

# **COMPROMISING CITIZENS' PRIVACY FOR NATIONAL INTEREST: A FAIR TRADE-OFF**

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The recent pronouncement of judgment<sup>i</sup> by the Supreme Court on mandatory linking of PAN card with Aadhaar card albeit with a word of caution to the Government of taking the necessary safeguards followed by declaring privacy<sup>ii</sup> as a fundamental right has shaped the new contours of privacy in India. In a series which might be linked to the above two landmark judgments, the hearing for making Aadhaar Card mandatory for every aspect is going on in the Supreme Court as the petitioners have challenged the rationale for such a move.

Challenges to this cherished right have not been new and tussle with the government over the past many decades have found its way to the Supreme Court where the hapless citizens at the receiving end as a consequence of usurpation of rights by the Government. The end result witnessed a plethora of pronouncements by the Supreme Court<sup>iii</sup> on various facets of the right viz. telephone tapping, search and seizure, virginity tests etc. Expatiating on all those would tantamount to substituting views with judicial pronouncements.

Privacy in India has to been seen and interpreted in binary terms:

1. Privacy for security
2. Privacy for surveillance.

A proper balance and adherence between the two is imperative for efficient state administration.

Maintaining internal security, law and order, preventing crime is a bounden duty of the state. The state is well within its rights to do whatever is lawful and not excessive within the exercise of its power. Tapping of phones for genuine reasons<sup>iv</sup>, keeping eye on suspicious persons or activities etc. come broadly within the purview of security.

The challenge and difficulty arises when the line between privacy and intrusion becomes thinner resulting in breach of law and unjustified infringements resulting in judicial pronouncements.

*Rights and freedoms of the citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. 'Liberty against Government' a phrase coined by Professor Cowrin expresses this idea forcefully. In*

*this sense, many of the fundamental rights of the citizens can be described as contributing to the right of privacy.<sup>v</sup>*

Technology has become all pervasive, easily accessible and surprisingly advanced. In this scenario, protecting one's identity and privacy has become as easy as breaching it. Surveillance voluntarily or involuntary surrendering one's bodily identity through the instrumentality of legal coercion can be very easily done.

The role of the state thus plays a key or important role and state policies on the level of intrusion are governed by their inherent and innate desire to rule and remain at the helm.

The gathering and holding of personal information on computers, databanks and other devices whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by states to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the covenant.

In order to have the most effective protection of his private life, every individual should have the right to ascertain which public [authorities] or private individuals control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.<sup>vi</sup>

Technology has narrowed and diminished the spaces between private spaces and public spheres.

The dubious role of the government to shrink the private space is just their inherent proclivity to remain in power for governance<sup>vii</sup>, employing tools that might capture imaginations, shape public perceptions, keep track of each and every movement of an individual and make an entry into the each and every aspect of a person's life however unjustified it might seem to anybody.

*A key challenge in the protection of privacy is the rapid development of new technologies. The online tools, devices and systems of the 21<sup>st</sup> century provide government organizations with enormous ability to acquire and analyse information. Technology is indeed evolving, as are the threats, but the manner in which we respond to these changes require a proactive, protective framework to ensure that our fundamental values such as privacy, are maintained.<sup>viii</sup>*

The mass surveillance programme is in this sense an incorrect departure from surveillance for the purposes of security. The state is very well in a position to distinguish between suspicious activities and persons and rightful conduct.

But this invasion, as mentioned earlier is to vanish the difference between the two under the garb of security.

Snooping, intruding and entering the private lives of individuals is a compulsive coercion to adhere to government policies as any form of dissent or revolt against the same would lead to an irreparable loss of power.

Policies framed and laws made under such an atmosphere forces the citizens to adhere to them involuntarily and surrender their rights to the ruling elite. An involuntary surveillance like this strikes at the very root of the privacy right of the citizens.

The issue of privacy goes beyond just data protection and goes beyond the realm of technology. It means and includes the freedom to make just choices without invasion, enjoyment of rightful liberties and creation of personal spaces both virtual and otherwise free from coercive intrusion.

Since dependence on technology has become an integral part of life as mentioned earlier with all aspects and facets of life including communications being linked to it, the government finds an excuse to invade that communication space under the guise of national interest which the state is otherwise very well in a position to protect. This it does with motives and reasons which goes beyond the issue of privacy as mentioned above.

A trade-off like this is seemingly unfair as it restricts and takes away from the citizens the power to make choices which includes the power to select representatives, a very important facet of privacy and also democracy. Thrusting choices through legislations which may not be beneficial in the long run but is imposed for oblique motives is a little alarming phenomenon which requires due and urgent attention.

The Aadhaar Card, at the time of its inception was supposed to be a national identity number. Its sole purpose was to provide citizens a national number unique enough for their recognition.

Before the launch of Aadhaar, there existed multiple channels through which the identity of a citizen could be established. These included the ration card, pan card, electoral photo identity card (voters' id), driving licence, passport etc. To plug leakages or to avoid de-duplication, the need was to strengthen and tighten the procurement of these to avoid misuse.

For a uniform identity, any one of these e.g. pan card or passport could have been made uniform identity proof for all social security benefits with a restriction to only establish and authenticate identity or for any other cogent purposes other than compulsive intrusion, at a much lower cost than launching a completely new identity proof which caused considerable cost to the exchequer.

Making Aadhaar compulsory for every facet of life even where it is not warranted, is not conferring any benefit, or where requirement can be dispensed with by other means is nothing but conquering of a citizens private space through state prowess for reasons mentioned above alienating him from his cherished right.

While interpreting and pronouncing the current problem of Aadhaar Card as a tool for mass surveillance in utter disregard of the privacy of citizens, it is hoped that the Supreme Court will look into all these aspects.

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<sup>i</sup> Binoy Viswam vs Union of India Writ Petition (Civil) 277 and 304 of 2017 pronounced on 09-06-2017

<sup>ii</sup> Justice K.S. Puttaswamy (Retd), and Another vs Union of India Writ Petition (Civil) No 494 of 2012 Dt. 24-08-2017

<sup>iii</sup> Kharak Singh vs State of Uttar Pradesh (1964) SCR (1) 332, People's Union for Civil Liberties vs Union of India AIR 1997 SC 568, R Rajagopal vs State of Tamilnadu 1994 6 SCC 632, Surjit Singh Thind vs Kanwaljit Kaur AIR 2003 353

<sup>iv</sup> Under section 5 of the Indian Telegraph Act, 1885

<sup>v</sup> Govind vs State of Madhya Pradesh AIR 1978 SC 1378

<sup>vi</sup> Information Privacy in the Digital Age- A proposal to update General Comment 16 (Right to Privacy) to the International Covenant on Civil and Political Rights. A Report by the American Civil Liberties Union, pg. 11.

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<sup>vii</sup> However good or bad that might be

<sup>viii</sup> A matter of Trust: Integrating Privacy and the Public Safety in the 21<sup>st</sup> Century. A reference Document from the Office of the Privacy Commission of Canada, November 2010, pg.6