



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## JUSTICE K.S. PUTTASWAMY & ANR. VS. UNION OF INDIA & ORS. (2017)

*~Mitali Ambre*

Supreme Court in the case of Justice K.S. Puttaswamy & Anr. Vs. Union of India (2017) decided essential questions about the Right to privacy in relation to the Aadhaar Act, 2016.

Questions raised in this case were:

- i. Is the Right to Privacy a fundamental right?
- ii. Is the Right to Informational Privacy included in the Right to Privacy?
- iii. Is the Aadhaar Act 2016 consistent with the Part III of the Indian Constitution?

This case deals with the section 2d, 33(1), 33(2), 47, 57 of the Aadhaar Act, 2016.

### FACTS OF THE CASE:

K.S. Puttaswamy, a retired judge of Karnataka High Court, Filed a petition regarding the Aadhaar Act, 2016 & the validity of having provisions such as Demographic Authentication, Fingerprint Authentication, and Irish Authentication.

The petitioner questioned the UIDAI (Unique Identification Authority of India), which collects the data of every individual in the country & provisions to protect such essential data.

The Aadhaar Act 2016 is a scheme to identify individuals that will help them enroll in government-beneficial schemes. UIDAI was established in 2009 by passing a resolution of the government of India. Aadhaar (Targeted delivery of financial & other subsidies, Benefits &

Services) Bill 2016 provides the establishment of UIDAI & issuance of a Unique number known as the Aadhaar number 16 digits. This bill became controversial as some sections of it contravene the right to privacy. Due to the controversies, there were group debates on this topic.

UIDAI plays a significant role in the Aadhaar Act. A committee was set up to advise UIDAI in regards budget, staff appointment & mannerisms of meetings. The cabinet notes approval of the demographic & biometrics of citizens, which is further registered by the Registrar general of India.

On the recommendation of the Chairman of UIDAI, the National Identification Authority of India Bill 2010 was Introduced in the Rajya Sabha.

Other steps were taken, such as the Reserve Bank of India stating that all banks will consider an Aadhaar letter as Identification of the resident. By September 2011, there were more than 3.75 crores generated Aadhaar & 10 crores enrolled because it was reported that Aadhaar verification grants the subsidies on Kerosene, LPG & Fertilizer. It was also made mandatory to have unique ID for initiating cash transactions.

In March 2012, Fingerprint Authentication was submitted to UIDAI. The report showcases that the accuracy of fingerprints is 96.5% & can be achievable to 99.3% if done by two fingers. In September 2012, the Irish Authentication report was submitted to UIDAI. As per the said report, accuracy is above 99.5%.

The petition was recorded as WRIT PETITION (CIVIL) NO. 494 OF 2012. Under this writ petition, a showcase notice was issued by this court, pointing out that the Aadhaar Act 2016 violates the right to privacy, which comes under the Right to Life & Liberty (Article 21), A fundamental right. Violation of Fundamental right makes that provision unconstitutional & Invalid. In Response, UIDAI stated that the Right to Privacy is not a Fundamental Right as held in the Eight bench judge judgment in M.P. Sharma & others v. Satish Chandra District.

On August 11<sup>th</sup>, 2015, an order was passed by three judges bench recommending this matter to a larger bench as the subject matter deals with the constitutionality of a. Act. Therefore, A constitutional bench of five judges bench was constituted to refer this matter, which was further referred to a judges bench to resolve this matter with accuracy and without ambiguity. The bench

traced out that the right to privacy is a fundamental right which can be observed in the Article 14, 19 & 21 of the Indian Constitution.

In a criminal case tried in the High Court of Bombay at Panaji, an authority, when directed, passed the biometric Information of a person, which further UIDAI pointed out as a violation of confidentiality provisions.

Similarly, in writ petition (civil) 1002 1, 2017, Known as Dr. Kalyan Menon Sen v. Union of India & others, the validity of Linking mobile number & bank account to the Aadhaar on constitutional grounds was questioned.

An order passed in September 2011 for People's Union Civil Liberties v. Union of India & others wherein was given to computerize the process, and Aadhaar registration was mandatory. In the case of State of Kerala & Ors v. President, Parent Teachers Association SNVUP School & Ors. Where the school considered unique identification to verify fake admissions, this case was used as a defense of the above writ petition.

### **DECISION:**

The case was decided after considering senior Counsels viewpoint on the Aadhaar Act & their recommendations of the same.

