

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7583 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay ...Petitioner

Verses

Union of India & Another ...Respondents

URGENT APPLICATION

To,

The Registrar,

High Court of Delhi at New Delhi,

Sir,

Kindly treat the accompanying application as an urgent one in accordance with the High Court Rules and Orders.

Petitioner is filing this writ petition under Article 226 of the Constitution. Matter is urgent in public interest as prayed.

PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)

IN THE HIGH COURT OF DELHI AT NEW DELHI

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NOTICE OF MOTION

To,

The Standing Council

Union of India / Election Commission of India

High Court of Delhi, New Delhi,

Sir,

Please find enclosed herewith copies of above mentioned Writ Petition, which is being filed today before this Hon'ble Court and likely to be listed before the Hon'ble Court on 16.7.2019 or any other date fixed by the registry. It's for your information and necessary action.

**PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)**

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MEMO OF PARTIES

Ashwini Kumar Upadhyay

...Petitioner

Verses

1. Union of India

Through the Secretary,

Ministry of Home Affairs

North Block, New Delhi-110001

2. Election Commission of India

Through the Director-Law

Nirwachan Sadan, Ashoka Road,

New Delhi - 110001,

Respondents

**PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)**

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SYNOPSIS

Election is a basic process of democracy, which allows people to show their opinions by selecting the candidate. India is spending huge money to improve voting system to provide a better government to citizens. Voting system should be honest, translucent and fully secure for better democracy. The current system is less transparent. Authentication of voters, security of the voting process and protecting the voted data - these are the main challenges of current election voting. That is why it is necessary to generate a secure election voting system.

Petitioner proposes an E voting system using finger print and face biometric. In this system, the database would be updated every time before an election. Many agencies have designed Biometric Voting System. The main benefits is that voting process shall be much speedy and most of the tasks shall be done automatically by the system. The proposed system are used correlation-based fingerprint matching technique to improve performance and to get much reliable fingerprint recognition. The objective of electronic voting system based on fingerprint biometric is to eliminate bogus voting and vote duplicity.

There are many problems in present voting system. People don't vote if away from their home constituency on polling day. Youths, if study far away, won't spend thousands of rupees and 2-3 days of travel to cast vote. People working away from home are not able to come on festivals. How can they come to cast vote? That's why voting percentage is low.

Proposed System offers election more accurately. Necessary steps are:

Step 1: Visit any polling station.

Step 2: Enter in voting compartment.

Step 3: Give fingerprint to scanner.

Step 4: System checks fingerprint with Aadhar database's and also checks whether eligible or not (whether above 18 or not).

Step 5: It will show "You can vote" else "You can't vote"

Step 6: Choose the candidate from list.

Step 7: It will show "your vote is successfully registered".

Aadhaar based system satisfies many requirements: **(i)** Peoples can vote without going to their home constituency on Election Day and they can vote from their current location. **(ii)** Illegal Voting will be curtailed because Fingerprint and Face Biometric trait is unique to each individual. **(iii)** Aadhaar database filters and permits only eligible voters to cast vote. So, it ensures that eligible voters vote only once. **(iv)** It maintains privacy and authority. **(v)** Major benefit of system is to increase the voting percentage. **(vi)** It saves precious time and money of traveling. **(vii)** Quick results are possible by this system.

The limitations of Aadhar based voting system are: **(i)** *People must be enrolled with Aadhar card.* **(ii).** *Aadhar based website should be accessible at the booth.* **(iii).** *Fingerprint Scanner must be present in voting booth.* **(iv).** *Electricity and internet are required for the website.*

Aadhaar Biometrics is the science of establishing the identity of an individual based on the physical, chemical or behavioral attributes of the person. Physical or behavioral characteristics include fingerprint, face, hand/finger geometry, iris, retina, signature, gait, palm print, voice pattern, ear, hand vein, odor or the DNA information of an individual to establish identity. This information is unique to each person.

In the biometric system, data acquire from an individual, extracts a related feature set from that data, compares this feature set with the feature set stored in the database, and then perform an action based on the result of the comparison.

People have used fingerprints for personal identification for many decades and the matching identification accuracy using fingerprints is very high. It has been determined that the fingerprints of each person are unique, also each finger's fingerprint of the same person is unique and fingerprints of identical twins are also different. Today, most fingerprint scanners cost less than Rs.5000, so it is affordable also.

In the proposed system, after verification, system shows voter's information like, Aadhar number, Name, Address and Date of birth, that are already stored in Aadhar's database and

system further asks for voter's fingerprint. If fingerprint image is matched with template image which is stored in Aadhar's database then next page shows candidate's list with party symbol. After selecting a candidate, system asks for vote confirmation. Finally, system shows result "Vote successful".

Government uses Aadhar network in order to ensure that individuals who require assistance and benefits gain access to these resources directly, eliminating the need for middlemen. As part of this process, it is gradually linking all essential services and schemes to Aadhaar network, creating centralized database through which it can distribute and keep track of the various schemes and programmes it runs with beneficiaries. In this manner, it can identify those who are receiving benefits but are not eligible for them and take corrective action.

The Aadhar card is a universal card that does not really have a specific purpose behind it. Unlike a voter ID card, whose sole purpose is to permit the holder to take part in the electoral process, the Aadhaar card was not created with any specific use in mind. Instead, it can be used for a number of purposes, making it universally acceptable government-issued card, without needing to register or apply for a separate card for each of the government sponsored welfare schemes.

For example, Aadhaar card can be used as identity proof, address proof as well as proof of age when applying for any government service. It is a versatile card, as can be used for all government related services. Aadhar card permits the holder

to avail of all government subsidies, he/she is eligible for, without the need to register and enroll for these separately. Since the government already has all the necessary data on a particular individual, they need only produce their Aadhaar card in order to avail of the various subsidies or programmes. Use of Aadhaar may be mandatory but ECI should not deny electoral roll to a person who is not willing to submit his Aadhaar details. Petitioner feels that linking of Aadhaar is not only necessary to ensure free and fair election but also to curtail fake electoral rolls. It will give the ECI robust and clean Voter details ensuring fake, duplicate and ghost voter records are weeded out from Electoral databases and there is no repeated KYC checks for voters.

Aadhaar database is the most authenticate database of the citizens and chances of duplication is almost negligible as it is beyond the realms of possibility and probability to fudge biometric which is pre-condition for Aadhaar enrollment. In the given circumstances, the use of Aadhaar details by the Election Commission will not only improve the overall health of electoral rolls by enabling deletion of duplicate entries but would also enable the ECI to provide additional services.

It is submitted that linking of Aadhaar with the Voter ID is a one-way process as in doing the same, the Electoral data is not shared with the authority having the data in respect of Aadhaar Card. Therefore, in an event of any attempt to hack the Aadhaar database, there will be no effect on Voter ID and

consequently, data with ECI will remain secured. ECI will ensure security and confidentiality of Personal Identity provided for purpose of Aadhaar based authentication. In view of the aforesaid, it is pertinent to point out that once Aadhaar is created, mere linking of same with Voter ID would not tantamount to infringement of any fundamental right guaranteed under the Constitution. Needless to say, linking of Aadhaar with Voter ID may not be a mandatory requirement and therefore, failure to do the said linking would not deprive citizens of basic right, much less exercising his right of vote.

Preamble of the RPA, 1950 provides: *“An Act to provide the allocation of seats in and the delimitation of constitution for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories, and matters connected therewith.”*

Sections 15, RPA, 1950 categorically provide that: *“15. Electoral roll for every constituency.- For every constituency there shall be an electoral roll, which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of Election Commission”.*

Sections 17, RPA, 1950 categorically provide that: *“17. No person to be registered in more than one constituency-No person shall be entitled to be registered in the electoral roll for more than one constituency.”* Sections 18 of RPA, 1950 categorically

provide that: “18. No person to be registered more than once in constituency-No person shall be entitled to be registered to be registered in the electoral roll for more than once.”

In view of the aforementioned provisions of the RPA, it is submitted that ECI is duty bound to prepare/maintain electoral rolls for each constituency. To achieve the objects of said Act, modern techniques / technology may be availed of and therefore to achieve the aforementioned objects and avoid multiple entries in electoral rolls, it is in the interests of justice that ECI take steps to link AADHAAR with voter ID.

LIST OF DATES

- 06.02.2018: Petitioner filed WP(C) 97/2018 in the Supreme Court seeking direction linking of AADHAAR number with voter id to curtail bogus votes and with property documents to curtail benami transaction, black money generation.
- 08.03.2019: The Apex Court disposed of the petition with direction to approach government authority.
- 11.03.2019: Petitioner submitted Representation to the Chief Election Commissioner to link AADHAAR number with Voter ID but apposite steps has not been taken till date.
- 15.07.2019: Free-fair election and right to vote guaranteed under Articles 19, can't be secured to citizens without curtailing fake fabricated bogus Votes. But, ECI has not apt steps. Hence this PIL.

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PIL TO LINK AADHAAR NUMBER WITH VOTER ID**To,**

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE HIGH COURT OF DELHI

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

THE MOST RESPECTFULLY SHOWETH AS UNDER:

1. Petition is not guided by self-gain or for gain of any other individual person, institution or body. There is no motive other than the larger public interest in filing this petition. Petitioner has no personal interest or individual gain, private motive or oblique reasons in filing this PIL. It is bona-fide with sole purpose of larger public interest and interest of justice.
2. The source of averments made in this petition is personal knowledge and information collected from various sources, including newspapers and websites. Petitioner is filing this PIL to link AADHAAR number with voter ID.
3. Present petition is for benefit of poor, disabled, economically weaker section and socially-economically down trodden people. As they are incapable of accessing this Hon'ble Court themselves, petitioner is filing this PIL to secure fundamental rights guaranteed under Article 14 of the Constitution.

