IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

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Place: Panaji

Dated: [27/07/2020]

Drawn By:

Shashwat Anand, Adv.

Chintan Nirala, Adv.

Filed By:

Shrinivas R. Khalap

(ADVOCATE)

ADVOCATE FOR THE PETITIONER

A

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

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Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

SYNOPSIS OF DATES AND EVENTS

S. No.	**Dates**	**Events**
1.	02/04/2020	The Aarogya Setu App ('App,' for short) was launched by the Government of India on 2nd April, 2020, purporting to be a COVID-19 tracking App, which seeks personal information ranging from basic contact details to profession, to full blown access to Bluetooth and GPS. As per Central Govt. claims and according to several proponents of the App, Aarogya Setu is supposedly a COVID-19 "contact tracing" App, but that is far detached from the reality. The App works by collecting information through a "symptoms and exposure" quiz and estimates degrees of risk of contracting COVID-19, accordingly.
2.	--	It is obvious that the App largely excludes tracking and identification of asymptomatic COVID-19 patients, which comprise more than 80% of the total COVID-19 cases. Mass testing is indispensable while India's testing rates are among

		the lowest in the world. This is evinced by the fact, that amidst the nation-wide lockdown since 25th March (after the one-day Janta Curfew on 24th March) when the tally of confirmed COVID-19 cases was 562, the number of COVID-19 infected persons exponentially increased to more than 11,00,000 confirmed cases, despite the ongoing lockdown.
3.	--	The App is purported to be floated on an "as-is" basis and despite the Government's claims that the App "cannot be hacked," "Elliot Alderson", an unidentified French ethical hacker not related to American TV character of the same name, and more recently a separate Bengaluru-based techie, hacked into the app, laying bare the fact that the data contained in the App is vulnerable and susceptible to hacking, misappropriation and misuse.
4.	--	Interestingly, as per the Terms of Service(ToS) of Aarogya Setu, the services provided by the App "**are not a substitute for common prudence, medical diagnosis, or specific therapeutic and epidemiological measures necessary to combat COVID-19**."
5.	--	Thus, it is clear that the Aarogya Setu does not detect/diagnose COVID-19. However, the reasons and intentions behind the App in its present form are best known to the Central Government. What it does is "Exposure Tracing" at best, as "Contact Tracing" is an epidemiological measure and a facet of the medical and healthcare field.

6.	--	The Data Protection Bill, 2018 in India is based on the recommendations of the B. N. Srikrishna Committee Report and framed under the direction of the Supreme Court of India in the Adhaar Case (Justice K.S.Puttaswamy (Retd.) & ANR. v. Union of India & ORS.), is still pending in the Parliament to date. Furthermore, recently, (Retd.) Supreme Court Justice B. N. Srikrishna himself thrashed the App in a webinar, stating that the App will end up causing more harm to the citizens, than good.
7.	--	The Supreme Court has laid down the test of "reasonableness, necessity, and proportionality," in assessing the constitutional validity of the infringement of Right to Privacy. The Apex Court's Aadhaar Judgment, and other judgments on the Right to Privacy provide that it is a fundamental right, and although not an absolute right, cannot be curtailed or interfered with "**except according to procedure established by law**."
8.	--	Notably, the Aarogya Setu App is not backed or mandated by any law. Thus, its imposition, in any way, is wholly arbitrary and unconstitutional, much less, through unwarranted and illegal executive instructions, as is the App an invasion into the privacy and a tool for prying and mining the data of the individuals.
9.	20/07/2020	The Deputy Collector (LA), Margao, Goa, under directions from the Collector, Margao, Goa, passed an order/letter, being Letter/Order No. 58/2/Coronavirus/CAB/2020 dt.

D

		20/07/2020 addressed to Security Incharge – GHRDC, attached to Collectorate, South Margao, Margao – Goa, mandating the usage of 'Aarogya Setu,' thereby directing the Security Incharge to allow only those persons who have downloaded the App to enter into the premises of the Collectorate, barring the rest.
10.		The said Order/Letter of the Deputy Collector, Margao, Goa (Resp. No. 4) is misconceived, discriminatory, arbitrary, uncalled for, unwarranted and bad in both law and fact, and hence unconstitutional and void, and liable to be quashed by this Hon'ble Court.
11.	27/07/2020	Hence, this writ petition.

Place: Panaji

Dated: [27/07/2020]

Drawn By:

Shashwat Anand, Adv.

Chintan Nirala, Adv.

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Shrinivas R. Khalap

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E

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

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DISTRICT: PANAJI

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

POINTS FOR DETERMINATION

1. Whether the Deputy Collector (Respondent No. 4), Margao, Goa, under directions of the Collector, Margao, Goa (Respondent No. 3), empowered to make the usage of 'Aarogya Setu' App mandatory, without any authority of law?
2. Whether the action of the Collector (Resp. No. 3) and the Dy. Collector (Resp. No. 4) arbitrary, unlawful and unconstitutional?
3. Whether the 'Aarogya Setu' App can be mandated without being backed by any law or statute?
4. Whether the Right to Privacy of the Citizens can be infringed without due procedure established by law?
5. Whether the Dy. Collector (Resp. No. 4) by his arbitrary order mandating the use of Aarogya Setu, curtail the Right of Public to Move Freely?

Place: Panaji

Dated: [27/07/2020]

Drawn By:

Shashwat Anand, Adv.

Chintan Nirala, Adv.

Filed By:

Shrinivas R. Khalap

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IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

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DISTRICT: PANAJI

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

AUTHORITIES TO BE CITED

1. Supreme Court 5-Judge Bench Judgment in Justice K.S.Puttaswamy (Retd.) & ANR. v. Union of India & ORS. (Adhaar Case; 2015 (8) SCC 735).
2. Supreme Court Judgement in 9-Judge Bench Judgment in Justice K.S.Puttaswamy (Retd.) & ANR. v. Union of India & ORS. (Right to Privacy Case; AIR 2017 SC 4161).

ACTS/BOOKS TO BE REFERRED TO:

- The Constitution of India, 1950.

Points To Be Urged:

As mentioned in the petition.

Place: Panaji

Dated: [27/07/2020]

Drawn By:

Shashwat Anand, Adv.

Chintan Nirala, Adv.

Filed By:

Shrinivas R. Khalap

(ADVOCATE)

ADVOCATE FOR THE PETITIONER

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

IN THE MATTER OF ARTICLE 226 OF THE CONSTITUTION OF INDIA, 1950.

AND

IN THE MATTER OF THE BOMBAY HIGH COURT PUBLIC INTEREST LITIGATION RULES, 2010.

AND

A PETITION SEEKING ISSUANCE OF WRIT, ORDER OR DIRECTION IN THE NATURE CERTIORARI FOR QUASHING OF LETTER/ORDER OF THE DEPUTY COLLECTOR, MARGAO, GOA, DATED 20.07.2020 MAKING USAGE OF AAROGYA SETU MANDATORY.

SUDEEP DALVI
AGED ABOUT: 40 YEARS
SOCIAL ACTIVIST

…..**PETITIONER**

VERSUS

1. STATE OF GOA,
   THROUGH THE SECRETARY,
   MINISTRY OF HOME AFFAIRS,
   SECRETARIAT – GOA.
2. MINISTRY OF LAW AND JUSTICE,
   THROUGH THE SECRETARY,
   SECRETARIAT – GOA.

