

Supreme Court Verdict on Aadhaar - I

Why in news?

\n\n

\n

- The Supreme Court recently upheld the constitutionality of the Aadhaar in its majority verdict (4 out of 5 judges).

\n

- Click [here](#) to know on the grounds for petitions filed against Aadhaar.

\n

\n\n

What are the highlights of the majority verdict?

\n\n

\n

- The majority ruling called Aadhaar “a document of empowerment”.

\n

- The ruling has highlighted two main aspects of the unique identification project -

\n

\n\n

\n

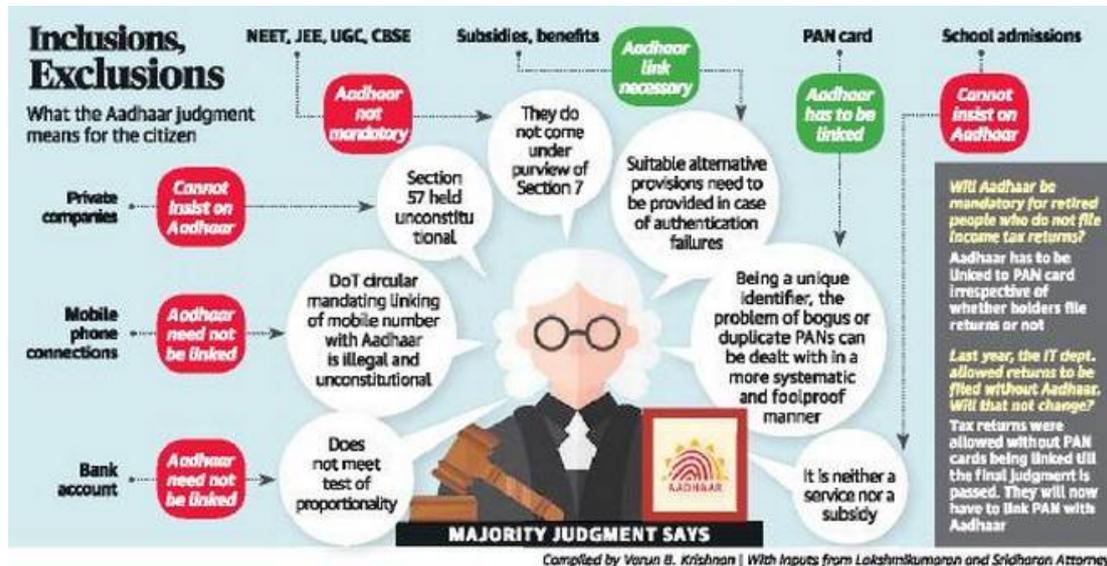
1. Aadhaar as digital identity infrastructure

\n

2. Aadhaar's application as public infrastructure for various purposes

\n

\n\n



\n\n

\n

- **Right to privacy** - Not all matters pertaining to an individual were an inherent part of the right to privacy.
- Only those matters in which there was a reasonable expectation of privacy were protected by Article 21 of the Constitution.
- In this context, the Aadhaar scheme passed the triple test laid down in the Puttaswamy (Privacy) judgment to check if it invades privacy viz.

\n

\n\n

\n

1. **existence of a law** - backed by the statute i.e. the Aadhaar Act
2. **a legitimate state interest** - to ensure that social benefit schemes reach the deserving community
3. **test of proportionality** - balances the professed benefits of Aadhaar and the potential threat it carries to the fundamental right to privacy

\n

\n\n

\n

- **Money Bill** - Section 7 of the Aadhaar Act mandates that individuals should produce Aadhaar to access social services, subsidy, benefits, etc.
- Moreover, it is clearly declared that expenditure incurred in this respect would be from the Consolidated Fund of India.
- Since Section 7 is the main provision of the Act, the validity of the Aadhaar Act being

passed as a Money Bill is upheld.

\n

\n\n

\n

- **Surveillance state** - During the enrolment process, “minimal biometric data in the form of iris and fingerprints is collected”.

\n

- Also, UIDAI “does not collect purpose, location or details of the transaction”.

\n

- Hence the manner of operation of Aadhaar, "do not tend to create a surveillance state".

\n

\n\n

\n

- **Security of biometric data** - UIDAI has mandated only registered devices to conduct biometric-based authentication transactions.

\n

- With these registered devices, the biometric data is encrypted within the device using a key.

\n

- This creates a unidirectional relationship between the host application and the UIDAI.

\n

- This also rules out any possibility of the use of stored biometric, or the replay of biometrics captured from another source.

\n

- Further, as per the regulations, authentication agencies are not allowed to store the biometrics captured for Aadhaar authentication.

\n

- **Telecoms** - Aadhaar-based re-verification of mobile numbers has been held illegal and unconstitutional as it was not backed by any law.

\n

- As a result-

\n

\n\n

\n

1. telecom cannot insist on customers to furnish Aadhaar details

\n

2. the provision that allowed private entities to conduct authentications has been held illegal.

\n

3. corporate bodies including banks, mobile wallets, etc also cannot ask for customers' Aadhaar number.

