

RIGHT TO PRIVACY WITH SPECIAL REFERENCE TO AADHAAR AND INFORMATIONAL PRIVACY

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Abstract

As Black's Law Dictionary defines Privacy as the right of a person to go his own way and live his own life that is free from interferences and annoyances. The Indian Constitution does not grant to its citizens the "right to privacy" as a distinct fundamental right however, the right to privacy has been culled by the Supreme Court from the articles that lay the foundation of the Constitution itself, Article 21 and various other such provisions read with the Directive Principles of State Policy. The nine-judge bench judgment of the Supreme Court in a consequential decision has decided on the issue of privacy as a fundamental right inalienable from the right to life enshrined in Article 21 of the Indian Constitution. Historically, privacy was almost implicit, because it was hard to find and gather information. But in the digital world, whether it's digital cameras or satellites or just what you click on, we need to have more explicit rules - not just for governments but for private companies. - Bill Gates. In today's day and age, the generation of the millennials as many term it, it is imperative that one understands their right in a world where technology dominates their lives and impacts the government and its citizens alike. Through this paper, the author wishes to break down the nitty gritty of the right to privacy and its origins and highlights the impact of the ground-breaking judgment on informational privacy and how it affects the Aadhar card scheme.

Keywords: Privacy, Aadhar, Right to Life, Personal Liberty, Inalienable Rights

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“Now the right to life has come to mean the right to enjoy life, -- the right to be let alone.”

- Samuel Warren and Louis Brandeis.

ORIGIN OF THE DEBATE ON PRIVACY

*MP Sharma v. Satish Chandra, District Magistrate, Delhi*¹

In the Indian context, the right to privacy traces its origin from the judgment of MP Sharma which put over the Hon'ble Supreme Court a blanket of doubt as to whether the right to privacy is implicit from the prevailing Fundamental Rights. An eight-judge bench decided on the question of privacy and concluded that the lawmakers did not subject search and seizure as given under the Criminal Procedure Code to a fundamental right to privacy. The case of MP Sharma is one that does not unambiguously endorse privacy as a constitutionally guaranteed right.

The Central government had ordered for an investigation under the Companies Act into the dealings of a company which was in liquidation on the grounds that it made an attempt to misappropriate funds and also masked its true state of affairs from the share-holders. The company was also suspected to have carried out fraudulent transactions and falsification of its records. On this basis, search warrants were issued, records were seized. The Courts warrant was challenged on the ground that the search violates the fundamental rights guaranteed to the petitioners under Article 19(1)(f) and 20(3). The Hon'ble court only took into account the infringement of the petitioner's right under Article 20(3) and referred to the US Supreme Court judgment² where obtaining incriminating evidence by illegal search violates the guarantees enumerated under the Fourth and Fifth Amendments of the American Constitution. The stark contrast between the two cases is that in India unlike the United States, there is a legislative backing for search and seizure under the Code of Criminal Procedure therefore, search and seizure as under the Indian Constitution does not ride roughshod over the right guaranteed under Article 20(3) of the Constitution. The Court therefore observed that, *“A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy,*

¹ (1954) SCR 1077

² *Boyd v. United States*, 116 US 616 (1886)

analogous to the Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches.”

*Kharak Singh v. State of Uttar Pradesh*³

The six-judge bench presiding over the matter of Kharak Singh was of the opinion that unless the Constitution of India expressly lists down right to privacy as a fundamental right, it does not confer any constitutional guarantee for the same. The challenge posed by this case before the Hon’ble Court was whether the accused’s fundamental rights have been infringed owing to regular police surveillance. Brief facts of the case give a better context to the question of privacy that arose before the bench.

Kharak Singh was held in a case of dacoity in 1941 but was released for lack of evidence. The police made out a ‘history sheet’⁴ against the accused. Kharak Singh was subjected to midnight knocks and round the clock surveillance. Thus, he moved to the Court to seek relief from these surveillance practices and to uphold his fundamental right.