3. COLLECTOR,
MARGAO, GOA,
CIVIL ADMINISTRATION
BRANCH, COLLECTORATE
BUILDING, SOUTH GOA
DISTRICT, MARGAO – GOA.

4. DEPUTY COLLECTOR,
MARGAO, GOA,
CIVIL ADMINISTRATION
BRANCH, COLLECTORATE
BUILDING, SOUTH GOA
DISTRICT, MARGAO – GOA.

..…**RESPONDENTS**

WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, 1950 SEEKING QUASHING OF THE LETTER/ORDER OF THE DEPUTY COLLECTOR, MARGAO, GOA, MAKING THE USAGE OF 'AAROGYA SETU' APP MANDATORY, AS BEING ARBITRARY, UNCONSTITUTIONAL AND VOID.

TO,
THE HON'BLE THE CHIEF JUSTICE AND
HIS LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE COURT, AFORESAID.

THE HUMBLE PETITION OF THE
PETITONERS ABOVE-NAMED,

MOST RESPECTFULLY SHOWETH:

1. That, this is the first writ petition of the petitioner, filed pro bono publico in this Hon'ble High Court with regard to the cause of action or matter(s) contemplated and the reliefs claimed herein.

2. That, the petitioner has not received any notice of caveat in this matter, lodged by the respondents, jointly or severally, and sent by them directly or on their behalf through their counsel(s).

3. That, the petitioner is a Social Activist, and as such, is well aware of his rights and duties as a public spirited citizen of India and is concerned with the rights of the public generally.

4. That, this is a Public Interest Litigation, inasmuch as, the petition is bona fide and purports to genuinely espouse the cause of the public at large, and is in the interest(s) of the public generally, as there are no personal or private interests of the petitioner, of any sorts, involved in the matter involved in the instant writ petition.

Further, there is no authoritative pronouncement by the Supreme Court or High Court on the question(s) raised herein and the result of the litigation shall not lead to any undue gain to the petitioner or anyone associated with him, or any undue loss to the respondents or any person(s), body of persons or the State, or any prejudice to the public at large.

5. That, by means of this writ petition in public interest, the petitioner is, *inter alia*, seeking:

A writ, order or direction in the nature of Certiorari, quashing the Letter/Order No. 58/2/Coronavirus/CAB/2020 dt. 20/07/2020 of the Deputy Collector (LA), Margao-Goa, addressed to Security Incharge – GHRDC, attached to Collectorate, South Margao, Margao – Goa, mandating the usage of 'Aarogya Setu,' as being arbitrary, unconstitutional and void.

A true copy of the Letter/Order No. 58/2/Coronavirus/CAB/2020 dt. 20/07/2020 of the Deputy Collector (LA), Margao-Goa, is germane and the

same is being filed herewith and marked as **ANNEXURE P-1** to instant petition.

6. That, the factual matrix of the '*lis*' involved herein, falls in a narrow compass and the same may be encapsulated as under:

The Aarogya Setu App ('App,' for short) was launched by the Central Govt. on 2nd April, 2020, purporting to be a COVID-19 tracking App, which seeks personal information ranging from basic contact details to profession, to a full blown access to Bluetooth and GPS. As per Govt. claims and according to several proponents of the App, Aarogya Setu is supposedly a COVID-19 'contact tracing' App, but that is far detached from the reality. The App works by collecting information through a 'symptoms and exposure' quiz and estimates degrees of risk of contracting COVID-19, accordingly.

A true copy of the Privacy Policy of the Aarogya Setu App is germane and the same is being filed herewith and marked as **ANNEXURE P-2** to this writ petition.

7. That, it is obvious that the App largely excludes tracking and identification of asymptomatic and/or pre-symptomatic COVID-19 patients, which comprise more than 80% of the total COVID-19 cases. Mass testing is indispensable while India's testing rates are among the lowest in the world. This is evinced by the fact, that amidst the nation-wide lockdown since 25th March (after the one-day Janta Curfew on 24th March) when the tally of confirmed COVID-19 cases was 562, the number of COVID-19 infected persons exponentially increased to more than 11,00,000 confirmed cases, despite the ongoing lockdown.

8. That, the App is floated on an "as-is" basis and despite the Government claims that the App "cannot be hacked," Elliot Alderson, a French ethical

hacker, and more recently a Bengaluru-based techie, hacked into the app, laying bare the fact that the data contained in the App is vulnerable and susceptible to hacking, misappropriation and misuse.

A true copy of the news report dt. 14/05/2020 detailing the hacking of the Aarogya Setu App by the French ethical-hacker and Bengaluru-based techie, titled "After French Hacker, Bengaluru Techie Hacks 'Un-Hackable' COVID-19 Tracking App Aarogya Setu in Less Than 4 hours" from the news portal www.india.com is germane and the same is being filed herewith and marked as **ANNEXURE P-3** to instant petition.

9. That, interestingly, as per the Disclaimer in the Terms of Service(ToS) of Aarogya Setu, "...*The Government of India specifically disclaims any implied warranties of fitness for a particular purpose or non-infringement The Services that are being provided (including the self-assessment test, its results and any notifications sent by the App)* ***are not a substitute for common prudence, medical diagnosis, or specific therapeutic and epidemiological measures necessary to combat COVID-19.***"

What is more astounding, is that the said ToS of the App further provides a Limitation of Liability of the Government which runs as, "*The Government of India... will not be liable for (a)* ***the failure of the App or the Services to accurately identify persons in your proximity who have tested positive to COVID-19;*** *(b)* ***the accuracy of the information provided by the App or the Services as to whether the persons you have come in contact with in fact been infected by COVID-19.***"

A true copy of the Terms of Service of the Aarogya Setu is germane and the same is being filed herewith and marked as **ANNEXURE P-4** to instant petition.

10. That, thus, it is picturesque that the Aarogya Setu does not detect/diagnose the COVID-19, and presumably, is an App meant merely for intensive surveillance and collecting data. However, the reasons and intentions behind the App in its present form are best known to the Government. What it does is 'Exposure Tracing' at best, as 'Contact Tracing' is an epidemiological measure and a facet of the medical and healthcare field.

11. That, the Data Protection Bill, 2018 in India is based on the recommendations of the B. N. Srikrishna Committee Report and framed under the direction of the Supreme Court of India in the Adhaar Case (**Justice K.S.Puttaswamy (Retd.) & ANR. v. Union of India & ORS.**), is still pending in the Parliament till date. Furthermore, recently, (Retd.) Supreme Court Justice B. N. Srikrishna himself thrashed the App in a webinar, stating that the App will end up causing more harm to the citizens, than good.

A true copy of the report of the remarks made by (Retd.) Supreme Court Justice B. N. Srikrishna in a Webinar, as published in the Indian Express titled "Mandating use of Aarogya Setu app illegal, says Justice B N Srikrishna," is germane and the same is being filed herewith and marked as **ANNEXURE P-5** to this petition.

12. That, the Supreme Court has laid down the test of 'reasonableness,' 'necessity,' and 'proportionality,' in assessing the constitutional validity of the infringement of Right to Privacy. The Apex Court's Adhaar Judgment, and other judgments on the Right to Privacy provide that it is a fundamental right, and although not an absolute right, cannot be curtailed or interfered with "**except according to procedure established by law**."

13. That, notably, the Aarogya Setu App is not backed or mandated by any law. Thus, its imposition, in any way, is wholly arbitrary and unconstitutional, muchless, through unwarranted and illegal executive instructions, as is the App

an invasion into the privacy and a tool for prying and mining the data of the individuals.

