**CONSTITUTIONALITY OF AADHAAR ACT IN REFERENCE TO K.S. PUTTASWAMY V. UNION OF INDIA**

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**Introduction**

Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India[[1]](#footnote-1) is a landmark case and the judgment was given by the Hon’ble Supreme Court of India. The judgment given in the case by the Bench gave a new perspective to the Right to Privacy of the citizens. It was held that the Right to Privacy is a Fundamental Right under Article 14, 19 and 21 of the Indian Constitution.

The Hon’ble Court upheld the Aadhaar Act and stuck down the provision of the Act which was unconstitutional. It was held by the Court that the Right to Privacy of the citizens has to be protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. The Court explicitly overruled the previous landmark judgments of the Supreme Court Kharak Singh vs. State of UP [[2]](#footnote-2)and M.P Sharma vs Satish Chandra[[3]](#footnote-3) in which it was held that Right to Privacy is not a Fundamental Right of the citizens under the Indian Constitution

**Summary of Facts**

‘Unique Identification for BPL Families’ was a project which was initiated by the Government of India. A Committee was set up for the project. The creation of a Unique Identification database was suggested by the Committee for the said project. The project was decided to be set up in three phases.

In January 2009, the Planning Commission of India passed a notification on UIDAI (Unique Identification Authority of India). In 2010, the National Identification Authority of India Bill was passed by the Commission. Retired Justice K S Puttaswamy and Mr. Parvesh Sharma in November 2012 filed a PIL Writ Petition in the Supreme Court challenging the validity of Aadhaar.

The scheme was challenged as it was violative of Fundamental Rights. The scheme violated the right to privacy under Article 21 of the Indian citizens. After filing this writ petition, a series of orders were passed. The Aadhar Act was passed in 2016. The petitioners then filed another writ petition challenging the vires of the Act. This writ petition was then merged with the previous one and was treated as one writ petition. Jairam Ramesh who was the Former Union minister and Congress leader moved Supreme Court in May 2017. He challenged the decision to treat the Aadhaar Bill as a money bill.

On 24th August 2017, the Supreme Court ruled that the right to privacy is a Fundamental Right under Article 21 of the Indian Constitution. On 17th January 2018, the hearing of Aadhaar Case was started in Supreme Court. The Supreme Court on 25th April 2018 questioned the Centre on linking the Aadhaar with mobile. On 26th September 2018, the Supreme Court held Aadhaar card to be valid but struck down certain provisions such as mandatory linking of Aadhaar with mobile, bank accounts and school admissions.

**Identification of Parties**

Petitioner- Justice K.S.Puttaswamy (Retd).

Respondent- Union of India.

Bench- Justice D. Misra, Justice D.Y. Chandrachud, Justice A Bhushan, Justice AM Khanwilkar, Justice A Sikri.

**Issues before the Court**

* Whether the Aadhaar Project has a propensity to create a surveillance state and is thus unconstitutional based on this ground?
* Whether the Aadhaar Project violates the right to privacy of the citizens and is unconstitutional based on this ground?
* Whether Section 7 and 8 of the Aadhaar Act also includes children?
* Whether the following provisions and Regulations of the Aadhaar Act are unconstitutional:
* Sections 2(c) and 2(d) read with Section 32; Section 2(h) read with Section 10 of the Act- Central Identities Data Repository (CIDR); Section 2(v), Section 3, Section 5, Section 6, Section 8, Section 9; Sections 11 to 23; Sections 23 and 54; Section 23(2)(g);  Section 29, Section 33, Section 47, Section 48, Section 57, Section 59
* Whether the Aadhaar Act can be treated as a ‘Money Bill’ within the meaning of Article 110 of the Indian Constitution?
* Whether Section 139AA of the Income Tax Act, 1961 violates the right to privacy of the citizens under the Indian Constitution?
* Whether Rule 9(a) of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and the notifications issued thereafter, which mandate linking of Aadhaar with bank accounts, are valid under the Indian Constitution?
* Whether Circular dated March 23, 2017, issued by the Department of Telecommunications which mandates the linking of the mobile number of the citizens with Aadhaar is illegal and unconstitutional?
* Whether certain actions which were taken by the respondents are in contravention of the interim orders passed by the Court?

