
RIGHT TO PRIVACY (UNDER ARTICLE 21) – FROM THE PERSPECTIVE OF AADHAAR

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ABSTRACT

The fundamental rights ever since they were introduced have been interpreted and many new aspects have been included under its ambit. One such is that of privacy. A rather new terminology to the people of India but has gained immense importance in the recent past. It all started from an initiative which the government had taken in the form of Aadhaar, which attracted attention from all sects of people including the jurists in the form of breach of individual privacy which later became a sensational argument in the apex court of India.

Whilst we live in a world which continues to grow digitally, even the governments have started adopting measures which seem to make all our lives easier, as most tech-oriented stuff usually does. One such initiative was taken by the Government of India in 2011, where a new identity document called as Aadhaar card, for which an agency named “UIDAI” (Unique Identification Authority of India)¹ was established to issue the cards. It creates a twelve-digit unique identity number which was intended by the government to be the primary identification number for all legal residents of the country. And to apply for the card, a resident must submit the scan of their fingerprints and retina.

Big Country. Huge Population. A unified card which could make the government's job easier in planning and implementing of schemes across the nation. Sounds fair right? Well, it did sound fair to the citizens of the country until here. The government advertisements and awareness programs seemed to work as the benefits of having an Aadhaar were well spread across the nation. Some of the benefits mentioned were – Availing of subsidies, opening bank accounts, Acquisition of passport, Digital life certificate. Aadhaar became a new household

¹ <https://uidai.gov.in/en/>

name and people in large numbers went ahead to get their hands on this new unique identity card.

The question of trouble began later on as the Aadhaar card which was voluntary at its inception, was slowly being shifted to a compulsion for every individual. The initial obstacle was faced by the lower class of the society where the government was making it compulsory to have an Aadhar card to avail certain social benefits such as cooking gas subsidy, Mahatma Gandhi National Rural Employment Guarantee Scheme, Public Distribution System among others. While some sections of the society did raise an eyebrow for the necessity of the card in every scheme, the government's stand suggesting it would help them target the beneficiaries, removing the middlemen and stopping corruption to some extent did make sense. The government ensured all this data will be stored in a centralized data base.

The digital era was well and truly booming but the concerns around it kept its pace as well. The eye-catching argument which made major headlines across the country was Aadhaar's interference with an individual's personal freedom aka "Privacy". It was a relatively new terminology to a common man as this concept was not too trendy back then. But the tech-savvy enthusiasts and jurists knew it that breach of privacy had achieved global recognition by then and legislations were being brought to make it a punishable offence across the globe.

India's stand on the right to privacy was clear back then. Two major Supreme Court judgements:

- a) MP Sharma Case² [where a bench of 8 judges] and
- b) Kharak Singh Case³ [where a bench of 6 judges]

Had stated that Indian constitution does NOT guarantee Right to Privacy.

That being said, The Aadhaar scheme was finally challenged before the court by a retired judge of Karnataka High Court K.S Puttaswamy, in 2012.⁴ He argued in the apex court that it is a violation of Right to Privacy and irrespective of availing the card or not, an individual should have the access to the social schemes run by the government. His major argument was that the government has not put any adequate privacy safeguards. Any company or entity could ask for

² M. P. Sharma and Others vs Satish Chandra [1954 AIR 300, 1954 SCR 1077]

³ Kharak Singh vs The State of U. P. & Others [1963 AIR 1295, 1964 SCR (1) 332]

⁴ K.S Puttaswamy and Anr. Vs Union of India [(2017) 10 SCC]

Aadhaar authentication and there are no checks on the power of the government to use the biometric data collected. He also contended that Aadhaar was unnecessarily being linked with other services as well such as opening a bank account, admission in schools and even for filing income returns. It was also being mentioned that Aadhar card was to be linked with the phone number and PAN card as well.

People expressed their sorrows over it as they felt it was slowly being brought into all sectors and aspects. With the increasing cyber acts and illegal leaking of data online in the recent years, people were hesitant to trust Aadhar and the central data base, where it was reportedly being stored. Supreme Court on 23rd September 2013 brought some relief as it passed an intern order that no individual should be made to suffer for the reason of not having an Aadhaar card, even when it is made mandatory by the government for the purpose of availing certain benefits. Some relief was felt in certain sections of the society as they could for now grant access to their benefits.

It was 2014 and a new reign under Narendra Modi of the NDA government had begun and they knew they had to review the progress of the Aadhaar project as soon as they could. As the Aadhaar scheme was launched by the Congress government, people were expecting the new party in power to express their anguish against it and make amendments into the usage of Aadhaar. But to their surprise, the MHA (Ministry of Home Affairs) in the early days of Modi as PM portrayed itself as a whole hearted supporter of the programme, and mooted for making Aadhar mandatory for various services, on which the apex court was unconvinced. Up next was 2015 which brought a lengthy back and forth battle between the Centre and the Court on the matter of Adhaar while the Puttaswamy case dragged on too. Despite resistance from the SC, Centre had firmly taken a stand that the Aadhaar cannot be rolled back at this stage.

Matters were now taken into the Parliament for deliberation, and in March 2016, The Adhaar Bill passed both the houses and received President's assent to become an Act.⁵ The act tried included various provisions which tried to clear some air about its loopholes. Section 32 (3) of Aadhaar act, 2016 specifically prohibits the UIDAI from "controlling, collecting, or maintaining any information about the purpose of authentication either by itself or through any entity". Aadhaar is identifier, not a profiling tool. But the allegations just wouldn't go away as

⁵ NDA's Aadhaar Bill stronger than UPA's on privacy: Nandan Nilekani Iyer
<https://indianexpress.com/article/india/india-news-india/ndas-aadhaar-bill-stronger-than-upas-on-privacy-nandan-nilekani/>

many newspapers and journalists in the coming few months reported on leaks and glaring holes which were found in the Aadhaar. The Government and the UIDAI was quick to hit back on the reports citing them to be baseless. India's Attorney General K.K Venugopal claimed in the apex court that the "data was safe behind 13 feet high and 5 inches thick walls" which brought in some good entertainment to the general public though memes and backlash to the government. While the court was hearing petitions concerning Aadhaar side by side, it agreed to hear the plea on the validity of Aadhaar and set up a 5-judge bench. The other aspect was if the right to privacy a fundamental right, upon which a 9-judge bench was constituted.

All eyes now turned towards the Supreme Court which now to provide clarity on these two issues. And the day came soon later as on 26th September 2018, the Supreme Court held that the Aadhaar Act was Constitutional and providing of biometric data was not a violation of fundamental right. But the SC churned out some of the problematic sections of the act and deemed it to be unconstitutional. And upon the matter of right to privacy, the court stated that the right to privacy's foundation can be found in the articles of 14, 19, 20, 21, 25 of the Indian Constitution, and many international conventions around the world consider Privacy to be a very important fundamental right. The Supreme court overruled its two decisions on MP Sharma and Kharak Singh cases and came up with a landmark judgement to declare that right to privacy is a fundamental right of the citizens.

CONCLUSION

Considerable amount of time has flown past since the landmark judgement but to this date, the debate still continues and people across the country come up with new arguments every day while the judiciary gets a new set of cases to follow up. While there still exists the divide of opinion of both the sides on the issue of Aadhaar, the legal battle surely helped in whisking out the loopholes which existed. Personal opinion on the matter would be that it is crucial to look closely on both the merits and demerits which would help all of us to curb the faults and skepticism which continues to exist. The recent scandals of pegasus spyware sent shockwaves across the country reminding us to be aware and take a stand to protect every individual's privacy.