

BY
UNIVERSITY FIVE YEAR LAW COLLEGE,
UNIVERSITY OF RAJASTHAN

MOOT PROPOSITION

The Republic of Indiana, located in South Asia is a multicultural nation rich in a cultural outlook with civilization, having population of over 2.5 billion diverse in ethnic backgrounds, languages and religions. With 29 States and 7 Union Territories, the Republic of Indiana is a sovereign, democratic, republic nation with a federal set up under the Constitution of Republic of Indiana. The country has adopted Parliamentary system wherein President is the executive head of the government. The aims and objectives enshrined in the preamble of the constitution are to secure to the citizens fundamental liberties and to assure the unity and integrity of the nation. A detailed chapter in the Constitution enumerates various fundamental rights like right to equality, right to life and personal liberty, right to freedom of religion, freedom to carry on any trade, profession and business, and right to constitutional remedies. These fundamental rights are available against the “State”. The concept of “**State**” is defined by the Constitution of the Republic of Indiana under Article 12.

The republic of Indiana is a fast developing nation with rapid growth in terms of science and technology; information technology in particular. According to latest government statistics, there are 354 million smart phone users and 1.2 billion mobile phone subscriptions turning the life of the citizens significantly digitally. The government has been enthusiastically emphasizing on transforming the country into “**Digital Indiana**”. In furtherance of this, the government introduced unique digital identity scheme “**Pehchan**”. The scheme based on the collection of personal information of the citizens including the biometric information.

In 2009, the Republic of Indiana through the Planning Commission issued a notification, constituted the Pehchan Authority of the Republic of Indiana for the purpose of implementing of Pehchan Identity scheme. However, there was no regulation in the aforesaid notification regarding collection of biometric information, storage and usages of the information as well as security of such information collected by the Pehchan Authority of the Republic of Indiana, nix check and balance with regard to the collection of

BY
UNIVERSITY FIVE YEAR LAW COLLEGE,
UNIVERSITY OF RAJASTHAN

information. Although the program/scheme was launched in September, 2010, there was no statutory backing for the same. Finally, in 2016, Pehchan Authority of the Republic of Indiana was made a statutory body under the provisions of **Pehchan (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (Pehchan Act, 2016)** by the Government.

However several PILs (Public Interest Litigation) were filed before the Hon'ble Republic Court of Indiana challenging the Pehchan scheme as early as in 2012 on the grounds that it is used as a tool of surveillance, interfered with federalism and is causing denial of fundamental right to personal liberty. Among all the above, the lead petition before the Hon'ble Republic Court of Indiana was **Michael Cross v. Republic of Indiana, 2012**. The Hon'ble Republic Court of Indiana issued notice in the said petition to the Republic of Indiana to defend it.

Meanwhile, in 2016, the Parliament of Republic of Indiana introduced the **Pehchan (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016** as a money bill in the Budget Session, 2016 in the Lok Sabha. In spite of objections with regard to the Pehchan (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016 being introduced as a Money Bill, the same came to be passed in March, 2016, which received Presidential assent and was published in the official gazette of Republic of Indiana in March, 2016.

In the Hon'ble Republic Court of Indiana, number of PILs (Public Interest Litigation) were filed against the **Pehchan (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016** and subsequently, first Writ Petition challenging the Pehchan Act titled as **Trevor John v. Republic of Indiana** tagged with the matter titled as **Michael Cross v. Republic of Indiana** which was pending adjudication before the Constitutional Bench of the Hon'ble Republic Court of Indiana. Under the **Pehchan (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016** different Ministries issued various notifications for making Pehchan No. a mandatory requirement for an individual to avail different benefits, services and subsidies under various government schemes. Some of them are as follows-

BY
UNIVERSITY FIVE YEAR LAW COLLEGE,
UNIVERSITY OF RAJASTHAN

- a) TRARI (**Telecom Regulation Authority of the Republic of Indiana**) launched the Pehchan based **e- KYC** for mobile connections and re-verification of existing customers (both postpaid and prepaid) by carrying out e-KYC.
- b) ITDRI (**Income Tax Department of the Republic of Indiana**) made mandatory to present Pehchan No. for obtaining “**PAN**” (**Permanent Account Number**), continue validity of a person’s PAN (Permanent Account Number) and filing one’s return of income under Income Tax Act.
- c) **Prevention of money Laundering (Maintenance of Records) Second Amendment Rules, 2017** was passed by the Republic of Indiana making the Pehchan No. mandatory for e-KYC. Consequently, Pehchan is mandatory for opening and maintaining bank accounts, for carrying out any financial transaction equal to or exceeding Rs 50,000/-, holding investments and insurance policies.

A Constitutional Bench of the Republic of Indiana passed its final order and judgment disposing of the batch of Writ Petitions filed under Article 32 of the Constitution of the Republic of Indiana vides judgment in September, 2017 titled as **Michael Cross v. Republic of Indiana, 2012** in which it upheld only two usages of Pehchan database, and only by the government. It also ruled that even voluntary use of the Pehchan database for authentication by private parties/entities was unconstitutional. The Hon’ble Court of Republic of Indiana also noted the importance of bringing a **Data Protection Bill**.

In January, 2019 the Republic of Indiana passed the **Pehchan and Other Laws (Amendment) Bill, 2018** in Lok Sabha, while it was pending before the Rajya Sabha, the Lok Sabha dissolved and the Pehchan and Other Laws (Amendment) Bill, 2018 lapsed. During that period, Hon’ble High Court of Arjuna and High Court of Karuna held that there was no verification of authenticity of demographic data in the Pehchan database and the information entered in the Pehchan identity cannot be treated as conclusive proof of the same as it is unverified by any government agency.