14. That, the collection of sensitive data as is being done by the App, stands in clear violation of the Right to Privacy and related principles established by the nine-judge bench judgment of the Supreme Court in **Jusitce KS Puttaswamy and Anr. v. Union of India and Ors.** (Privacy Judgement; AIR 2017 SC 4161) and five-judge bench in **K.S. Puttaswamy (Retd.) & Anr. v Union of India & Ors.** (Aadhar Judgement; 2015 (8) SCC 735).

15. That, the Supreme Court while deliberating on the scope of the Right to Privacy, included informational privacy, and privacy of choice within its ambit. Justice Nariman, J, defined 'informational privacy' and 'privacy of choice' in the Privacy Judgment, in the following terms:-

> *"Informational privacy which does not deal with a person's body but deals with a person's mind, and therefore recognises that an individual may have control over the dissemination of material that is personal to him. Unauthorised use of such information may, therefore lead to infringement of this right;" and*
>
> *"The privacy of choice, which protects an individual's autonomy over fundamental personal choices."*

16. That, the data which the app intends to collect is well-covered by both the aspects, i.e., 'informational privacy' and 'privacy of choice.' There is a reasonable expectation of privacy regarding the personal data collected. It was held in **Privacy Judgement** by Justice Chandrachud, J,:

> *"The sphere of privacy stretches at one end to those intimate matters to which a reasonable expectation of privacy may attach. It expresses a right to be left alone. A broader connotation which has emerged in academic literature of a comparatively recent origin is related to the*

protection of one's identity. Data protection relates closely with the latter sphere. Data such as medical information would be a category to which a reasonable expectation of privacy attaches."

17. That the State while gathering such personal should adhere to the principles enunciated by the Supreme Court, in its judgments, *supra*, regarding privacy rights. It was stated in the **Privacy Judgement** that privacy has both positive and negative content. The negative content restrains the State from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the State to take all necessary measures to protect the privacy of the individual. It is submitted, that that the manner/way/means in which State is collecting data and its order for mandatory use of *Aarogya Setu* App has failed to adhere to it both positive and negative obligations under privacy rights.

THREE-FOLD REQUIREMENT TO IMPINGE UPON RIGHT TO PRIVACY

18. That, unfortunately, the App remains a privacy minefield and it does not adhere to principles of minimisation, strict purpose limitation, transparency and accountability. Since the information is covered by right to privacy, it cannot be impinged without a just, fair and reasonable statutory law, as per the 9-Judge **Privacy Judgement** of the Supreme Court, which laid down the threefold requirement any act of the State/Government seeking to impinge upon the privacy of the individuals, it has to fulfil, i.e.,

(i) **existence of a law**; (ii) must serve a legitimate State aim; and (iii) proportionality.

19. That, it is well established that the infringement of the right to privacy cannot be impinged without a just, fair and reasonable statutory law, for which it has to fulfill and must meet the threefold requirement, *supra*. The data

collected by *Aarogya Setu* App is well-covered and protected by the Right to Privacy, and to collect the same, the stated requirements need to be met. However, it is submitted that the State has failed to pass this threshold.

Existence of a Law

20. That, the first and foremost requirement that **there must be a law in existence to justify an encroachment on privacy** is also an express requirement of the Article 21 itself, which provides that no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. Part III of the Constitution requires that even before we get to the discussion of whether a rights violation is justified or not, there must exist a law that authorizes it. Any such law has to be specific and explicit with respect to the rights that it seeks to infringe, the bases of infringement, the procedural safeguards that it establishes, and so on.

21. That, there is no clarity on the legal underpinning behind the App. The regulations fall short to provide anything which may act as a specific law backing such data-collection and surveillance. There is no mention of the circumstances, manner, and limitations under which the government is authorised to limit or infringe the right to privacy.

Must serve a Legitimate State Aim

22. That, secondly, the requirement of a need, in terms of a legitimate State aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness, which is a guarantee against arbitrary State action. The pursuit of a legitimate State aim ensures that the law does not suffer from manifest arbitrariness.

23. That, importantly, the State aim is to be inferred from the law through with State imposes restriction. Laws for data collection cannot be framed in generic or open-ended terms. They must categorically specify the purpose for

which data is collected (and will be stored and used), and their constitutionality will be judged on that count. In other words, data collection statutes must be specific and targeted. This test is premised on checking the veracity of the concerned 'law'.

In this instant case, there is no law to delve into and scrutinize the aim. The closest resemblance would be of the Terms of Service and Privacy Policy. It is submitted that the even the Terms of Service and Privacy Policy state the purpose of the App on so open-ended and vague terms, that no specific aim can be inferred.

Proportionality

24. That, thirdly, it is required that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Exploring the principle, it was stated in the **Aadhaar Judgement** that:-

> *"Thus, it is evident from various case laws cited above, that data collection, usage and storage (including biometric data) in Europe requires adherence to the principles of consent, purpose and storage limitation, data differentiation, data exception, data minimization, substantive and procedural fairness and safeguards, transparency, data protection and security.Only by such strict observance of the above principles can the State successfully discharge the burden of proportionality while affecting the privacy rights of its citizens."*

25. That, it has already been held that once the petitioner pleads that, for example, his right or that he is deprived of his right, it is for the State to justify the impugned law or action. Therefore, this standard also places an evidentiary burden upon the government to justify both the rationality of the measure, as well as its necessity.

ABSENCE OF STATUTORY LAW TO MANDATE USAGE OF AAROGYA SETU APP

26. That, it is submitted, that in the light of submissions compressed hereinbefore, for the sake of emphasis, it is reiterated that the Aarogya Setu App is not backed or mandated by any law, and it's imposition in any way is thus, manifestly, arbitrary, unconstitutional, unwarranted and bad in both law and fact and hence void and liable to be struck down.

RESTRICTION ON RIGHT TO MOVE FREELY

27. That, further, the freedom of movement in clause (d) of Article 19(1) of the Constitution provides the fundamental right of the people to move freely within the territory of India, i.e. in a country where he can do whatever he likes, speak to whomsoever he wants, meet people of his own choice without any apprehension, subject of course to the law of social control.

The petitioner under the shadow of surveillance is certainly deprived of this freedom. He can move physically, but he cannot do so freely, for all his activities are watched and noted. The shroud of surveillance cast upon him perforce engender inhibitions in him and he cannot act freely as he would like to do. (Supreme Court 7-Judge Bench in **Kharak Singh v. State of U.P.**)

28. That, in **Puttaswamy**, *supra*, Justice Kaul, J, had emphasized upon the concerns regarding surveillance of individuals:

> *"The growth and development of technology has created new instruments for the possible invasion of privacy by the State, including through surveillance, profiling and data collection and processing. Surveillance is not new, but technology has permitted surveillance in ways that are unimaginable*
>
> *The personal data collected is capable of effecting representations, influencing decision-making processes and shaping behaviour. It can be*

used as a tool to exercise control over us like the "big brother" State exercised. This can have a stultifying effect on the expression of dissent and difference of opinion, which no democracy can afford.

In today's world, privacy is a limit on the Government's power as well as the power of private sector entities."

29. That, in the present case, the order/letter of the Respondent No. 4, passed under directions of the Respondent No. 3, restricting movement or entry into the premises of Collectorate, Margao, Goa (**ANNEXURE P-1**), directly militates against the Right to Move Freely as envisaged under Article 19(1)(d), muchless, in the absence of an enacted law to mandate the same, is totally misconceived, unwarranted and bad in both law and fact, arbitrary, unconstitutional and void, and liable to be struck down and quashed.

DISCRIMINATION BY THE IMPUGNED ORDER/LETTER

30. That, as a matter of fact, a huge chunk of the populace of India does not have or own smartphones, muchless, the high-end ones which are actually compatible with and able to run the Aarogya Setu App.

