

AADHAAR ACT: A JURISPRUDENTIAL CONUNDRUM THAT ENTAILS INVASIVENESS AND BREACHES OF PRIVACY

Written by *Pareesh Virmani**, *Vallabha Gulati*** & *Prachi Bhati****

* 4th Year BBA LLB student, Delhi Metropolitan Education affiliated to GGSIP University

** 4th Year BA LLB student, Delhi Metropolitan Education affiliated to GGSIP University

*** 4th Year BA LLB student, Delhi Metropolitan Education affiliated to GGSIP University

ABSTRACT

Privacy, in its simplest sense, allows each human being to be left alone in a core which is inviolable. Yet the autonomy of the individual is conditioned by her relationships with the rest of society. Those relationships may and do often pose questions to autonomy and free choice. The overarching presence of state and nonstate entities regulates aspects of social existence which bear upon the freedom of the individual. The preservation of constitutional liberty is, so to speak, work in progress. Challenges have to be addressed to existing problems. Equally, new challenges have to be dealt with in terms of a constitutional understanding of where liberty places an individual in the context of a social order.

The emergence of new challenges is exemplified by this case, where the debate on privacy is being analysed in the context of a global information based society. In an age where information technology governs virtually every aspect of our lives, the task before the Court is to impart constitutional meaning to individual liberty in an interconnected world. The question whether our constitution protects privacy as an elemental principle, the Court has to be sensitive to the needs of and the opportunities and dangers posed to liberty in a digital world.

A Bench of three judges of the Apex Court, while considering the constitutional challenge to the Aadhaar card scheme of the Union government noted in its order dated 11 August 2015 that the

norms for and compilation of demographic biometric data by government was questioned on the ground that it violates the right to privacy.

Key Words: K.S. Puttaswamy Judgement, Civil Death, Right to Information, Reasonable Classification, Right to remain Silent, Deprivation of Choice, Bodily Integrity, Narrow Tailoring test, State Surveillance, Private Entities.

INTRODUCTION

“It makes sense to say that a man has a fundamental right against the Government, in the strong sense, like free speech, if that right is necessary to protect his dignity, or his standing as equally entitled to concern and respect, or some other personal value of like consequence.”¹

Perhaps more than any other case of the past decade, the legal challenge to the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016—or the Aadhaar Act—in the Supreme Court is subsumed by a debate over the extent of the rights and liberties guaranteed to us as individuals under our Constitution. At the core of this debate lies a basic question: do Indian citizens possess a fundamental right to privacy?

Although the answer to this question ought to be in the affirmative, on any reasonable interpretation of India’s Constitution, the Union government argues that our citizens do not enjoy any such liberty. The Constitution, it says, only grants a right to life and personal liberty, a right to equality, and a right to various other freedoms, subject to certain reasonable restrictions. Its elision, in explicitly failing to accord a right to privacy, the government contends, cannot be cured by way of judicial interpretation, and, therefore, the Aadhaar Act cannot be struck down on the ground that it infracts a person’s privacy.

¹ Ronald Dworkin, *Taking Rights Seriously*, Duckworth (1977)

The Constitution's prime aim, one would imagine, is to effectuate into justiciable principles those ideas contained in its Preamble, to make the ideas capable of realisation through an action in a court of law. But the attempted crystallization of the philosophies underpinning the Preamble, viz. Justice (social, economic and political), Liberty (of thought, expression, belief, faith and worship), and Equality (of status and of opportunity), has only resulted in the creation of further abstractions. Article 14, for instance, which seeks to provide a right to equality says the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It, however, offers no explicit clues on what equality means—on whether it guarantees merely formal equality, which would give individuals a right to be treated equally without discrimination, or on whether it guarantees a more substantive equality, which would demand that the State treat its people with equal concern. The attempted crystallization also doesn't rid the Constitution of its innumerable contradictions. When a person's right to religion conflicts with another's right to free speech, for instance, which right must prevail? What exactly do we mean by "personal liberty"? Does the right to personal liberty encompass nothing more than a guarantee against arbitrary incarceration? Or, does it encompass a right to bodily integrity and to live with human dignity? The Constitution doesn't always give us any overt answers to these questions. It leaves judges with the task of adjudicating these conflicts in the hope that there is a right answer, to be found within its language.²

COERCING CITIZEN TO PART THE BIOMETRIC/PERSOANL DATA DOES NOT SAFEGAURDS THEIR PRIVACY

A person has every right to protect his or her biometrics from wide dissemination because in a digital world the theft of a biometric such as fingerprints could compromise that person's safety and property. Evidently the Aadhaar act compels the individuals to do so which is violative of right to privacy which is the heart of article 21 of the constitution

² Gautam Bhatia, Privacy Aadhaar and Constitution, <http://www.thehinducentre.com/the-arena/current-issues/article9717493.ece>

AADHAAR ACT FAILS TO ACKNOWLEDGE THE PRIVACY DANGERS MOUNTING FROM RTI INQUIRIES

Right to information is people's right ever since Evidence Act was passed in 1872 as its Sections 74 and 76 provided access to public records on payment of copying charges. This right was constitutionalized in 1950 under Article 19(1)(a) and then legally facilitated in 2005 through Right to Information Act. If liberty of thought is basis for expression right which included right to vote, the right to information formed foundation for free speech. People have right to know and right to information from the government. The Aadhaar Act is exactly in juxtaposition to the RTI Act, as that gives 'authority of Government to secure the information of the people. Interestingly, the privacy holds these two Acts in two hands in opposite directions. While the RTI of the people about state is denied practically by the PIOs of public authorities on the wrongful claim of privacy, the state's Aadhaar law and scheme has every danger of invading the privacy of the citizen.

Allowing Free Collection, Use and Storage of Aadhaar and Other Personal Data of the People Violates their Right to Privacy

It is a settled position that in case of a conflict between individual rights and state interests, the former are given priority over the latter.³ In addition to the principle of non-discrimination in Article 14,⁴ it is necessary that each state action passes the test of due process, substantively as well as procedurally.⁵ The Aadhaar Act lacks legitimacy in its object in so far as it validates breach of fundamental rights retrospectively. It is also characterised by excessive delegation. For an aim to be legitimate, it is necessary that the means adopted also be legitimate. Therefore the means resorted by the Act being biometrics and algorithm, itself is unsatisfactory”

³ kesavananda bharati vs. State of kerala, AIR 1973 SC 1461

⁴ **14. Equality before law** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

⁵ Supra note 1.