The judgment delivered by the Hon’ble Court struck down Regulation 236 (b)⁵ of the UP Police Regulations as it was violative of the fundamental right under Article 21 guaranteed to the citizens. However, the majority upheld that the right of privacy is not a guaranteed right under our Constitution.

Justice Subba Rao gave a dissenting opinion acknowledging the right as one inferred from the term “personal liberty” in Article 21 and stating that the rights in Part III are not placed in watertight compartments, they have overlapping areas. Though not expressly provided for in the Constitution, the right to privacy is an indispensable aspect of personal liberty. The minority opinion read as, “...*The scientific methods used to condition a man’s mind are in a real sense physical restraint, for they engender physical fear channelling one’s actions through anticipated and expected grooves. So also the creation of conditions which*

³ (1964) 1 SCR 332

⁴ Regulation 228 of Chapter XX of the UP Police Regulations

⁵ (a) Secret picketing of the house or approaches to the houses of suspects; (b) domiciliary visits at night; (c) thorough periodical inquiries by officers not below the rank of sub-inspector into repute, habits, associations, income, expenses and occupation; (d) the reporting by constables and chaukidars of movements and absences from home; (e) the verification of movements and absences by means of inquiry slips; (f) the collection and record on a history-sheet of all information bearing on conduct.

necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty...”

The judgment in MP Sharma has been overruled by the decision⁶ of the nine-judge bench comprising of Justice J.S. Khehar, R.K Agarawal, D.Y. Chandrachud, S. Abdul Nazeer, S.A. Bobde, Abhay Manohar Sapre, Rohinton Fali Nariman, Sanjay Kishan Kaul, J. Chamleswar with one accord. The bench revisited the facts of the case and the obiter dicta and concluded thus, the Indian Constitution does not recognize a right similar to the 4th Amendment of the US Constitution and therefore, the right to privacy cannot be a part of the provisions of 20(3) of the Indian constitution. The verdict did not distinctively pass judgment on whether the right to privacy would crop up from any of the other rights guaranteed under Part III principally Article 19 and 21. Consequently, the finding that privacy is not a guaranteed right under the Constitution stands overturned as it does not mirror the correct position.

In the case of Kharak Singh it has been appropriately held that the expression *life* does not under article 21 mean a person's bare existence and that *personal liberty* is an assurance against invasion into the sanctity of a person's home or an invasion into his personal space. Regulation 236 (b) which discredits domiciliary visits on the grounds that it invaded a person's privacy is an implicit recognition of the right under Part III of the Constitution. However, the other half of the ruling which states that the right to privacy is not an assured right is erroneous keeping in mind the decisions in Cooper⁷ and Maneka⁸. As a result, Kharak Singh stands overturned so far as it does not distinguish the right to privacy.

RC Cooper and Maneka Gandhi Case

The Fundamental rights penned down in the Indian Constitution are not a strait-jacket formula, they have overlapping areas. This observation was made by an eleven-judge bench of this Hon'ble Court in the case of Rustom Cavasjee Cooper. Justice J.C. Shah approved of Justice Subba Rao's dissenting opinion in Kharak Singh and vehemently opposed the

⁶ Justice K.S. Puttaswamy And Anr. v. Union of India and Ors. WP (Civil) no. 494 of 2012

⁷ Rustom Cavasji Cooper v. Union of India (1970) 1 SCC 248

⁸ Maneka Gandhi v. Union of India (1978) 1 SCC 248

Gopalan⁹ doctrine, which was that, the protection given to the citizens by a guarantee of personal freedom would be dependent on the object of State action in relation to the individual's right. The view adopted was that Article 22 was a complete code relating to the law of preventive justice and it didn't have to meet the criterion of Article 19 (1) (d). Justice Shah recognized the dissenting opinion of Justice Fazl Ali (Gopalan Case) and Subba Rao (Kharak Singh case) and held, *"The enunciation of rights either express or by implication does not follow a uniform pattern. But one thread runs through them: they seek to protect the rights of the individual or groups of individuals against infringement of those rights within specific limits. Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields: they do not attempt to enunciate distinct rights."*¹⁰

The seven-judge bench in Maneka reaffirmed the decision taken in the Cooper case and repudiated the Gopalan doctrine. The verdict in the case supported the idea of the overlapping nature of the constitutional provisions and therefore, reaching the logical conclusion. Thus, in accordance with the Maneka judgment the term "personal liberty" in Article 21 covers a wide variety of rights, some of which have also been granted a different standing and have been made a distinct fundamental right to which additional protection has been given under Article 19.

