

# BURNISHED LAW JOURNAL

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## CASE COMMENT: JUSTICE K. S. PUTTASWAMY (RETD.) AND ANR. V. UNION OF INDIA AND ORS.<sup>1</sup>

### INTRODUCTION:

It goes without saying that the right to privacy has been a matter of discussions and debates all across the globe since its very inception. The date 24<sup>th</sup> August, 2017 is remembered as the historic date on which a nine-judge bench of the Supreme Court unanimously held the right to privacy to be an intrinsic part of right to life under Article 21.<sup>2</sup> The case of *Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.*<sup>3</sup> is remembered as a landmark in the history of Indian Judiciary as it revolved around the challenges related to the Aadhar database. The controversy related to the Aadhar database saw its birth in the year 2009 when for the very first time an uncertain scheme for national identification was brought up. The Scheme mandated every individual of the state of India to store all his/her biometric details in a Unique Identification Number. The mission of the scheme was to provide the beneficiaries of various government programmes direct benefits and put curb a on the bureaucratic delays involved in the transfer of such benefits. However, after the operation of the scheme for a period of 7 long years, it failed to serve its purpose. Rather, various issues related to the privacy of the individuals arose. There were certain loopholes such as the private information of the beneficiaries were being leaked online thereby posing a major threat to the privacy of persons. The Union was planning to add this unique identification number to aspects such as the Account Number and mobile numbers of individuals, which were a potential threat to the privacy of such individuals. To answer and address the potential challenges and threats, the K.S. Puttaswamy Judgement was delivered.

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<sup>2</sup> INDIAN CONST. art 21.

<sup>3</sup> Justice K.S. Puttaswamy (Retd) & Anr. v. Union of India & Ors., (2017) 10 SCC 1.

## FACTS OF THE CASE:

The petitioners mainly, Justice K.S. Puttaswamy (Retd.) and Mr. Pravesh Khanna challenged the Aadhar scheme primarily on the basis that it was violative of right to privacy under Article 21.<sup>4</sup> In the year 2016, the petitioners challenged the constitutionality of the Aadhar Act. The case was ultimately taken up by a nine judge bench of the Supreme Court to decide whether the right to privacy can be said to be guaranteed as an independent fundamental right.

Earlier, in the year 2015 the vires of the Aadhar Scheme was challenged before a three judge bench of the apex court. The attorney general had then put forth that the right to privacy does not form part of the fundamental rights because the larger benches of the Supreme Court in MP Sharma's case (8 judge bench)<sup>5</sup> and Kharak Singh's case (6 judge bench)<sup>6</sup> had rejected the argument of privacy being given constitutional safeguard. For this very reason, a nine-judge constitutional bench was formed to decide whether privacy is a fundamental right or not.<sup>7</sup>

## ISSUE RAISED:

A. Whether the framework of Aadhaar bill is *ultra vires* of the Constitution of India?

## ARGUMENTS FROM THE SIDE OF PETITIONER:

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<sup>4</sup> Supra note 1.

<sup>5</sup> M.P. Sharma v. Satish Chandra, (1954) SCR 1077.

<sup>6</sup> Kharak Singh v. State of Uttar Pradesh, (1954) SCR 1077.

<sup>7</sup> Puttaswamy v. India, GLOBAL FREEDOM OF EXPRESSION, COLUMBIA UNIVERSITY (May 3, 2020, 10:45 AM), <https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/>.

The petitioners humbly put forth that the framework of the Aadhar mechanism is by virtue of its nature very probabilistic. This very nature of the Aadhar may result in the exclusion of the people to whom subsidies are advanced, rather than extending it.

The Aadhar framework poses a severe threat to the rights of the citizens. Furthermore, the Aadhar goes against the constitutional abiding values and its ideals. If the Scheme is allowed to operate further then it has the ability to transform the nature of the Indian State from being an intrusive one to a surveillance one.

Privacy is an innate part of right to life. The deprivation of the right to life can take place, provided that it is accordance with the due procedure established by law. The expression “*due procedure*” signifies that the procedure shall be fair, just as well as reasonable.<sup>8</sup> Article 14 and 19 need to be satisfied for the procedure to be in accordance with law. The Aadhar framework puts an embargo upon the right to privacy of individuals, such a restriction is arbitrary and unreasonable as there exists no intelligible differentia upon which the Scheme was grounded. Most importantly, the scheme lacks a rationale nexus between its classification and the object it seeks to achieve.<sup>9</sup> The right to mental integrity which is violated by the information sought under the Aadhar Scheme is inclusive of the right to privacy.

The Compulsory imposition of Aadhaar violates one’s right to choice, in terms of liberty to identify oneself to the government in a rational and non-intrusive manner.

The scheme provides for profiling of individuals on the ground of religion, such an act is in stark contrast to the values embedded under Article 25.<sup>10</sup>

#### **ARGUMENTS FROM THE SIDE OF RESPONDENT:**

Basic minimum information which was necessary for the purpose of beneficiary identification was procured for Aadhaar Framework.

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<sup>8</sup> Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

<sup>9</sup> E.P. Royappa v. State of T.N., (1974) 4 SCC 3.

<sup>10</sup> INDIAN CONST. art 25.

Furthermore, the demographic details that were required from the persons enrolled for the Aadhar Scheme was limited to name, date of birth, address, gender, contact number and email ID.

The biometric details were limited to the fingerprints and iris scan. Such collection of basic biometric information was in its very nature non-intrusive.

The primary ground on which the personal details of the individuals were collected and processed is based *per se* on their consent.

### **JUDGMENT OF THE SUPREME COURT:**

While Chandrachud J. Dissented the other judges were in favour of Aadhar. The court observed that Aadhar cannot be allotted to illegal immigrants as the term 'resident' under section 2(b) needs to be strictly read. The legal limit to retain data of an individual is not more than 6 months. On the contrary Section 27 gives the authority to the Union to hold the data for a period of upto 5 years. Therefore, it shall be struck down with immediate effect.

With regard to the disclosure of details of a person, the choice of such disclosure vests solely with him/her. At any given point of time he may refuse to disclose the information as per his free will. Hence, the court calls for a more comprehensive and elaborate interpretation of Section 33(1).

There is no clarity regarding the particular authority or individual who is going to determine whether the revealing of details is in the interest of public or not. Therefore, the court was of the view to strike down Section 33(2).

Section 57 is struck down with immediate effect as the provision provides that, the State, a body corporate or any individual can use authentication process and retrieve details under Central Identities Data Repository (CIDR). This creates an open ended and unspecified set of legislations and agreements for which the Scheme can be exploited and defeats the established ratio of informed consent, thereby posing a potential threat to a person's privacy.

Apart from the above mentioned provisions, the other sections of the Act were held to be *intra vires* of the Constitution.

**CONCLUSION:**

While the K.S. Puttaswamy judgment is the first step towards the interpretation of right to privacy as an inherent part of right to life under article 21. It is important to realize that the ambit of the right to privacy will be expounded by legal practitioners on a judgment to judgment basis. The judgment highlights a significant message that privacy has to be an important concept for any further legislative action reason being that the foundation of every peaceful society rests on the respect given to privacy of the members of the society.

At the same time, it is crucial to understand the basic objective behind the entire Aadhar framework. The Aadhar scheme was brought up by the union government with a purpose of providing direct benefits to the underprivileged lot of the society. Furthermore, the Scheme aimed at reducing red-tapism and bureaucratic delays in the transfer of benefits. This very objective behind the entire scheme is in direct consonance with the concept of Welfare State on which our State is grounded.



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