4. The Centre Government and Election Commission is likely to be affected by the orders sought in this petition, which have been impleaded as Respondents. Petitioner submits that to its knowledge, no other persons, bodies, institutions are likely to be affected by the order sought in this petition.
5. Petitioner's full name is Ashwini Kumar Upadhyay.

Petitioner is an Advocate, practice in this Hon'ble Court and a social-political activist, contributing his best to development of socially-economically downtrodden people. Petitioner is able to bear the cost if any, imposed by the Court.

6. Petitioner has not filed any other petition either in this Court or in other Court seeking same or similar directions except WP(C)57/2018, which was withdrawn. (**Annexure-1**, Pg.25-26).
7. Petitioner has submitted Representation to the Respondents which is annexed as **Annexure-2**. (Pg.27-30). There is no requirement to move concerned authority for relief sought in the petition again. There is no other remedy available except approaching the Hon'ble Court by way of instant PIL.
8. Petitioner is filing this writ petition under Article 226 seeking direction to the Election Commission to take apposite steps to implement '*Aadhaar Based Election Voting System*' to ensure maximum participation in election and to curtail bogus voting in spirit of Sections 17-18 of the RPA, 1950.

9. The facts constituting cause of action accrued on 03.03.2015 and every subsequent date, when in order to remove multiple entries and errors, etc. from the electoral rolls, ECI proposed to authenticate entries/data of electors with their respective Aadhaar Numbers but suddenly it was abandoned.
10. The injury caused to the public is very large as in the prevailing system, People cannot vote without going to their polling booth in their home constituency. Illegal Voting is still prevalent as the present EVM does not filter illegal voters. On the other hand, the proposed system ensures that eligible voters vote only once and maintains privacy and authority.
11. When our Constitution makers opted for parliamentary democracy based on “*universal adult suffrage*”, they conferred a valuable constitutional status, on marginal of voters at par with those having money/muscle power. “*One man one vote*” was the motto emanating from Article 325, 326, irrespective of his race, caste, sex and status. This is the greatest egalitarian, principle enshrined in our Constitution.
12. If we analyze the “*right to vote*” in the context of our constitutional scheme, following salient features emerge:-
- (i) It confers an equality of status on the most marginalized citizens at par with the most powerful.
 - (ii) It fully sub-serves the ideals of social and political equality and justice as enshrined in the Preamble to our Constitution.
 - (iii) It gives equal opportunity to the most marginalized citizens to have equal say in the Governance of this Country.
 - (iv) It enjoins

Legislature to reflect their will, amongst others. This is what Hon'ble Justice Krishna Aiyar meant when he talks of "*Little Man*" expressing his "*Social and Political Audit*" of the government and his Representative. [(1978)1 SCC, 405]

- 13.** What should therefore be aimed at is how to make this exercise free from all pollutions caused due to money and muscle power including the bogus votes otherwise the above right given to the "*little man*" would become worthless and the tall claims made in the Preamble would also be defeated. The Apex Court held that "*Right to Vote is an Expression of Will*" and is therefore guaranteed under the Article 19(1)(a).
- 14.** The Apex Court, after holding that "*Little man's right to vote is traceable under the Article 19*" further held that he has "*Right to Information*" about candidates and law must provide for giving requisite information to enable effective exercise of this right. Although, Section 33 of the RPA was silent in this regard. It was taken to be breach of Article 19 and requisite affidavit is now required to be filed at the time of nomination. The law did not consciously require, yet giving of information was ensured and enforced, to make the exercise of "*little man's social and political audit*" effective but Apex Court found this exercise necessary. In the present case, the grant of relief to link Aadhaar with Electoral Roll would sub-serve the very same cause, by enabling same audit to be exercised freely and fairly. It is pertinent to state that free and fair election is impossible without deleting fake and duplicate electoral rolls.

15. The Constitution makers opted for “*adult suffrage*” when they incorporated Articles 325-326. The principle enshrined in these provisions is called “*One Man One Vote*” principle. Apart from equality of status, it ensures non-discrimination. This principle has been repeatedly emphasized as one of the “*Basic Features*” of our Constitution. There is another aspect that “*Right to Vote*” enshrined in the Constitution can be a great egalitarian concept traceable to Article 14 of the Constitution. Article 14 is the genus while Articles 15, 16, 17, 25, 325-326 are its species. By subscribing to principle of “*One Man One Vote*” the framers in one stroke elevated the status of most marginalized to that of the most powerful. They ensured equal right to vote on all and all votes carry equal weight that, express “*Will of the People*”. It is for this reason the principle of “*One Man One Vote*” has been regarded as central feature, or heart of democratic system imbedded in our Constitution.

16. The principle of equality is equally sponsored by Articles 325-326. Article 325 is in the same form as Article 15. The Apex Court had reiterated that “*right to vote*” enshrined, in the principle of “one man one vote” [Article 325-326], is one of the “basic features” of our Constitution. It has also been traced to Article 19(1)(a) as “expression”. Although, Articles 325-326 may not be a part of Part III yet it can still be so regarded as such since it partakers of the same nature and character as Articles 14-15. Therefore breach of right under Article 325-326 would immediately attract Articles 14-15.

- 17.** In order to understand how Articles 14, 19, 325-326 are breached in present case it would be necessary to understand the nature and character of principle of *“one man one vote”*. Apart from being a basic feature of our Constitution and an important right, it operates in two ways to ensure equality. (i) Everyone has equal right to vote irrespective of caste, creed, sex, religion etc. (ii) All votes carry equal weight and say. Breach of either of these would result in breach of the Article 14-15. Anything that tinkers with this has potential to upset whole edifice of *“universal suffrage”* visualized in Constitution.
- 18.** *“Free and fair election”* may not only be seen in context of *“Right to Vote”* but also from the angle of *“freedom of voting”*. The Apex Court had held that *“free”* ensure democracy while *“fair”* denotes equal opportunity to all. Thus, the principle of *“One Man One Vote”* demands equal opportunity to all to vote with guaranteed freedom to vote without fear or favour.
- 19.** The infusion of money/muscle power to make fake and fabricated votes breaches the rights guaranteed under Article 325-326 and Article 14 as thus. (i) It prevents free exercise of *“right to vote”* and *“one man one vote”* due to use of money and muscle power. (ii) It effects ordinary citizen’s rights to get elected and puts him to great disadvantage due to reduced win-ability factor as fake votes are generally polled in favour of candidates having money-muscle power. Therefore, Hon’ble Court be pleased to direct ECI to link AADHAAR with Electoral Rolls to curtail bogus and duplicity of votes on top priority.

- 20.** Election is a basic process of democracy, which allows people to show their opinions by selecting the candidate. India is spending huge money to improve voting system to provide a better government to citizens. Voting system should be honest, translucent and fully secure for better democracy. The current system is less transparent. Authentication of voters, security of the voting process and protecting the voted data - these are the main challenges of current election voting. That is why it is necessary to generate a secure election voting system.
- 21.** Petitioner proposes an E-voting system using fingerprint and face biometric in that they will use biometric with EVM. In this system, the database would be updated every time before an election. Many agencies have designed Biometric Voting System. The main benefit is that voting process shall be much speedy and most of the tasks shall be done automatically by the system. The proposed system uses correlation-based fingerprint matching technique to improve performance and to get much reliable fingerprint recognition. The objective of electronic voting system based on fingerprint biometric is to eliminate bogus voting and vote duplicity.
- 22.** There are many problems in present voting system. People don't vote if away from their home constituency on polling day. Youths, if study far away, won't spend thousands of rupees and 2-3 days of travel to cast vote. People working away from home are not able to come on festivals. How can they come to cast vote? That's why voting percentage is low.

23. Proposed Election System offers election more accurately.

Necessary steps are thus:

Step 1: Visit any polling station.

Step 2: Enter in voting compartment.

Step 3: Give fingerprint to scanner.

Step 4: System checks fingerprint with Aadhar database's and also checks whether eligible or not (whether above 18 or not).

Step 5: It will show "You can vote" else "You can't vote"

Step 6: Choose the candidate from list.

Step 7: It will show "your vote is successfully registered".

24. Aadhaar based system satisfies following requirements:

(i) Peoples can vote without going to their home constituency on Election Day and they can vote from their current location.

(ii) Illegal Voting will be curtailed because Fingerprint and Face Biometric trait is unique to each individual.

(iii) Aadhaar database filters and permits only eligible voters to cast vote. So, it ensures that eligible voters vote only once.

(iv) It maintains privacy and authority.

(v) Major benefit of system is to increase the voting percentage.

(vi) It saves precious time and money of traveling.

(vii) Quick results are possible by this system.

25. The limitations of Aadhar based voting system is thus:

(i) People must be enrolled with Aadhar card.

(ii). Aadhar based website should be accessible at the booth.

(iii). Fingerprint Scanner must be present in voting booth.

(iv). Electricity and internet are required for the website.