31. That, in the circumstances, there seems no head or tail to the letter/order of the Respondent No. 4 mandating the use of Aarogya Setu, neither any use or cogency of such an order, overlooking the fact that a majority of persons don't even own such smartphones as may be able to run the App. Thus, the impugned letter/order is highly derogatory of the equality principle as enshrined under Article 14 of the Constitution, in that, it discriminates between people who own and those who don't own smartphones in according them entry into the premises of the Collectorate, Margao, Goa, and the same is arbitrary, unconstitutional and void.

THE IMPUGNED ORDER/LETTER MUST BE QUASHED TO UPHOLD THE FUNDAMENTAL RIGHTS OF THE PEOPLE

32. That, the British Mathematician, Clive Humby once famously said, “Data is the new oil.” He used it as a metaphor to explain that data is a resource, just like oil, that is useless ‘unrefined,’ but once it is ‘refined’(mined and analysed), it creates enormous value. A lot of information can be extracted from data just as energy can be extracted from oil.

33. That, admittedly, for the people charged with tracing and tracking COVID-19, surveillance systems are crucial, so we must make an intentional and voluntary sacrifice of our privacy and allow some of our movements to be tracked for the common good of the public at large. But, new hi-tech surveillance in the Digital-Age has ushered in fears of the other kinds of surveillance.

34. That, however, we're hitting walls of skepticism and mistrust, because the Government has failed over past years to create the requisite infrastructure, institutions, legislations, regulatory mechanisms and safeguards that would win our trust in this increasingly invasive world. However, there are hardly any substantial efforts made by the State to earn the people’s confidence.

35. That, the COVID-19 pandemic brings us a window of opportunity, to reassert proper regulations over the Age of Information and Communications Technology, in the backdrop of the Prime Minister’s commitment to heralding the move towards Digital India. As the State owes a responsibility to the society, as well as, to the privacy of the individual, both of which can be balanced and harmonized. As a matter of great concern, the thin-line between voluntary and mandatory, and between privacy-protecting and privacy-invading, has now begun to diminish and blur and shall go on to have grave long-term consequences.

36. That, without this discourse, the new world and the digital-age present the risk of becoming a *glass-house*, whose see-through walls would allow too much exposure to the light of ubiquitous surveillance and public scrutiny, thus, scorching our private-selves, and in doing so, would arrest and encumber the organic growth and development of the "inviolate personality," which requires shade and shelter in which to flourish.

37. That, at this pace, with the evolution of Big Data and mass surveillance systems, our future generations run the risk of inheriting a mangled world, with a marred and depleted ecosystem for the cultivation of the human 'Self' and personality; where everyday, a little bit more of our private lives and our inner selves is laid bare, out in the aether, defenceless to exploitation and abuse.

38. That, without express assurance and/or undertaking by the Respondents that the data of the citizens shall not be misappropriated or misused, the sword of infringement and violation of personal data and privacy ever hangs upon the people and citizens.

39. That, further, in the facts and circumstances of the case as adumbrated hereinbefore, it is picturesque that impugned order/letter of the Respondent No. 4, mandating the use of Aarogya Setu, is misconceived, discriminatory, arbitrary, uncalled for, unwarranted and bad in both law and fact, unconstitutional and void, and must be struck down and quashed.

40. That, in the light of the submissions as aforesaid, it is imperative that this Hon'ble Court may issue a writ, order or direction, in the nature of Certiorari, quashing the Letter/Order No. 58/2/Coronavirus/CAB/2020 dt. 20/07/2020 of the Deputy Collector (LA), Margao-Goa, addressed to Security Incharge – GHRDC, attached to Collectorate, South Margao, Margao – Goa.

41. That, the instant petition is based upon the information/documents which are well within the public domain and it is in the pleasure of this Hon'ble Court to take a judicial notice thereof.

42. That, *inter alia*, the sources of Information relied upon:

- **i.** Letter/Order No. 58/2/Coronavirus/CAB/2020 dt. 20/07/2020 of the Deputy Collector (LA), Margao-Goa, addressed to Security Incharge – GHRDC, attached to Collectorate, South Margao, Margao – Goa;
- **ii.** News Paper Articles;
- **iii.** E-News Outlets; and
- **iv.** Other information available in Public Domain.

43. That, delay if any in filing the Petition and explanation thereof:

There is no delay in filing the present Public Interest Petition under the Article 226 Constitution of India, 1950.

44. That, the Petitioner has filed the present Petition before this Hon'ble Court under Article 226 of the Constitution of India and therefore this Petition can be heard and disposed of by this Hon'ble Court.

45. That, the Petitioner states that the Petitioner has paid all the proper Court fees stamp.

46. That, the Petitioner shall rely upon documents, a list of the same are annexed herein with this Petition.

47. That, the Petitioner states that he has not filed any other Petition in respect of the reliefs prayed in this Petition, in any other Court of Law. The Petitioner further submits that, in the facts of the case, the Petitioner has no other remedy available save and except by way of approaching this Hon'ble Court under Article 226 of the Constitution.

48. That, the Petitioner states that the Offices of Respondents are within the jurisdiction of this Hon'ble Court; and the present Petition involves question of infringement of Public Interest; and therefore, this Hon'ble Court shall have the

territorial jurisdiction to entertain and pass authoritative Orders, as prayed for hereinafter.

49. The Petitioner craves leave to add, amend, delete and/or modify and of the grounds/submissions/pleadings as and when required.

50. That, the grounds given below and all such other grounds will be raised at the time of hearing and/or final submissions.

51. That, the petitioner has no other equally efficacious and alternative remedy except to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution by filing the instant writ petition in public interest, *inter alia*, on the following grounds: –

GROUNDS

a. **Because,** as per the Disclaimer in the Terms of Service (ToS) of Aarogya Setu, "*...The Government of India specifically disclaims any implied warranties of fitness for a particular purpose or non-infringement....The Services that are being provided (including the self-assessment test, its results and any notifications sent by the App)* ***are not a substitute for common prudence, medical diagnosis, or specific therapeutic and epidemiological measures necessary to combat COVID-19.***"

b. **Because,** what is more astounding, is that the said ToS of the App further provides a Limitation of Liability of the Government which runs as, "*The Government of India... will not be liable for (a)* ***the failure of the App or the Services to accurately identify persons in your proximity who have tested positive to COVID-19;*** *(b)* ***the accuracy of the information provided by the App or the Services as to whether the***

persons you have come in contact with in fact been infected by COVID-19."

c. Because, it is picturesque that the Aarogya Setu does not detect/diagnose the COVID-19, and presumably, is an App meant merely for intensive surveillance and collecting data. However, the reasons and intentions behind the App in its present form are best known to the Government. What it does is 'Exposure Tracing' at best, as 'Contact Tracing' is an epidemiological measure and a facet of the medical and healthcare field.

d. Because, the Supreme Court has laid down the test of 'reasonableness,' 'necessity,' and 'proportionality,' in assessing the constitutional validity of the infringement of Right to Privacy. The Apex Court's Adhaar Judgment, and other judgments on the Right to Privacy provide that it is a fundamental right, and although not an absolute right, cannot be curtailed or interfered with "**except according to procedure established by law**."

e. Because, notably, the Aarogya Setu App is not backed or mandated by any law. Thus, its imposition, in any way, is wholly arbitrary and unconstitutional, muchless, through unwarranted and illegal executive instructions, as is the App an invasion into the privacy and a tool for prying and mining the data of the individuals.