Tracing the trends of reasonableness through the Supreme Court judgments in *Re Delhi Laws Act*,⁶ *State of West Bengal Vs. Anwar Ali Sarkar*,⁷ *Rustom Cavasji Cooper Vs. Union Of India*,⁸ *Maneka Gandhi Vs. Union Of India*,⁹ and *Kesavnanda Bharti*,¹⁰ therefore evidently the said Act is unconstitutional.

In *District Registrar and Collector, Hyderabad Vs. Canara Bank*¹¹ the Apex Court had observed, “if the right (to privacy) is to be held to be not attached to the person, then ‘we would not shield our account balances, income figures and personal telephone and address books from the public eye, but might instead go about with the information written on our foreheads or our bumper stickers’.”

Right to life under Article 21 also includes the Right to Reputation

The right to privacy as a fundamental right, with the judgments in *NALSA vs. UOI*,¹² wherein the right of transgender was read into Article 15 and 21, and *Subramanian Swamy Vs. UOI*,¹³ where it was observed that the right to life in Article 21 includes the right to reputation, Article 21 encompasses the concept of dignity. The Aadhaar project is accordingly unconstitutional.

That the notifications mandating Aadhaar for the welfare schemes for bonded labourers and child labourers and so called welfare schemes. In *Minerva Mills*¹⁴ wherein it was observed that “One of the faiths of our founding fathers was the purity of means. The goals set out in Part IV have, therefore, to be achieved without the abrogation of the means provided for by Part III”. Evidently the report of Justice Wadhwa Committee¹⁵, appointed by the apex court in *PUCL v. Union of*

⁶ 1951 AIR 332, 1951 SCR 747

⁷ 1952 AIR 75, 1952 SCR 284

⁸ 1970 AIR 564, 1970 SCR (3) 530

⁹ 1978 AIR 597, 1978 SCR (2) 621

¹⁰ AIR 1973 SC 1461

¹¹ [AIR 2005 SC 186]

¹² [(2014) 5 SCC 438]

¹³ (2016) 7 SCC 221

¹⁴ *Minerva Mills Ltd. and Ors. v. Union Of India and Ors.* AIR 1980 SC 178

¹⁵ The committee, headed by former Supreme Court judge D P Wadhwa, was set up in 2006 following an order by the apex court, which was hearing a petition by People's Union for Civil Liberties, a human rights organisation. The

*India*¹⁶ to look into the maladies affecting the proper functioning of the Public Distribution System (PDS), similarly Aadhaar could not block the leakages in social security schemes and other benefits.

In Justice KS Puttaswamy case it was observed that “privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality”.

AADHAAR ACT SUMMITS TO CIVIL DEATH AND CONSTITUTIONAL DEATH OF A CITIZEN

“The Aadhaar scheme, in fact, impedes mobilization and perpetrates intrusion in addition to civil death, it confers the power to the result in the constitutional death of a citizen.” Civil Death The law in general provided for presumption of civil death.¹⁷ If a man is unheard of for seven years, law presumes him to be dead, which of course can be rebutted by his existence.¹⁸ Secondly when a man converts into a different religion, he suffers civil death as far as his original religious group is concerned and the wife gets a right to relinquish him.¹⁹ The third way of civil death presumption is when a person renounces the world.²⁰ Now the Aadhaar Act adds a fourth dimension to presumption of civil death, i.e., a person devoid of Aadhaar will be denied all benefits, pension, account, certification etc.

committee was assisted by N C Saxena, commissioner of the Supreme Court on right to food. Taking the committee’s report on board, a bench of apex court has asked states to respond to the report.

¹⁶ (1975) 2 SCC 148

¹⁷ Section 107 r/w 108, Indian Evidence Act 1872

¹⁸ Subhash Rmachandra Wdekar v. Union of India, AIR 1993 Bom. 64

¹⁹ Mohammad sharif v. Bande Ali, ILR 43 Alld. 36

²⁰ Hemant Kishore and others v. Brij Raj Kishore and others, AIR 1998 All. 328

The decisions of the Federal Constitutional Court of Germany in the *Micro census case*²¹ and *Census case*²². In the former, it was held that it is an infringement of human dignity to catalogue and register an individual and that there has to be an area in which there is no invasion and the individual can enjoy in solitude. In the latter, it was observed that the right of informational self-determination has its roots in the constitutional guarantees of personhood and human dignity, and it accords the individual the liberty to decide about the disclosure as well as the use of their personal data.

Arbitrary or Unlawful interference with his Privacy, Family, Home and Correspondence

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honour and reputation.²² Everyone has the right to the protection of the law against such interference or attacks as Article 17 of the International Covenant on Civil and Political Rights Act, 1966, to which India is a party also protects that right and states as follows: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence nor to unlawful attacks on his honour and reputation.”

STATE CANNOT COERCE A CITIZEN TO PART WITH THE PERSONAL AND BIOMETRIC DATA

The state cannot compel any individual to part his or her biometrics except for every limited purposes such as criminal investigation or (where backed by law) bordered control or registration of documents. In contrast, in a totalitarian regime the individual has a diminished status.²³ His or her biometrics can be collected indiscriminately by a totalitarian state. Biometric is an unreliable.

