

SYNOPSIS

This petition filed under Article 137 of the Constitution of India read with Order XLVII Rule 1 of the Supreme Court Rules, 2013, requests the Supreme Court of India to review the Majority Judgments rendered by it on 26.9.2018 in what is popularly known as the Aadhaar case (Justice K.S. Puttaswamy v. Union of India). This judgment disposed of a batch of writ petitions filed under Article 32 of the Constitution as well as transfer petitions. The Aadhaar case was heard and decided by a Constitution Bench of five Learned Judges.

Three judgments were rendered by this Hon'ble Court. Dr. A.K. Sikri, J. (for himself as well as Dipak Mishra, CJI and A.M. Khanwilkar, J.) authored the majority judgment. Ashok Bhushan, J. rendered a separate judgment which broadly concurred with the majority judgment. These two judgments are together referred to as the 'Majority Judgments'.

The third judgment of the court is a dissent and was rendered by Dr. D.Y. Chandrachud, J. The review petitioners believe that the view taken by Justice Chandrachud is the correct view, and this petition consequently seeks review of the Majority Judgments alone.

This review petition is being filed on the grounds that there are serious errors, and internal inconsistencies within the Majority Judgements, which necessitate correction in the interests of justice. A program such as Aadhaar has a serious, long standing, impact on the constitutional structure of our country. At the outset, the Aadhaar Bill was incorrectly certified as a Money Bill, as it failed to meet the strict standard laid out in Article 110(1). For a legislation that has serious implications on the rights of citizens to be passed without consideration of the Rajya Sabha is nothing but a fraud on the Constitution, as the Minority Judgement notes. Second, the Majority judgement committed a serious error on the face of the record in not appreciating how the architecture of Aadhaar creates a surveillance state. The Majority judgement did not even refer to the expert evidence submitted by both the Petitioner and the Respondent, which demonstrated how locational tracking was possible under Aadhaar. The Majority Judgement also didn't address the fact that the Aadhaar database carried very little value as there is no verification of the information submitted to it. Third, the Majority judgement commits an error in holding the use of Aadhaar under Section 7 was permissible, despite the deleterious impact it had on the rights of the most marginalized and vulnerable, who had been resigned to the status of

second class citizens. The Majority judgement ignored evidence submitted before the Hon'ble Court which showed that mandating Aadhaar authentication to access welfare benefits had caused exclusion to the extent of starvation deaths. There are also several internal inconsistencies within the judgement, listed below, including the manner in which the proportionality test was applied to the different applications of Aadhaar. These findings cannot be read together harmoniously, and require resolution in the interests of justice.

LIST OF DATES

28.01.2009 The Union of India, through the Planning Commission issued a Notification dated 28.01.2009, constituting the Unique Identification Authority of India (UIDAI) to implement the Unique Identity (UID) scheme wherein a UID database was to be collected from the residents of India. Notably, there was no mention of the collection of biometric information in the said notification. Furthermore, the notification did not

provide any measures to control the collection, storage, usage of the said information collected pursuant to the UID scheme.

- September 2010 The programme was launched in September 2010 in rural Maharashtra, with no statutory backing.
- 03.12.2010 On 03.12.2010, the Union of India introduced the National Identification Authority of India Bill, 2010 (NIA Bill) in Parliament. Notably, the NIA Bill was almost identical to the impugned Aadhaar Act, 2016.
- 13.12.2011 The NIA Bill was referred to the Parliamentary Standing Committee on Finance. The Standing Committee gave its report on 13.12.2011, where it noted several lacunas in the NIA Bill. Certain specific objections raised by the Standing Committee pertained to:
- (i) Privacy issues,
 - (ii) Protection of the sensitive biometric information,

(iii) Private parties' involvement in the collection of the biometric information,

(iv) Lack of appropriate technology in India to sustain such a project,

(v) Possibility of fake Aadhaar numbers being generated due to the inadequate verification system under the UID scheme.

30.11.2012 Aggrieved by the violation of fundamental rights of the citizens of India, several PILs were filed before this Hon'ble Court. The lead petition before this Hon'ble Court was *Justice K. S. Puttaswamy (Retd) v. Union of India &Ors.*, W.P. (C) No.494/2012. This Hon'ble Court vide Order dated 30.11.2012 issued notice in the said petition.