f. Because, the collection of sensitive data as is being done by the App, stands in clear violation of the Right to Privacy and related principles established by the nine-judge bench judgment of the Supreme Court in **Jusitce KS Puttaswamy and Anr. v. Union of India and Ors.** (Privacy Judgement; AIR 2017 SC 4161) and five-judge bench in

K.S. Puttaswamy (Retd.) & Anr. v Union of India & Ors. (Aadhar Judgement; 2015 (8) SCC 735).

g. **Because,** it is well established that the infringement of the right to privacy cannot be impinged without a just, fair and reasonable statutory law, for which it has to fulfill and must meet the threefold requirement, laid down by the 9-Judge **Privacy Judgement** of the Supreme Court: (i) **existence of a law**; (ii) must serve a legitimate State aim; and (iii) proportionality. The data collected by *Aarogya Setu* App is well-covered and protected by the Right to Privacy, and to collect the same, the stated requirements need to be met. However, the State has failed to pass this threshold.

h. **Because,** in the present case, the order/letter of the Respondent No. 4, passed under directions of the Respondent No. 3, restricting movement or entry into the premises of Collectorate, Margao, Goa (**ANNEXURE P-1**), directly militates against the Right to Move Freely as envisaged under Article 19(1)(d), muchless, in the absence of an enacted law to mandate the same, is totally misconceived, unwarranted and bad in both law and fact, arbitrary, unconstitutional and void, and liable to be struck down and quashed.

i. **Because,** there seems no head or tail to the letter/order of the Respondent No. 4 mandating the use of Aarogya Setu, neither any use or cogency of such an order, overlooking the fact that a majority of persons don't even own such smartphones as may be able to run the App. Thus, the impugned letter/order is highly derogatory of the equality principle as enshrined under Article 14 of the Constitution, in that, it discriminates between people who own and those who don't own smartphones in according them entry into the premises of the

Collectorate, Margao, Goa, and the same is arbitrary, unconstitutional and void.

j. **Because,** without express assurance and/or undertaking by the Respondents that the data of the citizens shall not be misappropriated or misused, the sword of infringement and violation of personal data and privacy ever hangs upon the people and citizens.

k. **Because,** as a matter of great concern, the thin-line between voluntary and mandatory, and between privacy-protecting and privacy-invading, has now begun to diminish and blur and shall go on to have grave long-term consequences.

l. **Because,** with the evolution of Big Data and mass surveillance systems, our future generations run the risk of inheriting a mangled world, with a marred and depleted ecosystem for the cultivation of the human 'Self' and personality; where everyday, a little bit more of our private lives and our inner selves is laid bare, out in the aether, defenceless to exploitation and abuse.

PRAYER

It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to:

i. Issue a writ, order or direction, in the nature of Certiorari, quashing the Letter/Order No. 58/2/Coronavirus/CAB/2020 dt. 20/07/2020 of the Deputy Collector (LA), Margao-Goa, addressed to Security Incharge – GHRDC, attached to Collectorate, South Margao, Margao – Goa, mandating the usage of 'Aarogya Setu,' as being misconceived, discriminatory, arbitrary, uncalled for, unwarranted and bad in both law and fact, unconstitutional and void (**ANNEXURE P-1**); And/or

ii. Pass such other and further order(s) in addition to or in substitution for, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; And/or

iii. To award the costs of the writ petition.

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

Place: Panaji

Dated: [27/07/2020]

Drawn By:

Shashwat Anand, Adv.

Chintan Nirala, Adv.

Filed By:

Shrinivas R. Khalap

(ADVOCATE)

ADVOCATE FOR THE PETITIONER

Drafted on: 23/07/2020
Filed on: 27/07/2020

VERIFICATION

I, Sri Sudeep Dalvi, Aged about 40 Years, ,

Social Activist,

, do hereby state on solemn affirmation that I am the petitioner in this public interest litigation and that I have carefully gone through the memo of this public interest litigation and annexures annexed thereto. I say that the contents of the memo of this public interest litigation are true to the best of my person\al knowledge and the legal submissions made therein are true to the best of my personal belief which belief is based upon the legal instructions and advice given to me by my advocate which I believe to be correct. I also state on oath that the annexure which are annexed to the memo of this petition have been personally checked by me and that they are true copies of the original documents, and I state on the affidavit accordingly.

Solemnly affirmed at Panaji on this_____day of July, 2020.

AFFIANT

I KNOW AFFIANT

[ADVOCATE]

VAKALATNAMA

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

SUDEEP DALVI
AGED ABOUT: 40 YEARS
SOCIAL ACTIVIST

…..**PETITIONER**

VERSUS

1. STATE OF GOA,
THROUGH THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
SECRETARIAT – GOA.
2. MINISTRY OF LAW AND JUSTICE,
THROUGH THE SECRETARY,
SECRETARIAT – GOA.
3. COLLECTOR,
MARGAO, GOA,
CIVIL ADMINISTRATION
BRANCH, COLLECTORATE
BUILDING, SOUTH GOA
DISTRICT, MARGAO – GOA.
4. DEPUTY COLLECTOR,
MARGAO, GOA,
CIVIL ADMINISTRATION
BRANCH, COLLECTORATE
BUILDING, SOUTH GOA
DISTRICT, MARGAO – GOA.

..…**RESPONDENTS**

I do hereby appoint **Shrinivas R. Khalap (Advocate Code: 453)** to act, appear, plead, withdraw and compromise for me in the above matter.

This_____Day of July, 2020.

SIGNATURE

SRI. SUDEEP DALVI

Accepted

[(I am not a member of
Welfare Fund.)]

SHRINIVAS R. KHALAP
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MAH/2978/2000
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Email: khalapandco.advocates@gmail.com

Address at Goa (for service)

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Advocates
188, Altinho, Mapusa,
Bardez, Goa : – 403 001.

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA
ORDINARY ORIGINAL CIVIL JURISDICATION

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

MEMORANDUM OF ADDRESS

SHRINIVAS R. KHALAP

Advocate

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Bardez, Goa : – 403 001.

Email: khalapandco.advocates@gmail.com

Mobile No.: +91-7720047421

Dated : _____July, 2020

Shrinivas R. Khalap

Advocate For the Petitioner

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA
ORDINARY ORIGINAL CIVIL JURISDICATION

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS…..**Respondents**

LIST OF DOCUMENTS

Sr. No.	**Particulars**
1.	**Annexure P-1** A true copy of the Letter/Order No. 58/2/Coronavirus/CAB/2020 of the Deputy Collector (LA), Margao-Goa, addressed to Security Incharge – GHRDC, attached to Collectorate, South Margao, Margao – Goa. **20/07/2020**
2.	**Annexure P-2** A true copy of the Privacy Policy of the Aarogya Setu App.
3.	**Annexure P-3** A true copy of the news report dt. 14/05/2020 detailing the hacking of the Aarogya Setu App by the French ethical-hacker and Bengaluru-based techie, titled "After French Hacker, Bengaluru Techie Hacks 'Un-Hackable' COVID-19 Tracking App Aarogya Setu in Less Than 4 hours" from the news portal www.india.com.
4.	**Annexure P-4** A true copy of the Terms of Service of the Aarogya Setu App.

5.	**Annexure P-5** A true copy of the report of the remarks made by (Retd.) Supreme Court Justice B. N. Srikrishna in a Webinar, as published in the Indian Express titled "Mandating use of Aarogya Setu app illegal, says Justice B N Srikrishna."