²¹ BVerfGE 1 (1969)

²² The basis for national regulation of personal data protection in the member states, and thereby another important source of interpretation in the field, is Directive 95/46/EC (i.e. Directive 95/46/EC of the European Parliament and of the Council of 24.10.1995, on the protection of individuals with regard to the processing of personal data and the free movement of such data (OJ L 281, 23.11.1995, p. 31). Still, the solutions provided to problems of protection of private life differ by country. While Hungary has balanced the two fundamental rights in a single act, in the Czech Republic the subject of the data is entitled to the widest of powers in relation to the data processors and Sweden has preserved a remarkable margin of publication. ²² John Stuart Mill, *On Liberty*, Batoche Books (1859), at page 13

²³ Warren and Brandeis, “The Right to Privacy”, *Harvard Law Review* (1890), Vol.4, No. 5, at page 193

In a liberal democracy the state cannot coerce citizens to harness their bodies to a central digital registry and refuse to recognize the person unless she does so.²⁴

The Biometric Authentication System works on a Probabilistic Model

That the AADHAAR project hinders self-realization of an individuals, the probabilistic nature of biometrics for instance change of biometric of any individual the rights and entitlements conferred under the Constitution cannot be left to chance and at the mercy of an algorithm the UIDAI cannot control. The project envisages the procurement of an Aadhaar card to even be issued a birth certificate. The State is trending its citizens like a flock of sheep.²⁵

It is humbly submitted before the Hon'ble Court that in *Re Kerala Education Bill*²⁶, sought to submit that where any essential benefit is conditioned on the surrender of a right by an individual, such condition is deemed unconstitutional. "Such a condition that that forecloses one from availing a benefit to which they are entitled on the basis of an unreasonable classification is void"²⁵

Biometrics such as fingerprints and iris scan of a person are inherent to the body of that person and are extremely valuable to the person the issue of feasibility of the provisions regarding counselling and procurement of informed consent in the Act of 2016, it is submitted that the Hon'ble Supreme Court in *Behram Khurshed Pesikaka Vs. State of Bombay*²⁶, wherein it was observed, "We think that the rights described as fundamental rights are necessary consequence of the declaration in the preamble that the people of Indian have solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens justice, social, economic and political; liberty of thought , expression, belief, faith and worship; equality of status and of opportunity. These fundamental rights have not been put in the Constitution merely for individual benefit, though ultimately they come into operation in considering individual rights.²⁷ They have

²⁴ M.P. Sharma and Ors. vs. Satish Chandra, District Magistrate, Delhi and Ors., 1950 SCR 1077 ²⁵ Kharak Singh vs. The State of U.P. and Ors., 1962 (1) SCR 332 ²⁶ 1959 1 SCR 995

²⁵ Satwant Singh Sawhney v D Ramarathnam, (1967) 3 SCR 525

²⁶ R 1955 SC 123, (1955) 57 BOMLR 575, 1955 CriLJ 215, 1955 1 SCR 613

²⁷ .C. Cooper v. Union of India, [(1970) 2 SCC 298 : (1971) 1 SCR 512]

been put there as a matter of public policy and the doctrine of waiver can have no application to provisions of law which have been enacted as a matter of constitutional Policy”.²⁸

The foundation of the project i.e. biometrics is an unreliable and unrested technology. Moreover, biometric exceptions severely erode reliability. The biometric authentication system works on a probabilistic model. Consequently, entitlements are reduced from certainly to a chance delivery where the biometrics match.

Biometrics such as fingerprints an iris scan of a person are inherent to the body of that person and are extremely valuable to the person and are extremely valuable to the person. While biometrics may change over time, generally, a person cannot at will alter his or her fingerprints or iris (as she might a password or other manner of protection in the digital world). A person has every right to protect his or her biometrics from wide dissemination because in a digital world the theft of a biometric such as fingerprints could compromise that person’s safety and property. Also before taking an individual’s biometric, it is mandatory to obtain free and informed consent.

AADHAAR ACT DOES NOT REPLICATE WITH THE INFORMATION ACT, 2000

Section 7, of the Aadhaar Act is violative of the Right to life including Right to Privacy guaranteed under Article 21 of Constitution of India.

In India, for the purpose of data protection, a body corporate is subject to section 43A of the Information Technology Act, 2000 (“IT Act”) and subsequent Rules, i.e. -The Information Technology (Reasonable security practices and procedures and sensitive personal data or Information) Rules, 2011. Rule 5(7)²⁹ of the aforesaid rules requires that the individual must be provided with the option of ‘opting out’ of providing data or information sought by the body corporate. Also, they must have the right to withdraw consent at any point of time. Whereas in the present, The Aadhaar Act has no such condition is fulfilled and therefore does not provide an opt- out provision and also does not provide an option to withdraw consent at any point of time. Section 7 of the Aadhaar Act actually implies that once the Central or State government makes

²⁸ Michael C. James, “A Comparative Analysis of the Right to Privacy in the United States, Canada and Europe”, Connecticut Journal of International Law (Spring 2014), Vol. 29, Issue 2, at page 261

²⁹ the information technology (reasonable security practices and procedure and sebstive personal data or information) rules, 2011.

Aadhaar authentication mandatory for receiving a benefit then the individual has no other option but to apply for an Aadhaar number. The only concession that is made is that if an Aadhaar number is not assigned to an individual then s/he would be offered some alternative viable means of identification for receiving the benefit.

“The state must ensure that information is not used without the consent of users and that it is used for the purpose and to the extent it was disclosed.³⁰ Whereas even Rule 5³¹ of the Information Technology Rules, 2011 requires that prior to the collection of sensitive personal data; the body corporate must obtain consent, either in writing or through fax regarding the purpose of usage before collection of such information. Whereas the Aadhaar Act is silent regarding consent being acquired in case of the enrolling agency or registrars. However, section 8 provides that any requesting entity will take consent from the individual before collecting his/her Aadhaar information for authentication purposes, though it does not specify the nature. But if the enrolling agency is a body corporate, they will also be required to take consent prior to collecting and processing biometrics. It is possible that since the Aadhaar Act envisages a scheme which is compulsory in nature under Section 7 of the Act, a consent provision is deliberately left out. This circumstance would give the enrolling agencies the power to collect the data without the consent of the individual, because given consent is of no more value. The compulsory nature of the Aadhaar scheme would mean that they are not required to take consent of the individuals before enrolment. Since, very sensitive personal information is collected not taking the consent of the concerned person is also violative of Right to Life Including Right to Privacy under Article 21 of the Constitution of India and that Section 7 of the Aadhaar Act, does not have compliance with the IT Rules, 2011 and also collection of such personal information at a mandatory basis is violative of Article 21 of the Constitution of India.