- 26.** Aadhaar Biometrics is the science of establishing the identity of an individual based on the physical, chemical or behavioral attributes of the person. Physical or behavioral characteristics include fingerprint, face, hand/finger geometry, iris, retina, signature, gait, palm print, voice pattern, ear, hand vein, odor or the DNA information of an individual to establish identity. This information is unique to each person.
- 27.** In the biometric system, data acquire from an individual, extracts a related feature set from that data, compares this feature set with the feature set stored in the database, and then perform an action based on the result of the comparison.
- 28.** People have used fingerprints for personal identification for many decades and the matching identification accuracy using fingerprints is very high. It has been determined that the fingerprints of each person are unique, also each finger's fingerprint of the same person is unique and fingerprints of identical twins are also different. Today, most fingerprint scanners cost less than Rs.5000, so it is affordable also.
- 29.** In the proposed system, after verification, system shows voter's information like, Aadhar number, Name, Address and Date of birth, that are already stored in Aadhar's database and system further asks for voter's fingerprint. If fingerprint image is matched with template image which is stored in Aadhar's database then next page shows candidate's list with party symbol. After selecting a candidate, system asks for vote confirmation. Finally, system shows result "Vote successful".

30. Government uses Aadhar network in order to ensure that individuals who require assistance and benefits gain access to these resources directly, eliminating the need for middlemen. As part of this process, it is gradually linking all essential services and schemes to Aadhaar network, creating centralized database through which it can distribute and keep track of the various schemes/programmes it runs along with beneficiaries. In this manner, it can identify those who are receiving benefits but are not eligible for them and take corrective action.

31. The Aadhar card is a universal card that does not really have a specific purpose behind it. Unlike a voter ID card, whose sole purpose is to permit the holder to take part in the electoral process, the Aadhaar card was not created with any specific use in mind. Instead, it can be used for a number of purposes, making it universally acceptable government-issued card, without needing to register or apply for a separate card for each of the government sponsored welfare schemes.

32. For example, Aadhaar card can be used as identity proof, address proof as well as proof of age when applying for any government service. It is a versatile card, as can be used for all government related services. Aadhar card permits the holder to avail of all government subsidies, he/she is eligible for, without the need to register and enroll for these separately. Since the government already has all the necessary data on a particular individual, they need only produce their Aadhaar card in order to avail of the various subsidies or programmes.

- 33.** It is submitted that use of Aadhaar may be mandatory but it should not deny electoral roll to a person who is not willing to submit his Aadhaar details. Petitioner feels that linking of Aadhaar is not only necessary to ensure free and fair election but also to curtail fake electoral rolls. It will give the ECI robust and clean Voter details ensuring all fake, duplicate and ghost voter records are weeded out from Electoral databases and there is no repeated KYC checks for voters.
- 34.** Aadhaar database is the most authenticate database of the citizens and chances of duplication is almost negligible as it is beyond the realms of possibility and probability to fudge biometric which is pre-condition for Aadhaar enrollment. In the given circumstances, the use of Aadhaar details by the Election Commission will not only improve the overall health of electoral rolls by enabling deletion of duplicate entries but would also enable the ECI to provide additional services.
- 35.** It is submitted that linking of Aadhaar with the Voter ID is a one-way process as in doing the same, the Electoral data is not shared with the authority having the data in respect of Aadhaar Card. Therefore, in an event of any attempt to hack the Aadhaar database, there will be no effect whatsoever on the Voter ID Card and consequently, the data with the ECI will remain secured. ECI will ensure security and confidentiality of Personal Identity data provided for the purpose of Aadhaar based authentication. In view of the aforesaid, it is pertinent to point out herein that once Aadhaar is created, mere linking of

same with Voter ID would not tantamount to infringement of any fundamental right guaranteed under the Constitution of India. Needless to say, linking of the Aadhaar with Voter ID may not be a mandatory requirement and therefore, failure to do the said linking would not deprive the citizens of any fundamental right, much less exercising his right of vote.

36. Preamble of the RPA, 1950 provides: *“An Act to provide the allocation of seats in and the delimitation of constitution for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories, and matters connected therewith.”*

37. Sections 15 of the RPA, 1950 categorically provide that: *“15. Electoral roll for every constituency.- For every constituency there shall be an electoral roll, which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of Election Commission”.*

38. Sections 17 of the RPA, 1950 categorically provide that: *“17. No person to be registered in more than one constituency- No person shall be entitled to be registered in the electoral roll for more than one constituency.”*

39. Sections 18 of the RPA, 1950 categorically provide that: *“18. No person to be registered more than once in constituency- No person shall be entitled to be registered to be registered in the electoral roll for more than once.”*

40. In view of the aforementioned provisions of the RPA, 1950, it is submitted that ECI is duty bound to prepare/maintain electoral rolls for each constituency. To achieve the objects of the said Act, modern techniques/technology may be availed of and, therefore, to achieve the aforementioned objects and avoid multiple entries in electoral rolls, it is in the interests of justice that this Hon'ble Court may allow the instant petition.

PRAYER

Keeping in view the awful effects of bogus and duplicate votes and lesser percentage of voting, it is respectfully prayed that the Hon'ble Court may be pleased to issue a writ, order or direction or a writ in the nature of mandamus to:

- a)** direct the Election Commission of India to take apposite steps to implement '*Aadhaar Based Election Voting System*' to ensure maximum participation of citizens in election and to curtail fake, fabricated, and duplicate votes;
- b)** in the alternative, direct the Election Commission of India to take appropriate steps to link the election identity card of citizens with their Aadhaar number to curtail fake, fabricated, and duplicate votes to ensure free and fair election;
- c)** in alternative, direct the Election Commission of India to pass a reasoned order on petitioner's representation within 30 days;
- d)** take such other steps as this Hon'ble Court deems fit and proper to curtail bogus votes and increase voting percentage;
- e)** allow the cost of this petition to petitioner.

15.07.2019
New Delhi

(Ashwini Kumar Upadhyay)
Petitioner-in-Person

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7583 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

AFFIDAVIT

I Ashwini Kumar Upadhyay

do hereby solemnly affirm and declare as under:

1. I am sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
2. I have filed the present writ petition as PIL. There is no personal gain, private motive or oblique reasons in filing this petition. It is totally bona-fide and purely in larger public interest and interest of justice.
3. I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the PIL is in conformity thereof.
4. I have no personal interest in the litigation and neither myself nor any body in whom I am interested, would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. The petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of Public Interest.
5. I have done whatsoever enquiry/investigation, which was in my power to do, to collect all data/material which was available and relevant for this Court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.
6. I have read and understood the contents of accompanying synopsis and list of dates (pages 4-10) & writ petition (pages (11-23) and total pages (1-31) which are true and correct to my personal knowledge and belief.
7. Annexures filed along with this are true copies of respective originals.
8. Averments in the affidavit are true/correct to my personal knowledge and belief. No part of Affidavit is false nor has anything been concealed.

DEPONENT

(Ashwini Kumar Upadhyay)

VERIFICATION

I, the Deponent do hereby verify that contents of above affidavit are true and correct to my personal knowledge and belief. No part of it is false nor has anything material been concealed there from.

I solemnly affirm today i.e. the 15th day of July 2019 at New Delhi.

DEPONENT

(Ashwini Kumar Upadhyay)

Annexure-1

ITEM NO.7

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Writ Petition (Civil) No.97/2018

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln.(s) for impleadment) WITH W.P.(C) No.999/2018 (PIL-W)

Date: 08-03-2019, This petition was called on for hearing today.

CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE

MR. JUSTICE S. ABDUL NAZEER

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Vikas Singh, Sr. Adv.

Mr. Ashwini Kumar Upadhyay, Adv.

Mr. Kapish Seth, Adv.

Ms. Deepika Kalia, Adv.

Mr. Prashant Kr. Umrao, Adv.

Mr. Krishna Kant Shukla, Adv.

Mr. R. D. Upadhyay, AOR

WP 999/18 Mr. Varun Thakur, Adv.

Ms. Shraddha Saran, Adv.

Mr. Varinder Kumar Sharma, AOR

For Respondent(s) Mr. Tushar Mehta, SG

Mr. Vikramjit Banerjee, ASG

Mr. Nachiketa Joshi, Adv.

Mr. Zoheb Hussain, Adv.

Mr. Bimal Roy Jad, Adv.

Mr. Arvind Kr. Sharma, Adv.

Mr. B.V. Balaram Das, Adv.

Mr. V.K. Shukla, Sr. Adv.

Ms. Parul Shukla, AOR

Mr. Amit Sharma, AOR

Mr. Dipesh Sinha, Adv.

Ms. Ayiala Imti, Adv.

Mr. Pankaj Sharma, Adv.

Mr. Ashwani Kr. Dubey, AOR

Mr. Chandra Shekhar Mishra, Adv.

Mr. Ashutosh Garg, AOR

UPON hearing the counsel the Court made the following

O R D E R

Heard learned counsel for petitioners and perused the relevant material.

We do not entertain the public interest litigations at this stage, instead we would ask the petitioners to move the Election Commission of India and thereafter the Election Commission will pass a reasoned order in the matter. If the petitioners are still aggrieved, it will be open for them to come to this Court once again.

The writ petitions are, accordingly, disposed of. Pending applications, if any, stand disposed of.

(Chetan Kumar)

A.R.-cum-P.S.