SRINIVAS R. KHALAP

Advocate for the Petitioner

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

ANNEXURE P-1

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

Letter/Order No. 58/2/Coronavirus/CAB/2020 of the Deputy Collector (LA), Margao-Goa, addressed to Security Incharge – GHRDC, attached to Collectorate, South Margao, Margao – Goa.

OFFICE OF THE COLLECTOR, SOUTH GOA DISTRICT, MARGAO-GOA
Civil Administration Branch, Collectorate Bldg., Margao – Goa.
E-mail: cab-cols.goa@nic.in
Phone No:0832-2794321/23 Fax No: 0832- 2794402
No. 58/2/Coronavirus/CAB/2020/ Dated: 20/07/2020

To,
The Security Incharge- GHRDC,
Attached to Collectorate South Margao,

Sub: Regulation of entry of Visitors/staff members in Collectorate Complex

Sir,

As per the directions of the Collector, I am directed to inform you to allow only those public who have downloaded the Arogya Setu App on their mobile and their status is showing **"You are safe"** only then, they will be permitted to enter the premises of the Collectorate, if not, they may be advised to download the Arogya Setu App on their mobile which should display ~~check~~ **" You are safe"** and allow entry after ensuring above .

For strict implementation and compliance forthwith.

Yours faithfully,

(Snehal S. Prabhu)
Dy. Collector(LA)
Margao-Goa.

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

ANNEXURE P-2

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

Privacy Policy of the Aarogya Setu App

PRIVACY POLICY

When you use Aarogya Setu (**App**), some personal information is collected from and about you. We are committed to protecting the security of this information and safeguarding your privacy. This privacy policy sets out the details of the personal information collected, the manner in which it collected, by whom as well as the purposes for which it is used. At registration you accepted the terms of this Privacy Policy and your use of the App signifies your continued acceptance thereof. This Privacy Policy may be revised from time to time and you will be notified of all such changes. In order to use the App, you will be required to consent to the terms of the Privacy Policy as revised from time to time.

1. INFORMATION COLLECTED AND MANNER OF COLLECTION

1. When you register on the App, the following information is collected from you and stored securely on a server operated and managed by the Government of India (**Server**) – (i) name; (ii) phone number; (iii) age; (iv) sex; (v) profession; and (vi) countries visited in the last 30 days. This information will be stored on the Server and a unique digital id (**DiD**) will be pushed to your App. The DiD will thereafter be used to identify you in all subsequent App related transactions and will be associated with any data or information uploaded from the App to the Server. At registration, your location details are also captured and uploaded to the Server.
2. When two registered users come within Bluetooth range of each other, their Apps will automatically exchange DiDs and record the time and GPS location at which the contact took place. The information that is collected from your App will be securely stored on the mobile device of the other registered user and will not be accessible by such other user. In the event such other registered user tests positive for COVID-19, this information will be securely uploaded from his/her mobile device and stored on the Server.

3. Each time you complete a self-assessment test the App will collect your location data and upload it along with the results of your self-assessment and your DiD to the Server.
4. The App continuously collects your location data and stores securely on your mobile device, a record of all the places you have been at 15 minute intervals. This information will only be uploaded to the Server along with your DiD, (i) if you test positive for COVID-19; and/or (ii) if your self-declared symptoms indicate that you are likely to be infected with COVID-19; and/or (iii) if the result of your self-assessment test is either YELLOW or ORANGE. For the avoidance of doubt, this information will NOT be uploaded to the Server if you are not unwell of if the result of your self-assessment test is GREEN.
5. If you have tested positive for COVID-19 or if there is a high likelihood of you being infected, you have the option to press the Report button on the App which will allow you to either request a test or report that you have tested positive for COVID-19. When you press the Report button the data collected under Clauses 1(b) and (d) and securely stored on your device will be uploaded to the Server with your consent.

2. USE OF INFORMATION

1. The personal information collected from you at the time of registration under Clause 1(a) above, will be stored on the Server and only be used by the Government of India in anonymized, aggregated datasets for the purpose of generating reports, heat maps and other statistical visualisations for the purpose of the management of COVID-19 in the country or to provide you general notifications pertaining to COVID-19 as may be required. Your DiD will only be co-related with your personal information in order to communicate to you the probability that you have been infected with COVID-19 and/or to provide persons carrying out medical and administrative interventions necessary in relation to COVID-19, the information they might need about you in order to carry out such interventions.
2. The information collected from any other user's mobile device and uploaded and stored on the Server in accordance with Clause 1(b) will be used to calculate your probability of having been infected with COVID-19.
3. The information collected under Clause 1(c) will be used by the Government of India to evaluate, based on the self-assessment tests and the GPS locations from where they are being uploaded, whether a disease cluster is developing at any geographic location.
4. The information collected under Clause 1(d) and securely uploaded and stored on the Server will, in the event you have tested positive for COVID-19, be used to map the places you visited over the past 30 days in order to identify the locations that need to be sanitised and where people need to be more deeply tested and identify emerging areas where infection outbreaks are likely to occur. Where, in order to more accurately map the places you visited and/or the persons who need to be deeply tested, your personal information is required, the DiD associated with the information collected under Clause 1(d) will be co-related with your personal information collected under Clause 1(a).

5. The information securely uploaded and stored on the Server under Clause 1(e) will be used to calculate the probability of those who have come in contact with you being infected with COVID-19.
6. The information collected under Clause 1 will not be used for any purpose other than those mentioned in this Clause 2.

3. RETENTION

1. All personal information collected from you under Clause 1(a) at the time of registration will be retained for as long as your account remains in existence and if any medical or administrative interventions have been commenced under Clause 2, subject to Clause 3(b) below, for such period thereafter as is required for such interventions to be completed.
2. All personal information collected under Clauses 1(b), 1(c), 1(d) and 1(e) will be retained on the mobile device for a period of 30 days from the date of collection after which, if it has not already been uploaded to the Server, will be purged from the App. All information collected under Clauses 1(b), 1(c), 1(d) and 1(e) and uploaded to the Server will, to the extent that such information relates to people who have not tested positive for COVID-19, will be purged from the Server 45 days after being uploaded. All information collected under Clauses 1(b), 1(c), 1(d) and 1(e) of persons who have tested positive for COVID-19 will be purged from the Server 60 days after such persons have been declared cured of COVID-19.
3. Nothing set out herein shall apply to the anonymized, aggregated datasets generated by the personal data of registered users of the App or any reports, heat maps or other visualization created using such datasets. Nothing set out herein shall apply to medical reports, diagnoses or other medical information generated by medical professionals in the course of treatment.

4. RIGHTS

1. As a registered user, you have the right to access your profile at any time to add, remove or modify any registration information that you have supplied.
2. You cannot manage the communications that you receive from us or how you receive them. If you no longer wish to receive communications from us, you may cancel your registration. If you cancel your registration, all the information you had provided to us will be deleted after the expiry of 30 days from the date of such cancellation.

5. DATA SECURITY

The App is equipped with standard security features to protect the confidentiality and security of your information. Data is encrypted in transit as well as at rest. Personal information provided at the time of registration is encrypted before being uploaded to the cloud where it is stored in a secure encrypted server. Personal information that is stored in the Apps of other registered users that you come in contact with is securely encrypted and are incapable of being accessed by such user.

6. DISCLOSURES AND TRANSFER

Save as otherwise set out in Clause 2 with respect to information provided to persons carrying out medical and administrative interventions necessary in relation to COVID-19, no personal information collected by the App will disclosed or transferred to any third party.