The relationship between Article 19 and 21 was founded on the majority verdict in Gopalan and that view presently stands repealed by the two important verdicts of Cooper and the subsequent doctrine recognised in Maneka. The right to privacy thus, traces its origins from sixty-three years ago when it came before the highest Court of order to rule over, till this date where it has been recognised by our Constitution as a right inalienable from Article 21 yet subject to reasonable restrictions like the rest. Therefore, putting the questions to rest and paving the foundation for what is now a settled position in constitutional law.

The fundamental rights stem from the notions of liberty and dignity; while some aspects of it have been distinctly protected under Article 19 it does not however strip Article 21 of its extensive domain. The cogency of a law which infringes an individual's right has to be tested on the grounds of its impact on the guarantees of freedom. Article 14 necessitates that state

⁹ A. K. Gopalan v. State of Madras AIR 1950 SC 27

¹⁰ Supra note 8

action cannot be arbitrary and must be reasonable therefore, imparting meaning to the constitutional guarantees under Part III of the Indian Constitution.

PRIVACY IS A NATURAL AND INALIENABLE RIGHT

Privacy is the right of an individual to exercise control over his inherent qualities of mind and character. There are certain rights which are natural and innate in a human being. Natural rights therefore, are sacrosanct because they purely cannot be separated from the human disposition.

Natural rights are not bestowed by the state on its citizens, as the term itself suggests it is an inherent right that human beings have because they're human. All human beings irrespective of strata, class or gender have certain rights that exist in them equally.

Declaration of the Rights of Man and of the Citizen which was adopted by the French National Assembly expressly uses the term "inalienable rights". It reads as, "For its drafters, to ignore, to forget or to depreciate the rights of man are the sole causes of public misfortune and government corruption. These rights are natural rights, inalienable and sacred, the National Assembly recognizes and proclaims them-it does not grant, concede or establish them-and their conservation is the reason for all political communities; within these rights figures resistance to oppression".¹¹

Black's Law Dictionary defines 'inalienable' in the following terms 'not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another, such as rivers and public highways, and certain personal rights; e. g., liberty.' All persons irrespective of their acts retain their inalienable rights. The right however, is not absolute and is subject to reasonable restrictions.

EVOLUTION OF THE NOTION OF PRIVACY IN INDIA

The question as to whether the right to privacy is recognized as a right accorded to the citizens under Part III of the Constitution gave rise to a plethora of judgments decided upon by smaller benches. Privacy as a matter of right can be claimed in all walks of life, the Courts thus, decided this question on case to case basis keeping in mind international precedents which gave rise to numerous judgments which cover the aspect of privacy as a right.

¹¹ Declaration of the Rights of Man and of the Citizen (1789)

In *Gobind*¹², a three-judge bench of the Supreme Court considered a challenge to the validity of Regulation 855 and 856 of the State Police Regulations under which a history sheet was compiled against the petitioner who was under police surveillance. It was a case similar to *Kharak Singh* so the bench referred to the decision given by the Court. The bench also adverted to the decision by the US Supreme Court in *Roe v. Wade*¹³ in which the Court upheld the right of a woman to terminate her pregnancy as her right to privacy. Justice Matthew who pronounced the judgment of the Court recognized the right to be let alone, and based his understanding of the concept of privacy on an ‘assumption’ that if there exists such a right it is a part of ordered liberty and yet a more scrutinized reading of the decision indicates that he too did not enter into the existence of a specific right to privacy as a fundamental right.

