

DECLARE AADHAAR ILLEGAL: SUIT FILED IN BANGALORE

IN THE COURT OF CITY CIVIL JUDGE AT BANGALORE

O.S.NO. OF 2011

BETWEEN:

1. Mr. MATHEW THOMAS

2. Mr. V.K.SOMASHEKHAR

PLAINTIFFS

AND

1. THE CHAIRPERSON,

UNIQUE IDENTIFICATION AUTHORITY OF INDIA,

2. UNION OF INDIA

Represented by

THE CHAIRPERSON,

PLANNING COMMISSION OF INDIA,

THE DEPUTY CHAIRPERSON,

Planning Commission of India

DEFENDANTS

PLAINT FILED ON BEHALF OF THE PLAINTIFFS UNDER SECTION 26 READ WITH ORDER VII RULE 1 OF THE CODE OF CIVIL PROCEDURE.

The address of the plaintiffs for the purposes of processes of the Hon'ble Court is as shown in the above cause title and he may also be served on his counsels Mr. B T Venkatesh, Mr. T K Satheesh and M S Purushothama, advocates, REACHLAW, No. 43, 3rd Cross, Link Road, Malleswaram, Bangalore 560003.

First plaintiff is a citizen of India. He has worked with distinction as a senior officer in defence of India. He is a missile scientist. He was head of Missile Manufacturing Establishment in DRDO (Defence Research and Development Organisation) A Premier Defence Establishment of India. He is commended by President of India for Distinguished Service in Defence Research in India. The second plaintiff is a corporate executive with 30yrs experience in the field, a popular social activist and the Managing Trustee of Grahak Shakti a Voluntary, not for profit, non political Consumer Organisation and also an

accredited journalist. A triple graduate with Post graduation in law and diploma in Foreign Trade Management and also Diploma in Journalism. It is most respectfully submitted that the plaintiffs are citizen of India and are taxpayers. The plaintiffs are extremely concerned with the way the defendants are abusing their position and powers, spending huge amounts of taxpayers' money that includes the tax paid by the plaintiffs (both direct and indirect taxes). It is respectfully submitted that the conduct of the defendants in continuing with AADHAAR is against the interest of citizens of India that includes the plaintiffs herein. The said scheme is in violation of all known civil rights and a disempowering mechanism. It is against all accepted norms of Rule of Law and fundamental rights, guaranteed under the Constitution of India.

Plaintiffs are filing this suit seeking declaration that AADHAAR being carried out by the defendants as illegal and for consequential relief of perpetual injunction against the defendants herein. The plaintiffs are presenting this suit in representative capacity on his behalf and on behalf of other persons and he has made separate application under order I rule 8 of the Code of Civil Procedure.

First defendant is the Chairperson of Unique Identification Authority of India, which was set up as an attached office of the Planning Commission of India and he has been appointed as the Chairperson by an executive order. Defendant number TWO is Chairperson of the Planning Commission of India and the THIRD defendant is Deputy Chairperson of Planning Commission of India.

The Government of India has initiated a program styled as Unique Identity Number, abbreviated as UID Project, where in a concept is envisaged to issue Unique Identity Number to every resident of India. It is claimed that this Unique Identity Number is in addition to other identities and is issued to all the citizens from time to time like PAN Card, Passport, Ration Card, Driving License, BPL Cards, NREGA Card and similar cards issued by both State and Central Government. However, unlike these identities issued by the government to citizens of India, the UID number is issued to every resident in India. It is stated that the said identity number is an option that a resident can choose to take as it would be easy to authenticate a person's identity anywhere and thus is portable. The identity initially was to be stored in a central database with individuals biometric and demographic data linked to a randomly generated unique number. Individuals were not to be issued identity cards. Subsequently, very recently, press reports say that an ID card would be issued. The defendants say that the identity would be authenticated by querying the database. Thus, it may be seen that even a person possessing the UID or AADHAAR card cannot authenticate his or her identity, but only those in charge of the First Defendant's database have the means and authority to authenticate the person's identity.

Thus, the Scheme of this Unique Identity Number is different in its characteristics, compared to other identities, listed supra. The defendants 1 to 3 have said that it is Unique in the sense, that a 12 digit number would be assigned to every resident which would be integrated with biometric and demographic data of the person.

Demographic data means the details of the person that is his name, name of the father (only in case of a child below the age of five years), age, residential address, telephone number, email address, details of bank accounts.

Biometric data is collection of digitized images of all the fingerprints and scanning of irises and image of the face.

Under the Scheme, all the biometric and demographic data is collected in a digitized form and a 12 digit number is generated and one biometric and demographic data is integrated with the "Unique Number". A copy of the application form is herewith produced for the kind perusal of this Hon'ble Court as **Annexure 'A'**.

It is respectfully submitted that the defendants herein after some time changed the nomenclature of the number "Unique Identity Number" to "AADHAAR" number, giving it what they termed as, a "brand name". The purpose of giving the brand name was to "market" or "sell" the UID project to the people and make it popular, so that it could later be exploited for commercial purposes. The First Defendant has publicly stated that he would open the UID platform to businesses for "building applications for commercial purposes". A Business Seminar to explain this was held in a five-star hotel in Mumbai.