The doctrine of harmonious construction applies when there is an accidental collision or conflict between two enactments and the Supreme Court has repeatedly read down one provision to give

³⁰ justice k.s. Puttaswamy and ors. V. Union of india (uoi) and ors. (24.08.2017 - sc)

³¹ the information technology (reasonable security practices and procedure and sensitive personal data or information) rules, 2011.

effect to other. Thus, both the provisions have to be given effect to. But if the collision or conflict is such that one provision cannot co-exist with another, then the latter provision must be struck down.³²

The term Privacy is a concomitant of the right of the individual to exercise control over his or her personality. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights.³³

a) *Privacy has both a Normative and Descriptive Function*

“Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty; Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes the plurality and diversity of our culture”.³⁴

VIOLATIVE OF THE FUNDAMENTAL RIGHTS OF THE PEOPLE PROVIDED BY THE CONSTITUTION

The Right to Privacy has been recognized as a fundamental right and the ‘AADHAAR Policy and the Aadhaar Act’ brought by the government is in violation of Arts. 14, 19 and 21 of the Constitution of India.

³² Gobind v State of Madhya Pradesh, (1975) 2 SCC 148

³³ R Rajagopal v State of Tamil Nadu, (1994) 6 SCC 632

³⁴ Justice K.S. Puttaswamy (Retd.), and Anr. v. Union of India and Ors, AIR 2015 SC 3081.

VIOLATION OF THE FUNDAMENTAL RIGHT TO PRIVACY OF THE PEOPLE

Right to Privacy is the basic inalienable right of an individual³⁵ concomitant of his right to exercise control over his personality and is essential for his development as a human being. The liberty of an individual is a matter of fundamental natural law, a private preserve and must be safeguarded from unnecessary interference.³⁶

Right to privacy has been held to be constitutionally protected fundamental right.³⁷ Right to privacy is vested within right to life and personal liberty under Art. 21 of Constitution of India³⁸ A citizen under this right has the right to protect and safeguard the liberty of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters.³⁹ According to Black's Law Dictionary, Privacy has been defined as, "right to be left alone"⁴⁰; right of a person to be free from any unwarranted publicity; right to live freely from any unwarranted interference by the public in matter with which public is not necessarily concerned". It is on the desire of people to choose freely under what circumstances and to what extent they will expose themselves, their attitude and their behaviour to others.⁴¹

The scope of Art. 21 is very broad and it covers every aspect of life which is required for an individual to live a healthy and secured life. Art. 21 takes all those aspects of life which go to make a person's life meaningful and even State can't violate it.⁴² Art. 21 protects the dignity of human life, one's personal autonomy, one's right to privacy, etc. Right to dignity has been

³⁵ idib

³⁶ Gobind v. State of Madhya Pradesh and Ors., (1975) 2 SCC 148.

³⁷ Gobind v. State of Madhya Pradesh and Ors., (1975) 2 SCC 148; See also, R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632; People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301; Kharak Singh v. State of UP, AIR 1963 SC 1295; Ramlila Maidan Incident v. Home Secretary, Union of India, (2012) 5 SCC 1, 119120 , ¶ 312.

³⁸ Kharak Singh v. State of UP, AIR 1963 SC 1295; See also, Gobind v. State of Madhya Pradesh, AIR 1975 SC 1378; PUCL v. Union of India, AIR 1991 SC 207.

³⁹ Unni Krishnan v. State of A.P. (1964) 1 SCR 332.

⁴⁰ Rajgopal v. State of Tamil Nadu, 1994 6 SCC 632; See also, Warren and Brandeis, "The Right to Privacy", Vol.4 (5), Harvard Law Review, 195-196 (1890).

⁴¹ Alan Westin, Privacy and Freedom (1967) in Justice K.S. Puttaswamy (Retd.), and Anr. v. Union of India and Ors., AIR 2015 SC 3081.

⁴² Justice K.S. Puttaswamy (Retd.), and Anr. v. Union of India and Ors., AIR 2015 SC 3081.

recognised to be an essential part of the right to life and accrues to all persons on account of being humans. If we talk of right to privacy then it also contains a broad scope in it like tapping of telephonic conversation, disclosure of dreadful disease⁴³, subjecting to medical tests.⁴⁴ Here in the present case, the information sought under Aadhaar Scheme is very intimate and integral to one's personality and hence making it mandatory to provide basic and intimate information is unconstitutional and violative of Fundamental Right to privacy.

2. INDIA'S COMMITMENT UNDER INTERNATIONAL LAW

The recognition of privacy as a fundamental constitutional value is a part of India's commitment to a global human rights regime. The state is required to endeavour to "foster respect for international law and treaty obligations in the dealings of organized peoples with one another".⁴⁵

The Universal Declaration of Human Rights of which India is a party recognises that everyone has the protection of law against interference with his privacy, family, home or correspondence, or attack upon his honour and reputation.⁴⁶ Similarly, the International Covenant on Civil and Political Rights casts an obligation on states to respect, protect and fulfil its norms. Art. 17 of the ICCPR casts a duty upon the states to adopt and enact measures to prohibit undue interferences with the exercise of right to privacy of people. The government in order to give effect to these provisions of ICCPR has enacted the Protection of Human Right Act, 1993 which includes liberty as the basic human rights guaranteed to the people.⁴⁹

The obligations assumed by India in International Conventions and Treaties, must reflect in the legislations enacted by the government.⁴⁷ Also, in absence of any provision of domestic law, the provisions of the Conventions of which the country is a party shall be applicable.⁴⁸

⁴³ Mr. X v. Hospital Z, AIR (1995) SC 95.

⁴⁴ Sharda v. Dharmpal, AIR (2003) SC 3450.

⁴⁵ Art. 51(C), The Constitution of India, 1950.

⁴⁶ Art. 12, Universal Declaration of Human Rights, 1947 (Adopted on December 10, 1948). ⁴⁹ Section 2(1)(d), Protection of Human Rights Act, 1993.

⁴⁷ Bachan Singh v. State of Punjab, (1980) 2 SCC 684; See also, Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

⁴⁸ Vishaka v State of Rajasthan, (1997) 6 SCC 241.

