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## Aadhaar and Privacy Paradox - The Verdict Unveiled

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*“The entire Aadhaar program, since 2009, suffers from constitutional infirmities and violations of fundamental rights. The enactment of the Aadhaar Act does not save the Aadhaar project. The Aadhaar Act, the Rules and Regulations framed under it, and the framework before the enactment of the Act are unconstitutional.”<sup>1</sup>*

*– Justice D.Y. Chandrachud*

*The introduction of the Aadhaar project embarked on the beginning of an innovative biometric identification system in India. This article examines the deep-seated impact of the landmark judgment of the Supreme Court of India on Aadhaar, keeping in mind its stance on privacy rights within the world's largest democracy. The Aadhaar project, planned in India to streamline government services, has given way to important debates over issues of privacy and state overreach. The article critically analyses the Supreme Court decision as it upheld the constitutionality of the Aadhaar project and, at the same time, narrates how it materialised as a Money Bill, which many feel went against the basic canons of parliamentary democracy. The strong dissent by Justice D.Y. Chandrachud serves as the bedrock of this controversy by questioning the Aadhaar scheme and voicing concerns that are vitally connected to the scope of civil liberties in the digital era. This article covers aspects of the Aadhaar verdict, discussing the ongoing tug-of-war between technological innovation and the protection of fundamental rights. The Aadhaar judgment is*

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<sup>1</sup> ‘Constitutionality of Aadhaar Act: Judgment Summary’ (Supreme Court Observer, 26 September 2018) <<https://www.scobserver.in/reports/constitutionality-of-aadhaar-justice-k-s-puttaswamy-union-of-india-judgment-in-plain-english/>> accessed 08 September 2024

*important in understanding how India will handle privacy during the 21st century, with the potential to safeguard or undermine the freedoms it aims to enhance.*

**Keywords:** *aadhaar verdict, constitutionality of aadhaar act, money bill, right to privacy.*

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## INTRODUCTION

In the modern world, establishing one's identity is crucial for accessing a wide range of government services and benefits. A robust and dependable identification system is critical for enabling citizens to efficiently and securely access important facilities provided by the government, such as social welfare, healthcare, and educational services. In India, the Aadhaar program, launched in 2009 by the Unique Identification Authority of India (UIDAI), was designed to fulfill this need by providing a universal digital identity to every resident.

Aadhaar, which assigns a unique 12-digit identification number to individuals linked to their biometric and demographic data, aims to achieve the goals of making the delivery of government services more efficient and reducing fraud. However, at its conception, such promises of increased efficiency and inclusion have sparked debate about how the intent of Aadhaar relates to privacy rights, one of the most basic components of a democratic society. Though no provision is made in the Constitution of India in this regard for an explicit incorporation of the right to privacy, the Supreme Court of India has constituted the right as an integral part of the right to life and personal liberty under Article 21. Therefore, it is a fundamental right that needs to be protected from the undue influence of the state and misuse of personal information. The Indian Constitution preserves and protects the basic rights to maintain the dignity of individuals against the potential overreach by the state.

On September 26, 2018, the Supreme Court of India delivered a landmark judgment on the constitutionality of the Aadhaar Act in the case of *Justice K.S. Puttaswamy v Union of India*<sup>2</sup>, which brought the conflict between the objectives of the program and the protection of privacy rights to a saturation point. The decision by the Supreme Court upheld the Act and struck down some

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<sup>2</sup> *Justice K S Puttaswamy v Union of India* (2019) 1 SCC 1

individual clauses, highlighting the challenging issue between technological innovation and the protection of basic rights. The ruling featured a majority opinion and a significant dissent, igniting crucial discussions about the future of privacy in India. The bench issued distinct opinions where the majority, including Justice Sikri, CJI Misra, and Justice Khanwilkar, supported the motion and Justice Bhushan wrote a concurring opinion, while Justice Chandrachud opposed the motion by writing a dissenting opinion.<sup>3</sup>

The agenda of this article is to critically analyse the majority opinion in the decision of the Supreme Court and to examine the grounds for the notable dissent presented by Justice Chandrachud. It examines how this ruling simultaneously addresses the conflict between the use of technology for the public good and the protection of individual privacy. In other words, this article makes every attempt to discover the paradox under the Aadhaar Act - whether it enhances or undermines the right to privacy in the digital arena. This manuscript further aims to contribute to the ongoing debate on balancing digitalisation with fundamental rights by presenting an insight into how legal frameworks should respond to the challenges of modern technology.