The office of the First Defendant is constituted by an executive order of the Government of India. It is not constituted as an authority under any statute. It is respectfully submitted that it is stated that the first defendant shall conduct required research on the issue of according AADHAAR numbers. It is respectfully submitted that issuance The AADHAAR number as envisaged and at this point of time does not have any statutory support. However, the second and third defendants with the malafide intention to compel every resident to acquire Unique Identity Number have without a semblance of a statutory authority, invested and transferred power and made further provision to the first defendant supposedly working as an attached office of the Planning Commission of India. It is respectfully submitted that defendants are making very ambiguous statements about the AADHAAR number and the first defendant has illegally entered into number of contracts in implementation of the project.

It is respectfully submitted that the first and third defendants have without any semblance of a statutory right have illegally designed the AADHAAR scheme along with the officials and other interested parties (who are by and large private companies having substantial investments in Software technologies.) It is respectfully submitted that the purpose of issuing a number to every resident of India is a dangerous design and is being issued with a malafide intention of enabling surveillance of the people, commercial exploitation of demographic data, unjust enrichment of some individuals, national and transnational agencies, bureaucrats, national and transnational monetary agencies, financial institutions, insurance based institutions, communication companies, imaging companies, vested societies and organizations of dubious background all at the cost of tax payer's money.

It is respectfully submitted that defendants have not conducted any serious study on the feasibility, implications and pitfalls of the AADHAAR scheme. There are serious lacunae in the the process of issuing the AADHAAR number to every resident. It is respectfully submitted that plaintiffs has studied the information that is made available by the first defendant in his website www.uidai.gov.in

. A verification of the same shows that the defendants have not given any serious thought on the issues of personal liberty, right to privacy and various other issues of citizen of India. The defendants have made tall claims of utility of AADHAAR. It is respectfully submitted that the process raises, dangerous issues of possibility of compromising rights of citizens of India and possibility of the whole process being one made to facilitate state surveillance of people, enrich already rich national and transnational corporate agencies like WIPRO, HCL, INFOSYS, ACCENTURE PLC, L 1 identity Solutions and host of other companies.

The first defendant has entered into number of agreements, contracts, and memorandum of understanding (MOUs) with both Indian and international private companies, as an authority of the Government of India. It has no authority to enter into such agreements, contracts or MOUs. When there is no legal sanction, through a law, to do so. It is respectfully submitted that the first defendant has committed the Government of India to contractual obligations with international and Indian companies, without the sanction of law. This is patently illegal. It is respectfully submitted that the proposed law on AADHAAR i.e. National Identification Authority of India Bill (NAIA Bill) is worded in such a way that regularises all the activities of the first defendant from the day it was constituted as an authority by the second and third defendant. The Bill seeks to provide ex-post-facto blanket approval of all such acts of the first defendant. It is respectfully submitted that first defendant on the basis of such a draft bill is continuing with the implementation of the AADHAAR scheme in entire India. It is respectfully submitted that the same is illegal. A copy of the draft NIAI Bill is herewith produced for the kind perusal of the Hon'ble Court as **Annexure 'B'**.

The plaintiffs most respectfully submit that first defendant has entered into contracts with number of companies, organizations, societies as Enrolling Agencies. The first defendant has stated that the AADHAAR project is high technology project. However it has selected number of organizations, companies, societies, whose capacity and qualifications are doubtful. The first defendant has selected 209 organizations, companies, societies as Enrolling Agencies for implementation of AADHAAR scheme. A list of selected agencies published by the first defendant in its website is herewith produced as **Annexure 'C'**.

Perusal of the list of enrolling agencies would result in drawing following inferences. Many of the agencies contracted to are not in the industry that is related to the technology. Some of the companies have secured the license for enrolling work for entire India. An organisation that is an education society in rural Andhra Pradesh secures rights of enrolling agency for entire state of Kerala and Tamil Nadu. The basis on which, the agency was granted the license for enrolling people of these states is still unknown and raises questions on the criteria employed by the first defendant for empanelling private companies as enrolling agencies. Similar is the case of a Tea Estate Company being licensed as an enrolling agency that has been granted enrolling job in entire state of Assam. The defendants have not presented or

published the criterion on the basis of which these companies, organizations, societies have been selected. It is respectfully submitted that it is claimed that the defendants are incurring approximately a sum of Rs. 350 for enrolment of each resident under the scheme. Defendants are incurring huge expenditure in issuing AADHAAR number as they embarked on the mission of issuing said number to all the 1.3+ billion residents of India. It is respectfully submitted that some of the enrolling agencies have already sub contracted the work, allegedly against the rules of the first defendant, which prohibit sub-contracting of the work. One of the enrolling agencies, M/s Alankit Financial Services sub-contracted enrolling at Bangalore to another private company, M/s ID Global Technology Solutions. The latter is alleged to have indulged in franchising enrolling business to many other private companies. M/s ID Global Technology Solutions is alleged to have been taking deposits of Rs. 2.5 Lakhs from the franchisees. It is respectfully submitted that when the first defendant was confronted by the said fraud, it has stated that it was not aware of this illegal activity. It is respectfully submitted that it demonstrates laxity of the first defendant in implementation of the scheme. The same has come to light on a complaint lodged by one of the franchisees. The first defendant's office at Bangalore is reported to have filed a complaint with the High Grounds Police Station. M/s ID Global Technology Solutions' premises was raided by the police. It is further reported that M/s Alankit Financial Services' license was terminated. The first defendant has not made any such fraud public. It is respectfully submitted on behalf of the plaintiffs that apart from the illegality of collecting people's demographic data without statutory provisions for the same, the lax implementation of this illegal project has facilitated such companies to make money at the cost of the taxpayer. A copy of the news report of the same is herewith produced for the kind perusal of the Hon'ble Court as **Annexure 'D'**. Similarly said company was also involved in sub contracting its enrolling work to another company at Bhatinda in the state of Punjab. It is stated that Alankit Finsec limited had sub contracted the work to a person by name Nitin Singla to whom Alankit paid a sum of Rs.14/- (Rupees fourteen) per enrollment and he in turn is alleged to have further sub-contracted to a firm known as Softel Systems. It is alleged that Nitin Singla provided the kits for enrollment to Softel Systems and they were paid Rs.9/- (Rupee Nine only) per enrollment. There were serious allegations made against the Alankit Finsec. A copy of the said report is herewith produced for the kind perusal of the Hon'ble Court as **Annexure 'E'**. It is most respectfully submitted the entire process of enrolling was done by a sub contracting agency in Mysore district. There were instances where the agency and its employees in collusion with other persons have been issuing fake AADHAAR numbers to those who can pay at Mysore. The same was reported in a Kannada television channel known as TV9. The same is available for any one to view in YOUTUBE.

