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LEGALONUS LAW JOURNAL
ISSN: 3048-8338



www.legalonus.com Email: journal@legalonus.com

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ISSN: 3048-8338

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ISSN: 3048-8338

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LEGALONUS LAW JOURNAL (LLJ)**Explanation of Right to Privacy and Aadhar with landmark judgments**

-Miss Shivani Gupta

Abstract

The **biometric identification**¹ program implemented in India explores the ethical, legal, and societal ramifications of privacy in the digital era. The development of the right to privacy as a fundamental human right is examined in this abstract, along with its importance in preserving individual liberty, dignity, and freedom from governmental interference. Examining the Aadhaar project, its goals, and its execution, it examines the conflicts that arise between the government's desire for effective service delivery and the worries about privacy, surveillance, and data security. Additionally, it examines legal issues and significant court decisions that have influenced the conversation around privacy and Aadhaar, emphasizing the fine line that must be drawn between individual rights, administrative effectiveness, and national security. In addition, this abstract considers the broader implications of the right to privacy in the digital age, highlighting the necessity of strong legislative frameworks, open governance, and technological protections to protect citizens' rights to privacy in the face of swiftly advancing technology and shifting social mores. In this article we will understand the right to privacy and its Aadhar implication.

Introduction

Although there isn't a clear legal definition of "privacy," some legal experts consider it as a human right that each and every person has just by virtue of their existence. It is independent of any charter or instrument. One of the most important aspects of the freedom each person is entitled to is privacy. The Latin word "privatus," which means "private, secret, or personal," is where the word "privacy" originates. It refers to anything that is not public or owned by the state. Therefore, the idea of something belonging to oneself that one would not wish to share with others is implied by the word "privacy." "Privacy means the control over whom and when various parts of us can be sensed by others," according to Richard B. Parker in his book Privacy. He refers to "various parts" as our voice, our physical parts, and the end result of our bodies.

People are legally protected from "arbitrary interference" with their privacy, family, home, correspondence, honour, and reputation by Article 12 of the 1948 Universal Declaration of Human Rights and Article 17 of the 1966 International Covenant on Civil and Political Rights (ICCPR). Being the owner of anything gives you a lot of rights over it, including the ability to

¹ A measurable physical characteristic or personal behavioural trait used to recognize the identity, or verify the claimed identity, of an applicant,

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give it away, sell it, or even destroy it. In addition, they are entitled to protection against unauthorized use, theft, transfer, and destruction of their property

Historical Background of Right to Privacy

The Right to Privacy is not mentioned in Part III of the Constitution's list of fundamental rights since it was not specifically intended by the drafters of the document. The legal system has considered the issue and provided early interpretations of privacy. But the Supreme Court's first opportunity to address the issue of privacy occurred in 1954, a mere four years after the Constitution's adoption. When comparing the practice of search and seizure against privacy, the Supreme Court ruled in Favor of it in the **MP Sharma v. Satish Chandra**² case.

The right to privacy was brought before the court once more in the case of **Kharak Singh v. State of Uttar Pradesh**³, which was decided nine years after the ruling in the M.P. Sharma case. In the case in question, Kharak Singh, an accused dacoit, was the target of covert picketing and surveillance. His residence was also periodically visited, and a number of investigations were conducted.

The right to privacy is one of the essential rights guaranteed by article 21 of the Indian Constitution, the court finally decided in the case of **Govind v. State of Madhya Pradesh**. However, this decision was made by a smaller bench of three judges, who also found that the right is not unqualified and that the legal process may impede it.

When the plaintiff filed a lawsuit against these changes, the court issued a ruling that followed the preceding pattern, holding that the right to privacy is not covered by fundamental rights. The one bright spot in this ruling was Justice Subba Rao's dissenting opinion, which maintained that even while the right to privacy has not been proclaimed a fundamental right by the constitution, it is nevertheless a crucial component of individual liberty.

In the well-known telephone tapping cases of **PUCL v. Union of India**⁴, decided in 1997, the Supreme Court categorically ruled that people have a right to privacy over the information they communicated over the phone. Thus, it can be seen from a number of decisions that while the right to privacy was acknowledged, its exceptions were also given appropriate consideration.

² A bench of 8 judges of the Supreme Court sat in this case.

³ Kharak Singh v. State of U.P. and others, 1964 SCR

⁴ PUCL V. Union of India AIR 1997 SC 568 / (1997) 1 SSC

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In the second decade of the twenty-first century, concerns over the right to privacy have centered on Aadhaar, a government program that requires citizens to provide their biometrics—such as their fingerprints and iris scans—as well as their demographic information in order to receive a unique ID. Aadhaar was contested in court on the grounds that it violates people's privacy, and the Supreme Court limited its use in its September 2013 ruling, allowing it only to be used for LPG subsidies and the public distribution system.