## **UNDERSTANDING AADHAAR: BACKGROUND AND DEVELOPMENT**

**What is Aadhaar?** The term 'Aadhaar' originates from the Hindi language, signifying 'foundation' or 'base'. It establishes a foundational identity system to facilitate individuals with various government services and benefits. Aadhaar is a legal document containing a twelve-digit unique identification number for identity verification of individuals, which is legally accepted and valid throughout the country. It was introduced in India to establish a comprehensive and secure identification system for its residents. The program was initiated with the tagline *Mera Aadhaar, Meri Pehchaan*, which emphasises the core purpose of the Aadhaar program, i.e. to provide every Indian resident with a unique identification number that serves as proof of their identity across the country.

**Rationale Behind Aadhaar:** The primary purpose of Aadhaar was to come up with a unified and centralised system through which government subsidies, benefits, and services could be

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<sup>3</sup> Constitutionality of Aadhaar Act: Judgment Summary (n 1)

well managed and delivered. Before introducing Aadhaar, many government schemes and Public Distribution Systems (PDS) were plagued by inefficiencies, corruption, and leakage of funds. The main challenge was the actual delivery of such benefits to the intended beneficiaries, especially in such a vast and diverse country as India. As there was no centralised identification system, this led to duplications, fake identities, and ghost beneficiaries who misappropriated resources meant for those in actual need, thereby undermining the effectiveness of welfare programs. To remedy these kinds of issues, Aadhaar was formulated to assign an exclusive number to each resident. It intended to eliminate duplicate and fake identities and streamline the verification of beneficiaries by linking their biometric information such as face photograph, fingerprint scan, and iris scan with their demographic information consisting of the name, date of birth, gender, telephone number, email, and residential address. Another objective of the Aadhaar program is to promote transparency and accountability in the delivery of benefits, free from middlemen and false claims. It is now possible for the government to directly transfer subsidies, pensions, scholarships, etc. into the bank accounts of the eligible recipients by linking their Aadhaar to bank accounts and using Direct Benefit Transfers (DBT). This minimises the scope for corruption and enhances efficiency in social welfare schemes.

**Birth of Aadhaar:** The Indian government, primarily the United Progressive Alliance (UPA) government, had conceptualised this concept of Aadhaar primarily for streamlining and unifying identification processes across different government services. The issue and administration of Aadhaar are managed by the Unique Identification Authority of India (UIDAI). It was established on January 28, 2009, under the leadership of Nandan M. Nilekani, former Chairman of Infosys. It was when the Union Government introduced the National Identification Authority of India (NIA) Bill in Rajya Sabha on December 1, 2010, to give a legal framework to the Aadhaar project and formally establish the UIDAI's role in managing the identification process. The Aadhaar program was established when the UIDAI started registering residents all over India, accumulating biometric data such as fingerprints and iris scans, and capturing other demographic details of the residents, including name, address, and date of birth. By the end of 2011, the first batch of Aadhaar numbers was released. The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits, and Services) Bill was introduced as a Money Bill in Lok Sabha in 2016 and eventually went on to be enacted as the Aadhaar Act

on March 11, 2016. The Act superseded the National Identification Authority of India Bill and granted legal status to Aadhaar. This Act empowers UIDAI to implement the Aadhaar program effectively by providing every Indian resident with a universal identity that serves as a comprehensive proof of identity, address, and date of birth, which will immensely reduce corruption because each individual will be provided with a unique identification number.<sup>4</sup>