**Contentions by Parties on issues**

**Petitioners:**

The petitioners contended that the planning of the Aadhaar Act by its very virtue is probabilistic in nature. The Act aims to extend subsidies, benefits, and services to society. It is possible that rather than providing these benefits, subsidies, and services to the section of society for which these are meant, it may end up excluding them from receiving such beneficiaries.

The main arguments were that the Act may take away the rights and liberties of the citizens of the country which are guaranteed to them under the Indian Constitution. Strict implementation of the Aadhaar Act can be a serious problem as it is contrary to the Fundamental Rights which are given in the Indian Constitution to the citizens of the country.

The Aadhaar was in contravention to the Constitution and had the potential to enable an intrusive state to become a surveillance state (a state in which the Government has the ability to monitor the activities of its citizens) based on the information that would be collected from each individual by creating a joint electronic mesh.

It was contended that the Right to Privacy of the citizens was being violated. Right to Privacy is an integral part of Article 21 of the Indian Constitution i.e. Right to life and liberty. The Act imposes restrictions that are not provided under Article 19 as reasonable restrictions. If any restriction is imposed then it is important that it satisfies the requirements of Article 14 and 19 of the Indian Constitution. It is also important that the law which imposes such a restriction must be fair, just and reasonable.

In the present case, the restrictions which are imposed by the Government through the Aadhaar Act do not fall under reasonable restrictions and are arbitrary and unreasonable. There isn’t any reasonable classification as there is no nexus between the classification of society made by the Act and the objective which the Act strives to achieve. The information which was sought from the citizens violated the integrity of the citizens. The object of the Act was not in nexus with the information which was sought to be collected by the citizens. The Act also made a classification of citizens based on religion. Classification based on religion did not only discriminate citizens but also forced them to reveal their religion which is violative of Article 25 of the Indian Constitution. Further, the Act also made Aadhaar Cards compulsory for availing certain benefits that were offered by the Government to the citizens under the Act. The compulsion of Aadhaar Cards will also enable the Government to put the citizens under its surveillance and this would amount to a violation of the Right to privacy under Article 21 of the Constitution. Violation of the Right to privacy is a very serious violation of the Right to life as it encroaches upon the life and dignity of the citizens which is the basic right guaranteed under the Constitution.

Most of the counsel who appeared for different petitioners agreed that as far as allotment of Aadhaar number for unique identification of the residents is considered there was no question of dispute.

The arguments which were made by some famous lawyers against the Aadhaar Act were as follows:

**Shyam Divan:**

Shyam Divan was the first counsel who started with the petitioner’s arguments. He challenged the Aadhaar Act, 2016. He contended that as per the Indian Constitution the State is bound to provide benefits to its citizens by way of subsidies and services. The Aadhaar Act makes these benefits conditional for the citizens which the State is bound to provide to its citizens. To avail such benefits the Aadhaar Act needs the citizens to give their biometric and demographic information. Section 7 of the Act was challenged on this ground by Shyam Divan.

The Aadhaar Act enabled the Government to track the citizens which violated their right to privacy and hence was unconstitutional. The UIDAI gives the power to the State to cancel the number of the citizens which is provided in their Aadhaar and such an act of the State would not have any redressal mechanism.

**Kapil Sibal:**

The main contention of Kapil Sibal was that when Right to Privacy was made a Fundamental Right under Article 21 of the Constitution then the personal information of the citizens which the Act seeks to receive should not be allowed. The Act takes away the right to make a choice from the citizens as according to the Act it is mandatory for the citizens to reveal the information to the State which the Act needs them to in order to avail the benefits and subsidies provided by the Government as without Aadhaar authentication the citizens will be denied of those Government beneficiaries. The Aadhaar Act takes away the informational privacy from the citizens which have been recognized as the Right to Privacy.

