

Justice K.S. Puttaswamy v. Union of India (2018)

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Summary

Aadhaar is the world's largest biometric identification system under which Indian residents and passport holders are eligible to obtain a unique 12-digit identification code based on their demographic and biometric data. The Indian government initiated Aadhaar in 2011 by establishing the Unique Identification Authority of India and, in 2016, the Lok Sabha passed the Aadhaar Act. Aadhaar's primary aim is to provide for "good governance, efficient, transparent, and targeted delivery of subsidies, benefits and services."¹

Former Justice K.S. Puttaswamy challenged the constitutional validity of the Aadhaar Act, mainly on the basis that it creates a surveillance state and infringes upon the right to privacy. On September 26, 2018, the Supreme Court of India, in a 4:1 majority decision, upheld the constitutionality of the Aadhaar Act with the exception of certain provisions.²

Issues and Analysis

1. *Whether Aadhaar creates a surveillance state and thus is unconstitutional.*

No, the Aadhaar Act does not create a surveillance state. The Court first acknowledged that, although surveillance is deeply interconnected with the right to privacy, its analysis would analyze the two issues separately.³ The Court identified that the surveillance issue involves considering: (1) whether the process required to obtain an Aadhaar number leaves respondents vulnerable to misuse and (2) whether the Aadhaar Act implemented "sufficient safeguards" (i.e. data protections) to prevent this misuse.⁴

With regard to (1), the Court determined that the process outlined in the Aadhaar Act does not leave participants so vulnerable as to create a surveillance state. Specifically, though participants are required to provide demographic and biometric information, the enrollment and authentication processes are strongly regulated to render the information secure.⁵ Moreover, the Court identified that the Act's Code of Conduct explicitly includes confidentiality, privacy, and security protocols, and that Chapter VII even provides penal provisions for violations of such protocols.⁶ Based on these extensive provisions aimed at inhibiting the creation of a surveillance state, the Court stated that "we are of the view that it is very difficult to create a profile of a person simply on the basis of biometric and demographic information stored in [the Aadhaar network]."⁷

With regards to (2), the Court ruled that the Act does include data protection mechanisms that sufficiently safeguard demographic and biometric information. The Act upholds the principle of "data minimization" by prohibiting the collection of sensitive data concerning race, religion, caste, tribe, ethnicity, language, records of entitlement, income,

¹ Preamble, The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act (2016).

² Justice K.S. Puttaswamy (Retd) v. Union of India, (2018).

³ *Id.* at [148]

⁴ *Id.* at [149]

⁵ *Id.* at [151]

⁶ *Id.* at [151]

⁷ *Id.* at [153]

and medical history.⁸ But the Court asserted that there is no legitimate reason for authentication records to be kept for a period of 5 years; rather, data should be deleted after 6 months.⁹ Finally, the Court noted that the implementation of a “robust statutory regime” relating to data protection is crucial to “entrench[ing] informational and data privacy within our laws and legal system.”¹⁰

2. Whether Sections 7 and 8 of the Aadhaar Act violate the fundamental right to privacy and thus are unconstitutional.

No, the Aadhaar Act does not violate the fundamental right to privacy. The Court reasoned that the right to privacy is intrinsic to the concept of human dignity and thus is inherent within the liberties guaranteed by Part III of the Constitution.¹¹ Because the right to privacy includes the right to control the dissemination of personal information, it therefore bears directly on the Aadhaar Act.¹²

The Court held that the Aadhaar Act nonetheless preserves the right to privacy because it meets the three-prong test articulated in the *Puttaswamy* judgment. Under *Puttaswamy*, there is no violation to the right to privacy if: (1) a law exists (2) that serves a legitimate state aim and (3) that law is proportional to achieve the aim.¹³ A law is proportional if it (i) has a legitimate goal; (ii) is a suitable means of meeting that goal; (iii) there is no less restrictive alternative; and (iv) the measure does not have a disproportionate impact on the right-holder.¹⁴