<http://www.youtube.com/watch?v=UgKJuMD4aHQ>

<http://www.youtube.com/watch?v=CJ4qwyuLXSw>

<http://www.youtube.com/watch?v=WR- 2NGrmv4>

The plaintiffs have requested for compilation of the said videos and he would present the same to the Hon'ble Court immediately on receipt of the same.

The plaintiffs had sought clarification relating to the same from the Department of E-Governance, Karnataka State. He has secured a copy of the FIR lodged in this regard is herewith produced for the kind perusal of the Hon'ble Court as **Annexure 'F'**. Similar acts of fraud have also be detected at Hyderabad. At Hubli, it is alleged that there was theft of about ten laptops that were used for registering the AADHAAR numbers and a complaint has been lodged with the jurisdictional police. It is respectfully submitted number of similar complaints are pouring from different parts of the country. Plaintiffs would produce the copies of the said reports on receipt of the same. It is evident from the said fact that the agencies that have secured the contracts with the first defendant have already sold their rights and made profits by sub contracting the same work. It is respectfully submitted that the action of the defendants in employing such private companies for sensitive work of securing Biometric Data and Demographic Data of every resident of India, raises questions of data security, coupled with the inadequate oversight by the first defendant, this poses a security risk to every resident of India.

It is respectfully submitted that there are complaints of large scale violations of these 'contracts of enrollment'. The private companies who are enrolling agencies employ temporary workers on contract basis. Their antecedents are unknown. This is a risk to both the nation and the people. It is most respectfully submitted that the defendants are implementing the UID project in an absolutely irresponsible manner. They have deliberately compromised the rights of the people.

It is respectfully submitted that a verification of the list of the enrolling agencies that have been selected by the first defendant to implement the enrolling process are organisations whose skills are suspect and the area they are to implement the enrolling process do not match and therefore it is suspected that the criterion of selection of these organizations seems to be not based on their capabilities. A verification shows that three 'industry' firm that is situate in Jhandewalan extension in New Delhi is listed as enrolling agency for the entire India. It is interesting to note that all the three firms with a first name 'Alankit' are closely connected. It is respectfully submitted that documents and reports produced show that these companies have sub contracted their work to many other companies. It can also be seen that these sub-contractors have further appointed franchisees for the business of enrolling. A education society situated in rural Hyderabad is selected as enrolling agency for the states of Tamil Nadu and Kerala!!! Similarly a Tea Estate company is selected for the entire north eastern states. How these organizations qualified for carrying out enrolling process of AADHAAR is not known to the plaintiffs. plaintiffs most respectfully submits that there is no transparency nor details of selection criterion and on what basis the first defendant has selected them as Enrolling Agencies as the same is not made public by the defendants. It is further respectfully submitted that most of these organizations are doing the business of enrolling through other agencies to whom they have sub-contracted the work. It can be learnt many of these organizations have pocketed huge amounts of money by sub contracting the work for cheaper rates. Without a sweat on the brow Crores of rupees of tax payers money has been pocketed by these companies. It is further submitted that similar is the situation with the large companies who are providing machines for recording biometrics. First defendant is said to be procuring the machines through number of big companies from L-1 Identity Solutions of America. At what price the machines were purchased and how much money was paid by the defendants to these companies

and how much they pocketed in the process is to be made available by the defendants as the money tendered by them for the purchase of the machines is taxpayers money.

It is most respectfully submitted that in the State of Karnataka Department of E-Governance has been appointed as Registrar for the State of Karnataka for AADHAAR project. It is entrusted with the responsibility of being a registrar for the purposes of carrying out enrolment of AADHAAR. It has also admitted of having granted contracts to organizations that are listed as selected agencies by the first defendant vide Annexure 'C'. In addition to the awarding of the contracts and allowing these organizations in collecting the data and making 'payments' to each person who has enrolled, they are also collecting another set of details from the people under the name of KYR+ (KNOW YOUR RESIDENT +). That is a larger form that records much more details of each of the resident. It is respectfully submitted that the defendants or the Government of Karnataka do not have any right to collect such data in the absence of a statute. It is also learnt that by the order of the Government of Karnataka a new society has been constituted for the sole purpose of being a Registrar of the AADHAAR program. It has been stated that the said society has awarded contracts to various agencies to collect details and grant AADHAAR numbers. Interestingly the said Department of E-Governance has not made public names of the agencies to whom such contracts of enrolment have been awarded and their terms of contract. Though the first defendant is to make it public all these details being the authority that has 'envisaged' and 'implementing' the AADHAAR Project, the first defendant with the aid and connivance with the second and third defendant has kept all these details and contracts in the dark and away from public.