Smaller benches based their decisions on the ground that *Gobind* does recognize a right to privacy. As in the case of *Malak Singh v. State of Punjab and Haryana*¹⁴ though not explicitly yet implicitly has recognized the right to privacy as one emanating from the term ‘personal liberty’ under article 21 and the right to freedom of movement as under Article 19(1)(d). This case dealt with certain provisions of the Punjab Police Rules under which a register was maintained called the surveillance register of all convicts of a particular description and all other such persons who were believed to be habitual offenders irrespective of the fact that they have or have not been convicted.

The case of *Rajagopal*¹⁵ was one in which during its findings the court held expressly that the right to privacy is one which stems from the right to life and liberty as guaranteed by the Constitution under Article 21. The facts of this case are that a writ under Article 32 was sought for restraining the state and prison authorities from interfering with the publication of a convict’s autobiography in the magazine as it was against prison rules. The Court held, “*The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his home, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent...*”

¹² *Gobind v. State of Madhya Pradesh* (1975) 2 SCC 148

¹³ 410 US 113 : 35 L Ed 2d 147 (1973)

¹⁴ (1981) 1 SCC 420

¹⁵ (1994) 6 SCC 632

The Court however while summarizing their decision held that however, such a right is subject to reasonable restrictions. This decision thus, recognized privacy as a protected and guaranteed right while following it to its source, i.e., Article 21.

A number of cases involving different facets of privacy and Article 21 were decided upon yet a concrete decision of the Supreme Court was pending as to whether or not the right to privacy is a fundamental right which has now been settled by the Court in a unanimous decision by a nine-judge bench asserting that Right to Privacy is undeniably a Fundamental Right.

INFORMATIONAL PRIVACY AND THE AADHAR CARD SCHEME

The new epoch brings with it a more extensive and intensified Digital Age with wider internet use. We are at present living in an information technology age. The Digital Age is looking us in the eye from the near future and as man's brain advances; more intricate instances of digital technology will be seen in the day to day lives of people. Our very own Prime Minister Mr. Narendra Modi has made it his principal agenda to transform India into Digital India and his government has taken numerous measures to further this agenda. Cell phones are now equipped with finger print locks, voice recognition software and are able to send pictures wirelessly across the globe, the threat to information in this age of digitalization is real and immense. Digital information is in a much more malleable format as once the data is stored on servers the possibility for that data being used or misused are endless. The Digital Age as it is called is the future and also the demise of the human touch.

Everything that some individual accesses on the internet leaves electronic tracks. For instance, if one happens to make hotel reservations of the internet and searches for the best hotels in a particular city, for the next couple of days every time he/she uses the internet there will be ads for hotels in the place one wishes to visit. The electronic tracks left behind by individuals are means of information which provides knowledge about their interests and likes and dislikes alike. Cookies are installed by websites that provide browsers with an identification number unique to each individual which allows them to tag the users and their searches to create profiles of individuals. In a press release ¹⁶ by the Telecom Regulatory Authority of India on 3 July, 2017 gives out numbers of internet subscribers both urban and rural and the trend seems to only increase.

¹⁶ Press Release 45/2017, Available at http://traai.gov.in/sites/default/files/PR_No.45of2017.pdf

Therefore, the Court addressed informational privacy along with other facets of privacy in the landmark judgment¹⁷ delivered on 24 August, 2017.

Talking of the contemporary world where humans are driven by machines and not machines by humans, the problem of data leak becomes even more potent, a meticulous plan to systematically adapt to these changes so as to prevent any data hampering or other allied obstacles, invoking the privacy of individuals. There needs to be equilibrium between both the development and what it brings at stake with making the data nakedly available for misuse. The definition of Privacy now entails much more than what it did decades back and shall now incorporate prima facie protection of data and information. It has become imperative that systems are put in place to protect the identity of individuals.

Aadhaar Card Scheme

The Aadhaar card scheme of the Central Government was instituted under the provisions of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. The chief objective behind issuance of Aadhaar was that one could link several government-run services with their 12-digit identification number. The identification number was provided to the residents of India after enrolling them in the system by means of a twofold enrollment technique which comprises taking of biometric data and an iris scan. If at all the database storing the biometrics – leaks, the penalties of the leak will be everlasting because biometric leak will be the ultimate privacy breach, one cannot modify their fingerprints unlike passwords which can be reset.

