

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) No. 829 OF 2013

S.G. VOMBATKERE & ANR. PETITIONERS

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

**SUPPLEMENTARY WRITTEN SUBMISSIONS ON
BEHALF OF THE PETITIONERS**

PAPER BOOK

(FOR INDEX : PLEASE SEE INSIDE)

ADVOCATES FOR THE PETITIONERS : M/S. K.J. JOHN & CO.

INDEX

<u>SL. NO.</u>	<u>PARTICULARS</u>	<u>PAGE(S)</u>
1.	SUPPLEMENTARY WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONERS	1-4
2.	ANNEXURE A Relevant excerpts from the Finance Minister's speech before Rajya Sabha on 16.3.2016, at the time of introduction of the Aadhaar Act	5-9
3.	ANNEXURE B Partial List of unenumerated rights held to be under Article 21	10-11

IN THE SUPREME COURT OF INDIA
WRIT PETITION (CIVIL) No. 829 OF 2013

S.G. VOMBATKERE & ANR. PETITIONERS
VERSUS
UNION OF INDIA & ORS. RESPONDENTS

**SUPPLEMENTARY WRITTEN SUBMISSIONS ON BEHALF
OF THE PETITIONERS**

1. These submissions supplement the Written Submissions dated 15.07.2017 filed by the Petitioners.
2. At the outset, it is submitted that, as recognised by an unbroken line of decisions of this Court since 1975, the 'right to privacy' is protected under Part III of the Constitution of India.¹ It is submitted that this Court has recognised several unenumerated rights as facets of Article 21². Similarly, the right to privacy has also been recognised as flowing from Article 21.
3. The 'right to privacy' itself cannot be defined with any specificity. However, it extends to several aspects, including: -
 - a. Bodily integrity
 - b. Personal autonomy
 - c. Right to be let alone
 - d. Informational self-determination

¹ The Finance Minister in his speech before the Rajya Sabha on 16.03.2016, at the time of introduction of the Aadhaar Bill, has acknowledged the existence of the fundamental right to privacy. Relevant excerpt of the Speech is enclosed herewith as **ANNEXURE A**

² A partial list of unenumerated rights recognised under Article 21 by the Supreme Court is enclosed herewith as **ANNEXURE B**

- e. Protection from state surveillance
 - f. Dignity
 - g. Confidentiality
 - h. Compelled speech
 - i. Freedom to dissent
 - j. Freedom of movement
 - k. Freedom to think
4. There can be no exhaustive enumeration of aspects of the 'right to privacy', and it must be determined on a case to case basis³.
5. It is submitted that in a technologically dynamic society it is imperative to keep dimensions of 'right to privacy' flexible to adapt and adjust with the new scenarios. A 9-Judge Bench of this Court in the case of *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1, has held that the '*... Constitution is a living document, its interpretation may change as the time and circumstances change to keep pace with it.*'
6. In the case of *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441, Pandian J. in his concurring view opined,
- "15. The exploration of the new principles are essential in those areas not before explored; more so when the old principles are found to be not responding to the unresolved and unforeseen modern challenges or to*

³ In the case of *PUCL v. Union of India and Anr.*, (1997) 1 SCC 301 (at paragraph 18), this Court has inter alia held,

"18. The right to privacy — by itself — has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case."

have become inapplicable to the new situations or found to be unsound.

16. *The proposition that the provisions of the Constitution must be confined only to the interpretation which the Framers, with the conditions and outlook of their time would have placed upon them is not acceptable and is liable to be rejected for more than one reason — firstly, some of the current issues could not have been foreseen; secondly, others would not have been discussed and thirdly, still others may be left over as controversial issues, i.e. termed as deferred issues with conflicting intentions. Beyond these reasons, it is not easy or possible to decipher as to what were the factors that influenced the mind of the Framers at the time of framing the Constitution when it is juxtaposed to the present time. The inevitable truth is that law is not static and immutable but ever increasingly dynamic and grows with the ongoing passage of time.*

7. It is submitted that the right to privacy emanates from a conjoint reading of the golden triangle of Article 14, 19 and 21 of the Constitution. It is submitted that many of the fundamental rights guaranteed under Part III of the Constitution cannot be enjoyed to the fullest, in the absence of a fundamental right to privacy.
8. It is submitted that recognition of the fundamental right to privacy is consistent with international norms and India's international obligations under different conventions and treaties. It is an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law. Article 51 of the Constitution directs that the State shall endeavour to inter alia,

foster respect for international law and treaty obligations. Article 17⁴ of the International Covenant on Civil and Political Rights (ICCPR) is not contrary to any municipal law. In this backdrop, Part III, more particularly Article 21, must be interpreted in conformity with international law.