Since January, 2019 a catena of articles were published in newspapers and magazines which highlighted how the personal and sensitive data of the citizen’s of the Republic of Indiana are compromised with; they are as following :-

BY
UNIVERSITY FIVE YEAR LAW COLLEGE,
UNIVERSITY OF RAJASTHAN

- a) *“SBRI (State Bank of Republic of Indiana) allege Pehchan data misuse, UIDARI (Unique Identification Authority of Republic of Indiana) rubbishes charge”* (SBRI was penalized for failing to meet the enrollment targets set by the UIDARI, because many of the vendors appointed by SBRI had been deactivated or blacklisted for unauthorized enrollments. SBRI allege that the enrollment details of their vendors had been stolen and misused).
- b) *“Andhra Pradesh: TDP app breached data of 3.7 crore voters? Probe Begins”* (Allegations of misuse of the demographic data collected during Pehchan enrolment of more than 3.7 crore voters).
- c) An FIR filed by one John Mark, under sections 66-B and 72 of the *Information Technology Act, 2000* and Sections 120-b, 379, 420 and 188 of the *Republic of Indiana Penal Code, 1860* alleges vast misuse of demographic data, including Pehchan data for private and election related purposes.
- d) *“Pehchan details of enrolment operator stolen and misused, show UIDARI records: Report”* (the biometrics of an enrolment official, who was a vendor with the SBRI in Chandigarh, had been stolen, and used to generate false enrolments under Pehchan enrolments. This official had been previously penalized Rs. 33 lakhs by the UIDARI for alleged fraudulent transactions)
- e) *“IT firm working on app for TDP ‘stole’ data of Andhra voters, say cops,”* (Pehchan related data amongst other data, had been stolen and misused for private and election related purposes).

In March, 2019, the **“Pehchan and Other Laws (Amendment) Ordinance, 2019** was promulgated by the president of India. This was materially same as the Pehchan and Other Laws (Amendment) Bill, 2018, which had lapsed. The UIDARI also notified the **Pehchan (Pricing of Pehchan Authentication Services) Regulations, 2019** in which UIDARI will charge private entities per e-KYC transaction and Yes/No authentication transaction.

The Pehchan and Other Laws (Amendment) Ordinance, 2019 is seen as having deleterious impact on fundamental rights of the citizen’s of the Republic of Indiana guaranteed under Part III of the Constitution of Republic of Indiana, and for the security of personal data, which is imperiled by allowing private entities/players access to it.

Also, under The **Pehchan (Pricing of Pehchan Authentication Services) Regulations, 2019**, private entities sub-worked their responsibility to other private entities/parties to make more profit which result into leakage of personal and sensitive information of the citizen’s of the Republic of Indiana.

BY
UNIVERSITY FIVE YEAR LAW COLLEGE,
UNIVERSITY OF RAJASTHAN

Hence, Writ Petition is filed by the Jagruk Law Students Association as a public interest litigation under Article 32 of the Constitution of Republic of Indiana before the Hon'ble Republic Court of Indiana for the adjudication of the issues of Leakage of Information by the private entities and creates a backdoor to permit private entities to access the Pehchan eco-system after **the Pehchan and Other Laws (Amendment) Ordinance, 2019** and **Pehchan (Pricing of Pehchan Authentication Services) Regulations, 2019**.

Taking into consideration of the public interest with respect to the personal and sensitive information of the citizens of the Republic of Indiana in the Writ Petition, the Hon'ble Republic Court of Indiana issued notice to the Republic of Indiana to defend their case.

In the present Writ Petition following question of law are raised:-

1. Whether the Writ Petition filed by the Petitioner under Article 32 of the Constitution of Republic of Indiana is maintainable?
 2. Whether the Pehchan and Other Laws (Amendment) Ordinance, 2019 and Pehchan (Pricing of Pehchan Authentication Services) Regulations, 2019 is unconstitutional as it violates the rights guaranteed under Part III of the Constitution of Republic of Indiana?
 3. Whether the public entities have the right to keep any personal/sensitive information and bio-metric data of citizens of the Republic of Indiana, what happen in case of breach or leakage of personal and sensitive information of citizen of Republic of Indiana and who will be liable for that?
 4. Whether permitting the Pehchan database to link with the existing databases of services offered under Chapter IV of the Prevention of Money Laundering Act, 2002 and Section 4 of the Indian Telegraph Act, 1885, poses a grave threat to national security after the Pehchan and Other Laws (Amendment) Ordinance, 2019?
- **Both parties (Petitioner and Respondents) are required to raise at least one additional issue of their choice with respect to the cyber law in the abovementioned moot preposition (Compulsory).**
 - **The case is posted for final arguments during 14 - 16 September, 2019 for final disposal.**

9th FYLC – RANKA MEMORIAL NATIONAL MOOT COURT COMPETITION, 2019

BY
**UNIVERSITY FIVE YEAR LAW COLLEGE,
UNIVERSITY OF RAJASTHAN**

NOTE:-

- Participants are requested to argue on the side of the Petitioner as well as on the side of the Respondents before the Hon'ble "Republic Court of Indiana" pertaining to the above case and further elucidate the arguments with appropriate case laws and inputs.
- The laws of Republic of Indiana are pari-materia with laws of India. The Republic Court of Indiana considers the leading common law precedents as being highly persuasive. Hence, all the relevant ancient, modern, texts of Indian law may be referred for arguing the case.
- This Moot Problem has been formulated solely for the purpose of this competition for furthering the academic exercise only.