadhaar Act and this provision satisfies the conditions of Article 110 of the Constitution. Up to this stage, there is no quarrel between the parties. But, the same provisions can no longer be classified as "merely being incidental or ancillary".*

X. BECAUSE the judgment under review has not considered that the objective and purpose of the Aadhaar program is not to provide benefits, subsidy or services, but to "create one national identity for every resident", which makes the grant of benefits, subsidies or services, contingent upon this unique identity. The judgment under review does not carve out a distinction between these two conflicting

objectives, rather accords primacy to only the former.

Y. BECAUSE concerns regarding security of data, have been addressed in the judgment prayed to be reviewed by relying on Chapter VII (Offences & Penalties) of the Aadhaar Act 2016. Penal provisions which have not been effective in securing the sensitive information collated by authorities performing functions under the Aadhaar Act, 2016. This Hon'ble court in the judgment prayed to be reviewed by Justice Bhushan at paragraph- 261 holds: "*With regard to an offence which falls within the definition of 'offences' a victim can always file complaint or lodge an F.I.R. Section 46 of the Aadhaar Act clearly provides that the penalties under the Aadhaar Act shall not interfere with other punishments*". The error apparent on the face of the record is that while these provisions may come to the aid of a citizen, whose data has been compromised after the date of passing of the Aadhaar Act, 2016. These provisions offer no protection whatsoever to the data which stood

compromised prior to the date of enactment of Aadhaar Act, 2016 and which roughly cover 90% of the Aadhaar holders. Since the information stored was with private players or Biometric Service Providers.

Z. BECAUSE Section 29(4) of the Aadhaar Act, 2016 clearly states that "*No Aadhar number or core biometric information collected or created under this Act in respect of Aadhaar Number holder shall be published, displayed or posted publically, except for the purposes of regulation".* On 05.04.2016 The Ministry of Electronics and Information Technology vide office Memorandum dated 05.04.2016 has admitted that the demographic information and other sensitive information in the nature of personal data has been leaked online and can be found by way of an easy online search.

AA. BECAUSE various Media Reports and Other Independent Reports have clearly highlighted some of the major drawbacks in the Aadhaar Scheme as well as some of the pressing concerns regarding national security, identity thefts, and privacy

concerns. The nature of information that is stored by the biometric agencies acting in coordination with the Government is extremely sensitive, confidential and personal in nature.

BB. BECAUSE the Hon'ble Court has elucidated upon the prohibition of data leak in Section 28 of the Aadhaar Act, but it fails to look at the fact that post leak, there in nothing that can be done by any authority. The mere existence of such scheme and CIDR itself is a breach of privacy.

CC. BECAUSE the Judgment prayed to be reviewed has failed to take into account the problem that is posited by relying on a Central Information Database Repository such as CIDR since it is a threat to National Security and public trust. A Centralised database which controls, collects and transfers data at one centralised location jeopardizes national security of the country.

DD. BECAUSE the judgment under review has not considered that the objective and purpose of the Aadhaar program is not to provide benefits, subsidy or services, but to "create one national identity for

every resident", which makes the grant of benefits, subsidies or services, contingent upon this unique identity. The judgment under review does not carve out a distinction between these two conflicting objectives, rather accords primacy to only the former.

EE. BECAUSE the judgment sought to be reviewed fails to take into account voluminous substantive contentions urged by the petitioners.

FF. BECAUSE it would be equitable and in the interest of justice that the Judgment dated 26.09.2018, prayed to be reviewed by way of the instant Petition, since grave prejudice shall be caused to the review petitioner herein.

8. It is most respectfully submitted that the Petitioner has not filed any similar review petition against the impugned final judgment and order dated 26.09.2018 passed by this Hon'ble Court in Writ petition (Civil) No. 494 of 2012, before this Hon'ble Court.

9. This Review Petition is preferred bona-fide, in the interest of justice and in the larger public interest and the

Petitioner has no personal interest or oblique motive in preferring this Review Petition.

PRAYER

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

A. ALLOW this Review filed against the Judgment dated 26.09.2018 passed by this Hon'ble Court in W.P.(Civil) 494 of 2012 and allow the prayer seeking directions contained in I.A. No. 131446 of 2017 in Writ petition Civil No. 494 of 2012;

B. PASS any other order as this Hon'ble Court may deem fit in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL, AS IN DUTY BOUND, EVER PRAY

Drawn By: Nipun Saxena (Adv.)

Filed By:

[PALLAVI PRATAP]

Advocate for the Petitioner

New Delhi

Filed on: 15.12.2018

IN THE SUPREME COURT OF INDIA

REVIEW JURISDICTION

REVIEW PETITION (C) NO. OF 2018

IN

I.A. NO. 131446 OF 2017

IN

WRIT PETITION (C) NO. 494 OF 2012

(To reconsider Final Order dated 26.09.2018 passed by this Hon'ble Court in WP (C) No. 494 of 2012)

IN THE MATTER OF:

IMTIYAZ ALI PALSANIYA

Petitioner

Versus

UNION OF INDIA & ORS.

Respondents

CERTIFICATE

UNDER PART-IV RULE 1 OF ORDER XLVII SCR, 2013

This is to certify that the present Review Petition is the first Petition seeking Review of the final order dated 26.09.2018 and the same is based on grounds admissible under the Rules.

Filed By:

[PALLAVI PRATAP]

Advocate for the Petitioner

New Delhi

Filed on: .12.2018