(Anand Prakash)

Court Master

**To,
The Chief Election Commissioner**

11.03.2019

Election Commission of India,

Nirvachan Sadan, New Delhi-110001

Subject: To link AADHAAR Number with Voter ID

Sir,

1. Election is a basic process of democracy, which allows people to show their opinions by selecting the candidate. India is spending huge money to improve voting system to provide a better government to citizens. Voting system should be honest, translucent and fully secure for better democracy. The current system is less transparent. Authentication of voters, security of the voting process and protecting the voted data - these are the main challenges of current election voting. That is why it is necessary to generate a secure election voting system.
2. Petitioner proposes an E voting system using fingerprint and face biometric. In this system, the database would be updated every time before an election. Many agencies have designed Biometric Voting System. The main benefits is that voting process shall be much speedy and most of the tasks shall be done automatically by the system. The proposed system are used correlation-based fingerprint matching technique to improve performance and to get much reliable fingerprint recognition. The objective of electronic voting system based on fingerprint biometric is to eliminate bogus voting and vote duplicity.
3. There are many problems in present voting system. People don't vote if away from their home constituency on polling day. Youths, if study far away, won't spend thousands of rupees and 2-3 days of travel to cast vote. People working away from home are not able to come on festivals. How can they come to cast vote? That's why voting percentage is low.
4. Proposed System offers election more accurately. Necessary steps are:

Step 1: Visit any polling station.

Step 2: Enter in voting compartment.

Step 3: Give fingerprint to scanner.

Step 4: System checks fingerprint with Aadhar database's and also checks whether eligible or not (whether above 18 or not).

Step 5: It will show "You can vote" else "You can't vote"

Step 6: Choose the candidate from list.

Step 7: It will show "your vote is successfully registered".
5. Aadhaar based system satisfies many requirements: **(i)** Peoples can vote without going to their home constituency on Election Day and they can vote from their current location. **(ii)** Illegal Voting will be curtailed because Fingerprint and Face Biometric trait is unique to each individual. **(iii)** Aadhaar database filters and permits only eligible voters to cast vote. So, it ensures that eligible voters vote only once. **(iv)** It maintains privacy and

authority. **(v)** Major benefit of system is to increase the voting percentage. **(vi)** It saves precious time and money of traveling. **(vii)** Quick results are possible by this system.

6. The limitations of Aadhar based voting system are: **(i)** People must be enrolled with Aadhar card. **(ii)**. Aadhar based website should be accessible at the booth. **(iii)**. Fingerprint Scanner must be present in voting booth. **(iv)**. Electricity and internet are required for the website.
7. Aadhaar Biometrics is the science of establishing the identity of an individual based on the physical, chemical or behavioral attributes of the person. Physical or behavioral characteristics include fingerprint, face, hand/finger geometry, iris, retina, signature, gait, palm print, voice pattern, ear, hand vein, odor or the DNA information of an individual to establish identity. This information is unique to each person.
8. In the biometric system, data acquire from an individual, extracts a related feature set from that data, compares this feature set with the feature set stored in the database, and then perform an action based on the result of the comparison.
9. People have used fingerprints for personal identification for many decades and the matching identification accuracy using fingerprints is very high. It has been determined that the fingerprints of each person are unique, also each finger's fingerprint of the same person is unique and fingerprints of identical twins are also different. Today, most fingerprint scanners cost less than Rs.5000, so it is affordable also.
10. In the proposed system, after verification, system shows voter's information like, Aadhar number, Name, Address and Date of birth, that are already stored in Aadhar's database and system further asks for voter's fingerprint. If fingerprint image is matched with template image which is stored in Aadhar's database then next page shows candidate's list with party symbol. After selecting a candidate, system asks for vote confirmation. Finally, system shows result "Vote successful".
11. Government uses Aadhar network in order to ensure that individuals who require assistance and benefits gain access to these resources directly, eliminating the need for middlemen. As part of this process, it is gradually linking all essential services and schemes to Aadhaar network, creating centralized database through which it can distribute and keep track of the various schemes and programmes it runs along with beneficiaries. In this manner, it can identify those who are receiving benefits but are not eligible for them and take corrective action.
12. The Aadhar card is a universal card that does not really have a specific purpose behind it. Unlike a voter ID card, whose sole purpose is

to permit the holder to take part in the electoral process, the Aadhaar card was not created with any specific use in mind. Instead, it can be used for a number of purposes, making it universally acceptable government-issued card, without needing to register or apply for a separate card for each of the government sponsored welfare schemes.

13. For example, Aadhaar card can be used as identity proof, address proof as well as proof of age when applying for any government service. It is a versatile card, as can be used for all government related services. Aadhaar card permits the holder to avail of all government subsidies, he/she is eligible for, without the need to register and enroll for these separately. Since the government already has all the necessary data on a particular individual, they need only produce their Aadhaar card in order to avail of the various subsidies or programmes. Use of Aadhaar may be mandatory but ECI should not deny electoral roll to a person who is not willing to submit his Aadhaar details. Petitioner feels that linking of Aadhaar is not only necessary to ensure free and fair election but also to curtail fake electoral rolls. It will give the ECI robust and clean Voter details ensuring fake, duplicate and ghost voter records are weeded out from Electoral databases and there is no repeated KYC checks for voters.
14. Aadhaar database is the most authenticate database of the citizens and chances of duplication is almost negligible as it is beyond the realms of possibility and probability to fudge biometric which is pre-condition for Aadhaar enrollment. In the given circumstances, the use of Aadhaar details by the Election Commission will not only improve the overall health of electoral rolls by enabling deletion of duplicate entries but would also enable the ECI to provide additional services.
15. It is submitted that linking of Aadhaar with the Voter ID is a one-way process as in doing the same, the Electoral data is not shared with the authority having the data in respect of Aadhaar Card. Therefore, in an event of any attempt to hack the Aadhaar database, there will be no effect on Voter ID and consequently, data with ECI will remain secured. ECI will ensure security and confidentiality of Personal Identity provided for purpose of Aadhaar based authentication. In view of the aforesaid, it is pertinent to point out that once Aadhaar is created, mere linking of same with Voter ID would not tantamount to infringement of any fundamental right guaranteed under the Constitution. Needless to say, linking of Aadhaar with Voter ID may not be a mandatory requirement and therefore, failure to do the said linking would not deprive the citizens of any fundamental right, much less exercising his right of vote.
16. Preamble of the RPA, 1950 provides: *“An Act to provide the allocation of seats in and the delimitation of constitution for the purpose of*

election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories, and matters connected therewith.”

17. Sections 15, RPA, 1950 categorically provide that: “15. *Electoral roll for every constituency.- For every constituency there shall be an electoral roll, which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of Election Commission*”.

18. Sections 17, RPA, 1950 categorically provide that: “17. *No person to be registered in more than one constituency-No person shall be entitled to be registered in the electoral roll for more than one constituency.*” Sections 18 of the RPA, 1950 categorically provide that: “18. *No person to be registered more than once in constituency-No person shall be entitled to be registered to be registered in the electoral roll for more than once.*”

19. In view of the aforementioned provisions of the RPA, it is submitted that ECI is duty bound to prepare/maintain electoral rolls for each constituency. To achieve the objects of said Act, modern techniques / technology may be availed of and therefore to achieve the aforementioned objects and avoid multiple entries in electoral rolls, it is in the interests of justice that ECI take appropriate steps to link AADHAAR with voter ID.

Sir,

Keeping in view the awful effects of bogus and duplicate votes and lesser percentage of voting, please take apposite steps to implement ‘*Aadhaar Based Election Voting System*’ to ensure maximum participation of citizens in election and to curtail bogus votes.

In the alternative, take appropriate steps to link election identity card of citizens with their Aadhaar number to curtail fake, fabricated and duplicate votes to ensure free and fair election.

Ashwini Kumar Upadhyay

15, MC Setalvad Chambers, Supreme Court, New Delhi-01, 8800278866,

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7583 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

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PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7566 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay ...Petitioner

Verses

Union of India & Another ...Respondents

URGENT APPLICATION

To,

The Registrar,

High Court of Delhi at New Delhi,

Sir,

Kindly treat the accompanying application as an urgent one in accordance with the High Court Rules and Orders.

Petitioner is filing this writ petition under Article 226 of the Constitution. Matter is urgent in public interest as prayed.

**PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)**

New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7566 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

NOTICE OF MOTION

To,

The Standing Council

Union of India / Election Commission of India

High Court of Delhi, New Delhi,

Sir,

Please find enclosed herewith 3 copies of above mentioned Writ Petition, which is being filed today before this Hon'ble Court and likely to be listed before the Hon'ble Court on 16.7.2019 or any other date fixed by the registry.

It's for your information and necessary action.

**PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)**

New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7566 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay ...Petitioner

Verses

Union of India & Another ...Respondents

MEMO OF PARTIES

Ashwini Kumar Upadhyay

Verses

1. Union of India

Through the Secretary,
 Ministry of Home Affairs
 North Block, New Delhi-110001

2. Government of NCT of Delhi

Through the Chief Secretary
 Delhi Secretariat, IP Estate,
 New Delhi - 110002,

Respondents

PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)

New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7566 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

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SYNOPSIS

Corruption is an insidious plague that has wide range of corrosive effects on our country. Corruption is the source of Benami Transaction and Black Money generation. Corruption undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime like separatism, terrorism, naxalism, radicalism, gambling, smuggling, kidnapping, money laundering, extortion and dowry and other threats to human security to flourish. It hurts the poor disproportionately by diverting funds intended for development, undermines government's ability to provide basic services, feeds inequality & injustice and discourages foreign aids and investment. Corruption and Benami Money is key element in economic underperformance and a major obstacle in poverty alleviation and development. The *Right to Life* guaranteed under Article 21 cannot be secured and the golden goals, set out in Preamble cannot be achieved without curbing the corruption and benami transaction. Therefore, it is duty of the State to take apposite steps to

curb corruption and seize the benami properties made by illegal means to give a strong message that Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated and to reaffirm the rule of law and transparency.