It was contended by him that the collection of information from the citizens violates Article 21 of the Constitution.

**Arvind Datar:**

It was contended by Arvind Datar that the Aadhaar Act is unconstitutional as it can’t be treated as a money bill. Linking of the bank accounts with Aadhaar violates the rights of the citizens as they are not left with a choice to operate their bank accounts without linking it with the unique ID and hence, it is violative of Article 14 and 21 of the Constitution. Further, the State did even give an explanation to the citizens for linking their bank accounts with Aadhaar. A reason to do so was needed to be given by the State in order to explain the object which the State intends to achieve by doing so. The right to make a choice is a right that has been recognized as a Fundamental Right under the Right to privacy. The Aadhaar Act takes away the right to make a choice by the citizens and thus, violates the Fundamental Right of the citizens under Article 21 of the Constitution.

The Act also violates the principle of proportionality under Article 14 of the Constitution as having an Aadhaar will give a valid identity to a person and whosoever fails to do so will not be considered to have a valid identity.

He argued that Section 139AA of Income Tax Act which makes it compulsory for citizens to link their Aadhaar with their bank accounts is violative of the Right to Privacy under Article 21 of the Constitution and is needed to be reconsidered.

**P Chidambaram:**

It was contended by P Chidambaram that the Aadhaar Act was in no way a money bill and so it should not be treated as one. He stated that a bill to qualify to be a money bill needs to go through strict criteria that have been set and if the bill passes such criteria only then it can be treated as a money bill. He also stated that all the money bills need to go through the Rajya Sabha and then it is passed to the President for his assent. The President has the power to send back the money bill for reconsideration which has been passed by the Rajya Sabha if he feels that some corrections are needed to be made in it.

Hence, the provisions of the Aadhaar Act which fails to fulfil the criteria of a money bill cannot be considered to be passed and so the entire law is void and needs to be struck down.

**Respondents:**

It was stated by the respondents in the affidavit that their intention behind introducing the Act was to ensure that all the citizens who are eligible for the benefits and subsidies by the Government receive such benefits and subsidies and aren’t deprived of it.

It was also rebutted by the respondents that the Aadhaar Act does not ask for any information which can violate a person’s Right to Privacy. It was submitted by the respondents that the Act barely asks for any personal information from the citizens which can enable State surveillance on them. The respondents further stated that the demographic information which the Act seeks to ask from the citizens include name, date of birth, gender, address, mobile number and email address of the citizens. Providing mobile number and email address to the State was left on the option of the citizens and these two are required only for transmitting relevant information to the AMH and for providing One Time Password (OTP) for their authentication. The information which the Act seeks to receive from the citizens is in the public domain. It was also stated by the respondents that the Act under Section 2(k) specifically provides that the regulations cannot ask for the information like race, religion, caste, tribe, ethnicity, language, income, records of entitlement or medical history from the citizens and hence, any sensitive information can’t be asked from the citizens through this Act. In light of the Section stated above the scope of obtaining any additional demographic information is very limited and even the biometric information which the Act seeks to obtain from the citizens is limited to their fingerprints and an iris scan.

This specific exclusion, in the context, ensures that the scope of including additional demographic information is very narrow and limited. Such biometric information is very commonly obtained all over the world in order to identify a person. The argument of the respondent was, thus, that the information which Aadhaar Act seeks to obtain is non-invasive and non-intrusive identity information.

The comprehensive reports on data protection and informational privacy were prepared by the Planning Commission of India under the Chairmanship of Retd. Justice A.P. Shah. the report included five salient features that aimed to protect the privacy of citizens.

The framework suggested by the Planning Commission was based on the following five salient features:

* technological neutrality and interoperability with international standards;
* multi-dimensional privacy;
* horizontal applicability to state and non-state entities;
* conformity with privacy principles; and
* a co-regulatory enforcement regime.