## TRACING THE ROOTS OF PRIVACY AS A FUNDAMENTAL RIGHT

The framers of the Indian Constitution did not explicitly include the Right to Privacy in the Fundamental Rights listed in Part III of the Constitution. However, aspects of privacy were interpreted by the judiciary consistently over the years. For the first time, the Supreme Court addressed this issue in 1954 in the case of *MP Sharma v Satish Chandra*.<sup>5</sup> In this case, the Court affirmed the search and seizure process as being more vital to the interest of the people than privacy. In 1962, the Court again made its pronouncement on privacy in *Kharak Singh v State of UP*.<sup>6</sup>, where it examined police surveillance over criminal persons. It ruled in favour of the police that the Constitution did not guarantee the right to privacy as a fundamental right. The year 1975 was the watershed for privacy rights in India. In the case of *Gobind v State of MP & ANR*,<sup>7</sup> The Supreme Court endorsed the 'Compelling State Interest' test borrowed from American law. The Court held that the right of privacy of a person could be overridden by a compelling state interest, provided the state's reasons were persuasive.

Over the Aadhaar program that issues a unique identification number to residents based on biometric and demographic data, there have been debates arising at the beginning of the 21st century. There have also been some privacy-violation legal challenges. In 2013, the Supreme Court limited the use of Aadhaar but permitted Aadhaar for further services in 2015 and was prompt in clarifying no person should be deprived of services by lack of an Aadhaar number. The Indian Constitution does not explicitly safeguard the right to privacy, yet the courts have construed it as an implicit right under Article 21, which enshrines the right to life and personal

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<sup>4</sup> Namrata Kandankovi, 'Aadhaar and the Right to Privacy' (*iPleaders*, 08 June 2019) <<https://blog.iplayers.in/aadhar-right-privacy/>> accessed 08 September 2024

<sup>5</sup> *MP Sharma v Satish Chandra* (1954) 1 SCR 1077

<sup>6</sup> *Kharak Singh v State of UP* (1963) 1 SCR 332

<sup>7</sup> *Gobind v State of MP & Anr* (1975) 2 SCC 148

liberty. This interpretation was subjected to judicial review in the case of *Justice K.S. Puttaswamy & Another v Union of India and Ors.*<sup>8</sup> On August 24, 2017, a nine-judge bench of the Supreme Court unanimously held that privacy was a fundamental right safeguarded as an intrinsic component of the right to life and personal liberty under the broader framework of freedoms guaranteed under Part III of the Constitution. However, it was further defined that the right to privacy is not absolute and can be subject to reasonable restrictions, similar to the other fundamental rights.

## UNDERSTANDING THE CONFLICTS

The controversy was triggered when the Union government introduced the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill 2016 as a Money Bill in the Lok Sabha. According to Article 110 of the Constitution of India, a Money Bill is a type of legislative bill that exclusively deals with matters related to financial matters, such as the imposition, abolition, or alteration of taxes, the appropriation of funds, and the management of the country's finances. A Money Bill can only be introduced in the Lok Sabha (the lower house of Parliament) and not in the Rajya Sabha (the upper house of Parliament). The Rajya Sabha can only make recommendations on a Money Bill and cannot amend or reject it. Recommendations made by the Rajya Sabha can either be accepted or rejected by the Lok Sabha. After passing both houses of Parliament, a Money Bill is presented to the President of India for assent. The President has to give his assent, similar to his practice for bills of other types as well, and once he gives his assent, the bill subsequently turns into an Act. The opposition parties alleged that the money bill was used as a tool by the government to evade the Rajya Sabha in which the BJP did not have a majority. The bill was successfully passed by the Lok Sabha without the appropriation of the Rajya Sabha. The Congress, holding a majority in the Rajya Sabha, presented five amendments to the bill; however, the BJP rejected all the amendments and enacted the bill.<sup>9</sup>

In 2016, the Indian government made Aadhaar compulsory for its citizens to get access to specific services and benefits in a maze of controversy. Critics strongly argue that such an order

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<sup>8</sup> *Justice K.S. Puttaswamy v Union of India* (2019) 1 SCC 1

<sup>9</sup> Varun HK, 'SC's Aadhaar verdict | Privacy v Identity' *Deccan Herald* (26 September 2018)

<<https://www.deccanherald.com/india/aadhaar-act-verdict-history-693614.html>> accessed 09 September 2024

infringes upon the right to privacy by subjecting individuals to extensive data collection and potential misuse of their personal information. In addition, compulsory Aadhaar would also disempower the most susceptible populations of society, such as those in remote areas, the elderly, or individuals lacking necessary documentation, thus deepening existing inequalities and forcing them away from the main benefits. Centralising sensitive biometric and demographic data also exposes more significant security risks since one database can become an easy target of cyber-attacks and data breaches, hence increasing the possibility of misuse and fraud. In addition, bureaucratic impediments associated with connecting Aadhaar to services put it at the receiving end of inefficiencies and delays, particularly for people who find it difficult to connect or interact with technology or the enrolment process.