However, in October 2015, it amended its order and said that Aadhaar can be used to deliver services such as Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA),

Pradhan Mantri Jan-Dhan Yojana, pension and provident fund schemes but no person should be deprived of any service in absence of Aadhaar⁵.

What is Aadhar?

Aadhaar is a twelve-digit unique identification number that the Indian government issues to its residents. It was first proposed in the Rajya Sabha in December 2010 by the National Identification Authority of India Bill. The Unique Identification Authority of India (UIDAI) is in charge of issuing and managing Aadhaar. The purpose of Aadhaar is not to replace current identity documents, such as a driver's license, passport, or PAN. It can, nevertheless, be used as a single form of identification. It can also be used by banks, financial institutions, and telecom firms to maintain profiles and do Know-Your-Customer (KYC) verification. The Supreme Court ruled on March 27 that the government cannot be prevented from utilizing Aadhaar identity for non-welfare tasks including as opening bank accounts, filing tax returns, confirming user credentials, and verifying new and existing mobile phone numbers.

The Supreme Court ruled that the government lacked the authority to impose a mandatory Aadhaar program in response to a challenge to the program. It was also decided that the government could not be prevented from using Aadhaar for non-welfare purposes. The government was allowed to utilize it for certain social programs but not all of them.

The following is a list of the government-released programs for which Aadhaar is required in both benefit and non-welfare schemes:

- Aadhaar is required for workers in iron ore, limestone, and beedi to receive household subsidiaries.
- Aadhaar is required for anyone wishing to participate in Janani Suraksha Yojana and the Integrated Department of Horticulture's welfare programs.
- Aadhaar is required for those who want to receive training through Integrated Child Development Services, according to the Ministry of Women and Child Development.

⁵ Governance Now dated July 1-15, 2016.

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- Aadhaar is required in order to receive benefits under the **Grih Kalyan Kendra plan**⁶.
- Aadhaar was made required in order to receive financial assistance under the National Women Development Scheme.

The Commencement and Timeline of the Aadhar Case: -

- **2006–2009:** Infosys co-founder Nandan Nilekani first put up the idea of a unique identity system in 2006. The project's goal was to give each Indian citizen a distinctive identification number that could be used as documentation of their address and identity. The Indian government chose to move forward with this endeavour in 2009 and created the UIDAI.
- **September 2009:** To facilitate the issuance of Aadhaar cards to citizens, the centre established the Unique Identification Authority of India, or UIDAI. The first chairman of UIDAI was named as Nandan M. Nilekani, the man who designed Aadhaar.
- **2010-2012:** Enrolment Begins - In September 2010, the UIDAI opened up enrolment for Aadhaar. It entailed gathering demographic and biometric information from citizens all throughout the nation. Adult enrolment was the primary goal at first, but later on, kids were added as well. In Supreme Court a writ petition has been filed by retired K.S. Puttaswamy. Puttaswamy, a former judge from the Karnataka High Court, contested the government's policy of requiring everyone to have an Aadhaar card as well as its intentions to connect people' biometric IDs to various government programs.
- **September 2013:** In an interim ruling, the Supreme Court ruled that no citizen should be forced to suffer because they do not have an Aadhaar card, even in cases when the government has made it necessary in order to be eligible for certain benefits. Enrolment in Aadhaar kept growing, encompassing an increasing number of citizens. With the goal of streamlining procedures and reducing fraud, a number of government programs and services began incorporating Aadhaar as a method of identification and authentication.
- **March 2014:** This year, the Supreme Court issued another judgment requiring the agencies to withdraw any orders they had previously issued mandating the use of Aadhaar in order to get benefits.
- **March 2017:** Legal Challenges and Supreme Court Decision: Aadhaar encountered legal challenges relating to privacy issues and problems with its required use in a number of services. The Supreme Court of India affirmed the constitutional legitimacy of Aadhaar in September 2018, but with limitations, holding that it cannot be made required for some services, such cell phone connections and bank accounts.

⁶ to promote the socio-economic and educational status of needy central government employee

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- **2019 and Present:** Continued Use and Expansion: In spite of legal disputes and controversy, Aadhaar remains an essential component of the identity verification system used by the Indian government.

Verdict by Supreme Court on Right to Privacy⁷

Under the Aadhaar Act, residents are entitled to receive an Aadhaar number by enrolling and submitting biometric and demographic information. The Supreme Court examined the terms of the Aadhaar Act to determine whether they infringed against the right to privacy, which it recognized as a fundamental right. On August 24, 2017, a nine-judge Constitution Bench led by Chief Justice J.S. Khehar rendered a historic ruling regarding the right to privacy. The Supreme Court declared that the right to privacy is "intrinsic to life and personal liberty" and that it is a fundamental freedom protected by Part III of the Constitution as well as Article 21.

The Chief Justice stated that the Court had overruled its own eight-judge bench and six-judge bench rulings in the M.P. Sharma and Kharak Singh cases, delivered in 1954 and 1961, respectively, that privacy is not protected under the Constitution, after reading the unanimous decision reached by the nine-judge bench.