23.09.2013 A 2-Judge Bench vide Order dated 23.09.2013, stated,

“All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Adhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Adhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant.”

26.11.2013 A 2-Judge Bench vide Order dated 26.11.2013, held,

“After hearing the matter at length, we are of the view that all the States and Union Territories have to be impleaded as respondents to give effective directions. In view thereof notice be issued to all the States and Union Territories through standing counsel.

...

Interim order to continue, in the meantime.”

24.03.2014 In UIDAI’s own SLP (Crl) No. 2524/2014 assailing a Bombay High Court order requiring UIDAI to disclose biometric details of an accused, a 2-

Judge Bench vide Order dated 24.03.2014 directed,

“In the meanwhile, the present petitioner is restrained from transferring any biometric information of any person who has been allotted the Aadhaar number to any other agency without his consent in writing.

More so, no person shall be deprived of any service for want of Aadhaar number in case he/she is otherwise eligible/entitled. All the authorities are directed to modify their forms/circulars/likes so as to not compulsorily require the Aadhaar number in order to meet the requirement of the interim order passed by this Court forthwith.”

16.03.2015 A 3-Judge Bench vide Order dated 16.03.2015, stated,

“In the meanwhile, it is brought to our notice that in certain quarters, Aadhar identification is being insisted upon by the various authorities, we do not propose to go into the specific instances.

Since Union of India is represented by learned Solicitor General and all the States are

represented through their respective counsel, we expect that both the Union of India and States and all their functionaries should adhere to the Order passed by this Court on 23rd September, 2013.”

11.08.2015 A 3-Judge Bench vide Order dated 11.08.2015, while referring the matter to larger bench to decide the issue whether privacy is a fundamental right, passed the following interim order,

“Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA proceed in the following manner:-

1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;

2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen;

3. The Unique Identification Number or the

Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of foodgrains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme;

4. The information about an individual obtained by the Unique Identification Authority of India while issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation.”

12.09.2015 Vide Notification dated 12.09.2015, the Government revised the Allocation of Business Rules to attach the UIDAI to the Department of Electronics & Information Technology (DeitY) of the then Ministry of Communications and Information Technology.

15.10.2015 A Constitution Bench vide Order dated 15.10.2015, while partly modifying the aforesaid interim

order, passed the following order,

“3. After hearing the learned Attorney General for India and other learned senior counsels, we are of the view that in paragraph 3 of the Order dated 11.08.2015, if we add, apart from the other two Schemes, namely, P.D.S. Scheme and the L.P.G. Distribution Scheme, the Schemes like The Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), National Social Assistance Programme (Old Age Pensions, Widow Pensions, Disability Pensions) Prime Minister's Jan Dhan Yojana (PMJDY) and Employees' Provident Fund Organisation (EPFO) for the present, it would not dilute earlier order passed by this Court. Therefore, we now include the aforesaid Schemes apart from the other two Schemes that this Court has permitted in its earlier order dated 11.08.2015.

4. We impress upon the Union of India that it shall strictly follow all the earlier orders passed by this Court commencing from 23.09.2013.

5. We will also make it clear that the Aadhaar card Scheme is purely voluntary and it cannot

be made mandatory till the matter is finally decided by this Court one way or the other.”

16.3.2016 In the above backdrop, the Union of India, introduced the Aadhaar (Targeted Delivery of Financial and other subsidies, benefits and services) Act, 2016 (impugned Aadhaar Act) as a Money Bill in the Budget Session, 2016 in the Lok Sabha. The Aadhaar Act was in pith and substance identical to the earlier NIA Bill, 2009.

Despite objections with regard to the Aadhaar Act being introduced as a Money Bill, the same came to be passed on 16.3.2016

26.3.2016 The Aadhaar Act received Presidential assent and was published in the official gazette on 26.3.2016.

12.7.2016 Vide Notification dated 12.7.2016 certain provisions of the Aadhaar Act were brought into force w.e.f. 12.7.2016.

The Union of India vide Notification dated 12.7.2016 issued under Section 11 of the Aadhaar

Act, established the 2nd Respondent/UIDAI.