Where there is a contradiction between international law and a domestic statute, the Court would give effect to the latter.⁴⁹ In the present case, there is no contradiction between the international obligations which have been assumed by India and the Constitution. The Court should not readily presume any inconsistency. India being a responsible member of the international community, the Court must adopt an interpretation which abides by the international commitments made by the country and recognise right to privacy as fundamental right.

The decision of the Apex Court that right to privacy is a common law right, holds no ground as it has been clearly observed in the recent case of *K. S. Puttaswamy*,⁵³ that;

“The fact that a right may have been afforded protection at common law does not constitute a bar to the constitutional recognition of the right. The central theme is that privacy is an intrinsic part of life, personal liberty and of the freedoms guaranteed by Part III which entitles it to protection as a core of constitutional doctrine. The protection of privacy by the Constitution liberates it, as it were, from the uncertainties of statutory law which, as we have noted, is subject to the range of legislative annulments open to a majoritarian government.”

Thus, the options canvassed for limiting the right to privacy include an Art. 14 type reasonableness enquiry; limitation as per the express provisions of Art. 19; a just, fair and reasonable basis (that is, substantive due process) for limitation per Art. 21; and finally, a just, fair and reasonable standard per Art. 21 plus the amorphous standard of ‘compelling state interest’

3. AADHAAR IS NOT IN ACCORDANCE WITH THE PROCEDURE ESTABLISHED BY LAW AS PER ART. 21 OF THE CONSTITUTION

Right to Privacy has been culled from Art. 21 of the Constitution of India,⁵⁰ as the concept of privacy overlaps with that of liberty.⁵¹ Right to Privacy is an integral part of Right to life and

⁴⁹ Justice K.S. Puttaswamy (Retd.), and Anr. v. Union of India and Ors., AIR 2015 SC 3081. ⁵³ Justice K. S. Puttaswamy (Retd.), and Anr. v. Union of India and Ors., AIR 2015 SC 3081. ⁴⁷ E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555.

⁵⁰ Mr. X v. Hospital Z, (1998) 8 SCC 296.

⁵¹ Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148; See also, D.D. Basu Commentary on The Constitution of India, Vol. 3, 3138 (8th ed., Lexis Nexis Butterworth Wadhwa Publications, Nagpur, 2008).

Personal Liberty,⁵² and it can be curtailed only in accordance with the “Procedure established by Law”, as provided under Art. 21 of the Constitution of India.⁵³

International Convention on Civil and Political Rights of which India is a signatory also provides that it is duty of the state to protect the liberty of the people and it can be restricted, only in accordance with such procedure as are established by law.⁵⁴

The Hon’ble Supreme Court in *Maneka Gandhi*,⁵⁵ has laid down a triple test for any law to be considered to be in accordance with the ‘Procedure established by law’: (1) The law must prescribe a procedure (2) the procedure must satisfy the requirements of Arts. 14 and 19 (3) and, it should be just, fair and reasonable.

The Aadhaar Act enacted by the government which makes making of Aadhaar Cards mandatory for all schemes (benefit and non-benefit both), is not in accordance with procedure established by law, i.e., it is neither just, fair and reasonable nor does it satisfy the requirements of Art. 14, 19 and 21 of the Constitution.

a) VIOLATION OF ART. 19 OF THE CONSTITUTION

The AADHAAR project violates the Right to remain silent enunciated under Art. 19(1)(a) of the Constitution. The ambit of freedom of speech and expression provided under Art. 19(1)(a) of the Constitution is very wide.⁵⁶ Right to remain silent is included within the definition of freedom of speech and expression as has been recognized by the SC in the case of *Bijoe Emmanuel v. State of Kerala*.⁵⁷ The right includes by necessary implication, freedom not to listen and/or to remain silent.⁵⁸ Silence postulates a realm of privacy. The privacy of the individual recognises an

⁵² Ramlila Maidan Incident v. Home Secretary, Union of India, (2012) 5 SCC 1.

⁵³ People’s Union for Civil Liberties v. Union of India, AIR 1991 SC 207.

⁵⁴ Art. 9, International Convention on Civil and Political Rights (Adopted by United Nations General Assembly on December 16, 1966).

⁵⁵ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

⁵⁶ D. D. Basu Commentary on The Constitution of India, Vol. 2, 2078 (8th ed., Lexis Nexis Butterworth Wadhwa Publications, Nagpur, 2008).

⁵⁷ Bijoe Emmanuel v. State of Kerala, AIR 1987 SC 748; See also, P.A. Jacob v. Superintend of Police, Kottayam, AIR 1993 Ker 1; Maruti Shripati Dubal vs. State of Maharashtra, (1986) 88 BOMLR 589.

⁵⁸ Moulana Mufti Syed Md. Noorur v. State Of West Bengal and Ors., AIR 1999 Cal 15.

inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent.⁵⁹ An important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say.⁶⁰ The right of freedom of thought as guaranteed by the Constitution against state action includes both right to speak freely and the right to refrain from speaking at all.⁶¹ As such every citizen is entitled to exercise the right except when restrictions are imposed on its exercise in accordance with Art. 19(2) of the Constitution.⁶²

The Government has made Aadhaar Cards mandatory for seeking benefits under different social welfare schemes of the government and also for issuing PAN Cards, Driving Licence, Passports, Opening bank accounts, etc. The state by making Aadhaar Cards mandatory for variety of schemes has compelled the citizens to part with their demographic and biometric information in clear violation of their right to remain silent. Further, there exists no reasonable ground to restrict the right to remain silent of the people.

b) Right to Remain Silent vis-à-vis Security of State

In the present context, it is opined that the restriction on the Right to Speech falls within the ambit of Security of State provided under Art. 19, which does not hold true. The term “security of state” refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray.⁶³ Thus speeches or expression on the part of an individual, which incite or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State.⁶⁴ The present case does not fall under any of the criteria of the restrictions

⁵⁹ Justice K.S. Puttaswamy (Retd.), and Anr. v. Union of India and Ors., AIR 2015 SC 3081 ¶ 169.

⁶⁰ Hurley v. Irish-American Gay, Lesbian, & Bisexual Group of Boston, 515 U.S. 557 (1995).