7. GRIEVANCES

If you have any concerns or questions in relation to this Privacy Policy, you may address them to the Grievance Officer whose name and address are as follows: Mr. R S Mani, Deputy Director General (DDG) NIC (support.aarogyasetu@gov.in).

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

ANNEXURE P-3

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

After French Hacker, Bengaluru Techie Hacks 'Un-Hackable' COVID-19 Tracking App Aarogya Setu in Less Than 4 hours

Security issues continue to haunt users of government's COVID-19 tracing app despite tall claims of it being 'un-hackable' since after the 'ethical' French hacker, a Bengaluru programmer breaches the app's defences in less than four hours

Published: May 14, 2020 2:19 PM IST

By India.com Viral News Desk Email Edited by Zarafshan Shiraz Email

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-

Seems like the government's swift responses to French hacker Robert Baptiste's allegations regarding the security issues with the **Aarogya Setu** app fell flat on its back after a Bengaluru programmer breached the app's defences in less than four hours. Baptiste or Elliot Alderson as he is known on Twitter, had claimed that "a security issue has been found in your app. The privacy of 90 million Indians is at stake" but the government had assured of no

data or security breach and even gone to the extent of booking citizens in Noida for not installing the app on their smartphones.

The liability concerns over privacy issues came to the surface once again when a Bengaluru-based software engineer, who goes by the name of Jay, breached the app's defences in less than four hours. He apparently hacked the Aarogya Setu app to find a way to not install it on his phone after the government made it mandatory. In an interview with BuzzFeed, Jay shared, "I didn't like the fact that installing this app is slowly becoming mandatory in India. So I kept thinking of what I could personally do to avoid putting it on my phone."

Jay reportedly started work at 9 am on a Saturday and managed to bypass the page that requested personal information like name, age, gender, travel history, COVID-19 symptom checker and also the registration page that required people to sign up with their cellphone numbers. Permissions that he viewed as invasive like those requiring access to the phone's Bluetooth and GPS at all times. Then were too carved away by the young programmer. Finishing the work on the app by 1 pm, Jay managed to revoke the app and was able to install it without giving away any of his details. Collecting no data, the app still flashed a green badge declaring that he, as a user, was at a low risk of infection and was even marked "safe" despite not giving any permission for it to run on his phone.

Jay shared with the news agency, "That was my goal. I succeeded. You can show the green badge to anyone if they ask to check your phone and they won't be able to tell." He added, "I'm rebelling against the mandatory nature of this app. I don't want to share my location 24/7 with the government. If I was coding this app, I would have chosen to keep data points to a minimum. If I have your location information for a month, I can gauge a lot of things about your life."

While Jay's concerns are rooted in the Indian government's record like when the country rolled out Aadhaar 10 years ago, with a biometric ID system that stored the fingerprints and iris scans of 1.3 billion Indians in a single database. According to him, Aarogya Setu app fared poorly against what Google and Apple were helping to build.

Talking about updating his hacking moves if the government tries to fix the loopholes he pointed out, Jay revealed, "I'm going to keep up with them. If they make significant changes or updates to the app, I'll find other workarounds."

Few days back, French hacker Baptiste claimed that the developers issued a statement of clarification on behalf of Team Aarogya Setu only after he "sent them a small technical report". Pointing out that the issue he had brought to light recently "had been fixed silently by the developpers", Baptiste wrote that within 49 minutes of his initial tweet, National Informatics Centre (that developed that app under the Union Ministry of Electronics and Information Technology) and the Indian Cert contacted him. Satisfied with their quick response, Baptiste had penned, "I'm happy they quickly answered to my report and fixed some of the issues but seriously: stop lying, stop denying."

For breaking news and live news updates, like us on Facebook or follow us on Twitter and Instagram. Read more on Latest Viral News on India.com.

Topics: AadhaarAarogya SetuAarogya Setu appBengaluruElliot AldersonFrench HackerIndiaJaynoidarailwaysRobert Baptistesecurity breachTwitter

Published Date: May 14, 2020 2:19 PM IST

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

ANNEXURE P-4

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

Terms Of Service of the Aarogya Setu App

Aarogya Setu TERMS OF SERVICE

These terms of service (**Terms**) govern your use of the Aarogya Setu application for mobile and handheld devices (**App**) and the services provided thereunder. Please read these terms and conditions (**Terms**) carefully before you download, install or use the App. By clicking on the "I Agree" button, you signify your acceptance of the Terms, and your agreement to be bound by them. The Terms may be amended from time to time with notice to you. In order to continue using the App, you will be required to accept the revised Terms.

1. SERVICE OVERVIEW

The App is part of a service designed to (i) enable registered users who have come in contact with other registered users who have tested positive for the severe acute respiratory syndrome Coronavirus 2 (**COVID-19**) to be notified, traced and suitably supported, (ii) to function as an indication of whether or not a user has been infected or is likely to have been infected. (iii) provide users useful information in relation to COVID-19, (iv) to allow users to access convenience services in relation to COVID-19, and (v) to display a government issued ePass (**Services**). When the App is installed on your mobile or handheld device, it detects when your device comes within Bluetooth range of any other registered user's device and initiates a protocol by which the information specified in the Privacy Policy (including location information) about that other registered user is collected. In the event you test positive for COVID-19, the Government of India will contact and/or inform such registered users you have come in contact with over the past 30 days who have a risk of being infected, to administer the appropriate medical intervention. Similarly, you will be notified if, as a result of having come in contact with any persons who have tested positive for COVID-19, that you have a risk of being infected. The App also allows users to conduct a self-assessment test to assess whether their symptoms combined with other relevant factors affects their risk of being infected. The App will also serve as digital representation of an e-Pass where available. The App will also provide links to convenience services offered by various service providers. Accessing the links will take users to external sites from where these convenience services will be provided.

2. REQUIREMENTS FOR USE

You agree to turn on and allow the App access to the Bluetooth and GPS services on your mobile or handheld device. You acknowledge that if your device is switched off or in airplane mode, if Bluetooth and GPS services on your device are turned off or if you revoke the App's access to Bluetooth and GPS services on your device, it will not be able capture all necessary information which will impair the completeness and accuracy of the Services. You agree to keep the mobile or handheld device on which the App is installed in your possession at all times and to not share it with or allow anyone else to use it. You acknowledge that if you do so it could result in you being falsely assessed as likely to infected with COVID-19 or not being assessed as such when you are.

3. USE

You agree that you will only use the App in good faith and will not provide false or misleading information about yourself or your infection status. You agree that you will not do anything to throttle, engineer a denial of service, or in any other manner impair the performance or functionality of the App. You agree that you will not use the App for any purpose for which it was not intended including, but not limited to, accessing information about registered users stored in the App, identifying or attempting to identify other registered users or gaining or attempting to gain access to the cloud database of the Service.

4. PRIVACY

You hereby consent to the collection and use of your personal information for the provision of the Services. The details of the personal information collected and the manner in which it collected and by whom as well as the purposes for which it will be used is more fully set out in our privacy policy which is available here. You are free to choose not to provide this information at any time by revoking the App's access to Bluetooth and GPS services. You can also delete the App from your mobile or handheld device, however, should you do so, you acknowledge that you will no longer be able to avail of the Services.

5. DISRUPTION

You agree that you have no expectation of, or right to permanent and uninterrupted access to the Services. While the Services are intended to be accessible to you from everywhere on a 24x7 basis, from time to time and without prior notice of downtime, access to the App or the Services or to any part thereof may be suspended on either a temporary or permanent basis and either with respect to all or a certain class of users.

