

Supreme Court Verdict on Aadhaar - I

Why in news?

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

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

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What are the highlights of the majority verdict?

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

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

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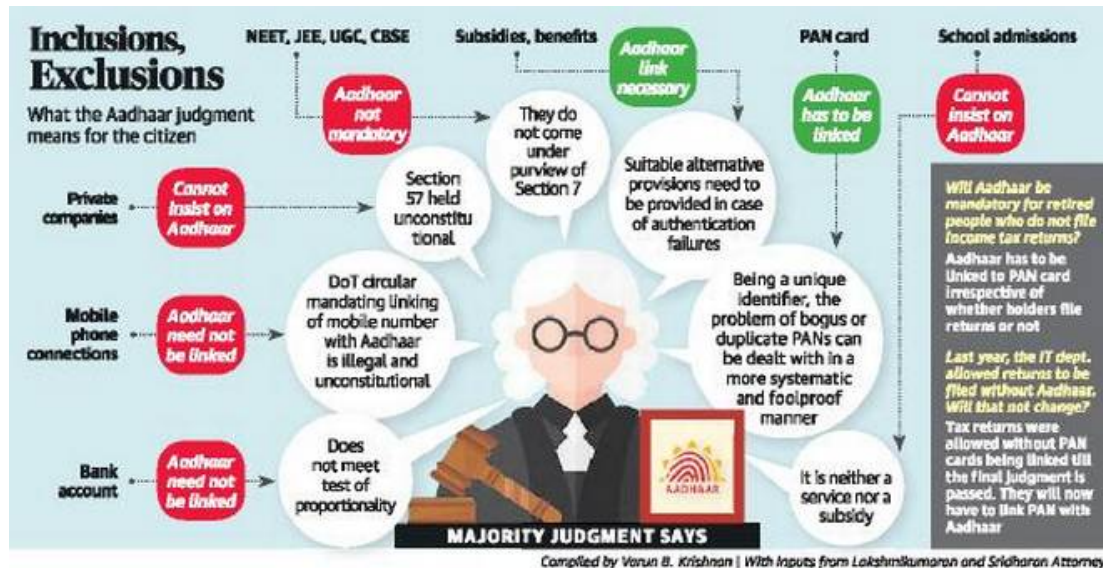
1. Aadhaar as digital identity infrastructure

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

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- **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.

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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

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- **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.

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

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

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

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

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

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

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

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

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

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- As a result-

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1. telecom cannot insist on customers to furnish Aadhaar details

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

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

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AADHAAR IS...	
<p style="color: red; font-weight: bold; text-align: center;">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; font-weight: bold; text-align: center;">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

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

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

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- But there was no deadline mentioned by the court.

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

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- **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.

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- 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.

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

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- **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.

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- 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.

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

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

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- 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.

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

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

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- **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.

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

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- **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.

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

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- 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.

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

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

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- **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.

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- 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.
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- The court thus read down (providing narrow interpretation) this provision as susceptible to misuse.
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- **Regulation 26(c), Aadhaar Regulations** - It allowed UIDAI to store metadata relating to transactions.
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- The court struck down this regulation in its present form.
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- **Regulation 27** - It allowed archiving transaction data for 5 years.
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- The court struck down this and allowed only upto 6 months.
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What are the highlights of the minority judgment?

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

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

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Click [here](#) for Part II

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Source: The Indian Express, The Hindu

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