The centralised storage of demographic and biometric data under the Aadhaar program has raised substantial privacy concerns. Critics say that in case of a breach or leakage of such sensitive information, fraudsters can misuse it for identity theft and financial fraud. Unauthorised access to the database can unlock *malafide* individuals tapping into account particulars of the bank, details of the passport, and biometric details in the form of fingerprints and iris scans. The program was widely criticised on its introduction since it lacked appropriate security measures to safeguard data, which raised concerns about vulnerability and whether adequate data protection protocols had been placed. Access available under the system also increases the risk of misuse and reflects the hassle associated with maintaining stringent data security standards across all the users of the UID system.

Considering the highly controversial and disputable character of the Aadhaar Act, many petitions challenged the constitutionality as well as its implementation. According to the petitioners, Aadhaar's mandatory use in availing a set of essential services infringed fundamental rights and did not have adequate checks in place against misuse or breaches within their database. The NIA Bill had already attracted eight petitions filed in the Supreme Court in 2013, challenging its approval as violating the right to privacy and being prone to mass surveillance, and such petitions were still pending before the courts. Petitioners included retired Justice K.S. Puttaswamy and celebrated right-to-information activist Aruna Roy. Even the

Parliamentary Standing Committee on Finance expressed concerns regarding privacy and security.<sup>10</sup>

Additionally, critics of the Aadhaar Act were also significantly influenced by the landmark Supreme Court verdict in 2017, wherein it recognised the right to privacy as a fundamental right under the Indian Constitution.<sup>11</sup> The landmark ruling threw emphasis on the constitutional protection of individual privacy and significantly brought scrutiny to how personal data is collected, stored, and used. Simultaneously, renewed calls for privacy outweighed the impact of the Aadhaar Act as its proponents argued that the mandatory linkage of Aadhaar to essential services and subsidies counters this newly established right. The judgment stressed the need to adhere to strong security measures and privacy principles in the implementation of such a large-scale data collection program.

## UNVEILING THE VERDICT

In all the controversies and complexities, the Aadhaar case was transferred to a separate 5-judges bench consisting of Chief Justice of India Dipak Misra, Justice Arjan Kumar Sikri, Justice Ajay Manikrao Khanwilkar, Justice Ashok Bhushan, and Justice D.Y. Chandrachud. The Supreme Court delivered its verdict in 2018 and rendered its landmark judgment in the case of *Justice Puttaswamy* as the Aadhaar Act is constitutional with a 4:1 majority. Dealing with the invasion of privacy aspect, the Court observed that the government can indeed limit privacy rights so far as the restriction is aimed at achieving a legitimate state interest. The Court found that maintaining fair and transparent distribution of benefits and services for disadvantaged citizens constitutes a legitimate state interest. Therefore, the Court concluded that the Act does not violate the privacy right guaranteed by Article 21. The judgment emphasised that there were adequate checks in place to prevent the possibility of misuse of Aadhaar for all-encompassing state surveillance. The majority judgment came before Chief Justice Dipak Misra, Justice Ajay Manikrao Khanwilkar, and Justice Arjan Kumar Sikri. Justice Ashok Bhushan wrote a separate

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<sup>10</sup> 'Aadhaar Review' (*Supreme Court Observer*) <<https://www.scobserver.in/cases/beghar-foundation-ks-puttaswamy-aadhaar-review-case-background/>> accessed 09 September 2024

<sup>11</sup> *Justice K.S. Puttaswamy v Union of India* (2017) 10 SCC 1



concurring opinion, while Justice D.Y. Chandrachud dissented and held the Act unconstitutional.<sup>12</sup>