A five-judge bench led by Chief Justice J.S. Khehar had referred the issue of whether or not privacy is a basic right to the numerically superior nine-judge bench⁸ in order to overrule these two precedents.

The validity of the biometric identification project Aadhaar could now be tested by the verdict. The nine-judge panel declared that the right to privacy was just as important as the rights to life and liberty, and that the decision will shield citizens' individual liberties from government interference.

Landmark Puttaswamy case

Case summary- Justice K.S. Puttaswamy (Retd.) v. Union of India

Article 12 of the 1948 Universal Declaration of Human Rights expressly states that the right to privacy is one of the fundamental human rights:

"Article 12 of the 1948 Universal Declaration of Human Rights expressly states that the right to privacy is one of the fundamental human rights.

⁷ Judge K.S. Puttaswamy (Retd.) petitioned the Supreme Court in 2012, arguing that Aadhaar infringes people's right to privacy and is therefore unconstitutional

⁸ The Hindu, 24 August 2017

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No person shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Every has the right to the protection of the law against such interference or attacks."

The majority of Western countries possess a strong legal framework concerning privacy, and India has long recognized the need for something similar. In a number of rulings, the Supreme Court had previously expressed strong opinions on the subject, including:

- M.P. Sharma v. Satish Chandra
- Maneka Gandhi v. Union of India
- Kharak Singh v. State of U.P. and
- People Union for Civil Liberties v. Union of India

The introduction of Aadhar Cards raised awareness of people's right to privacy once more. In a writ case, retired Justice Puttaswamy contested Aadhar's legitimacy before the Supreme Court. The petitioner said that the Aadhar process infringed upon the fundamental right to privacy, which is protected by all prior rulings of the highest court.

Issue raised

- Was Parliament competent to pass the Aadhar Act as a Money Bill?
- Does the maintenance of a record of biometric data violate right to privacy?

Puttuswamy case Judgement

The following points were emphasized by the Court in its ruling:

- It was decided that both state and non-state organizations may have privacy concerns in the modern era of technology, and as a result, both can be sued for invasions of privacy.
- The Court further held that in the era of the internet, the right to information privacy is not inalienable and that a person's freedom to exercise control over his data may result in a significant breach of that person's private.
- It was also established that Article 21's scope is constantly growing as a result of the Supreme Court justices' agreement over time, which has led to the inclusion of several rights under Article 21.

On August 24, 2017, a nine-judge Supreme Court bench eventually rendered a decision in this historic case, preserving the basic right to privacy derived from Article 21. The court ruled that

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Part III of the Constitution, which protects fundamental rights, includes the right to privacy as an inherent and essential component.

An individual's right to privacy and the government's rightful goal of enforcing its regulations are the primary points of contention in this field, and maintaining a balance is necessary while doing so.

According to the Supreme Court, the right to privacy is not unqualified, and any infringement against it by state or non-state entities must pass the following three requirements:

- Legitimate aim
- Equitableness and
- Lawfulness

The decision of all the nine judges also held the following:

- The ruling in *M.P. Sharma v Satish Chandra*, which concluded that the Indian Constitution does not safeguard the right to privacy, is overturned.
- Insofar as it maintains that Part III does not guarantee the right to privacy, the *Kharak Singh* ruling is likewise overturned.
- In addition to being guaranteed by Article 21 of the Constitution, an individual's right to privacy is an integral component of Part III's framework, which upholds fundamental rights.

India's Commitment under International Law

- The acknowledgement of privacy as an essential constitutional principle is a component of India's dedication to a worldwide human rights framework.
- The State is required to make an effort to "promote respect for international law and treaty obligations in the dealings of organized peoples with one another" according to Article 51 of the Constitution, which is a component of the Directive Principles.
- The right to privacy is recognized in Article 12 of the Universal Declaration of Human Rights.

Conclusion

Given that article III of the constitution recognizes privacy as a basic and fundamental human right, India cannot lag behind. Privacy must be recognized as a distinct legal framework in light of the expanding information and technological landscape, with a few stringent data regulations coming next. For the purpose of determining the number of privacy cases and issues occurring in India, an expert committee should be established.

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In an increasingly interconnected world, data protection must to be given higher priority, and appropriate care must be used when there is a conflict between privacy violations and public interest. Public interest must take precedence over individual interest. As is well known, the most crucial law to uphold in a democracy is the one pertaining to public welfare. Finally, in this day and age of technological innovation, privacy protection is crucial, and in a rising nation like India, the implementation of a distinct privacy law is critically needed.



Legalonus

VOLUME 1 ISSUE 2, 2024

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Maiden Issue

S. No.:	Particulars	Details
1.	Place of publication	Lucknow, Uttar Pradesh
2.	Language	English only
3.	Under the guidance	Dr. Radha Ranjan
4.	Owner, & Publisher	LEGALONUS LAW JOURNAL, Ayush Chandra, Lucknow, UP, India

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