On 31st July 2017, the Central Government constituted a committee to review data protection norms in the country and make recommendations which was chaired by Retd. Justice B N Srikrishna, former Judge of the Supreme Court of India. The Committee had recently released its report and the first draft of the Personal Data Protection Bill, 2018. It comprehensively addresses the process of personal data. It includes information like where such data has been collected, disclosed, shared or otherwise processed within the territory of India. The provisions and principles of Europe’s General Data Protection Regulation (EUGDPR) and EU data protection jurisprudence were used for the purpose of framing the bill.

The traditional concepts of the data controller in which the entity processes the data and the person whose data is being collected known as data subject was replaced by the Draft Bill. The new concept introduced by the Draft Bill was ‘data fiduciary and dad principal’. The new concept aimed to establish a trust-based relationship between the entity and the person whose data is being collected.

The Draft bill and the report includes the rights and obligations of the data fiduciary and data controller respectively. These rights include the right to access and correction, the right to data portability and the right to be forgotten – a right to prevent or restrict disclosure of personal data by a fiduciary. The consent plays a crucial role as it has been given an important status in the draft data protection law. Thus, for the purpose of the process of processing the personal details of the citizens, it plays a significant role.

It was stated by the respondents that Aadhaar works as an identity card which is used by around 92 crore people for accessing various social schemes or availing benefits which are provided by the Government to its citizens. It is a document which widely is being used by the citizens and restricting it would create a problem for the citizens. Aadhaar is a document that can help the Government in detecting and eliminating the duplication and impersonation in muster rolls and beneficiary lists. It also helps the workers under MGNREGA and pensioners to withdraw their wages and pensions every month.

The respondents also rebutted the privacy contention stating that the data which is obtained by the Act is secure as it is encrypted at its source and all the biometrics of the citizens are stored by the Government in the Government of India’s servers. The Government of India’s servers has a security standard which is one of the best in the world. The duplication of cards or fake cards for availing the benefits which are provided by the Government can be avoided with the help of Aadhaar number which asked from the citizens. Aadhaar will also be able to help in reducing the involvement of middlemen who try to drain off a part of the Government’s subsidy which is made available for a particular section of the society. Government subsidies are mainly concerned with goods and services like food grains, fertilizers, water, electricity, education, healthcare. The Government usually provides these goods and services at a lower price than the market price. To make this initiative work efficiently Aadhaar can be used. Aadhaar can be used to ensure timely and direct payment to the sections of society for which subsidies are made available by the Government and prevent leakage of money. This step can save thousands of crores of rupees which are lost in leakage. The Government have identified crores of duplicate ration cards, Aadhaar can ensure that the benefits and subsidies which are mean for certain sections of society actually reaches them.

The objective behind the provision which is included by the Government for the citizens to quote their Aadhaar number while applying for PAN card and for filing Income Tax returns is to identify the tax evaders by linking their PAN card with Aadhaar. Mandatory linking of PAN card with Aadhaar can curb tax evaders and also ensure that one person owns only one PAN card. Making Aadhaar mandatory can identify the fraudulent practices which are going on in the country and curb it to a large extent. Unique Identification Authority of India can even permanently or temporarily deactivate an individual’s number which has been provided in the Aadhaar.

**Judgment**

The Aadhaar Act was held to be valid by the Supreme Court. The Hon’ble Court stated that sufficient security measures have been taken by the Government in order to keep the data safe which the citizens have been asked to reveal for Aadhaar. A five-judge bench led by CJI Dipak Misra decided the case. The Bench asked the Government to take measures to provide more security in order to protect the data obtained by the people. It was also stated by the Court that the information which has been obtained by Aadhaar should not be released to the commercial banks, payment banks, and e-wallet companies. E-wallet companies like Paytm asked their customers to get their KYC done by using their Aadhaar cards. It was held by the Court that such information of Aadhaar should not be released to them. It was also stated by Bench that telecom companies cannot seek details of Aadhaar from their customers when they buy a new sim card and even schools shall not ask students to provide their Aadhaar number for appearing in board exams or for admissions.