Though the majority opinion had validated the entire Act, some individual provisions were declared unconstitutional and void, some provisions were considered for amendments, and some were retained strictly based on strongly interpretative arguments. The three-fold test established in the landmark *Puttaswamy* case formed the basis for classifying these provisions. It states that for legislation to violate the right to privacy, it must fail the following:

- Legality, which postulates the existence of law.
- Need, defined in terms of a legitimate state aim.
- Proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them.<sup>13</sup>

The majority bench, following the three-fold test of privacy violation, analysed and delivered their judgment on the following provisions *viz*,

**Section 57** of the Aadhaar Act, which permitted private companies to access Aadhaar details for processes like eKYC (electronic Know Your Customer), has been struck down by the court. This decision aims to limit the use of Aadhaar data to government services and prevent its use by private entities for verification purposes. The court deemed it unconstitutional for companies or individuals to use Aadhaar for authentication, especially when based on a contract, as it allows for the commercial exploitation of personal data. However, the judgment did not entirely clarify whether the private use of Aadhaar for authentication is universally unconstitutional or whether such private use is only applicable when it is based on a contract between a company and an individual. The provision allowing companies and individuals to demand authentication based on a contract violated the individual's right to privacy and was therefore declared unconstitutional.<sup>14</sup>

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<sup>12</sup> Aadhaar Review (n 10)

<sup>13</sup> Constitutionality of Aadhaar Act: Judgment Summary (n 1)

<sup>14</sup> Deeksha Chaudhary, 'Aadhar Is Valid And Constitutional: Conditions Apply - Analysis With Special Respect To The Apex Court's Judgement' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-2062->

The bench struck down **Sections 33(1)** and **33(2)**, ensuring stricter safeguards for Aadhaar information. Formerly, the court ruled that any disclosure of Aadhaar information must involve a hearing for the individual concerned, allowing them to challenge the order before disclosure. For the latter, the Court mandated that breaches of Aadhaar confidentiality related to national security can only be authorised by a senior government official, higher than a joint secretary, and must also be approved by a sitting high court judge, ensuring greater oversight and scrutiny. **Section 2(d)** was struck down due to concerns about retaining authentication records in their current form, as it was seen as enabling the collection of metadata that could contribute to a surveillance state.<sup>15</sup>

The declaration of **Section 28(5)** as unconstitutional and void was seen as a great step towards the protection of the fundamental rights of individuals because it disallows an individual to access the biometric information that forms the core of his or her unique ID. Such provision is violative of a fundamental principle that ownership of an individual's data must at all times vest with the individual.<sup>16</sup>

The Court invalidated **Regulation 27**, which mandated the archiving of data for five years. It ruled that retaining data beyond six months is impermissible, thus enhancing the protection of personal information by limiting the duration for which data can be stored.

The Court found that **Section 47**, which restricts the right to file complaints regarding violations of the Act to only UIDAI, must be amended. The amendment should allow individuals or victims whose rights have been violated to also file complaints, thus ensuring better accountability and redressal.

Additionally, the Supreme Court upheld the requirement to link Aadhaar with PAN cards, making the 12-digit UID essential for filing Income Tax returns and accessing welfare schemes and government subsidies as it satisfies the aforementioned three-fold test. It struck down the mandatory linking of Aadhaar with bank accounts and SIM cards. The majority opinion found

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[aadhar-is-valid-and-constitutional-conditions-apply-analysis-with-special-respect-to-the-apex-court-s-judgement.html](#)> accessed 10 September 2024

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

that compulsory linking failed to meet the proportionality test and lacked sufficient legislative backing. As a result, individuals are not required to link their Aadhaar with their bank accounts or SIM cards.

Furthermore, the Court ruled that enrolling a child into the Aadhaar scheme requires the consent of the parents. The bench specified that once the child reaches adulthood, they have the right to opt out of the Aadhaar scheme if they choose to do so. It safeguards the autonomy and privacy of children as they transition into adulthood.<sup>17</sup> Contrary to this statement, the Supreme Court clarified that **Section 7** of the Aadhaar Act is constitutional, which mandates the use of Aadhaar as proof for receiving certain subsidies, benefits, and services and applies only to those for which the expenditure is drawn from the Consolidated Fund of India. Consequently, educational bodies like CBSE, NEET, JEE, and UGC cannot make Aadhaar mandatory for registration or participation, as these institutions and activities fall outside the purview of Section 7 and are not supported by any specific law requiring Aadhaar. This ruling limited the mandatory use of Aadhaar to specific government-funded welfare programs and prevented its compulsory application in other areas, specifically education.<sup>18</sup>