Plaintiffs most respectfully submits that all these acts are patent illegalities that have been committed by the first defendant in connivance with the second and third defendant.

Plaintiffs most respectfully submit that the defendants have made statements to substantiate their claim about the validity of the project even in the absence of a law regarding the same. They have based their claim on a study that they have conducted in validating the project under a concept known as 'Proof of Concept'. That they say has proved the usefulness of the project and also safety of the project. Following is basic description of the process of 'proof of concept'.

‘PROOF OF CONCEPT’ :

a) It is respectfully submitted by the plaintiffs that the first defendant has been making statements in public that it has conducted a detailed study under a method that he terms as, ‘PROOF OF CONCEPT’. He has stated on number of occasions that on the study made by such method is fool proof and that margin of error is very minimal. It is respectfully submitted that collection of sensitive 'biometric data' and using the same for the purpose of identification has not been properly studied by the first defendant.

b) In management science, the phrase, “Proof of Concept” [PoC] is used to denote that the basic premise on which a project or management intervention is founded has been sample-tested before scaling up to full size. The purpose is to prove that the objectives of the project could reasonably be expected to be achieved. Hence, in PoC studies or experiments, the end-result should indicate achievement of the project objectives.

c) Thus, in the case of the UID project, where the objectives, according to the statements of the defendants, are to ensure welfare benefits reach the intended beneficiaries, it would be necessary for the PoC exercise to show how beneficiaries would receive the benefits. This means, that the study would involve, not merely the collection of fingerprint data, but the use of the data to authenticate the BPL beneficiaries who come to collect PDS rations from designated shops and their receiving the goods over a reasonable period of time through the process envisaged in the project.

d) This is not what the first defendant is doing or calling PoC. UIDAI is merely collecting fingerprint data of small sample populations, with great effort to ensure accurate collection, [that is, not simulating actual field conditions]. Then first defendant allows a time of a month or two to lapse, after which they call the people in the sample to check whether their fingerprints are authenticated when rechecked through the same scanner/data stored in the pen-drive of other storage device. One is not even sure whether the check involves a query to the central database.

e) Firstly, this does not simulate field situation. Next, the lapsed time is too short for testing whether there is any change in the fingerprints, especially of manual workers, who would form the majority of the BPL population. Thirdly, the procedure does not test whether the identity would be authenticated when the procedure is used in a ration shop, where “technical experts” would not be available to see that the fingerprints for authentication are scanned "properly" at the time of collection of the rations. The test procedure is silly, since it ignore real-life situations, wherein, one person would go for collection of the rations for three or four families, since the others would be working.

f) The defendants have embarked on the UID project on two assumptions. One is that due to lack of identity the poor do not receive government welfare benefits. Secondly, the defendants assume that fake identities and duplicate identities are the causes for leakage (that is siphoning) of welfare funds. Both these are false assumptions. They are not based on any study or investigation. Firstly, it is the duty of the governments to identify the poor beneficiaries of welfare schemes, such as subsidised rations of public distribution system (PDS). This identification of the poor beneficiaries is to be done by personal physical verification conducted by officials of government departments. Fingerprints or any other biometric data could never be used to conclude whether a person is poor or not. Secondly, the fake ration cards or muster rolls are done under pressure from political and bureaucratic masters of these even assuming, but not admitting that with the biometric data of billions of persons could be scanned to detect duplicates in a database, if a person who is not eligible for the welfare benefit is shown as eligible, the biometric data is useless. Hence, the discretion to decide eligibility is the cause of fraud in welfare schemes. Such fraud is not due to inaccurate or duplicate identities.

g) First defendant with the aid of second and defendants is hoodwinking itself and the stakeholders of the project through this half-baked PoC procedure.

CONTRACTS MULTINATIONAL AGENCIES:

a) WITH L-1 IDENTITY SOLUTIONS:

i) The website of the first defendant reports that the first defendant has entered into a contract with one 'L-1 Identity Solutions, a Company registered in United States of America, for supply of the machines and technology that are used for the purpose of collecting 'Biometric Identities' of fingerprints, Iris scans and photographs and for processing these for authentication and de-duplication. The technology that is being used is proprietary technology of said company. It is stated that said company has not transferred the technology of the products and only the machines are being sold to first defendant and agencies appointed by the first defendant. It is respectfully submitted that most of the directors of the said company are persons from United States Defence Department and one of the Director is the former Director of Central Intelligence Agency (CIA). It is reported that said company has received a sum of \$24 million for supplying of the Biometric machines to defendants and agencies appointed by them. It is further submitted that the said company is now merged with another multinational company registered in France known as 'Safran'. It is respectfully submitted that, with the kind of company that defendants have entered into contract for supply of the machines, it casts serious doubt on safety of the data that is being collected by the defendants. Employing such private foreign companies with their proprietary technology, and entrusting them with the demographic and biometric data of the entire population of the country is a serious security risk the nation. Since, the technology has not been transferred to this country, the nation would be forever dependent on this private foreign company for authentication of identities of our people. This dependence would also facilitate this foreign company to create false Indian identities of criminals or spies or employees of foreign intelligence agencies. The security risk to the nation from such a situation is enormous.

ii) It is most respectfully submitted that the biometric technology is not something that cannot be developed or sourced in India, if at all it is necessary to use such technology for the social purpose of providing welfare benefits to the poor. Why the first defendant entered into contract with an American company with former defence and intelligence officials being directors and not sought indigenous technologies for the said purpose is not answered by the first defendant. It is also strange that the company that was already in the process of closing its business and getting merged with Safran was given such a contract. It is respectfully submitted that the defendants have compromised the safety of all the citizens of India by entering into contract with such company.

b) CONTRACT WITH ACCENTURE PLC:

It is most respectfully submitted that the first defendant has entered into contract with another transnational company known as Accenture PLC. The second and third defendants have not exercised the oversight expected of them to ensure that the first defendant does not enter into such illegal contracts and that too when there is no law empowering him to create international legal and financial obligations committing the Government of India to these.