1. Mr. Shyam Divan, learned Senior Counsel, submitted his opinion about the Aadhaar Act.

In his opinion, the Act is ultra vires on the following grounds –

- It violates right to privacy,
- It limits the sovereignty of the people,
- Failure of authentication may result in exclusion from welfare schemes,
- Ignorance of democratic citizen's choice to reveal his/her identity through a mode which indirectly violates Article 14, 19 & 21.

2. Mr. Kapil Sibal, Learned senior Counsel as per his opinion, Provisions of Aadhaar are unconstitutional due to the following reasons –

- Collection of sensitive personal data is impermissible & violates individual freedom guaranteed by the Article 19, 21 & 25.
- Collection of such sensitive information infringed informational privacy which comes under Right to Privacy.
- Aadhaar made mandatory deprives the citizens basic rights & entitlements which is violation of Article 21.
- Using the Aadhaar Identification number as exclusive identification of the resident, which violates Article 14.

3. Mr. Gopal Subramaniam, Learned counsel, made following submission regarding Aadhaar Act-

- The Aadhaar Act violates the dignity of Individuals under Article 21.
- The Aadhaar Act violates reasonableness in procedures under Articles 14,19 & 21.
- The Aadhaar Act is discriminatory due to exclusion from beneficial schemes.
- The Aadhaar Act lacks legitimacy in the object and violates fundamental rights.

4. Mr. Arvind Datar, Learned senior counsel submitted –

- Rule 9 of the PMLA (Second Amendment) Rules, 2017 provides mandatory linking of the Aadhaar number to the Bank account, which, in his opinion, is unconstitutional & violates Articles 14, 19, and 300A of the constitution.
- Section 139AA of the Income Tax Act,1961, to be struck down as it violates Articles 14, 19 & 21.

### **ANALYSIS:**

This case is also known as the Aadhaar case, which stands to be the landmark for the Right to Privacy. Analyzing this case into two parts –

- From the perspective of Right to Privacy as Fundamental Right.
- Post Significance of this case.

The right to Privacy was not considered as Fundamental Right, as seen in the case of –

- M.P. Sharma v. Satish Chandra District

- Kharak Singh case

In the above cases, the larger judges bench held that the constitution doesn't give a guarantee of the right to privacy.

Whereas with smaller judges bench it was held that there is constitutional protection for right to privacy in the following cases –

- Maneka Gandhi case
- Govind v. State of Madhya Pradesh
- R. Rajgopal v. State of Tamil Nadu

The court was confused to come to a conclusion, but due to the following reasons it held that the Right to Privacy is a fundamental right –

- The Aadhaar Act made it mandatory to enroll as identification of the resident
- It was mandatory linked to Bank accounts, School Admission, Governmental benefit schemes, etc.
- Excessive powers to the UIDAI under section 57 of the Act.
- Infringement of fundamental rights
- No procedure for safeguarding the collected data.

Post Significance of this case is that it act as a foundation for the Personal Data Protection Bill, 2019. As viewed in this case that there is no procedure for safeguarding the data, which is sensitive in nature. The bill was presented before the Houses of Parliament in 2019 and came into force as an Act in the year 2023.

## **CONCLUSION:**

To Summarize this whole case in the following few points –

- . The writ petition was filed by K.S. Puttaswamy, questioning the constitutionality of the Aadhaar Act
- . The petitioner raised questions on the constitutionality of Demographic Authentication, Fingerprint Authentication & Irish Authentication.

- Many Learned senior counsel opposed the Aadhaar Act's provisions because it violates Articles 14, 19, and 21 of the Indian Constitution.
- . This case is considered a foundation for the Personal Data Protection Bill, 2019.

## **REFERENCE:**

### **1. WEBSITE**

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- Finology, [www.finology.in](http://www.finology.in), 9<sup>th</sup> June, 2024.

### **2. CASE LAW**

- M.P. Sharma v. Satish Chandra District (1954) 1 SCR 1077
- Kharak Singh v. State of Uttar Pradesh 1964] 1 SCR 332, AIR 1963 SC 1295
- Maneka Gandhi v. Union of India AIR 1978 SC 572
- Govind v. State of Madhya Pradesh AIR 1975 SC 1378, (1975) 2 SCC 148
- R. Rajagopal and Ors. V. State of Tamil Nadu, 1994 SCC (6) 632
- Dr. Kalyan Menon Sen v. Union of India & others, 2017
- State of Kerala & Ors v. President, Parent Teachers Association SNVUP School & Ors, 2000