## ANALYSING THE DISSENTING OPINION

With a fiery dissent, Justice DY Chandrachud opposed the majority judgment when he declared the Aadhaar Act *prima facie* unconstitutional. His dissent in the Aadhaar judgment stands as an all-important critique of the Aadhaar framework, especially in the context of privacy, democratic integrity, and individual rights. His judgment underlines the dangers of reducing constitutional identity to a mere 12-digit number, arguing that this reduction undermines the pluralistic nature of identity protected by the Constitution. He underscores the fact that the passing of the Aadhaar Act as a Money Bill is a 'fraud on the Constitution' because it bypasses the legislative authority of the Rajya Sabha and distorts the delicate balance of bicameralism.

Justice Chandrachud offered a sharp criticism of Section 7 on the question of using Aadhaar as a pre-condition for availing government services, benefits, and subsidies. He was of the view

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<sup>17</sup> Constitutionality of Aadhaar Act: Judgment Summary (n 1)

<sup>18</sup> Chaudhary (n 14)

that Section 7 is fundamentally flawed because of its overreach and lack of precision, impacting the very marginalised sections of society, *inter alia* children, elderly people, and illiterates. He questioned whether the creation of linkage to Aadhaar for welfare benefits like midday meals, scholarships, and ration cards was in the cause for some reason. He said that the state has failed to prove why less intrusive means, which do not compromise privacy, could not be used to achieve the same objectives. He says the Aadhaar project violates the right to privacy and dignity on account of the wide ambit it has taken as people are required to give up their fundamental rights to enjoy basic services. He also condemned the bringing of Section 7 under a Money Bill since it does not directly involve expenditure from the Consolidated Fund of India but instead requires Aadhaar authentication. Thus, it should not have been a part of a Money Bill, as this negates the appropriate bicameral legislative process of a democracy. He also criticised the concept of Aadhaar-linkage with the telecom services. He says that the move for mandatory linkage of Aadhaar for SIM cards is a serious threat to individual privacy, liberty, and autonomy. As it lacks proportionality and also there is no legislative support for such a mandate, it makes it unconstitutional. He emphasised that telecom service providers should erase the Aadhaar-linked data that they have collected because its continued use is a violation of principles of privacy and data protection.<sup>19</sup>

## CONTINUITY OF CONTRADICTIONS

Despite extensive litigation and detailed consideration, the Aadhaar verdict faced a continuity of contradictions and controversy before the Supreme Court in the form of review petitions. Though the judgment ensured continued implementation of the Aadhaar Act, Justice Chandrachud's dissenting judgment drew much attention and opened the way for subsequent contradictions and challenges. A bunch of review petitions were filed soon after the pronouncement of the judgment. These challenged the uprightness of the verdict and its procedural correctness.

Seven review petitions were brought before the Supreme Court under Article 137 of the Constitution that aimed to reverse the judgment. These petitioners included prominent parties

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<sup>19</sup> *Justice K.S. Puttaswamy v Union of India* (2017) 10 SCC 1

such as the Beghar Foundation, Jairam Ramesh, M.G. Devasahayam, Mathew Thomas, Imtiyaz Ali Palasaniya, Shantha Sinha, and S.G. Vombatkere. Notably, the petition filed by Shantha Sinha through Advocate-on-Record Vipin Nair argued that there were several errors in the majority opinion. It drew attention to the significant fact that important ‘material evidence’ presented by the writ petitioners had not been considered at all and also challenged the inconsistency in the rationale of the majority judgment.<sup>20</sup>