⁶¹ Bamette, 319 U.S at 645 (Murphy J, concurring).

⁶² A.K. Gopalan v. State of Madras, AIR 1950 SC 27; See also, Collector of Malabar v. Erimal Ebrahim Hajee, AIR 1957 SC 688.

⁶³ Ranjit v. State of Maharashtra, AIR 1965 SC 881.

⁶⁴ Express Newspapers (Private) Ltd. v. Union of India, (1959) 1 SCR 12; See also, State of Bihar v. Shaila Bala, AIR 1952 SC 329.

laid down above. On the contrary, the security of the citizens is hampered on the leakage of their personal data in the public.

It has been observed by the Court in *People's Union for Civil Liberties v. Union of India*,⁶⁵ that any restriction on fundamental right to personal liberty can be imposed, when there is grave danger to 'public safety' arising due to sudden circumstances. In the present case, though there are instances of terrorism and illegal immigrants, there has been no report of increase, or sudden threat. Even though, the respondent contends at elimination of these issues, through solving the problem of duplicity of identities, the nexus between the restriction and public order, etc., is farfetched, then the restriction cannot be sustained as being in the interests of public order or security of the state⁶⁷ and the same is not possible as instances of many fake Aadhaar cards which use the same biometric information have surfaced till date.⁶⁶

VIOLATION OF ART. 14 OF THE CONSTITUTION

Article 14 provides for equality before the laws and equal protection of the laws. Two tests have been provided by the SC overtime, which any law passed by the government is required to satisfy, in order to fulfil the requirements of Art. 14 of the Constitution, and the Aadhaar Project is unable to satisfy the requirements so laid down.

c) Test of Reasonable Classification

⁶⁵ *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301. ⁶⁷ V.K Javali v. State of Mysore, AIR 1966 SC 1387.

⁶⁶ Omar Rashid, Fake AADHAAR card network busted in Kanpur, The Hindu September 11, 2017 available at <http://www.thehindu.com/news/national/uttar-pradesh-police-busts-fake-AADHAAR-cardnetwork/article19660140.ece> (Last visited on September 14, 2017).

While Art. 14 allows reasonable classification for the purposes of legislation it forbids any sort of class legislation.⁶⁷ The test of reasonable classification was laid down by SC in **Budhan Chaudhary v. State of Bihar**,⁶⁸ which provides that: (1) the classification proposed in the legislation must be founded on intelligible differentia and that, (2) there must be close nexus between the classification and the object of the Act.

(1) Principle of Intelligible Differentia

The expression intelligible differentia means difference capable of being understood and should be reasonable and not arbitrary.⁶⁹ In the present case, the government seeks to profile and classify people based on educational qualification, religion, etc., which is arbitrary and unreasonable.

(2) There should be Rational Nexus between Classification and Objective Sought

The law can only make and set apart the classes according to the needs and exigencies of the society.⁷⁰ The legislative policy should be clear and definite and an effective method of carrying out that policy should be vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons.⁷¹

the government of India seeks information relating to education, religion, etc. from the people for the purpose of making Aadhaar Cards which does not have any relation with the object of the Act, and therefore the classification is not only unreasonable but also promotes class legislation.

⁶⁷ *Budhan Chaudhary v. State of Bihar*, AIR 1955 SC 191; See also, *Ameronissa v. Mehboob*, AIR 1953 SC 71; *Kedar Nath Bajoria v. State of West Bengal*, AIR 1953 SC 404; *Vajravellu Mudaliar v. Special Deputy Collector for Land Acquisition*, AIR 1965 SC 1017.

⁶⁸ *Budhan Chaudhary v. State of Bihar*, AIR 1955 SC 191.

⁶⁹ M.P. Jain, *Indian Constitutional Law*, 876 (7th ed., Lexis-Nexis Butterworth Wadhwa Publications, Nagpur, 2016).

⁷⁰ *Suresh Kumar Koushal v. Naz Foundation* (2014) 1 SCC 1.

⁷¹ M P Jain, *Indian Constitutional Law*, 917 (7th ed., Lexis-Nexis Butterworth Wadhwa Publications, Nagpur, 2016).

d) VIOLATES THE BODILY INTEGRITY OF THE PEOPLE OF INDIA

Dignity is an integral part of the Constitution.⁷² Reflections of dignity are found in the guarantee against arbitrariness,⁷³ the lamps of freedom⁷⁴ and in the right to life and personal liberty⁷⁵. The right to privacy is an element of human dignity.⁷⁶ Privacy ensures that a human being can lead a life of dignity by securing the inner recesses of the human personality from unwanted intrusion.⁷⁷ The term, 'life' in Art. 21 does not mean 'mere animal existence', rather right to live with dignity.⁷⁸ Therefore, any violation of dignity of an individual is violation of right to life of the individual.

The government requires various demographic and biometric information which are intimate to one's personality, to be disclosed by the people for the purpose of making Aadhaar Cards. These involve questions relating to family, marriage, procreation and education are all integral to the dignity of the individual.⁷⁹ Furthermore, requirement to part with biometric information is a violation of the privacy of the body of an individual, which is a part of the integrity of an individual, enabling him to realize his freedom of thought, belief and self-determination, which are essential components of the dignity of an individual, as has been observed by the Apex Court in *K.S. Puttaswamy*.

Right to live as a human being is secured only when a human being is assured of all facilities to benefit himself,⁸⁰ which includes privacy. The government by depriving people of their privacy of mind and body is stripping them of their dignity.

CONSTANT STATE SURVEILLANCE

⁷² Francis Coralie v. Union Territory of Delhi, AIR 1981 SC 1746.

⁷³ Art. 14, Constitution of India, 1950.

⁷⁴ Art. 19, Constitution of India, 1950.

⁷⁵ Art. 21, Constitution of India, 1950.

⁷⁶ Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461.

⁷⁷ Justice K.S. Puttaswamy (Retd.), and Anr. v. Union of India and Ors., AIR 2015 SC 3081.