The Supreme Court upheld the validity of Aadhaar and made it mandatory for availing the benefits and subsidies of the Government. The Act ensures that the benefits and subsidies of the Government are received by the people for whom it is meant. The Court held Section 57 of the Act to be unconstitutional and was, therefore, struck down.

The court held that Aadhaar card shall be made mandatory for availing the welfare schemes, benefits, and subsidies that are provided by the Government as it empowers the poor and ensures that the benefits and subsidies are received by the sections of society for which it was meant. Section 57 of the Aadhaar Act was held to be unconstitutional and was struck down. The Supreme Court held that children would not be denied the benefits of any Government scheme if they do not have an Aadhaar card. The Bench of the Supreme Court also struck down the national security exception under the Aadhaar Act.

The Court also explained the difference between an identity card and Aadhaar. Aadhaar has a unique identification and hence can’t be duplicated like other identity cards. Further, the Court also stated that the objective of Aadhaar is to give identity and empower the poor of the society by making sure that they are able to avail the benefits and subsidies which are provided by the Government for them. Therefore, the Aadhaar has been made compulsory for availing the Government welfare schemes.

**Conclusion**

The Aadhaar Act was launched with the purpose to give identity and empowerment to the marginalized section of the society. It provides a unique identification number to the citizens of India. The Aadhaar number is unique and therefore, it can’t be duplicated. The unique identification ensures that the benefits and subsidies of the Government are availed by the section of society for which it is meant. Aadhaar can prevent unfair practices and leakage of thousands of crores of money. Many privacy rights questions were also raised in the case. The question of dignity of citizens, informational self-determination and consent formed the basis for the privacy rights claims.

The right to Privacy formed an important part of the case. A five-judge bench of the Hon’ble Supreme Court on 26th September 2018, delivered a judgment in favour of respondents. The validity of Aadhaar was upheld by the Court after striking down various clauses and Sections of the Act which were contrary to the Constitution and violated the rights of the citizens. Justice A K Sikri who wrote the majority of the judges declared the Aadhaar Act to be valid after striking down Section 33(2) and Section 57 of the Act. Various questions were raised by the petitioners on issues like the Right to Privacy of the citizens and the possibility of state surveillance as well as the possibility of breach of information which was collected by the Government for Aadhaar cards of the citizens. The questions of the petitioners have mitigated the claim of UIDAI that their system is one of the best in the world and secured enough to keep the information of the citizens safe. The Court held the Aadhaar Act to be Constitutionally valid as the Act was under reasonable restrictions of the Constitution.

The majority of the honourable Bench also stated that the right of choice of the citizens to avail the Aadhaar card will not be protected by upholding the Aadhaar Act. The citizens will not be left with a choice as Aadhaar will be mandatory for availing the subsidies and benefits of the Government and if a citizen is excluded from availing the subsidies and benefits of the Government due to lack of Aadhaar or authentication problem it can result in the violation of the dignity of the citizen. The Bench also said that linking of Aadhaar to PAN card is not important as there isn’t any constitutional rationale behind it. Upholding of Aadhaar can possibly result in the violation of the Right to Privacy even after striking down Section 33(2) and Section 57 of the Act. In order to protect the Right to Privacy of the citizens the Court clearly ruled out the possibility for private entities to use the authentication mechanism or for asking Aadhaar details by the citizens. The step taken by the Court was to protect the Right to Privacy of the citizens and it clearly showed that the Right to Privacy is indeed a Fundamental Right.

1. WRIT PETITION (CIVIL) NO 494 OF 2012 [↑](#footnote-ref-1)
2. 1963 AIR 1295, 1964 SCR (1) 332 [↑](#footnote-ref-2)
3. 1954 AIR 300, 1954 SCR 1077 [↑](#footnote-ref-3)