The review petition pointed out several grounds for reconsideration. In the first instance, it submitted that the inference drawn by the majority verdict that validated the introduction of the Aadhaar Act as a Money Bill was flawed. It questioned how it could be called a Money Bill when several provisions of the Act, such as Section 57, did not go well in Article 110 of the Constitution. It argued that despite the invalidation of Section 57 by the Court, the other sections of the Act could not be held to be a Money Bill. Another significant ground for the petition was surveillance at the state level. The majority dismissed concerns about Aadhaar creating a surveillance state. However, the petition emphasised that while deciding the matter, Justice Sikri overlooked the crucial material evidence that raised concerns about Aadhaar’s potential for mass surveillance, violating Article 21, which was specified in a report by a member of the Technology and Architecture Review Board (TARB). Hence, it constitutes an ‘error apparent’ on the face of the record and is sufficient for review.<sup>21</sup>

Further, serious questions were raised about whether the implementation of Aadhaar was necessary to establish the welfare state. The Union had explained its necessity to curb identity fraud in welfare schemes, ensuring that there be delivery of welfare benefits to the deprived segments. Contrary to this, the petitioner submitted that the judgment of 2018 did not consider whether the Union had produced sufficient statistical evidence to support its claims of widespread fraud. It further contended that such a judgment was contradictory as it agreed to accept that welfare benefits could not be made dependent upon Aadhaar and at the same time, confirmed the requirement of the scheme. Finally, the petition raised concerns about the procedural aspect, claiming that the Court had failed to hold the Union in contempt for violating

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<sup>20</sup> Aadhaar Review (n 10)

<sup>21</sup> *Ibid*

earlier orders. In early 2013, the Supreme Court itself had ordered that Aadhaar should not be made mandatory until a final decision was taken. The significant breach of ignorance of the verdict by the Union should have been noticed by the Court in the review petition presented.<sup>22</sup>

While responding to the review petition filed on similar grounds by the *Beghar Foundation*<sup>23</sup>, the Supreme Court resisted deviating from its landmark verdict in the Aadhaar case. The constitutional bench led by Justices A.M. Khanwilkar, D.Y. Chandrachud, Ashok Bhushan, S. Abdul Nazeer, and B.R. Gavai addressed the two key questions raised under the petition *viz*, first, whether the Speaker's decision under Article 110(3) of the Constitution, certifying a bill as a 'Money Bill' under Article 110(1), is final and binding or subject to judicial review; and second, if judicial review is allowed, whether the Aadhaar Act was correctly classified as a Money Bill under the same Article. The review petition emerged after a similar issue arose before a different Constitution Bench in the *Rojer Mathew* case.<sup>24</sup>, where the majority observed that the first question had not been fully addressed in the Puttaswamy judgment.

The majority answered the first question by saying that judicial review of a Bill's classification as a 'Money Bill' is permissible in certain circumstances. On the second question, they concluded that Section 7 of the Aadhaar Act contained elements of a Money Bill, while the remaining provisions were incidental to the core of the Act. Therefore, they upheld the certification of the Aadhaar Act as a Money Bill under Article 110(1). The majority also ruled that changes in the law or subsequent decisions by a coordinated or larger Bench cannot be grounds for reviewing a final judgment. As such, they ruled there was no case for revisiting the Aadhaar verdict.<sup>25</sup>

Justice D.Y. Chandrachud, consistent with his earlier dissent in the original judgment, reiterated his disagreement with the majority's conclusions. He highlighted that a coordinate bench in *Rojer Mathew* had cast doubts on whether the Aadhaar Act was rightly classified as a Money Bill. Given that the larger bench tasked with resolving the issue had not yet been constituted, he

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<sup>22</sup> *Ibid*

<sup>23</sup> *Beghar Foundation v K.S. Puttaswamy* (2021) 3 SCC 1

<sup>24</sup> *Rojer Mathew v South Indian Bank Ltd* (2020) 6 SCC 1

<sup>25</sup> Kamini Sharma, 'Aadhaar | When 4:1 majority refused to review the Aadhaar-5 Judges verdict but Justice Chandrachud dissented' *SCC Online* (28 December 2021)

<<https://www.sconline.com/blog/post/2021/12/28/aadhaar-when-41-majority-refused-to-review-the-aadhaar-5-judges-verdict-justice-chandrachud-dissented/>> accessed 10 September 2024

argued that dismissing the review petitions at this stage would prematurely conclude the matter without benefiting from the larger bench's analysis.