\n

\n\n

AADHAAR IS...	
<p style="color: red; margin: 0;">NOW NOT NEEDED FOR</p> <ul style="list-style-type: none"> ■ Employee pension ■ Admission to school ■ Taking CBSE, NEET, JEE, UGC exams ■ Re-verification of mobile number ■ Bank accounts ■ Mutual fund investments ■ Insurance policies ■ Credit cards ■ New/existing post office schemes ■ New/existing NSC accounts ■ New/existing PPF accounts ■ New/existing Kisan Vikas Patra accounts <p style="color: red; margin: 10px 0 0 0;">STILL NEEDED FOR</p> <ul style="list-style-type: none"> ■ PAN card ■ National Child Labour Project (NCLP) ■ Scholarships for school students, such as National Means-cum-Merit Scholarship Scheme, National Scheme of Incentive to Girls for Secondary Education, Inclusive Education of the Disabled at Secondary Stage 	<ul style="list-style-type: none"> ■ Mid-day Meal for children ■ Assistance/scholarship given by Department of Empowerment of Persons with Disabilities ■ Supplementary Nutrition Programme under ICDS Scheme ■ Payment of honorarium to AWWs & AWHs under ICDS Scheme ■ ICDS Training Programme ■ Supplementary Nutrition for children offered at creche centres ■ Honorarium to creche workers and creche helpers ■ Maternity Benefit Programme ■ Scheme for Adolescent Girls ■ National Mission for Empowerment of Women ■ Ujjwala Scheme ■ Swadhar Scheme ■ Integrated Child Protection Scheme ■ STEP programme ■ Rashtriya Mahila Kosh ■ Pradhan Mantri Matru Vanana Yojana ■ Painting, essay contests under IEC component of human resource development and capacity building

\n\n

\n

- **PAN** - Section 139AA of IT Act makes Aadhaar mandatory for filing IT returns and applying for PAN.

\n

\n\n

\n

- Since it stood the triple test and did not violate the right to privacy, linking of PAN with Aadhaar will be mandatory.

\n

- But there was no deadline mentioned by the court.

\n

\n\n

\n

- It is also said that if in the regulations, a provision was made that impinged upon the right to privacy, it could be challenged.

\n

- **Linking of bank accounts** - Linking of bank accounts and other financial instruments with Aadhaar were made mandatory by 2017 amendment to Prevention of Money Laundering Act Rules, 2005.

\n

- It does not stand the proportionality test because just for preventing money laundering, there cannot be such a provision targeting every resident as a suspicious person, which is seen as

disproportionate.

\n

- Therefore it violates the right to privacy of a person which extends to banking details and hence the amendment is declared unconstitutional.

\n

- **Details already given** - The judgment does not clearly state if banks/mobile companies that have already collected Aadhar data will have to delete the collected information.

\n

- But the court has upheld the validity of Section 59, which validates all Aadhaar enrolment done prior to the enactment of the Aadhaar Act, 2016.

\n

- The court has said that since enrolment was voluntary, those who refuse to give consent would be allowed to exit.

\n

- **Aadhaar for education** - Statutory bodies like CBSE and UGC cannot ask students to produce their Aadhaar cards for examinations like NEET and JEE.

\n

- Aadhaar would also not be compulsory for school admissions as “it is neither a service nor subsidy” but a fundamental right for children between 6 and 14.

\n

- **Aadhaar for children** - The consent of parents/guardians will be essential for the enrolment of children under the Aadhaar Act.

\n

- On attaining the age of majority, such children shall have the option to exit.

\n

- **Section 33(1), Aadhaar Act** - It prohibits disclosure of information (identity and authentication), except when it is by an order of a district judge or higher court.

\n

- The judgment enabled individuals to have a right to challenge such an order passed by approaching the higher court.

\n

- **Section 33(2), Aadhaar Act** - It provides for disclosure of information in the interest of national security when directed by an officer of Joint Secretary or higher rank.

\n

- The court struck down this provision in the present form.

\n

- It held that an officer higher than this rank should be given such a power and a Judicial Officer (preferably an HC judge) should also be associated with it.

\n

- **Section 47, Aadhaar Act** - It provides for cognisance of offence only on complaint by UIDAI (or any person authorised by it).

\n

- The court ruled that this needed suitable amendment to provide for filing of complaints also by an individual whose right was violated.

\n

- **Section 57, Aadhaar Act** - It provides for use of Aadhaar number for establishing the identity of an individual for any purpose, by the state or any corporate or person.

- \n
- The court has said that the section would impinge upon the right to privacy of the individual and enable commercial exploitation of biometric and demographic information.
- \n
- The court thus read down (providing narrow interpretation) this provision as susceptible to misuse.
- \n
- **Regulation 26(c), Aadhaar Regulations** - It allowed UIDAI to store metadata relating to transactions.
- \n
- The court struck down this regulation in its present form.
- \n
- **Regulation 27** - It allowed archiving transaction data for 5 years.
- \n
- The court struck down this and allowed only upto 6 months.
- \n

\n\n

What are the highlights of the minority judgment?

\n\n

- \n
- Justice D Y Chandrachud gave the dissenting minority judgment in which he observed the following.
- \n
- **Surveillance** - The architecture of Aadhaar poses a risk of potential surveillance activities through the Aadhaar database.
- \n
- From the verification log, it is possible to locate the places of transactions carried out by an individual over the past five years (now made six months).
- \n
- It was also possible to track an individual's location through the Aadhaar database, even without the verification log.
- \n
- **Money Bill** - Passing of a Bill as a Money Bill, when it does not qualify for it, damages the delicate balance of bicameralism.
- \n
- Notably, bicameralism is part of the basic structure of the Constitution.
- \n
- The ruling party in power may not command a majority in the Rajya Sabha.
- \n
- But the legislative role of that legislative body cannot be obviated and passing it as money bill was "a fraud on the Constitution,"
- \n
- **Shortfalls** - Denial of benefits arising out of any social security rights is violative of human dignity and impermissible under the constitutional scheme.

\n

- The biometric authentication failures under Aadhaar that have led to denial of rights and legal entitlements were highlighted in this regard.

\n

\n\n

\n\n

Click [here](#) for Part II

\n\n

\n\n

Source: The Indian Express, The Hindu

\n