⁷⁸ Kharak Singh v. State of U.P. and Ors., AIR 1963 SC 1295; See also, Francis Coralie v. Union Territory of Delhi, AIR 1981 SC 1746

⁷⁹ Justice K.S. Puttaswamy (Retd.), and Anr. v. Union of India and Ors., AIR 2015 SC 3081, ¶ 169

⁸⁰ Chameli Singh v. State of U.P., (1996) 2 SCC 549.

Liberty is among the core values of the Constitution of India. Right to privacy which is an integral part of Right to life ensures freedom from unwarranted state intervention.⁸¹ Usually, various data that is collected is stored across multiple sources, and data required for a particular purpose is being taken from individuals at one time. This leads to the creation of informational silos.⁸² For example, the data required taking a gas connection shall be different from that of opening a bank account. But the Aadhaar project of the government, which aims to be used as a multipurpose identification system, all the data pertaining to an individual could be accessed at one time. This situation severely compromises with the individual's autonomy, which is a well enshrined concept in human rights philosophy by the great philosophers such as Emanuel Kant.⁹⁹ In other words, every decision made by a person in India could be under state surveillance. This could potentially lead to the denial of, and access to, many important social opportunities and other facilities for a particular section of people, who could be discriminated against by the state, using the information gathered from the Aadhaar Project.⁸³

Such action is only justified in case where the person is accused of some offence, otherwise regular surveillance of day to day transaction by government of general public is not just and fair in any manner and constitutes a violation of right to life of the people.⁸⁴ With regard to telephone tapping, the SC observed in *Kharak Singh*,⁸⁵ that, while telephone interception of guilty person by the police through lawful means is justified in larger public interest, the same is not justified when an innocent citizen is involved and will amount to violation of right to privacy, of the person.⁸⁶

⁸¹ Anna Jonsson Cornell, "Right To Privacy", Max Planck Encyclopedia of Comparative Constitutional Law (2015).

⁸² Usha Ramanathan, A Unique Identity Bill, Vol. 45(30) Economic and Political Weekly, 10-14 (2010).

⁸³ Sheetal Asrani Dann, The Right to Privacy in the Era of Smart Governance: Concerns Raised By the Introduction of Biometric-Enabled National ID Cards in India, 47(1) The Journal of India Law Institute, 53-95, 67 (2005).

⁸⁴ *Gobind v. State of Madhya Pradesh*, (1975)2 SCC 148; See also, *Kharak Singh v. State of U.P. and Ors.*, AIR 1963 SC 1295.

⁸⁵ *Kharak Singh v. State of U.P. and Ors.*, AIR 1963 SC 1295.

⁸⁶ Immanuel Kant, *The Moral Law: Groundwork of the Metaphysics of Morals*, 42 (Herbert James Paton eds., Psychology Press, London, UK, 2005).

The government has also provided that, if the Aadhaar card thus made is not linked with bank accounts, penal actions shall be taken,⁸⁷ which is not only unjust and unreasonable, but also limits severely the autonomy of the individual, who is left with no choice but to comply.

THE RESTRICTIONS IMPOSED IS NOT PROPORTIONAL TO OBJECTIVES OF THE ACT

The Principle of Proportionality envisages that a government ought to maintain a sense of proportion between its particular goals and the measure it takes to achieve those goals, so that its action impinges on the individual rights to the minimum extent so as to preserve public interest.⁸⁸

The government requires the people to part with basic information about oneself, which is integral to one's personality, as well as core biometric information, which could have as well been handled through other methods, given the facts and circumstances. For instance, the highly successful SSN Programme of the U.S government involves issuing of SSN cards to the residents which does not require disclosure of basic details like, marriage, infertility disorder, educational qualification *inter alia*, nor does it require parting with biometric information; and yet the programme has been successful so far in providing welfare entitlements to the needy.⁸⁹

e) NARROW TAILORING TEST

The measures taken by the government were not the least restrictive measures, The *compelling state interest*⁹⁰ of the government i.e. to fulfil the objectives through collection of personal information should undergo great scrutiny that is one right should not suffer from another that is there must be a balance should be stricken between public right and individual right and the

⁸⁷ Gautam Bhatia, "State Surveillance and the Right to Privacy in India: A Constitutional Biography", Vol. 26(2) National Law School of India Review, 148 (2014).

⁸⁸ Ajoy P.B., Administrative Action and the Doctrine of Proportionality in India, Vol. 1(6) International Organization of Scientific Research Journal of Humanities and Social Science, 16-23 (2012) available at www.iosrjournals.org; See also, M.R.F Ltd. v. Inspector of Kerala Govt., (1998) 8 SCC 227.

⁸⁹ R. RamaKumar, AADHAAR: on a platform of Myths, The Hindu November 12, 2016 available at <http://www.thehindu.com/opinion/lead/AADHAAR-on-a-platform-of-myths/article13673159.ece> (Last visited on September 17, 2017).

⁹⁰ Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148; See also, Metro Broadcasting, Inc. v. Federal Communications Commission, 497 U.S. 547 (1990). ¹⁰⁷ Grutter v. Bollinger, 539 U.S. 306 (2003).

measures so taken should be tailored in a manner that infringes the right in narrowest manner i.e. it should satisfy *narrow tailoring test* to achieve its goals with minimal interception.

f) CONFLICT BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

As per the respondent the main aim of the Aadhaar project is to prevent corruption and to ensure welfare entitlements provided by the government adequately reach the needy. The Aadhaar Policy and the Aadhaar Act has been brought to give effect to Directive Principles of State Policy. Though, Directive Principles of State Policy are important in realizing the goals of the Constitution, the same should not override the fundamental rights guaranteed to the people.⁹¹

Art. 37 of the Constitution of India provides that though directive principles are fundamental in governance of the country, they are expressly made non-justiciable. On the other hand, fundamental rights are enforceable by the Courts,⁹² and the courts are bound to declare as void any law that is inconsistent with the fundamental rights. The Directive Principles has to conform and run as a subsidiary to the chapter on fundamental rights and in case of any conflict between fundamental rights and directive principles, fundamental rights would prevail.⁹³

The Constitution is founded on the bedrock of the balance between Part III and Part IV,⁹⁴ but one should not be given absolute primacy over the other. The goals set out in the Part IV have to be achieved without the abrogation of the means provided for by Part III. To destroy the guarantees given by Part III in order to achieve the goals of Part IV is plainly to subvert the Constitution.⁹⁵ Therefore, it is the responsibility of the government to come up with a scheme which adequately preserves the fundamental rights of the people.

