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JUSTICE K.S. PUTTASWAMY (Retd.) vs. UNION OF THE INDIA (2017)

Writ Petition (Civil) No. 494 of 2012, (2017)

By:- Abhishek Mishra and Abhishek Tripathi

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INTRODUCTION

Parties Involved:

Appellant: Justice K S Puttaswamy (Retired)

Vs.

Respondent: Union of India and Others.

Bench:

(9 Judges –Bench)

J. S. Khehar(Chief Justice), Sanjay KishanKaul, Dhananjaya Y. Chandrachud, R. K. Agrawal, , S. A. Bobde, S. A. Nazeer, R. K. Agrawal, J. Chelameswar and A.M. Sapre.

Justice K. S. Puttaswamy (Retd.) and Anr.vs Union Of India is one of the most important judgement, rather a milestone in field of Right to Privacy.

Earlier in the landmarkjudgementsof [*Kharak Singh vs State of UP*](#)¹ and [*M.P. Sharma vsSatish Chandra*](#)² it was declared by Supreme court of India that Right to privacy cannot be considered as Fundamental right which is guaranteed by *Part III of the Indian Constitution*³.

In Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India the Supreme Court overruled its previous judgements regarding Right to Privacy. This judgement declared Right to Privacy is no longer an *Implicit Right* under *Article 21*⁴ rather it is intrinsic part of *Article 21* of Fundamental Right which can be enforceable against the state.

BRIEF FACTS

This is a case of a Retired Judge of High Court K.S. Puttaswamy who filed a petition in 2012 in Supreme Court before a nine judge bench, against The Union of India challenging the constitutionality of Aadhaar.It was claimed that Aadhar is violating the right to privacy, which has been taken on the reference from the constitution Bench to determine whether or not the right

¹<https://indiankanoon.org/doc/619152/>

²<https://indiankanoon.org/doc/1306519/>

³https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf

⁴<https://indiankanoon.org/doc/1199182/>

of Privacy was guaranteed as an absolute independent fundamental right, under the constitution of India considering past decision from Supreme Court of India.

Following is the date by date event of the Aadhar Scenario -

January 2009 – Planning commission has passed a notification for UIDAI.

2010- The national identification authority of India Bill, 2010 came.

November 2012 – Retired Judge K.S. Puttaswamy and MR. Parvesh Sharma has filled a writ petition in The Supreme Court Of India challenging the constitutionality of Aadhaar.

There was so many series of order which was passed in this case from time to time.

On May 10, 2018 The Supreme Court of India has reserved the Aadhaar verdict.

On September 26, 2018 The Supreme Court of India upheld the constitutional validity of Aadhaar but it also struck down certain provisions of Aadhaar Act which include the compulsory linking of Aadhaar with Bank Account, mobile phone, school admission.

ISSUES RAISED –

1. Whether this project of Government (Aadhaar Project) has tendency or aims to create surveillance state and thus it is unconstitutional on this ground?
2. What is the magnitude of the protection of the data that need to be accordance to collection, storage and use of biometric data?
3. Whether this Act of the government provide such protection, including in data collection, time period of data retention and Data protection and security?
4. Whether the Aadhaar Act violate the Right to privacy and thus its unconstitutional (In context of Section 7 & 8 of Aadhaar Act)
5. Whether Children can be brought within the area of Section 7 & 8 of this act?
6. Whether this Act defies the concept of Limited Government, Good Governance and Constitutional Trust?
7. Whether this Act can pass as a Money Bill within the meaning of Article of 110 of Indian Constitution?

ARGUMENTS RAISED -;

PETITIONER

The Petitioners has simply argued that the Architecture of Aadhaar, by its nature is problematic and therefore it can result in exclusion of cases. Therefore, rather than being

beneficial for providing certain subsidies benefits, this act has tendency to exclude them from taking such benefits.

The main arguments which were put before the court was, that the strict implementation can turn into a higher risk for the liberty and rights of the citizen, because it will affect the citizen at large. This Act will change state into surveillance state.

It was humbly argued before the court that Right to Privacy is an important part of Right of Life & Personal Liberty and this act is putting restriction on it. This Act is not satisfying the requirement of Article 14 & 19. This would amount to grave violation of right to life as it would encroach upon the dignity of the individual, which is the basic element of the constitution. KapilSibal said that there is no concept of consent in the Aadhaar authentication, a person will be denied benefits, subsidies.

RESPONDENT –

The Respondent stated on Affidavit, that respondent will make sure that no individual who is eligible for the such benefits etc, is deprived from getting those benefits, even if their fingerprints are not matching then also they will be getting all the benefits for which he or she is eligible.

The respondent in the rebuttal of arguments said that every information which is provided by the person is safe, he or she only can change the password through one time password (OTP). It was also said that the biometric was only limited to finger prints and iris scan, which is considered to be core biometric information thus, the main arguments which was given by respondent side was that the information which was collected was non- intrusive identity information.



ARGUMENTS: IN THE LIGHT OF MAKING AADHAR MANDATORY

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1. Aadhaar will restructure the role of the state in social sector. It will give state totally a new shape.
2. It will be much helpful for nearly 1 Crore workers under the MGNREGA scheme who use Aadhaar to withdraw their wages every month.
3. UIDAI says that the data which is taken for Aadhaar is totally secure and all biometric data are safe with government in full security.
4. Through Aadhaar people can directly get the benefits of subsidies.
5. Through this number of fake documentation cases will reduce which will provide much benefits to government.

SIGNIFICANCE OF THE AADHAR VERDICT-

1. The Supreme Court upheld the Aadhaar verdict and said that proper safety measure should be taken to protect the data. A Five Judge Bench said that government should also reduce the time of keeping data.
 2. Many commercial bank are asking to link there account with their account. The court said that they cannot ask for aadhaar data.
 3. The students are also not require to have aadhaar to give the examination. Even school cannot ask aadaar for admission purposes.
 4. However the court said that aadhaar card will be compulsory for taking all the beneficiary scheme & subsidies of the government.
 5. The Supreme Court has made exception for the children and said that no child can denied of getting benefits of any scheme if he or she does not have Aadaar.
- The court said that there are much difference between Aadhaar & other Identity Document. Aadhaar cannot be duplicated and that is what makes it unique. Aadhaar is empowering the weaker section of the society and providing them many benefits along with providing them a identity. Thus, Aadaar is compulsory for availing government beneficiary scheme.
- This Judgement has clearly given a message that “RIGHT TO PRIVACY” is an important criterion that should be considered before any legislative action.



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