9. It is submitted that in view of the decisions in *Rustom Cavasjee Cooper v. Union of India*, ((1970) 1 SCC 248--11-Judge)⁵ and *Maneka Gandhi v. Union of India* ((1978) 1 SCC 248) – 7-Judge⁶, the law laid down in the case of *M.P. Sharma and Kharak Singh*, is no longer good law.

FILED BY:

M/s. K.J. JOHN & CO.,
Advocates for the Petitioners

Dated: 18.07.2017

⁴ India signed and ratified the ICCPR on 10.4.1979 without any reservation with respect to Article 17. Article 17 is reproduced herein below for ready reference: -

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

2. *Everyone has the right to the protection of the law against such interference or attacks."*

(Page 372/Vol. II/Petitioners' Compilation)

⁵ Page 55/Vol. I/Petitioners' Compilation

⁶ Page 57/Vol. I/Petitioners' Compilation)

5

ANNEXURE-A

92

Uncorrected/ Not for Publication-16.03.2016

MR. DEPUTY CHAIRMAN: I am happy that there is a great unity in the House.

श्री नीरज शेखर: वह हरसिमरत जी के लिए है।

(Followed by NBR/2F)

-RG/NBR-MCM/2F/1.50.

MR. DEPUTY CHAIRMAN: Now, we will take up the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016. Shri Arun Jaitley to move.

**THE AADHAAR (TARGETED DELIVERY OF FINANCIAL AND OTHER
SUBSIDIES, BENEFITS AND SERVICES) BILL, 2016**

SHRI SITARAM YECHURY: Sir, I have a point of order on this.

MR. DEPUTY CHAIRMAN: On this Bill? Okay, alright.

SHRI SITARAM YECHURY: What alright?

MR. DEPUTY CHAIRMAN: You say what is your point of order? I don't know what you are going to say.

श्री शरद यादव : ये काम में इतने व्यस्त हैं कि इनको कुछ याद ही नहीं रहता।

श्री सीताराम येचुरी : छोड़िए, मैं इसलिए जान बूझकर कर रहा हूँ यह सब, ताकि इसका माहौल बने।

Uncorrected/ Not for Publication-16.03.2016

a little: "If you criticize me, it is your freedom of speech; if I criticize you, it is my intolerance." (Interruptions)

It is a very nice text. I will pass on a copy to you to read the full text!

SHRI SITARAM YECHURY: Privately you can tell me who that anonymous person is. (Interruptions)

MR. DEPUTY CHAIRMAN: You can do it privately.

SHRI ARUN JAITLEY: It is only somebody who disagrees with you.

Sir, the question Court was considering is: Is privacy the conflict between those Benches in the absence of any law? Is privacy a fundamental right or not? The present Bill presupposes and is based on a premise that it is too late in the day to contend that privacy is not a fundamental right. So, I do accept that probably privacy is a fundamental right.

(Contd. by DC/2H)

-KGG/DC-DS/2H/2.00

SHRI ARUN JAITLEY (CONTD.): Now, where do you fit in privacy as a Fundamental Right? And that is where I want to clear the misconception behind some of the amendments which have also been proposed and

Uncorrected/ Not for Publication-16.03.2016

this debate is on. It is contended and, broadly, it is now accepted that privacy is a part of individual liberty. So when Article 21 says, "No person shall be deprived of his right of life and liberty without procedure established by law," then let us assume that privacy is a part of liberty and no person shall be deprived of his privacy without procedure established by law. The underlying point is that privacy is not an absolute right. It is a right even in our Constitution. If it is Fundamental Right in Article 21, which is subject to a restriction that it can be restricted by a procedure established by law, now, that procedure established by law, obviously, has to be a fair, just and reasonable procedure. The case before the Supreme Court is, you have no law, you have not legislated, you have not laid down any guidelines and you have by an executive fiat created an authority where all the personal data and biometric information will go in. What will that be used for? Is this a fair, just and reasonable procedure? The UPA Government, therefore, was well-advised to come out with a legislation and they came out with the legislation. The UPA legislation was -- and I will separately deal with the privacy provisions -- that a UID authority will be created. There will be a procedure as to how the authority is created. There will be a procedure

Uncorrected/ Not for Publication-16.03.2016

as to how personal details are taken and the storage of those personal details; the storage of those biometrics and when can that information be shared and in what manner. That was the UPA law in effect. That law kept on being discussed between committees, etc. The law, unfortunately, could not be passed. What that information will be eventually used for and what the purpose of that information is, were absent in the UPA law. So there was no detailed chapter in the UPA law. Maybe, they thought, subsequently, by rules and, otherwise, they could explain what that information will be used for. I am not criticising that law because, since, it was the beginning of a thought process, that you need that Unique Identity Number and you will use this Unique Identity Number for some purpose. So obviously there were some gaps and with passage of time that law, itself, could be improved. The present law, in pith and substance, is completely different. It borrows the complete idea from the UPA law that you need a Unique Identity Number and to that extent, I give them all the credit for it. That was an idea which was rightly created. There will be some personal details and there will be some core biometric details. Compared to the UPA law, and I will subsequently demonstrate, there is a very strict procedure. The privacy