It is most respectfully submitted that Accenture PLC was earlier known as Andersen Consulting. It was one of the Big Five accounting firms in the world. However, senior officials of the said company were accused of flouting the rules in Enron fraud and that they had returned their registration for accounting. Accenture PLC was a wing of the said company.

It is most respectfully submitted that Accenture PLC Accenture PLC was appointed as System Integrator for United States Defence Department, to identify and grant technology related contracts. It is alleged that Accenture PLC had given 'preferential treatment' to some of the companies after receiving 'fee' through its subsidiary. Number of the major companies including HP had procured contracts through the method. Accenture PLC was and is now, being prosecuted in an US court through whistleblower suits. One Norman Rille and Neal Roberts have filed case against Accenture PLC for the illegalities committed in its functioning as System Integrator in Civil Action No. 4:04CV000985-WRW of December 2007, in the District Court of Eastern District of Arkansas, Little Rock Division, United States of America. US Government joined the said proceedings and sought action against Accenture PLC. Accenture PLC is under prosecution for offenses under three laws of the United States of America, namely, The Anti-kickbacks Act, The False Claims Act and The Truth in Negotiations Act. A copy of the said petition is herewith produced for the kind perusal of the Hon'ble Court as **Annexure 'G'**.

It is respectfully submitted that such proceedings were pending (and are still pending) against Accenture PLC at the time it was granted contract to integrate and store data of 200 million identities under AADHAAR scheme. It is respectfully submitted that the process of granting award of such a contract had seen several changes before Accenture PLC securing the same. It is respectfully submitted that acts committed by Accenture PLC that are part of the above suits constitute offences of criminal breach of trust and cheating under Indian Penal Code and under the Prevention of Corruption Act, in India. At no point of time, such a company would be entitled for any governmental contract. However, the defendants herein have not only granted huge contract to Accenture PLC but also have made changes to facilitate Accenture PLC securing the same. It is most respectfully submitted that rival contenders for the said contract had initiated proceedings and questioned the way the contract was granted to Accenture PLC by the first defendant.

It is most respectfully submitted that the defendants have compromised the safety of the identities of the Citizen of India by entering into contract with such a company. It is submitted that the defendants having knowledge of such reputation of Accenture PLC have granted such a contract. It is respectfully submitted that the first defendant has not made public the contracts it has entered into with the said L-1 Identity Solutions and Accenture PLC in their website nor made public the terms of the contracts.

c) CONTRACTS WITH HCL, WIPRO and other companies:

It is most respectfully submitted that the first defendant has not only entered into contract with L-1 Identity Solutions and Accenture PLC, they have also entered into similar contracts with number of Indian Multinational Companies like HCL, Wipro and others. It is pertinent to note that even these contracts are not made public by the first defendant with active connivance of second and third defendants

ADHAAR AND RIGHT TO PRIVACY:

i) It is most respectfully submitted that AADHAAR is a scheme that is most serious invasion of privacy of Citizens of India. The same is in violation of the judgment of Supreme Court of India rendered in Unnikrishnan v/s State of Andhra Pradesh, wherein the Court held that the right to privacy is inherent in the right to life, guaranteed by the Constitution of India. In the absence of any statutory authority under a statute of Parliament, the entire AADHAAR scheme is in contempt of the judgment of Supreme Court, which is the law of the land. The defendants who are aware of the said judgment have, in flagrant violation of the same, initiated the AADHAAR Scheme. The AADHAAR scheme is illegal ab initio, as the same is against the law of the land.

ii) A perusal of the AADHAAR application form speaks that every person who is applying for AADHAAR number is asked to consent for use of the information supplied by the first defendant, although it has an appearance of being optional. Add to the new systems of Banking that make it mandatory for every person seeking to open a bank account to provide all the personal details under the garb of Know Your Customer (KYC), the option ceases to exist. It is mandatory to provide the details and including the production of AADHAAR number for opening bank accounts. Further the same is in gross violation of Article 13(2) of the Constitution of India, that no law can be made or enacted that is in violation of the Part III.

iii) It is most respectfully submitted that defendants, through their registrars, such as banks, are collecting a whole lot of information about every resident of India. All this is done under the pretence of ensuring that government welfare benefits reach the intended beneficiaries. The details that are being collected are as follows:

iv) Resident's name, his/her father's name, his/her spouse's name, names of his/her children, his/her age, residential address, his/her income, whether he/she owns any car? Whether he/she owns any scooter? Whether he/she owns any other vehicle? His/her telephone and cell phone numbers both office and residence, his/her deposits, insurance policies, investments, the companies in which he/she has interest and other details;

v) Similar details of his/her spouse and his children. All these details are not collected under the AADHAAR form. However, all these particulars are mandated through the concept of 'Know Your Customer' from the banks by a RBI directive. It includes disclosure of the AADHAAR number. When all these details of each resident is integrated, the state would be virtually accessing and intruding into the life each and every resident of India and having contracted the entire process of integration to an American company, the entire information of each and every resident of India is being compromised and handed over to foreign companies. This is gross violation of fundamental rights of the citizens of India.