6. LIABILITY

The Government of India will make best efforts to ensure that the App and the Services perform as described but will not be liable for (a) the failure of the App or the Services to accurately identify persons in your proximity who have tested positive to COVID-19; (b) the accuracy of the information provided by the App or the Services as to whether the persons you have come in contact with in fact been infected by COVID-19.

7. DISCLAIMER

The App is being made available on an "as-is" basis. All services such as those provided by this App are never wholly free from defects, errors and bugs, and the Government of India provides no warranty or representation to that effect or that the App will be compatible with any application, or software not specifically identified as compatible. The Government of India specifically disclaims any implied warranties of fitness for a particular purpose or non-infringement. The functioning of the App is dependent on the compliance by all registered users of the App with these Terms. Accordingly, the Government of India disclaims all liability on account of such non-compliance by other registered users. The Services that are being provided (including the self-assessment test, its results and any notifications sent by the App) are not a substitute for common prudence, medical diagnosis, or specific therapeutic and epidemiological measures necessary to combat COVID-19.

8. DEFECT REPORTING

You can report any defects or bugs in the App or the Services to support.aarogyasetu@gov.in. The Government of India will make every endeavour to address all reported bugs and defects.

9. GOVERNING LAW

These Terms shall be governed by the laws of India.

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

ANNEXURE P-5

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

Mandating use of Aarogya Setu app illegal, says Justice B N Srikrishna

Justice Srikrishna said that the guidelines cannot be considered as having sufficient legal backing to make the use of Aarogya Setu mandatory.

Written by Apurva Vishwanath | New Delhi | Updated: May 13, 2020 11:37:10 am

Former Supreme Court Judge Justice B N Srikrishna at Idea Exchange (Express file photo)

Former Supreme Court Judge B N Srikrishna, who chaired the committee that came out with the first draft of the Personal Data Protection Bill, termed the government's push mandating the use of Aarogya Setu app "utterly illegal".

"Under what law do you mandate it on anyone? So far it is not backed by any law," the former judge told The Indian Express.

On May 1, the Ministry of Home Affairs, in its guidelines after the nationwide lockdown was extended, made Aarogya Setu App mandatory for employees of private and public sector offices. It also asked local authorities to ensure 100% coverage of the app in containment zones. The guidelines were issued by the National Executive Committee set up under the National Disaster Management Act (NDMA), 2005.

The Noida police then said that not having the Aarogya Setu application would be punishable with imprisonment up to six months or fine up to Rs 1,000.

"The Noida police order is totally unlawful. I am assuming this is still a democratic country and such orders can be challenged in court," he said.

Justice Srikrishna said that the guidelines cannot be considered as having sufficient legal backing to make the use of Aarogya Setu mandatory. “These pieces of legislation — both the National Disaster Management Act and Epidemic Diseases Act — are for a specific reason. The national executive committee in my view is not a statutory body,” he said.

In July 2017, while the Supreme Court was still examining whether the right to privacy would constitute a fundamental right, the government had appointed Justice Srikrishna to head the committee on data protection. The committee of experts and officials held public hearings across the country and submitted a report in July 2018, in which it also proposed a draft data protection law. The Bill is yet to be brought to Parliament for approval. The report recommended that “processing of personal data must only be done for clear, specific and lawful” purposes. The committee recommended several rights for the data principal (whose personal data is collected) – from revoking consent granted for processing data, notifying a breach to having their incorrectly processed data rectified by the authorities.

The Supreme Court in the landmark 2017 ruling that recognised the fundamental right to privacy laid down a three-fold test to examine constitutionality of government actions that could invade a citizen’s right to privacy. The first condition is that the action taken must be under a law duly passed by Parliament and the government will have to show it had a “legitimate state interest” to violate the right to privacy apart from having considered all less intrusive measures before violating the right.

On Monday, the Aarogya Setu Data Access and Knowledge Sharing protocol was issued, setting up principles for collecting and processing of data. The protocol is an “order” by the Empowered Group on Technology and Data Management set up by the National Executive of the Disaster Management Act.

Justice Srikrishna said that the protocol would not be adequate to protect the data. “It is akin to an inter-departmental circular. It is good that they are keeping with the principles of the Personal Data Protection Bill but who will be responsible if there is a breach? It does not say who should be notified,” he said.

In a webinar organised on Monday by Daksha Fellowship, a legal education group, he called the new protocol a “patchwork” that will “cause more concern to citizens than benefit.”

“It is highly objectionable that such an order is issued at an executive level. Such an order has to be backed by Parliamentary legislation, which will authorise the government to issue such an order,” said Justice Srikrishna.

“If it is traced to NDMA, the NDMA has no provision for constitution of an empowered group. (Under) what provision of law is this order issued? I cannot understand … If there is a breach of data here, who is answerable, what action has to be taken and (who is) accountable for the data breach. This should really have been traced ideally to PDP (Personal Data Protection) or through NDMA by an appropriate amendment,” he said.

— with inputs from Aashish Aryan.

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

IN THE MATTER OF:

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

AFFIDAVIT

I, Mr. Sudeep Dalvi, aged about 40 Years, ,

Social Activist,

, abovenamed, do hereby solemnly affirm and declare as under:-

1. That, the Petitioner has been filed the Public Interest Litigation for its reliefs as prayed for in the Writ Petition. I repeat and confirm all that has been stated in the Petition is true and pray that the reliefs prayed in the petition be granted.

2.

.

3. That, the Petitioner has no personal interest, gain, private or oblique motive in filing the petition.

4. That, the Petitioner undertakes to pay costs as ordered by this Hon'ble Court if the petitioner is found to be frivolous or filed with any oblique motive.

5. That, the Petitioner undertakes to disclose the source of his information leading up to the filing of this petition, as and when called upon by this Hon'ble Court to do so.

I say that accordingly this affidavit is filed.

Solemnly affirmed at Panaji)
this day of July, 2020.)

Identified by,

DEPONENT

VERIFICATION

I, Sri Sudeep Dalvi, Aged about 40 Years, ,
Social Activist,
, do hereby state on solemn affirmation that I am the petitioner in this public interest litigation and that I have carefully gone through the memo of this public interest litigation and annexures annexed thereto. I say that the contents of the memo of this public interest litigation are true to the best of my person\al knowledge and the legal submissions made therein are true to the best of my personal belief which belief is based upon the legal instructions and advice given to me by my advocate which I believe to be correct. I also state on oath that the annexure which are annexed to the memo of this

petition have been personally checked by me and that they are true copies of the original documents, and I state on the affidavit accordingly.

Solemnly affirmed at Panaji on this_____day of July, 2020.

AFFIANT

I KNOW AFFIANT

[ADVOCATE]

ID PROOF OF PETITIONER/DEPONENT

IN THE HON'BLE HIGH COURT OF BOMBAY AT GOA

ORDINARY ORIGINAL CIVIL JURISDICATION

CIVIL MISC. (PUBLIC INTEREST LITIGATION) NO._____OF 2020

DISTRICT: PANAJI

Sudeep Dalvi ….. **Petitioner**

Versus

State of Goa and ORS.....**Respondents**

ADVOCATE CERTIFICATE

TO,

THE PROTHONOTARY & SR. MASTER

HIGH COURT O.S.

PANAJI

Respected Sir,

I Mr. Shrinivas R. Khalap, Advocate for the Petitioner, abovenamed, do hereby certify and state that the issue involve in the present Petitioner is required to be adjudicated by the Hon'ble Division Bench of this Hon'ble Court under Rule 636(1)(b) of the High Court Original Side Rules.

PANAJI: Dated_____July, 2020.

Shrinivas R. Khalap

Advocate for the Petitioner