Uncorrected/ Not for Publication-16.03.2016

law is much more tightened and the core purpose of this law is that both the Centre and State Governments give several subsidies to people. There are monetary assistances given; there are cost rebates given; there are subsidies given which are worth thousands and thousands, almost lakhs of crores. Now the purpose of these subsidies is that these have to be quantified amounts given to identifiable sections. If subsidies are given as unquantified amounts to unidentified section, then non-merit people will get the subsidies and the merit will not get it. And from the public exchequer, you will keep spending money which does not go to the targeted people; which goes to the people who don't deserve subsidies.

(Continued by TDB/2J)

TDB-SC/2J/2.05

SHRI ARUN JAITLEY (CONTD.): So, today, every Central Government, every State Government, in some way or the other, is assisting the people by way of subsidies. So, you are entitled to take a UID identification. But if you want the benefit of that subsidy, production of the UID identity or any other alternative document is a condition precedent.

ANNEXURE B**LIST OF UN-ENUMERATED RIGHTS (OTHER THAN THE RIGHT TO PRIVACY) THAT HAVE BEEN HELD TO FALL UNDER ARTICLE 21 SINCE PERSONAL LIBERTY IS OF WIDE AMPLITUDE.**

1. The right to go abroad. *Maneka Gandhi v. Union of India* 1978 SCC (1) 248
2. The right of prisoners against bar fetters. *Charles Sobraj v. Supdt. Central Jail* (1978) 4 SCC 104
3. The right to freedom from torture. *Sunil Batra v. Delhi Administration* (1978) 4 SCC 494
4. The right to legal aid. *M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 544
5. The right to bail. *Babu Singh v. State of Uttar Pradesh* 1978 SCC (1) 579
6. The right to life with dignity. *Jolly George Varghese vs. Bank of Cochin* 1980 SCC (2) 360
7. The right against handcuffing. *Prem Shankar Shukla v. Delhi Administration* (1980) 3 SCC 526
8. The right against custodial violence. *Sheela Barse v. State of Maharashtra* (1983) 2 SCC 96
9. The right to compensation for unlawful arrest. *Rudal Sah v. State of Bihar* (1983) 4 SCC 141
10. The right to earn a livelihood. *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545
11. The right to speedy trial. *A.R. Antulay v. R.S. Nayak* 1988 SCC (2) 602
12. The right to know. *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers* 1988 (4) SCC 592
13. The right against public hanging. *A.G. of India v. Lachma Devi* (1989) Supp (1) SCC 264
14. The right to doctor's assistance at government hospitals. *Paramanand Katara v. Union of India* (1989) 4 SCC 286
15. The right to first aid and medical care. *Parmananda Katara v. Union of India* 1989 SCC (4) 286
16. The right to shelter. *Shantistar Builders v. N.K. Totame* (1990) 1 SCC 520

17. The right to pollution free water and air. *Subhas Kumar v. State of Bihar* 1991 SCC (1) 598
18. The right to education. *Mobini Jain v. State of Karnataka & Ors.* 1992 SCC (3) 666
19. The right to social security and protection of family. *Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose* 1992 SCC (1) 441
20. The right to primary education. *Unni Krishnan v. State of Andhra Pradesh* 1993 SCC (1) 645
21. The right against illegal detention. *Joginder Kumar v. State of Uttar Pradesh* 1994 SCC (4) 260
22. The right to health. *Consumer Education and Research Centre v. Union of India* 1995 SCC (3) 42
23. The right to healthful environment. *Virender Gaur v. State of Haryana* (1995) 2 SCC 577
24. The right to clean environment. *Vellore Citizens Welfare Forum vs Union Of India* (1996) 5 SCC 647
25. The right against sexual harassment. *Vishaka and others V. State of Rajasthan and others* 1997 (6) SCC 241
26. The right against noise pollution. *In Re: Noise Pollution* (2005) 5 SCC 733
27. The right to fair trial. *Zabira Habibullah Sheikh & Anr. V. State of Gujarat & Ors.* (2006) 3 SCC 374
28. The right to sleep. *In Re Ramlila Maidan* (2012) 5 SCC 1
29. The right to reputation. *Umesh Kumar v. State of Andhra Pradesh* (2013) 10 SCC 591
30. The right against solitary confinement *Shatrugan Chauhan & Anr. v. Union of India* (2014) 3 SCC 1