Benami transaction in high denomination currency is used in illegal activities - terrorism, naxalism, separatism, radicalism, gambling, smuggling, money laundering, kidnapping, extortion, bribing and dowry. It also inflates the price of essential commodities as well as major assets like real estate, gold etc. These problems can be curbed up to great extent by linking movable-immovable properties with the owner's Aadhaar number. Black money holders would be forced to declare their unaudited movable and unmovable properties and it will take years to generate that amount of benami property again. Thus, in a long way it will help in putting an end to the black money generation. Another benefit is that people will deposit their money in banks; government will get good amount of revenue, which can be used for betterment of society and to provide good infrastructure and facilities to needy people. India cannot move forward without clean and transparent governance, for which corruption-free society is a basic requirement. But State has not taken appropriate steps till date.

There is no country in top 50 of the Human Development Index, which has a significant amount of corruption and Benami property. There is correlation between Welfare State with appropriate attention to education and public health and absence of corruption and black money so it is obligation of the State to take steps to curb the Corruption and Benami transaction.

Berlin-based Corruption watchdog “Transparency International” has put India at 78 in Corruption Perception Index 2018. India was ranked 66 in 1998, 72 in 1999, 69 in 2000, 71 in 2001, 71 in 2002, 83 in 2003, 90 in 2004, 88 in 2005, 70 in 2006, 72 in 2007, 85 in 2008, 84 in 2009, 87 in 2010, 95 in 2011, 94 in 2012, 87 in 2013, 85 in 2014, 76 in 2015, 79 in 2016 and 81 in 2017 and root cause of the pathetic ranking is corruption and benami transaction.

Corruption and Benami Transaction distorts and disrupts the public distribution system with great violence. It is inimical to the fostering of excellence and has adverse impact on the EWS and BPL families. After seven decades of independence, our 50% of population is still in distress, leading a hand-to-mouth existence, large segments not knowing where the next meal is coming from, with abominable health standards and primary education levels. Much of this malaise is traceable to widespread corruption, benami transaction and existence of black money.

If we see the International Ranking in “Ease of Doing Business”, India was ranked 77 in 2018, 100 in 2017, 130 in 2016, 130 in 2015, 142 in 2014, 134 in 2013, 132 in 2012, 132 in 2011, 134 in 2010, 133 in 2009, 122 in 2008, 120 in 2007, 134 in 2006 and 116 in 2005 and the root causes of this pathetic ranking is the same– Corruption, Benami Transaction and Black Money Generation.

If we see the World Happiness Index, India ranked 140 in 2019, 133 in 2018, 122 in 2017, 118 in 2016, 117 in 2015, 120 in 2014, 111 in 2013 and 133 in 2012 and the root cause of the pathetic ranking is Corruption and Benami Transaction.

In Global Peace Index, India ranked 141 in 2019, 137 in 2018, 137 in 2017, 141 in 2016, 144 in 2015, 142 in 2014, 141 in 2013, 144 in 2012, 147 in 2011, 144 in 2010, 144 in 2009, 143 in 2008 and 107 in 2007 and the root cause of our pathetic ranking is Corruption and Benami Transaction.

Corruption and Population Explosion is the root cause of pitiable condition of our International Ranking. We are ranked 103 in the Global Hunger Index, 43 in Suicide Rate, 168 in Literacy Rate, 133 in World Happiness Index, 125 in Gender Discrimination, 124 in Minimum Pay, 42 in Employment Rate, 66 in Rule of Law Index, 43 in Quality of Life Index, 51 in Financial Development Index, 177 in Environment Performance Index, 139 in GDP Per Capita. However, we are first in draining underground water, though we possess only 4% of ground water and merely 2% of agricultural land of the world.

If Government link property with Aadhaar, it will lead to an increment of 2% in annual growth. It will clean our electoral process, which is dominated by black-money and benami transaction and thrives on a cycle of large black investments, capture of power through foul means, use of political strength to amass private wealth, all with disdain of the citizen. There may be some inconvenience for a short period and political leaders who have fostered corruption and have benami property may focus on the distress to common man, but no honest citizen will lose his savings and nothing will get confiscated.

In several addresses to the nation (Mann Ki Baat), Hon'ble Prime Minister has repeated his plans to root out black money by cracking down on benami properties. This is because a major part of black money is held in the form of benami properties (gold and cash are other forms). Demonetization, announced on 08.11.2016, was fight against black money held in form of cash.

India has numerous legislations, but fails miserably in implementing them. The Benami Transactions (Prohibition) Act, passed in 1988 was gathering dust without any action. Though the present government added more teeth to it by amending it (Benami Transactions (Prohibition) Amended Act, 2016), activities to catch benami properties are still going on slowly. For example, this amended Act came into existence from 1.11.2016. But, action taken is restricted to a few immovable properties and bank deposits after demonetization. Finding real

beneficiary of benami properties is a Herculean task and that is the main reason for its slow implementation. To speed up this information gathering, government came out with cash reward up to Rs 1 crore for '*secret informers*'. But, success is less because people scare that some rogue employees from these agencies will leak information of informer. Similar rules in income tax and customs rules are not fetching big information.

LIST OF DATES

- 06.02.2018: Petitioner filed WP(C) 97/2018 in the Supreme Court seeking direction for linking of AADHAAR number with voter id to curtail bogus votes and with property documents to curtail benami transaction and black money generation.
- 08.03.2019: The Apex Court disposed of the petition with direction to approach government authority.
- 11.03.2019: Petitioner submitted Representation to Hon'ble Home Minister and Chief Minister for linking AADHAAR number with property documents but apposite steps has not been taken till date.
- 15.07.2019: Right to clean air, right to drinking water, right to health, right to sleep, right to shelter, right to livelihood and right to education guaranteed under Articles 21, can't be secured to citizens without curbing corruption, but, Government has not linked AADHAAR number with property documents till date. Hence this PIL.

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7566 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

PIL TO LINK AADHAAR NUMBER WITH PROPERTY DOCUMENTS**To,**

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE HIGH COURT OF DELHI

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petition is not guided by self-gain or for gain of any other individual person, institution or body. There is no motive other than the larger public interest in filing this petition. Petitioner has no personal interest or individual gain, private motive or oblique reasons in filing this PIL. It is bona-fide with sole purpose of larger public interest and interest of justice.
2. The source of averments made in this petition is personal knowledge and information collected from various sources, including newspapers and websites. Petitioner is filing this PIL to link AADHAAR number with property documents.
3. Present petition is for benefit of poor, disabled, economically weaker section and socially-economically down trodden people. As they are incapable of accessing this Hon'ble Court themselves, petitioner is filing this PIL to secure fundamental rights guaranteed under Article 21 of the Constitution.

4. The Centre Government and Government of NCT of Delhi is likely to be affected by the orders sought in this petition, which have been impleaded as Respondents. Petitioner submits that to its knowledge, no other persons, bodies, institutions are likely to be affected by the order sought in this petition.
5. Petitioner's full name is Ashwini Kumar Upadhyay.

Petitioner is an Advocate, practice in this Hon'ble Court and a social-political activist, contributing his best to the development of socially-economically downtrodden people. Petitioner is able to bear the cost if any, imposed by the Court.

6. Petitioner has not filed any other petition either in this Court or in any other Court seeking same or similar directions except WP(C)57/2018, which was withdrawn. (**Annexure-1**, Pg.23-24)
7. Petitioner submitted Representation to Respondents which is annexed as **Annexure-2**. (Pg. 25-29) & **Annexure-3** (Pg. 30-34). There is no requirement to move concerned authority for relief sought in the petition again. There is no other remedy available except approaching the Hon'ble Court by way of instant PIL.
8. Right to clean air, right to drinking water, right to health, right to peaceful sleep, right to shelter, right to livelihood and right to education guaranteed under Article 21, can't be secured to the citizens without curbing the corruption, but, Government has not linked AADHAAR with property documents till date.

9. Corruption is the source of Benami Transaction and Black Money generation. It is an insidious plague that has wide range of corrosive effects on our country. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime like separatism, terrorism, naxalism, radicalism, gambling, smuggling, kidnapping, money laundering, extortion and dowry and other threats to human security to flourish. It hurts the poor disproportionately by diverting funds intended for development, undermines government's ability to provide basic services, feeds inequality & injustice and discourages foreign aids and investment. Corruption and Benami Money is key element in economic underperformance and a major obstacle in poverty alleviation and development. The *Right to Life* guaranteed under Article 21 cannot be secured and the golden goals, set out in Preamble cannot be achieved without curbing the corruption and benami transaction.

10. Therefore, it is duty of the State to take apposite steps to curb corruption and seize the benami properties made by illegal means to give a strong message that Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated and to reaffirm the rule of law and transparency.