- 12.9.2016 Vide Notification dated 12.9.2016, the remaining provisions of the Aadhaar Act was brought into force. Section 7 of the Aadhaar Act was brought into force by this Notification.
- 28.10.2016 A number of PILs were filed before this Hon'ble Court challenging the Aadhaar Act. The first writ petition is WP No. 797/2016 titled '*S.G. Vombatkere and Anr. vs. Union of India &Anr.*'. This Hon'ble Court vide Order dated 28.10.2016, issued rule nisi, and tagged the matter with the above-mentioned petitions, which were pending adjudication before the Constitution Bench.
- January 2017 The Respondent No. 1, through its different Ministries, issued various Notifications under Section 7 of the Aadhaar Act, making the Aadhaar number a mandatory requirement for individuals seeking to avail different benefits, services and subsidies.

6.02.2017 In spite of the specific direction by this Court to not use the Aadhaar platform, TRAI launched the Aadhaar based e-KYC for mobile connections of 16.8.2016.

The Respondent No. 1/Union of India in a separate proceeding before this Hon'ble Court, has sworn on affidavit that they are using the Aadhaar platform for verification of sim cards. This Hon'ble Court vide Order dated 6.2.2017 in the matter of '*Lokniti Foundation v. Union of India and Anr.*, WP No. 607/2016', has taken note of the same.

31.3.2017 The Union of India introduced Section 139AA of the Income Tax Act, 1961 (by way of Section 56 of the Finance Act, 2017) making it mandatory to present an Aadhaar number for the following: - (a) obtaining a permanent account number ("PAN"); (b) continued validity of a person's PAN; and (c) filing one's return of income under the Income

Tax Act.

23.03.2017 The Department of Telecommunication vide Circular dated 23.03.2017 directed all mobile companies to carry out re-verification of existing customers (both postpaid and prepaid) by carrying out e-KYC, which requires the customer to provide his or her Aadhaar number on or before 8.02.2018.

25.04.2017 Writ Petition (Civil) No. 342 of 2017, titled *Shantha Sinha & Anr. v. Union of India & Ors.* was filed by the Review Petitioners in this matter, challenging, inter alia the constitutionality of the Aadhaar Act, 2016.

01.06.2017 Prevention of Money Laundering (Maintenance of Records) Second Amendment Rules, 2017 was passed by the Union of India making Aadhaar Number mandatory for eKYC.

Consequently, Aadhaar was made mandatory for opening and maintaining of bank account, for carrying out any financial transaction equal to or

exceeding Rs. 50,000/-, holding investments in mutual funds and holding insurance policies.

Writ Petition (Civil) No. 1002 of 12017 was filed by one the review petitioners herein, titled '*Kalyani Menon Sen v. Union of India &Ors.*' challenging the amendments made under the Prevention of Money Laundering Act, and Mobile linking.

09.06.2017 A 2-Judge Bench of this Hon'ble Court vide Judgment dated 9.06.2017 in the matter titled '*BinoyViswam v. Union of India &Ors.*', Writ Petition (Civil) No. 247 of 2017, upheld the validity of Section 139AA of the Income Tax Act, under Articles 14 and 19.

It directed that those who have already enrolled themselves under Aadhaar scheme would comply with the requirement of sub-section (2) of Section 139AA of the Income Tax Act. Those who still want to enrol are free to do so. However, the PAN cards of those who are not Aadhaar card holders, and do

not comply with the provision of Section 139(2), can be not treated as invalid for the time being.

24.08.2017 A 9-Judge Constitution Bench of this Court vide Judgment dated 24.08.2017 in WP No. 494/2012 titled '*Justice K.S. Puttaswamy (retd) &Anr vs. Union of India &Ors*' along with other matters, decided the 'referred issue' relating to the existence of the fundamental right to privacy. This Court unanimously held that there exists a fundamental right to privacy and remitted the matter back for adjudication.

26.09.2018 A five-judge bench of this Hon'ble Court passed its final order and judgement, disposing of the batch of writ petitions filed under Article 32 of the Constitution vide judgement dated 26.09.2018 titled *Justice K.S. Puttaswamy (Retd.) And Another vs. Union Of India &Ors.* in W.P. No. 494 of 2012. The Judgement was given by Justice A.K. Sikri, writing for himself, Chief Justice Dipak Misra and Justice Khanwilkar, Justice Bhushan who

broadly concurred with the majority judgement,
and Justice D.Y. Chandrachud, writing in dissent.

10.01.2019 The Petitioners filed the present Petition seeking
review.

