

## **AADHAAR'S CONSTITUTIONAL VALIDITY**

In a 4:1 judgment, 5 membered constitution bench of Supreme Court upheld the constitutional validity of The Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016 (Hereafter, Aadhar Act). SC was hearing a clutch of petitions filed in Supreme Court against the Aadhar Scheme of the government of India, with initial one filed in 2012 by former Karnataka High court judge K S Puttaswamy.

The Court has held that the architecture of Aadhaar, as well as the provisions of the Aadhaar Act, do not tend to create a surveillance state. During the enrolment process, minimal biometric data in the form of iris and fingerprints are collected. The Unique Identification Authority of India (UIDAI), does not collect purpose, location or details of the transaction. Thus, the purpose of the transaction is not stored. The information collected remains in silos. The information is not accessible in combined form. The requesting agency (like banks and the Income Tax Department) is provided an answer only in 'Yes' or 'No' about the authentication of the person concerned. However, dissenting judge, Justice D Y Chandrachud said that from the verification log, it was possible to locate the places of transactions carried out by an individual over the past five years. SC struck down Regulation 27 which provided for archiving transaction data for five years. SC has said that authentication logs should be deleted after six months.

The Court ruled that the Aadhar Act passed the test laid down in the Privacy judgment to determine the reasonableness of the invasion of privacy. It held that the Aadhaar scheme is backed by the statute, i.e. the Aadhaar Act. It also serves legitimate State aim i.e. to ensure that social benefit schemes reach to the deserving community. The Court noted that the failure to establish the identity of an individual has proved to be a major hindrance for successful implementation of those programmes as it was becoming difficult to ensure that subsidies, benefits, and services reach the intended beneficiaries in the absence of a credible system to authenticate the identity of beneficiaries. It also noted that while the challenge to Aadhaar Act is on the basis of dignity as a facet of right to privacy under Article 21, the rationale behind Section 7 of the Aadhaar act (which makes Aadhaar mandatory for Government Benefits) is to ensure that right to life of marginalized are protected by ensuring that they get the benefits of welfare schemes. Majority judgment held that the Aadhaar Act has struck a fair balance between the right of privacy of the individual along with the right to life of the same individual as a beneficiary of government benefits. However, the dissenting judge held that by collecting identity information, the Aadhaar program treats every citizen as a potential criminal without even requiring the state to draw a reasonable belief that a citizen might be perpetrating a crime or an identity fraud. Justice Chandrachud also held that the legitimate aim of state can also be fulfilled by adopting less intrusive measures as opposed to the mandatory enforcement of the Aadhaar scheme as the sole basis of identification.

The Court upheld the Lok Sabha Speaker's decision to recognize the Aadhar Act as the Money Bill. While admitting that Rajya Sabha plays a significant role in our bicameral system of Parliament, and Article 110 which provide for money Bills have to be interpreted strictly, the Court held that Aadhaar Act fell within the ambit of Article 110. The Court held the reasoning that the main objective of Aadhaar Act is to extend benefits in the nature of aid, grant, or

subsidy to the marginalized sections of the society with the support of Consolidated Fund of India. However, in the minority judgment, Justice Chandrachud said that the Passing of a Bill as a Money Bill, when it does not qualify for it, has damaged the delicate balance of bicameralism which is a part of the basic structure of the Constitution.

SC upheld the Aadhar for government services by using the Doctrine of Proportionality. The doctrine of Proportionality postulates that the nature and extent of the State's interference with the exercise of a right must be proportionate to the goal it seeks to achieve. The Court upheld the validity of Section 7 of the Act stating that the rationale behind Section 7 is to ensure targeted delivery of services, benefits, and subsidies which are funded from the Consolidated Fund of India. This has been done keeping in view the larger interest to ensure social and economic justice, to eliminate inequality and to ameliorate a lot of the poor and the Dalits. Some such schemes are PDS, scholarships, mid-day meals, LPG subsidies, etc. The court held that it is convinced that the purpose of the provision is to ensure that such benefits which help to achieve the right to life, reach the deserving. The court also said that government cannot increase the scope of 'benefits' and 'Benefits' are such welfare schemes for which resources are to be drawn from the Consolidated Fund of India. Therefore actions by CBSE, NEET, JEE and UGC requirement of Aadhar for the scholarship shall not be covered under Section 7 unless it is demonstrated that the expenditure is incurred from Consolidated Fund of India. A benefit which is earned by an individual (e.g. pension by a government employee) cannot be covered under Section 7 of the Act, as it is the right of the individual to receive such benefit.

On the protection of biometric data, the court held that there are sufficient authentication security measures in place. During authentication, no information about the nature of transaction etc. is obtained. The UIDAI has mandated the use of Registered Devices (RD) for all authentication request. With the use of these registered devices, the biometric data is encrypted within the device using a key, and is, therefore, captured live. Before returning to the application being used by the service provider, the registered device blocks the personal identity data by encrypting it. This creates a unidirectional relationship between the host application and the UIDAI. The machinery which the UIDAI has created for data protection, it was of the view that it is very difficult to create the profile of a person simply on the basis of biometric and demographic information stored in Central Identities Data Repository (CIDR). Court also ordered the government to bring out a robust data protection regime on the basis of recommendations of Justice B N Sri Krishna Committee report. The court struck down Section 33(2) of the Aadhar Act which allows disclosure of information of a user in the interest of national security. However, the court held that the power of determination of such an eventuality should be given to an officer higher than the rank of a Joint Secretary. Court also read down Section 33(1) of the Aadhar Act which prohibits disclosure of information, including identity and authentication information, except when it is by an order of a district judge or higher court, the court ordered that an individual, whose information is sought, shall be afforded an opportunity of hearing. SC struck down Regulation 26(c), Aadhaar Regulations which allowed UIDAI to store metadata relating to Aadhaar based authentications or authentication history for private firms.

For the enrolment of children under the Aadhaar Act, it would be essential to have the consent of their parents/guardian. On attaining the age of 18, such children who were enrolled under Aadhaar with the consent of their parents will have the option to exit from the Aadhaar project. SC also ruled that Aadhaar is not compulsory for admissions to schools as it is neither a

service nor subsidy. Further, since a child between the age of 6 to 14 years has the fundamental right to education under Article 21A of the Constitution, school admission cannot be treated as 'benefit'.

SC upheld the Section 139AA of the Income Tax Act, which mandates linking of Aadhaar to PAN and providing Aadhaar while filing income-tax returns. SC held that the provision did not violate the right to privacy. By this ruling linking of PAN with Aadhar will also be mandatory.

The circular of the Department of Telecommunications, which mandated Aadhaar-based re-verification of mobile numbers, has been held illegal and unconstitutional. The provision in the Aadhaar Act that allowed private entities to conduct authentications too has been held illegal, due to which corporate bodies including banks, telecom operators, mobile wallets, etc will not be able to press any customer for his or her Aadhaar number.