- 11.** Benami transaction in high denomination currency is used in illegal activities - terrorism, naxalism, separatism, radicalism, gambling, smuggling, money laundering, kidnapping, extortion, bribing and dowry. It also inflates the price of essential commodities as well as major assets like real estate, gold etc. These problems can be curbed up to great extent by linking movable-immovable properties with the owner's Aadhaar number. Black money holders would be forced to declare their unaudited movable and unmovable properties and it will take years to generate that amount of benami property again. Thus, in a long way it will help in putting an end to the black money generation. Another benefit is that people will deposit their money in banks; government will get good amount of revenue, which can be used for betterment of society and to provide good infrastructure and facilities to needy people. India cannot move forward without clean and transparent governance, for which corruption-free society is a basic requirement.
- 12.** There is no country in top 50 of the Human Development Index, which has a significant amount of corruption and Benami property. There is correlation between Welfare State with appropriate attention to education and public health and absence of corruption and black money so it is obligation of the State to take steps to curb the Corruption and Benami transaction.

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- 14.** Corruption and Benami Transaction distorts and disrupts the public distribution system with great violence. It is inimical to the fostering of excellence and has adverse impact on the EWS and BPL families. After seven decades of independence, our 50% of population is still in distress, leading a hand-to-mouth existence, large segments not knowing where the next meal is coming from, with abominable health standards and primary education levels. Much of this malaise is traceable to widespread corruption, benami transaction and existence of black money.
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- 16.** If we see the World Happiness Index, India ranked 140 in 2019, 133 in 2018, 122 in 2017, 118 in 2016, 117 in 2015, 120 in 2014, 111 in 2013 and 133 in 2012 and the root cause of the pathetic ranking is Corruption and Benami Transaction.
- 17.** In Global Peace Index, India ranked 141 in 2019, 137 in 2018, 137 in 2017, 141 in 2016, 144 in 2015, 142 in 2014, 141 in 2013, 144 in 2012, 147 in 2011, 144 in 2010, 144 in 2009, 143 in 2008 and 107 in 2007 and the root cause of our pathetic ranking is Corruption and Benami Transaction.
- 18.** Corruption and Population Explosion is the root cause of pitiable condition of our International Ranking. We are ranked 103 in the Global Hunger Index, 43 in Suicide Rate, 168 in Literacy Rate, 133 in World Happiness Index, 125 in Gender Discrimination, 124 in Minimum Pay, 42 in Employment Rate, 66 in Rule of Law Index, 43 in Quality of Life Index, 51 in Financial Development Index, 177 in Environment Performance Index, 139 in GDP Per Capita. However, we are first in draining underground water, though we possess only 4% of ground water and merely 2% of agricultural land of the world.
- 19.** If Government link property with Aadhaar, it will lead to an increment of 2% in annual growth. It will clean our electoral process, which is dominated by black-money and benami transaction and thrives on a cycle of large black investments, capture of power through foul means, use of political strength to amass private wealth, all with disdain of the citizen. There may be some inconvenience for a short

period and political leaders who have fostered corruption and have benami property may focus on the distress to common man, but no honest citizen will lose his savings and nothing will get confiscated.

20. In several addresses to the nation (Mann Ki Baat), Hon'ble Prime Minister has repeated his plans to root out black money by cracking down on benami properties. This is because a major part of black money is held in the form of benami properties (gold and cash are other forms). Demonetization, announced on 08.11.2016, was fight against black money held in form of cash.

21. India has numerous legislations, but fails miserably in implementing them. The Benami Transactions (Prohibition) Act, passed in 1988 was gathering dust without any action. Though the present government added more teeth to it by amending it (Benami Transactions (Prohibition) Amended Act, 2016), activities to catch benami properties are still going on slowly. For example, this amended Act came into existence from 1.11.2016. But, action taken is restricted to a few immovable properties and bank deposits after demonetization. Finding real beneficiary of benami properties is a Herculean task and that is the main reason for its slow implementation. To speed up this information gathering, government came out with cash reward up to Rs 1 crore for '*secret informers*'. But, success is less because people scare that some rogue employees from these agencies will leak information of informer. Similar rules in income tax and customs rules are not fetching big information.

22. As on today, every citizen of our country have an Aadhaar number, asking them to link it to their property documents is a better option. The main advantage of this strategy is that the tax authorities will get details about 'legal owners' immediately. Several historical property deals might have happened in fictitious names and they will get stuck immediately. Black money hoarders also used to register properties in other's name (e.g. in the name of servants, some family members who are poor, etc.) after getting their signatures (these poor people have no idea what these signatures are meant for). In these cases, the original property documents are kept by the 'original owners' and in most cases, they also keep power of attorney signed by *'legal owners'*.

23. Once the Aadhaar linkage happens, tax authorities can approach the 'legal owners' and it can be treated as benami property if the 'legal owners' are unaware or denies knowledge of the ownership'. Even if the 'legal owner' takes onus and claims that it is his property, he needs to show the 'source of income' for buying that property (It will be difficult for a house maid to show source for property worth crores). The Aadhaar opponents (due to fear about losing their data or others vested interests want to continue with their illegal activities) may come out against this also. Will this amount to harassing the 'genuine tax payers' as the Aadhaar opponents will put it? No, because there are several provisions in the Benami Transactions (Prohibition) Amended Act, 2016 to protect them.

24. The usual transactions like buying property in the name of spouse, kids, parents, joint names with siblings, etc is already exempt in the Benami Act. However, they need to show the source of money used for such purchase. This may amount to some discomfort to 'genuine tax payers' because they may have to visit the registrar's office for updating their Aadhaar number but most of the citizens will support this move because it will result in unearthing huge black money. Only thing, since this process will be time consuming (some people may be working in cities but may have properties in villages), government should give enough time for doing this.

25. Noting that Aadhaar is helping in bringing about an *irreversible change* in people's interest, Hon'ble Prime Minister has reiterated that the AADHAR will work as *big weapon* in the fight against benami property. Aadhaar has played a big role in ensuring that ration at proper rates, scholarships, pension and government subsidies reached the poor. At the inaugural session of the '*Hindustan Times Leadership Summit-2017*', Hon'ble Prime Minister said: "*Linking Aadhaar with mobile and Jan Dhan accounts have evolved such a system which was not even thought of till some years ago -- a system which is irreversible. Earlier, pension money and students stipend was distributed in crores of fake accounts. All that has been addressed with the help of Aadhaar in the last three years.*"

Petitioner respectfully submits that linking of AADHAR with property documents will definitely curtail the corruption.

26. The day our country will have a technical and digital address for all monetary transactions, organized corruption, and money laundering and bribing will be checked to a great extent. Black money coming into the banking system had also brought along with it massive data, a "treasure trove" that would enable the government take action against wrongdoers. Ill-gotten wealth earlier funding a parallel economy was now a part of the formal economy.

27. Preamble is not a mere flourish of words, but is an ideal setup for practices and observances as a matter of law through Constitutional mechanism. The purpose of Preamble is to clarify who has made the Constitution, what is its source, what is the ultimate sanction behind it; what is the nature of polity, which is sought to be established by the Constitution and what are its Goals and Objectives. Preamble acknowledges, recognizes and proclaims that the Constitution emanates from 'People of India' and not from any external or lesser source and meant for the 'Welfare of the People'. So Constitution must be read as a whole and in case of doubt; it is interpreted consistent with the basic structure to promote the great objectives stated in the Preamble. Welfare of the people is ultimate goal of all laws, State actions and above all the Constitution. They have one common object that is to promote well-being of the society as a whole. It is impossible to achieve the great golden goals as set out in the Preamble without curbing the corruption, the greatest menace to our democracy and development.

28. In *Subramanian Swamy v. Manmohan Singh*, [(2012) 3 SCC 64], the Hon'ble Supreme Court very categorically observed: "Corruption not only poses a grave danger to concept of constitutional governance, it also threatens the very foundation of the democracy and the Rule of Law. The magnitude of corruption in public life is incompatible with concept of the Socialist, Secular and Democratic Republic. Where corruption begins all rights end. Corruption devalues human rights, chokes development, and undermines justice, liberty, equality and fraternity, which are the values in Indian Preambular vision...".

29. In *State of Gujarat versus R.A. Mehta*, [(2013) 3 SCC 1], the Hon'ble Court once again observed about the menace of corruption and its grave effect on our society and country: "Corruption threatens constitutional governance and shakes the foundation of democracy and rule of law. Corruption is opposed to democracy and social order as being not only anti-people, but also due to the fact, that it affects the economy of a country and destroys its cultural heritage. It threatens security of the society, undermines the ethical value and justice and jeopardizes sustainable development. Corruption devalues human rights, chokes development and corrodes the moral fabric of society. It causes considerable damage to the national economy, national interest and image of the country. The very object, the noble and grand vision of the Preamble will be defeated if corruption is not curbed immediately".

PRAYER

Keeping in view the above stated facts and circumstances, the terrible effects of corruption and benami transaction, it is the most respectfully prayed that this Hon'ble Court may be pleased to issue a writ, order or direction or a writ in the nature of mandamus to the Government of NCT of Delhi to:

- a)** take appropriate steps to link movable and immovable property documents of citizens with their Aadhaar number to curb corruption, black money generation and benami transaction;
- b)** in the alternative, direct the Union of India and Government of NCT of Delhi to pass a reasoned order on the petitioner's representation dated 11.03.2019 within 30 days;
- c)** take such other steps as this Hon'ble Court deems fit and proper to control corruption and benami transaction;
- d)** allow the cost of this petition to petitioner.

PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)

New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7566 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

AFFIDAVIT

I Ashwini Kumar Upadhyay aged 44 years, S/o Sh. Suresh Chandra Upadhyay, Office at 15, M.C.Setalvad Chambers, Supreme Court of India, New Delhi-110001, R/o G-284, Govindpuram, Ghaziabad-201013, at present at New Delhi, do hereby solemnly affirm and declare as under:

1. I am sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
2. I have filed the present writ petition as PIL. There is no personal gain, private motive or oblique reasons in filing this petition. It is totally bona-fide and purely in larger public interest and interest of justice.
3. I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the PIL is in conformity thereof.
4. I have no personal interest in the litigation and neither myself nor any body in whom I am interested, would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. The petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of Public Interest.
5. I have done whatsoever enquiry/investigation, which was in my power to do, to collect all data/material which was available and relevant for this Court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.
6. I have read and understood the contents of accompanying synopsis and list of dates (pages 4-9) and writ petition (pages (10-21) and total pages (1-35) which are true and correct to my personal knowledge and belief.
7. Annexures filed along with this are true copies of respective originals.
8. Averments in the affidavit are true/correct to my personal knowledge and belief. No part of Affidavit is false nor has anything been concealed.

DEPONENT

(Ashwini Kumar Upadhyay)

VERIFICATION

I, the Deponent do hereby verify that contents of above affidavit are true and correct to my personal knowledge and belief. No part of it is false nor has anything material been concealed there from.

I solemnly affirm today i.e. the 15th day of July 2019 at New Delhi.

DEPONENT

(Ashwini Kumar Upadhyay)

Annexure-1

ITEM NO.7

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Writ Petition (Civil) No.97/2018

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln.(s) for impleadment) WITH W.P.(C) No.999/2018 (PIL-W)

Date: 08-03-2019, This petition was called on for hearing today.

CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE

MR. JUSTICE S. ABDUL NAZEER

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Vikas Singh, Sr. Adv.

Mr. Ashwini Kumar Upadhyay, Adv.

Mr. Kapish Seth, Adv.

Ms. Deepika Kalia, Adv.

Mr. Prashant Kr. Umrao, Adv.

Mr. Krishna Kant Shukla, Adv.

Mr. R. D. Upadhyay, AOR

WP 999/18 Mr. Varun Thakur, Adv.

Ms. Shraddha Saran, Adv.

Mr. Varinder Kumar Sharma, AOR

For Respondent(s) Mr. Tushar Mehta, SG

Mr. Vikramjit Banerjee, ASG

Mr. Nachiketa Joshi, Adv.

Mr. Zoheb Hussain, Adv.

Mr. Bimal Roy Jad, Adv.

Mr. Arvind Kr. Sharma, Adv.

Mr. B.V. Balaram Das, Adv.

Mr. V.K. Shukla, Sr. Adv.

Ms. Parul Shukla, AOR

Mr. Amit Sharma, AOR

Mr. Dipesh Sinha, Adv.

Ms. Ayiala Imti, Adv.

Mr. Pankaj Sharma, Adv.

Mr. Ashwani Kr. Dubey, AOR

Mr. Chandra Shekhar Mishra, Adv.

Mr. Ashutosh Garg, AOR

UPON hearing the counsel the Court made the following

O R D E R

Heard learned counsel for petitioners and perused the relevant material.

We do not entertain the public interest litigations at this stage, instead we would ask the petitioners to move the Election Commission of India and thereafter the Election Commission will pass a reasoned order in the matter. If the petitioners are still aggrieved, it will be open for them to come to this Court once again.

The writ petitions are, accordingly, disposed of. Pending applications, if any, stand disposed of.

(Chetan Kumar)

A.R.-cum-P.S.

(Anand Prakash)

Court Master

To, 11.3.2019
The Home Minister
Government of India,
North Block, New Delhi-110001,
Subject: To link AADHAAR number with property documents
Sir,

1. Corruption is the source of Benami Transaction/ Black Money generation. It is an insidious plague that has wide range of corrosive effects on our country. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime like separatism, terrorism, naxalism, radicalism, gambling, smuggling, kidnapping, money laundering, extortion and dowry and other threats to human security to flourish. It hurts the poor disproportionately by diverting funds intended for development, undermines government's ability to provide basic services, feeds inequality & injustice and discourages foreign aids and investment. Corruption and Benami Money is key element in economic underperformance and a major obstacle in poverty alleviation and development. The *Right to Life* guaranteed under Article 21 cannot be secured and the golden goals, set out in Preamble cannot be achieved without curbing the corruption and benami transaction. Therefore, it is duty of the government to take steps to curb corruption and seize the benami properties made by illegal means to give a strong message that Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated and to reaffirm the rule of law and transparency.
2. Benami transaction in high denomination currency is used in illegal activities - terrorism, naxalism, separatism, radicalism, gambling, smuggling, money laundering, kidnapping, extortion, bribing and dowry. It also inflates the price of essential commodities as well as major assets like real estate, gold etc. These problems can be curbed up to great extent by linking movable-immovable properties with the owner's Aadhaar number. Black money holders would be forced to declare their unaudited movable and unmovable properties and it will take years to generate that amount of benami property again. Thus, in a long way it will help in putting an end to the black money generation. Another benefit is that people will deposit their money in banks; government will get good amount of revenue, which can be used for betterment of society and to provide good infrastructure and facilities to needy people. India cannot move forward without clean and transparent governance, for which corruption-free society is a basic requirement.

3. There is no country in top 50 of the Human Development Index, which has a significant amount of corruption/Benami property. There is correlation between Welfare State with appropriate attention to education and public health and absence of corruption and black money so it is obligation of the State to take steps to curb Corruption and Benami transaction.
4. The Berlin-based Corruption watchdog “Transparency International” has put India at 78 in Corruption Perception Index 2018. India was ranked 66 in 1998, 72 in 1999, 69 in 2000, 71 in 2001, 71 in 2002, 83 in 2003, 90 in 2004, 88 in 2005, 70 in 2006, 72 in 2007, 85 in 2008, 84 in 2009, 87 in 2010, 95 in 2011, 94 in 2012, 87 in 2013, 85 in 2014, 76 in 2015, 79 in 2016 and 81 in 2017 and root cause of the pathetic ranking is corruption and benami transaction.
5. Corruption and Benami Transaction distorts and disrupts the public distribution system with great violence. It is inimical to the fostering of excellence and has adverse impact on the EWS and BPL families. After seven decades of independence, our 50% of population is still in distress, leading a hand-to-mouth existence, large segments not knowing where the next meal is coming from, with abominable health standards and primary education levels. Much of this malaise is traceable to widespread corruption, benami transaction and existence of black money.
6. If we see the International Ranking in “Ease of Doing Business”, India was ranked 77 in 2018, 100 in 2017, 130 in 2016, 130 in 2015, 142 in 2014, 134 in 2013, 132 in 2012, 132 in 2011, 134 in 2010, 133 in 2009, 122 in 2008, 120 in 2007, 134 in 2006 and 116 in 2005 and the root causes of pathetic ranking is– Corruption, Benami Transaction and Black Money.
7. In World Happiness Index, India ranked 140 in 2019, 133 in 2018, 122 in 2017, 118 in 2016, 117 in 2015, 120 in 2014, 111 in 2013, 133 in 2012 and root cause of pathetic ranking is Corruption and Benami Transaction.
8. In Global Peace Index, India ranked 141 in 2019, 137 in 2018, 137 in 2017, 141 in 2016, 144 in 2015, 142 in 2014, 141 in 2013, 144 in 2012, 147 in 2011, 144 in 2010, 144 in 2009, 143 in 2008 and 107 in 2007 and root cause of our pathetic ranking is Corruption and Benami Transaction.
9. Corruption and Population Explosion is the root cause of pitiable condition of our International Ranking. We are ranked 103 in the Global Hunger Index, 43 in Suicide Rate, 168 in Literacy Rate, 133 in World Happiness Index, 125 in Gender Discrimination, 124 in Minimum Pay, 42 in Employment Rate, 66 in Rule of Law Index, 43 in Quality of Life Index, 51 in Financial Development Index, 177 in Environment Performance Index, 139 in GDP Per Capita. However, we are first in draining underground water, though we possess only 4% of ground water and merely 2% of agricultural land of the world.