⁹¹ R K Dalmia v. Justice Tendulkar, AIR 1958 SC 538.

⁹² Art. 32, The Constitution of India, 1950.

⁹³ State of Madras v. Champakam Dorairajan, AIR 1951 SC 228.

⁹⁴ Granville Austin, Cornerstone of a Nation (Indian Constitution) 75 Oxford India (1999).

⁹⁵ Minerva Mills v. Union of India, AIR 1980 SC 1789.

Moreover, many identity card schemes based on biometric information have failed across the globe. In India itself, Aadhaar Card scheme has failed to show any success, while the risks involved are several.⁹⁶

g) LACK OF SECURITY MEASURES TO PREVENT LEAKAGE OF DATA

The Aadhaar Project of the government of India is devoid of adequate security measures to guarantee the security of data collected for the purpose of making Aadhaar Cards. The respondent is yet to bring substantive law for the protection of data.¹¹⁵ Though, there are penal provisions for offences relating to data leakage in the Aadhaar Act, but there are no security measures in place to ensure the protection of data; thereby, giving rise to grave violation of the privacy of the people as the large database of the Aadhaar Project remains largely unprotected.

It is contended in this regard that mere presence of a full chapter on data protection and penalties for leakage, is not enough, to further such data protection. Also, the principle of *res ipsa loquitur* tells that “*the thing speaks for itself*” i.e., the contention of the government that they will bring a substantive law for the protection of data is in itself tells that the present law to protect data is not sufficient.

h) Prevalence of Identity Theft

Scheme of Aadhaar Cards brought by the government is susceptible to identity theft. There have been many instances in several countries of information being stolen from the government database of national identification programmes and recreation of such information by illegal means. For instance, in Turkey, Personal details i.e. First and last names, National identifier numbers Gender, City of birth, Date of birth, Full address, ID registration city, district etc. of nearly fifty Million Turkish citizens, including the country’s President Recep Tayyip Erdogan, have been compromised and posted online in a massive security breach which is supposed to be

⁹⁶ Jean Dreze, Aadhaar Coup, The Hindu March 15, 2016, <http://www.thehindu.com/opinion/lead/jean-dreze-on-AADHAAR-mass-surveillance-datacollection/article8352912.ece>

the biggest public breaches of its kind, effectively putting two-thirds of the Nation's population at risk of identity theft and fraud.⁹⁷

i) De-Duplication of Identities

There is consensus among scientists and legal experts regarding the limitations of biometrics in proving identity. No accurate information exists on whether the errors of matching fingerprints are negligible or non-existent. A small percentage of users would always be either falsely matched or not matched at all against the database.⁹⁸

j) Unsatisfactory Adequate Safeguards against Misuse of Aadhaar Database

Chapter VI and Chapter VII of the Aadhaar Act deals with Protection of data and offences and penalties for breach of any such data. The National Unique Identification Authority is required to adopt and implement appropriate technical and organisational security measures to ensure that the information in the possession or control of the Authority is secured and protected against access, use or disclosure not permitted under this Act or regulations made thereunder, and against accidental or intentional destruction, loss or damage.⁹⁹ But, there is no provision of security against misuse by the government itself. And, there is a possibility that such information could be misused by government which is communalist in nature, as the Act lacks in adequate safeguards which the Aadhaar Act lacks in. For instance, in the Rwandan genocide it was by using identity cards that the demarcation of the Tutsis and Hutus could be done.

k) Delegation of Authority to Private Entities and Private Vendors

The enrolling agencies are the private entities who further outsource the work to private vendors in each district and block in India which means the data being collected reaches first in the hands of the private vendors, which makes the data even more vulnerable to misuse and leakage, which

⁹⁷ Robert Tait, Personal details of 50 million Turkish citizens leaked online, The Telegraph April 4, 2016 *available at* <http://www.telegraph.co.uk/news/2016/04/04/personal-details-of-50-million-turkish-citizensleakedonline-ha/>

⁹⁸ R. Rama Kumar, Aadhaar: on a platform of myths, the hindu november 12, 2016, <http://www.thehindu.com/opinion/lead/AADHAAR-on-a-platform-of-myths/article13673159.ece>

⁹⁹ Section 28(2), Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

¹¹⁷ Anonymous, History, Human Rights Watch, <https://www.hrw.org/reports/1999/rwanda/Geno1309.htm>

is a grave threat of a citizen's privacy.¹²³ Furthermore, while the National Identification Authority which is established by statute is obliged to maintain adequate security measures, the same does not go for private vendors, which raises doubts as to the protection of data, which can act as a gateway for identity theft.¹⁰⁰

CONCLUSION

While this battle is understandably likely to prove daunting, given the present dispensation's proclivities, and the apparent majoritarian support that it seems to enjoy, we can look to the American experience for some help. As David Cole, the National Legal Director of the American Civil Liberties Union, argues in his recent book, "Engines of Liberty," constitutional law can certainly be changed by acts of principled dissent, by people working outside the ordinary frameworks of the institutional system. Judges often allude to a "living Constitution," in an exercise to interpret the Constitution in a manner befitting the times that we live in. Cole says the Constitution is living in another sense too: "The Constitution lives in each of us — and in the groups we create to safeguard and advance what we view as important constitutional values," Cole writes *"These groups are living embodiments of our constitutional commitments. They carry the torch of constitutionalism, and it is their work that ultimately shapes the directions in which the living Constitution — in the first sense — grows."*¹⁰¹

¹⁰⁰ Combating Identity Theft: A Strategic Plan, The President's Identity Theft Task Force, 1-72, 56, <https://www.ftc.gov/sites/default/files/documents/reports/combating-identity-theftstrategicplan/strategicplan.pdf> (Last Visited on March 26, 2018).

¹⁰¹ Gautam Bhatia, Privacy Aadhaar and Constitution, <http://www.thehinducentre.com/the-arena/current-issues/article9717493.ece>