vi) plaintiffs most respectfully submits that following are the concerns raised by great thinkers, judges, activists and concerned citizens against AADHAAR on various grounds including Invasion Privacy and have made demands to the defendants. It is respectfully submitted that the defendants have not responded to the same and have shown kind of negligence that speaks volumes of the attitude of the defendants over the concerns of the citizen. The same is herewith presented for the kind perusal of the Hon'ble Court:

“A project that proposes to give every resident a “unique identity number” is a matter of great concern for those working on issues of food security, NREGA, migration, technology, decentralisation, constitutionalism, civil liberties and human rights. The process of setting up the Unique Identification Authority of India (UIDAI) has resulted in very little, if any, discussion about this project and its effects and fallout. It is intended to collect demographic data about all residents in the country.

Before it goes any further, we consider it imperative that the following be done:

(i) Do a feasibility study: There are claims made in relation to the project, about what it can do for the PDS and NREGA, for instance, which does not reflect any understanding of the situation on the ground. The project documents do not say what other effects the project may have, including its potential to be intrusive and violative of privacy, who may handle the data.

(ii) Do a cost-benefit analysis: It is reported that the UIDAI estimates the project will cost Rs. 45,000 Crores to the exchequer in the next four years. This does not seem to include the costs that will be incurred by the registrars, enrollers, the internal systems costs that the PDs system will have to budget if it is to be able to use the UID, the estimated cost to the end user and to the number holder.

(iii) In a system such as this, a mere statement that the UIDAI will deal with the security of the data is obviously insufficient. How does the UIDAI propose to deal with data theft?

(iv) The involvement of firms such as Ernst & Young and Accenture PLC raises further questions about who will have access to the data, and what that means to the people of India. The questions have been raised which have not been addressed

so far, including those about:

- 1. Privacy: It is only now that the Department of Personnel and Training is said to be working on a draft of a privacy law, but nothing is out for discussion,*
- 2. Surveillance: This technology, and the existence of the UID number, and its working, could result in increasing the potential for surveillance,*
- 3. Profiling,*
- 4. Tracking, and*
- 5. Convergence,*

by which those with access to state power, as well as companies, could collate information about each individual with the help of the UID number. National IDs have been abandoned in the US, Australia and the UK. The reasons have predominantly been costs and privacy.

If it is too expensive for the US with a population of 308 million, and the UK with 61 million people, and Australia with 21 million people, it is being asked why India thinks it can prioritise its spending in this direction. In the UK the home secretary explained that they were abandoning the

project because it would otherwise be “intrusive bullying” by the State, and that the government intended to be the “servant” of the people, and not their “master”. Is there a lesson in it for us?

This is a project that could change the status of the people in this country, with effects on our security and constitutional rights. So a consideration of all aspects of the project should be undertaken with this in mind.

We, therefore, ask that the project be halted; a feasibility study be done covering all aspects of this issue; experts be tasked with studying its constitutionality; the law on privacy be urgently worked on (this will affect matters way beyond the UID project); a cost-benefit analysis be done; a public, informed debate be conducted before any such major change be brought in.

Justice V R Krishna Iyer,

Romila Thapar,

K G Kannabiran,

S R Sankaran,

Upendra Baxi,

Shohini Ghosh,

Bezwada Wilson,

Trilochan Sastry,

Jagdeep Chhokar,

Justice A P Shah,

and others.”

The above letter was addressed by the eminent persons who have subscribed their signatures to the second defendant. Strangely, there is absolutely no response to the above representation by the second respondent.

AADHAAR AND DISCRIMINATION:

It is most respectfully submitted that the National Human Rights Commission has expressed its concern and has expressed that the AADHAAR would lead to discrimination among the citizen and is in violation of the constitutional mandate of Right to Equality under Article 14 of Constitution of India between those who possess AADHAAR number and those who do not possess the same. It would also be discriminate on the privileges enjoyed by those who possess the AADHAAR number and with those who do not possess the same. Hence the process of AADHAAR is seriously contested by the Commission. It is strange that despite these serious issues that are affecting the rights of citizen, the defendants are continuing with the issuance of AADHAAR numbers. It is most respectfully submitted that the defendants have not answered the questions raised by the National Human Rights Commission.

AADHAAR IS NOT VOLUNTARY BUT COMPULSORY.

It is claimed by the defendants that AADHAAR would be one of the identities among the many others that are already issued by the Government of India and various state governments. It would not negate any of the existing of identities or their validity. It is further stated that securing AADHAAR number is voluntary and not compulsory. Those who do not want to secure AADHAAR number are free to do so. The NIAI Act draft, which seeks to legitimize the functioning of the first defendant, is so worded to establish that AADHAAR is optional and not compulsory. Strangely, officials of the first defendant have been making different statements relating to the same. Various authorities of the state are also making statements that AADHAAR may be mandatory for accessing certain services. An article written by the Deputy of the first defendant states that while AADHAAR may be voluntary, the service providers may make it compulsory. It is respectfully submitted that the recent press release of the gazette notification dated 26 Sep 2011, of the Petroleum Ministry that production of AADHAAR number is mandatory for LPG users proves that the AADHAAR number is being made compulsory by the defendants by other means. It is further submitted that first defendant has entered into number of contracts with various public sector banks and corporations like Life Insurance Corporation of India and other authorities relating to sharing of the data with them. There are media reports that the first defendant may use the data for financial benefit of commercial entities.

