



Aadhaar gets thumbs up from Supreme Court

Posted at: 27/09/2018

Highlights

- The Supreme Court, in a majority opinion, upheld Aadhaar as a reasonable restriction on individual privacy that fulfils the government's "legitimate aim" to provide dignity to a large, marginalised population living in abject poverty.
- The majority view by Chief Justice of India Dipak Misra and Justices A.K. Sikri and A.M. Khanwilkar declared Aadhaar a "document of empowerment." An "unparalleled" identity proof.
- A document that cannot be duplicated unlike PAN, ration card, and passport.

'Widely accepted'

- Justice D.Y. Chandrachud wrote a sharp dissent, declaring Aadhaar unconstitutional.
- Justice Ashok Bhushan, in a separate opinion, concurred with the majority view, saying Aadhaar has been widely accepted.
- Justice Sikri said technology had become a vital tool for ensuring good governance in a social welfare state. Schemes like PDS, scholarships, mid-day meals, LPG subsidies, involve a huge amount of money and "fool-proof" Aadhaar helped welfare reach the poor.

Aadhaar gets thumbs up from Supreme Court

- Upholding the passage of the Aadhaar Act as a Money Bill, the Supreme Court said neither were individuals profiled nor their movements traced when Aadhaar was used to avail government benefits under Section 7 of the Aadhaar Act of 2016.
- The statute only sought "minimal" biometric information, and this did not amount to invasion of privacy.

Bar on bank-mobile link

- The majority opinion upheld the PAN-Aadhaar linkage, but declared linking Aadhaar with bank accounts and mobile SIM cards unconstitutional.
- The court insulated children from the Aadhaar regime, by making it unnecessary for children aged between six and 14 under the Sarva Shiksha Abhiyan as right to education was a fundamental right.
- Statutory bodies like CBSE and UGC cannot ask students to produce their Aadhaar cards for examinations like NEET and JEE.
- Permission of parents and guardians was a must before enrolling children into Aadhaar, the Supreme Court declared.

- Children once they attained the age of majority could opt out of Aadhaar, the Supreme Court said.
- It said it was not trivialising the problem of exclusion faced by the elderly, the very young, the disabled and several others during the authentication process.
- Authentication was found to be only having a .232% failure, Justice Sikri pointed out.
- He reasoned that dismantling the scheme would only disturb this 99.76%.
- The Supreme Court, in its majority opinion, said the remedy was to plug the loopholes rather than axe Aadhaar.
- The court further directed the government and the Unique Identification Authority of India (UIDAI) to bring in regulations to prevent rightfully entitled people from being denied benefits.
- Countering the argument that the Aadhaar regime would facilitate the birth of a “surveillance state”, Justice Sikri wrote that Aadhaar exhibited no such tendencies.
- Authentication transactions through Aadhaar did not ask for the purpose, nature or location of the transaction.
- Besides, information was collected in silos and their merging was prohibited.
- The authentication process was not expanded to the Internet.
- The collection of personal data and its authentication was done through registered devices.
- The Authority did not get any information related to the IP address or the GPS location from where authentication was performed.
- “The Aadhaar structure makes it very difficult to create the profile of a person,” Justice Sikri reasoned.
- However, the Supreme Court quashed or read down several provisions in the Aadhaar Act in order to de-fang any possibility of the state misusing data.
- For one, the court held that authentication records should not be retained for more than six months.
- It declared the archiving of records for five years as “bad in law.”
- It also prohibited the creation of a metabase for transactions.
- It read down Section 33 (1), which allowed the disclosure of Aadhaar information on the orders of a District Judge.
- This cannot be done now without giving the person concerned an opportunity to be heard.
- The Supreme Court struck down Section 33(2), which allowed the disclosure of Aadhaar information for national security reasons on the orders of an officer not below a Joint Secretary.
- It held that an officer above the Joint Secretary rank should first consult with a judicial officer, possibly a High Court judge, and both should decide whether information need to be disclosed in the national interest.
- The court has struck down Section 47, which allows only the UIDAI to file criminal complaints of Aadhaar data breach.
- Finally, it quashed that part of Section 57 of the Act which permits private companies from using Aadhaar data to authenticate a person.