10. If Government link property with Aadhaar, it will lead to an increment of 2% in annual growth. It will clean our electoral process, which is dominated by black-money and benami transaction and thrives on a cycle of large black investments, capture of power through foul means, use of political strength to amass private wealth, all with disdain of the citizen. There may be some inconvenience for a short period and political leaders who have fostered corruption and have benami property may focus on the distress to common man, but no honest citizen will lose his savings and nothing will get confiscated.
11. In several addresses to the nation (Mann Ki Baat), Hon'ble Prime Minister has repeated his plans to root out black money by cracking down on benami properties. This is because a major part of black money is held in the form of benami properties (goldcash are other forms). Demonetization, announced on 08.11.2016, was fight against black money held in form of cash.
12. India has numerous legislations, but fails miserably in implementing them. The Benami Transactions (Prohibition) Act, passed in 1988 was gathering dust without any action. Though the present government added more teeth to it by amending it (Benami Transactions (Prohibition) Amended Act, 2016), activities to catch benami properties are still going on slowly. For example, this amended Act came into existence from 1.11.2016. But, action taken is restricted to a few immovable properties and bank deposits after demonetization. Finding real beneficiary of benami properties is a Herculean task and that is the main reason for its slow implementation. To speed up this information gathering, government came out with cash reward up to Rs 1 crore for '*secret informers*'. But, success is less because people scare that some rogue employees from these agencies will leak information of informer. Similar rules in income tax and customs rules are not fetching big information.
13. As on today, every citizen of our country have an Aadhaar number, asking them to link it to their property documents is a better option. The main advantage of this strategy is that the tax authorities will get details about 'legal owners' immediately. Several historical property deals might have happened in fictitious names and they will get stuck immediately. Black money hoarders also used to register properties in other's name (e.g. in the name of servants, some family members who are poor, etc.) after getting their signatures (these poor people have no idea what these signatures are meant for). In these cases, the original property documents are kept by the 'original owners' and in most cases, they also keep power of attorney signed by '*legal owners*'.

14. Once the Aadhaar linkage happens, tax authorities can approach the 'legal owners' and it can be treated as benami property if the 'legal owners' are unaware or denies knowledge of the ownership'. Even if the 'legal owner' takes onus and claims that it is his property, he needs to show the 'source of income' for buying that property (It will be difficult for a house maid to show source for property worth crores). The Aadhaar opponents (due to fear about losing their data or others vested interests want to continue with their illegal activities) may come out against this also. Will this amount to harassing the 'genuine tax payers' as the Aadhaar opponents will put it? No, because there are several provisions in the Benami Transactions (Prohibition) Amended Act, 2016 to protect them.
15. The usual transactions like buying property in the name of spouse, kids, parents, joint names with siblings, etc is already exempt in the Benami Act. However, they need to show the source of money used for such purchase. This may amount to some discomfort to 'genuine tax payers' because they may have to visit the registrar's office for updating their Aadhaar number but most of the citizens will support this move because it will result in unearthing huge black money. Only thing, since this process will be time consuming (some people may be working in cities but may have properties in villages), government should give enough time for doing this.
16. Noting that Aadhaar is helping in bringing about an *irreversible change* in people's interest, Hon'ble Prime Minister has reiterated that the AADHAR will work as *big weapon* in the fight against benami property. Aadhaar has played a big role in ensuring that ration at proper rates, scholarships, pension and government subsidies reached the poor. At the inaugural session of the '*Hindustan Times Leadership Summit-2017*', Hon'ble Prime Minister said: "*Linking Aadhaar with mobile and Jan Dhan accounts have evolved such a system which was not even thought of till some years ago -- a system which is irreversible. Earlier, pension money and students stipend was distributed in crores of fake accounts. All that has been addressed with the help of Aadhaar in the last three years.*" Petitioner respectfully submits that linking of AADHAAR with property documents will definitely curtail the corruption.
17. The day our country will have a technical and digital address for all monetary transactions, organized corruption, and money laundering and bribing will be checked to a great extent. Black money coming into the banking system had also brought along with it massive data, a "treasure trove" that would enable the government take action against wrongdoers. Ill-gotten wealth earlier funding a parallel economy was now a part of the formal economy.

18. Preamble clarifies who has made the Constitution, what is source, what is ultimate sanction behind it; what is nature of polity, which is to be established by the Constitution and what are its Goals. Preamble acknowledges, recognizes and proclaims that the Constitution emanates from 'People of India' and not from any external source and meant for the 'Welfare of the People'. So Constitution must be read as a whole and in case of doubt; it is interpreted consistent with the basic structure to promote the great objectives stated in the Preamble. Welfare of the people is ultimate goal of all laws, State actions and above all the Constitution. They have one common object that is to promote well-being of the society as a whole. It is impossible to achieve the golden goals without curbing corruption, the greatest menace to our democracy and development.
19. In *Subramanian Swamy v. Manmohan Singh*, [(2012) 3 SCC 64], the Apex Court held: "Corruption not only poses a grave danger to concept of constitutional governance, it also threatens the very foundation of the democracy and the Rule of Law. The magnitude of corruption in public life is incompatible with concept of the Socialist, Secular and Democratic Republic. Where corruption begins all rights end. Corruption devalues human rights, chokes development, and undermines justice, liberty, equality and fraternity, which are values in Indian Preambular vision...".
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21. Right to clean air, right to drinking water, right to health, right to peaceful sleep, right to shelter, right to livelihood and right to education guaranteed under Article 21, can't be secured to citizens without curbing the corruption, therefore, please take steps to link movable and immovable property documents with Aadhaar. It will help in curbing corruption, black money generation and benami transaction;

Ashwini Kumar Upadhyay

15, MC Setalvad Chambers, Supreme Court, New Delhi-01, 8800278866,

To,

11.3.2019

The Chief Minister

Government of NCT of Delhi,

Delhi Secretariat, IP Estate, New Delhi-110002,

Subject: To link AADHAAR number with property documents

Sir,

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14. Once the Aadhaar linkage happens, tax authorities can approach the 'legal owners' and it can be treated as benami property if the 'legal owners' are unaware or denies knowledge of the ownership'. Even if the 'legal owner' takes onus and claims that it is his property, he needs to show the 'source of income' for buying that property (It will be difficult for a house maid to show source for property worth crores). The Aadhaar opponents (due to fear about losing their data or others vested interests want to continue with their illegal activities) may come out against this also. Will this amount to harassing the 'genuine tax payers' as the Aadhaar opponents will put it? No, because there are several provisions in the Benami Transactions (Prohibition) Amended Act, 2016 to protect them.
15. The usual transactions like buying property in the name of spouse, kids, parents, joint names with siblings, etc is already exempt in the Benami Act. However, they need to show the source of money used for such purchase. This may amount to some discomfort to 'genuine tax payers' because they may have to visit the registrar's office for updating their Aadhaar number but most of the citizens will support this move because it will result in unearthing huge black money. Only thing, since this process will be time consuming (some people may be working in cities but may have properties in villages), government should give enough time for doing this.
16. Noting that Aadhaar is helping in bringing about an *irreversible change* in people's interest, Hon'ble Prime Minister has reiterated that the AADHAR will work as *big weapon* in the fight against benami property. Aadhaar has played a big role in ensuring that ration at proper rates, scholarships, pension and government subsidies reached the poor. At the inaugural session of the '*Hindustan Times Leadership Summit-2017*', Hon'ble Prime Minister said: "*Linking Aadhaar with mobile and Jan Dhan accounts have evolved such a system which was not even thought of till some years ago -- a system which is irreversible. Earlier, pension money and students stipend was distributed in crores of fake accounts. All that has been addressed with the help of Aadhaar in the last three years.*" Petitioner respectfully submits that linking of AADHAAR with property documents will definitely curtail the corruption.
17. The day our country will have a technical and digital address for all monetary transactions, organized corruption, and money laundering and bribing will be checked to a great extent. Black money coming into the banking system had also brought along with it massive data, a "treasure trove" that would enable the government take action against wrongdoers. Ill-gotten wealth earlier funding a parallel economy was now a part of the formal economy.

18. Preamble clarifies who has made the Constitution, what is source, what is ultimate sanction behind it; what is nature of polity, which is to be established by the Constitution and what are its Goals. Preamble acknowledges, recognizes and proclaims that the Constitution emanates from 'People of India' and not from any external source and meant for the 'Welfare of the People'. So Constitution must be read as a whole and in case of doubt; it is interpreted consistent with the basic structure to promote the great objectives stated in the Preamble. Welfare of the people is ultimate goal of all laws, State actions and above all the Constitution. They have one common object that is to promote well-being of the society as a whole. It is impossible to achieve the golden goals without curbing corruption, the greatest menace to our democracy and development.
19. In *Subramanian Swamy v. Manmohan Singh*, [(2012) 3 SCC 64], the Apex Court held: "Corruption not only poses a grave danger to concept of constitutional governance, it also threatens the very foundation of the democracy and the Rule of Law. The magnitude of corruption in public life is incompatible with concept of the Socialist, Secular and Democratic Republic. Where corruption begins all rights end. Corruption devalues human rights, chokes development, and undermines justice, liberty, equality and fraternity, which are values in Indian Preambular vision...".
20. In *State of Gujarat versus R.A. Mehta*, [(2013) 3 SCC 1], the Apex Court once again observed about the menace of corruption and its grave effect on our society and country: "Corruption threatens constitutional governance and shakes the foundation of democracy and rule of law. Corruption is opposed to democracy and social order as being not only anti-people, but also due to the fact, that it affects the economy of a country and destroys its cultural heritage. It threatens security of the society, undermines the ethical value and justice and jeopardizes sustainable development. Corruption devalues human rights, chokes development and corrodes the moral fabric of society. It causes considerable damage to the national economy, national interest and image of the country. The very object, the noble and grand vision of the Preamble will be defeated if corruption is not curbed immediately".
21. Right to clean air, right to drinking water, right to health, right to peaceful sleep, right to shelter, right to livelihood and right to education guaranteed under Article 21, can't be secured to citizens without curbing the corruption, therefore, please take steps to link movable and immovable property documents with Aadhaar. It will help in curbing corruption, black money generation and benami transaction;

Ashwini Kumar Upadhyay

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 7566 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

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PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)

New Delhi