VIOLATION OF LAW AND PARLIAMENTARY PROCEDURE:

The Plaintiffs most respectfully submits that the defendants have presented a bill in the name and style of 'National Identity Authority of India Bill', which is pending before the Standing Committee on Finance in the Parliament. A reading of the Bill makes clear that 'AADHAAR Number' can be issued only under the provisions of the sub section (2) of Section 3 of the said bill. Further, a reading of the NIAI draft bill shows that date of coming into force of the Act is subject to notification of the Central Government in official gazette in this regard after the bill is passed by the Parliament and after securing presidential assent. Plaintiffs most respectfully states such being the status of the 'AADHAAR', the collection of the biometric data and personal data and issuing of 'AADHAAR Number' does not have any statutory sanction and hence, the same is illegal. Plaintiffs respectfully submits that defendants could not have

legally issued any orders for such collection of data. He further states that hurried spending of thousands of Crores of tax payers' money on the project is done with a malafide intention of compelling the parliament to pass the bill and endorse ex-post-facto all contracts entered into, and activities done by the defendants. It is respectfully submitted that the same is in gross violation of parliamentary principles and legislative processes known to India.

It is most respectfully submitted on behalf of the plaintiffs that it is not known to parliamentary process, where even before the statutory authority is constituted by the legislative process, the authority commences functioning. It is respectfully submitted that NIAI bill is not even tabled before the Parliament. Under the NIAI Bill, the national authority is to be appointed by the provisions of sub section (1) of Section 11 of the Bill. Even before the Statute of NIAI Bill is tabled or discussed by the parliament in the legislative process, second and third defendant have illegally constituted the UIDAI Authority and appointed first defendant as its chairperson for a purpose that is yet to be the law. It is respectfully submitted that the first defendant knowing that the very purpose of issuing 'AADHAAR number' does not have statutory sanction, has been spending huge amount of taxpayers' money and entering into contracts with companies that are registered in India and in other countries in a manner that is a questionable and coloured exercise of illegally usurped power and authority.

It is most respectfully submitted that the first defendant is spending several Thousands of Crores of Rupees in this activity, Without Parliamentary approval of the Bill. It is submitted that that though a budgetary provision has been made for establishment of the office of the first defendant, set up as part of the Planning Commission, he cannot use this money for the purposes of issuing UID numbers by purchasing equipment, paying contractors etc., before the law is enacted by the parliament.

It is most respectfully submitted that the total cost of the UID project being implemented by the first defendant with the approval of the other two defendants has neither been disclosed to Parliament or to the people of India, whose monies, as taxpayers is spent for it. Experts have estimated the cost of merely setting up the database with biometrics and demographic data of all residents in India to be about Rs. 1.5 Lakh Crores. In the budget for the financial year 2011 – 2012, an allocation of Rs. 1,950 Crores was made for the UID project. As per statements issued to the press by departments of the Government, the first defendant sought an additional sum of Rs. 15,000 Crores for the year. It is now reported that the Government has sanctioned Rs. 8,000 Crores. These sums are over and above the money sanctioned for the National Population Register of Citizens of India. The Finance and Home ministries of the Government are known to have raised objections regarding duplication of the data of citizens by the first defendant and the Registrar of Census. Since the first defendant does not disclose information, even to RTI applications, the plaintiffs is seeking through this Hon'ble Court, production of documents with information such as the above. Plaintiffs got issued a legal notice to the defendants raising number of issues relating to AADHAAR and had called upon them from immediately stopping collecting of the data or spending taxpayers money in a process that is yet to receive parliamentary approval, through his counsel dated 4th July, 2011. A copy of the said notice is herewith produced for the kind perusal of the Hon'ble Court as **Annexure 'H'** It is respectfully submitted that the defendants have received the said notice and not have not issued any reply to the said notice. The first plaintiff again issued another legal notice to the defendants on 25th July, 2011. Defendants have received the

notice and have failed to reply to the second notice too. A copy of the said notice dated 25th July, 2011 is herewith produced for the kind perusal of the Hon'ble Court as **Annexure 'J'**.

They are continuing with the business of collecting the details of residents of India and assigning AADHAAR Numbers to each of them. It is respectfully submitted that the first plaintiff has got issued notices (produced at Annexure 'H' and 'J'). However the said notices are not in accordance with section 80 of the Code of Civil Procedure. It is respectfully submitted that the defendants have received the said notices and have not given any reply to the said notices. It is respectfully submitted that more than three months have elapsed since issuance of the notices. As the defendants are continuing with the AADHAAR project despite such notice and with absolute disregard to the use of tax payer's money and in violation of the fundamental rights, the plaintiffs are constrained to file this suit. There is urgency in filing the suit as the defendants intend to complete major part of the AADHAAR enrollment before the matter is decided by the Standing Committee on Finance of the Parliament and presented before the Lok Sabha so as to compel the Parliament to support the project with retrospective effect as money has already been spent. Hence there is urgency in filing of this suit. A separate application seeking exemption under section 80(2) of the Code of Civil Procedure is filed herewith.