Here, the Court identified the relevant law as the Aadhaar Act and its aim as to provide “subsidies, benefits, and services” (food, in particular) to marginalized members of society. It further determined that this aim is legitimate because it seeks to realize a series of rights enshrined in the Constitution—namely, the right to life and personal liberty (Article 21) and the right to social, political, and economic justice and the elimination of economic inequality (Article 14).¹⁵ With regard to proportionality, the Court focused on the last two elements, having already established that the Act both has a legitimate goal and is a suitable means of meeting that goal. The Court further determined that there is no less restrictive alternative that can achieve the same purpose, noting that Petitioners did not even suggest an alternative.¹⁶ The Court recognized that evaluating the fourth element requires balancing the fundamental right to privacy with the right to food, shelter, and employment.¹⁷ Ultimately, it determined that the Act has “struck a fair balance” between the two sets of rights, as the Act preserves the right to privacy while vindicating marginalized peoples’ access to social benefit schemes.¹⁸

⁸ *Id.* at [193]

⁹ *Id.* at [207]

¹⁰ *Id.* at [229]

¹¹ *Id.* at [232(iii)]

¹² *Id.* at [232]

¹³ *Id.* at [310]

¹⁴ *Id.* at [267]

¹⁵ *Id.* at [363]

¹⁶ *Id.* at [280]

¹⁷ *Id.* at [285(ii)]

¹⁸ *Id.* at [313]

3. Whether Section 7 of the Aadhaar Act, which mandates that individuals possess an Aadhaar number in order to receive “subsidies, benefits, and services,” applies to children.

No, children need not possess an Aadhaar number in order to receive “subsidies, benefits, and services” under Section 7. Under Section 7, “no child should be denied those benefits if...she is not able to produce the Aadhaar number” and instead applicants should provide alternative identification.¹⁹ For enrollment under the Aadhaar Act, children must possess parental consent.²⁰ Moreover, because Article 21A of the Constitution guarantees the fundamental right to education among children aged 6 to 14, the Court held that “subsidies, benefits, and services” necessarily do not include school admissions.²¹

4. Whether the Aadhaar Act qualifies as a “Money Bill” under Article 110 of the Constitution.

Yes, the Act qualifies as a “Money Bill” under Article 110 of the Constitution. Consequently, the Act’s passage is valid despite having sidestepped the Rajya Sabha from the legislative process and the President from exercising his return power. Petitioners contested Sections 23(2)(h), 54(2)(m) and 57, but conceded that Section 7 qualifies as a money bill.

Article 110(1)(e) of the Constitution states that a bill is a money bill if it “contains only provisions dealing with... declaring of any expenditure... charged on the custody of the consolidated fund of India...”²² Because the aim of Section 7 is to provide subsidies, benefits and services, which are funded from the Consolidated Fund of India, the Court held that this provision qualifies as a money bill.²³ The Court then reasoned that further, because the contested provisions are incidental to Section 7, the entire Act qualifies as a money bill.²⁴

5. Whether specific provisions of the Act violate the constitution.

The Court struck down Section 57 of the Act as a violation of the fundamental right to privacy. Section 57 allowed private companies to request individuals’ Aadhaar numbers. Notably, the Court will allow legislators to pass a statute allowing private companies to request Aadhaar numbers in the future, so long as it passes the three-prong *Puttaswamy* test. The Court also struck down Bank and Sim linking of Aadhaar, as well as Section 33(2), which allowed disclosure of Aadhaar for the purpose of “national security.”

Conclusion/Implementation of the Judgment

In July 2019, Parliament passed the Aadhaar and Other Laws (Amendment) Bill.

¹⁹ *Id.* at [332(f)]

²⁰ *Id.* at [332(a)]

²¹ *Id.* at [332(c)]

²² IND. CONST. art. 110, §1, cl. e.

²³ *Id.* at [406]

²⁴ *Id.* at [412]