*“Dismissing the present batch of review petitions at this stage – a course of action adopted by the majority – would place a seal of finality on the issues in the present case, without the Court having the benefit of the larger bench’s consideration of the very issues which arise before us.”<sup>26</sup>*

– Justice D.Y. Chandrachud

## CONTEMPORARY DEVELOPMENTS IN AADHAAR

Since most services have become digitalised and are increasing daily, the Aadhaar program has been amended to function with double security and privacy. The new Aadhaar cards and the PDF versions, *viz* e-Aadhaar, carry a disclaimer that it is ‘an identity proof, not for citizenship or date of birth.’ The explicit clarification should help prevent potential misuse by government departments and organisations who might otherwise use Aadhaar for purposes prohibited to citizens. Also, the Bombay High Court, in the case of *State of Maharashtra v Unique Identification Authority of India (UIDAI)*<sup>27</sup> In 2022, reiterated the limitations of Aadhaar by observing that it is proof of identity and residence but not necessarily proof of citizenship or age. There is also an astonishing provision wherein foreigners who have been in India for over six months may be given an Aadhaar card, lending further credence to the argument that it is more of a tool for resident identity than citizen identity. However, the Election Commission of India (ECI) had initially accepted Aadhaar as proof of date of birth for voter registration, yet the recent clarifications over the use of Aadhaar may challenge such practices.<sup>28</sup>

To further add strength to privacy, the government implemented Masked Aadhaar, which masks the first eight digits of the Aadhaar number and only shows the last four digits, thereby reducing the chances of identity theft. As per the official website of UIDAI, The mask Aadhaar option allows you to mask your Aadhaar number in your downloaded e-Aadhaar. Masked

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<sup>26</sup> *Ibid*

<sup>27</sup> *State of Maharashtra v Unique Identification Authority of India (UIDAI)* (2022) Crim WP 3002/2022

<sup>28</sup> ‘Aadhaar is Not a Proof of Citizenship’ (*Drishti IAS*, 31 January 2024) <<https://www.drishtiiias.com/daily-updates/daily-news-analysis/aadhaar-is-not-a-proof-of-citizenship>> accessed 10 September 2024

Aadhaar number implies replacing the first 8 digits of the Aadhaar number with some characters like 'XXXX-XXXX' while only the last 4 digits of the Aadhaar Number are visible.<sup>29</sup> The policy is the answer to balancing a rising need for digital verification against users' privacy and security. In addition to these revisions, the government ensured that Aadhaar remains trusted, although limited, in India's growing digital ecosystem.

## CONCLUSION

With the dismissal of review petitions on Aadhaar by the Hon'ble Supreme Court, decisive issues remain unresolved. This is a question over questions regarding the constitutionality of allowing the Aadhaar Act to be passed as a Money Bill. The major concerns of Justice D.Y. Chandrachud resort to a larger issue - the need for careful judicial scrutiny when fundamental constitutional principles are involved, as in the proper interpretation of Article 110(1). Dismissing these review petitions before the larger bench could weigh in means placing a premature seal of approval on legislative procedures that may undermine parliamentary oversight.

To resolve these challenges, several measures can be adopted. The first one would be strict guidelines for classifying a bill to be a Money Bill so that it is not misused as a legal tool to bypass the basic element of a bi-cameral democracy. The classifications should compulsorily undergo judicial review for strictly constitutional compliance. Furthermore, the state shall further improve data protection laws by implementing stringent safeguards and protocols for biometric data to address the growing concerns about privacy and data misuse. The Aadhaar database must become so robust that hacks become unheard of. At the same time, the legislation should make the government answerable for lapses, if any. Besides, there is a need for urgent disposal of pending cases and timely constitution of larger benches to resolve long-standing critical legal questions.

As we reflect on the Aadhaar judgment, the question arises - Has the judiciary adequately ensured the protection of the democratic process? Can one be sure about the propriety of the legislative process by which the Aadhaar Act was passed? Does the introduction of Masked

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<sup>29</sup> *Ibid*



Aadhaar serve enough to counter the privacy challenges? Does the limitation of Aadhaar as a mere proof of identity curb fraudulent practices? The lingering uncertainty calls into question the effectiveness of judicial oversight and the potential leakages within the system that allowed the persistence of such unresolved legal ambiguities.