It is most respectfully submitted that the defendants have committed all the illegalities with knowledge and have caused serious harm to the unity and integrity of India, violated rights guaranteed under Chapter III of the Constitution of India, entered into and bound India with various national and international contracts without support of a statute, risked national security, have encouraged corruption and are acting with absolute irresponsibility with taxpayers money with impunity. It is further submitted that the very project of AADHAAR is liable to be declared as illegal and against rights of citizen of India. Hence this suit seeking AADHAAR scheme as illegal and consequential perpetual injunction restraining the defendants from implementing the AADHAAR Scheme.

It is most respectfully submitted that every day the UID project continues, several Crores of Rupees of taxpayers' money would be lost. Apart from this, the continued gathering of people's data would be an unacceptable security risk both to the people and the nation its self. It is respectfully submitted that while millions are dying of hunger, starvation and deprivation be it children, women, men or aged persons, spending such huge amounts of money to benefit and make it possible for many to pocket the money at the expense of the citizen in the name of AADHAAR even without any legislative sanction is illegal. Plaintiffs are affected by the conduct of the defendants and so are many millions of Indians. Hence this suit.

It is most respectfully submitted that AADHAAR is proposed to create a central repository of information of each of the 1.2 billion people. The data involves personal information as well as the bank details. It's a risky affair. If not the ever-hungry Government, the corporate world or anyone can misuse the information. The Government's response to this was technology. It is further submitted that the defendants have claimed that data will be stored in safe place. It is submitted that biometric and demographic information of 1.3+ billion residents of India mean 6 petabytes (6,000 terabytes or 6,000,000 gigabytes). It will be the world's largest database. But can we imagine managing this volume? The technological challenges involve system performance, reliability, speed and resolution of accuracy

and errors. But a more serious issue is regarding the security. The information can be hacked. It is respectfully submitted that there are number of instances the databases have been hacked internationally. More particularly what is the guarantee when the authority is engaging in number of dubious organisations as 'enrolling agencies' who have already shown their use of the program for making some quick easy money at the expenses of taxpayers money. It is further respectfully submitted that there is also fear that instead of checking illegal migration, it can actually 'legalize' it. The porous borders of this country would make it possible for any immigrant secure an 'identity' for himself through AADHAAR and may enjoy the privileges that are specifically meant for the citizen of India. Plaintiffs submit that all these are the being done at the expense of the tax payers money that includes the money of the plaintiffs.

Plaintiffs are citizen of India and are concerned about such a project. It is respectfully submitted that the above said project if implemented would adversely affect the rights of the plaintiffs and millions of citizens of this country. There would be serious discrimination between those who possess the AADHAAR number and those who do not possess the same. It would make it possible for the state to compel all those who are not willing to possess such number to secure one for availing any facility of the state. It would make it possible for the state or any one who has details of the resident of India under AADHAAR to conduct surveillance on the person without his knowledge, virtually meaning 'big brother is watching you'. It would make life of every citizen vulnerable to the whim and fancy of the state and those who have control over his data. Services of the state can be restricted to those who are critical of the policies of the state or those who are poor. It would make it possible for corruption at much more dangerous level than the present as the control mechanism can be used by the state or by those agencies who possess the same. plaintiffs most respectfully submits that he is being affected by AADHAAR scheme as number of the institutions are making it compulsory to access his rights. In some time to come it would be possible for any one who does not possess AADHAAR number to be denied the service of the state or its agencies. Hence the plaintiffs are presenting this suit. They are filing the suit in representative capacity on their own behalf and on behalf of many concerned citizen of India. An application in this regard is has been filed under Order I rule 8 of the Code of Civil Procedure.

It is most respectfully submitted that there are number of documents that are not made available by the defendants to public. Which are essential for the adjudication of this suit. They are in possession of the defendants and more particularly first defendant has claimed in various interviews and articles that he has in fact entered into with such contracts. Hence a separate application is filed along with this suit for a direction to the first defendant to produce all the agreements and contracts before the court.

It is most respectfully submitted that the cause of action for the suit arose in January, 2009 when the second and third defendants announced the establishment of the Unique Identification Authority of India and on actual notification of constitution of the UIDAI and appointment of first defendant and continues within the jurisdiction of the Hon'ble Court.

As the activity and business of the first defendant is being carried out within the jurisdiction of this Hon'ble Court and the first defendant having his office within the jurisdiction of this Hon'ble Court, this Hon'ble Court has jurisdiction to try the suit.

Suit is valued as per the valuation slip and appropriate court fee as calculated under the provisions of Karnataka Court Fees and Suits Valuation Act, 1958 is paid herewith.

WHEREFORE the plaintiffs most respectfully prays that the Hon'ble Court be pleased to;

- a) grant a decree of declaration declaring AADHAAR Scheme as illegal;
- b) grant a decree of perpetual injunction against the defendant restraining them from continuing with the process of AADHAAR scheme;
- c) grant a decree of perpetual injunction against the defendants from entering into any contracts binding the government and expending taxpayers money;
- d) award costs of the suit and grant such other reliefs that this Hon'ble Court may deem fit under the circumstances of the case in the interest of justice and equity.

ADVOCATE FOR PLAINTIFFS

PLAINTIFF No. 1

&nb sp; PLAINTIFF No.

2

VERIFICATION

We MATHEW THOMAS and V.K.SOMASHEKHAR, the plaintiffs above named most respectfully state and verify that what is stated in the above paragraphs are true and correct to the best of my knowledge, information and belief and I believe the same to be true and correct.

BANGALORE

DATE:

PLAINTIFF No. 1

PLAINTIFF No. 2