The Aadhaar card scheme right from its inception has faced a constitutional challenge involving the right to privacy and data protection with several leaks and flaws in the handling of data.¹⁸ News reports of Aadhaar card being issued to animals¹⁹ and an instance of issuance of the card to God himself²⁰ were reported. Thus, a petition was filed before the Supreme Court that the norms for and the demographic biometric data being collected by the Union Government under the Aadhaar Act, 2016 violated the right to privacy.

¹⁷ *Supra* note 6

¹⁸ Available at: <http://www.hindustantimes.com/india-news/right-to-privacy-a-fundamental-right-7-aadhaar-controversies-that-raised-concerns/story-UGTtXhgJDtaWrmyuli2LwO.html>

¹⁹ Available at: <http://indianexpress.com/article/trending/man-arrested-for-getting-aadhaar-card-made-for-dog/>

²⁰ Available at: <http://www.thehindu.com/news/national/lord-hanuman-gets-aadhaar-card/article6401288.ece>

In the case of Justice K.S.Puttaswamy (Retd) v. Union of India,²¹ the Court addressed the constitutional challenges posed by the Aadhaar card for the first time. Initial benches of three judges were presiding over the matter but when faced with the quandary involving the interpretation of the backbone of the constitution, i.e., the fundamental right under Article 21, the bench on 11 August, 2015 decided to refer the matter to a larger bench. On 18 July, 2017 the Chief Justice chaired over a Constitutional Bench and considered it apposite that this issue must be determined by a Bench of nine judges who would put to rest all conjecture regarding whether or not the right to privacy emanates from Article 21.

DIFFERENT WAYS IN WHICH THE AADHAAR INTRUDES ON PRIVACY

The verdict of the Highest Court of Order is a very welcomed development by the people of India. Privacy has limits that one cannot fathom; it would mean different things for different people. One set of people might look at it from the perspective of ‘data protection’ as is also an important facet of privacy while others may look at it from the civil liberty point of view. The Supreme Court in its final verdict which is a landmark judgment has covered all facets of privacy and in perhaps one of the lengthiest judgments²² spanning over 547-pages has put to rest all complications.

The privacy concerns revolving Aadhaar:

- The ‘data security’ aspect of Aadhar is most widely questioned. The emphasis is on what data collected under the scheme needs to be protected and what will be the consequences of a breach in security. The UIDAI (Unique Identification Authority of India) claims that the data has been encoded using the highest standards and the access to the same is constrained. Experts on the issue of ‘data security’ believe that the issue is not whether it can be hacked, but when.²³
- The Aadhaar has flung open the doors to ‘Identity theft’ and ‘Banking Fraud’. Fingerprints can be easily replicated.²⁴ The Aadhaar number available on public

²¹ 2015 SCC OnLine SC 969

²² *Supra* note 6

²³ Available at: https://www.buzzfeed.com/pranavdixit/one-id-to-rule-them-all-controversy-plagues-indias-aadhaar?utm_term=.cs3qYwkDK#.hpWOY3E14

²⁴ Available at: <http://www.hindustantimes.com/mumbai-news/you-will-be-glued-to-this-mumbai-college-s-students-trick-biometric-system/story-W64f1jdMtecxKDml2DakeI.html>

domain²⁵ endangers an individual's bank account safety and increases the risk of banking frauds as the ever-emerging technology makes nothing impossible. Even if there is no breach in data, all these illustrations are a distressing breach of privacy.

- The biometric and demographic data is warehoused in a central database and in return individuals are allotted a unique 12-digit number. The unique number is added as a new data field with public and private database in the country. The data about an individual's life are kept in different data silos. The only person who can construct the deconstructed data available about oneself, is the person himself. If the unique identification number is available to every database it will integrate the data silo and construct it as one and information about an individual will be available to persons not authorised by the individual. This 'profile' that will be hence constructed will be accessible to persons beyond the individual's knowledge.

The Aadhaar card scheme which is claimed to be a 'welfare scheme' is essentially a surveillance and data-mining tool which endangers the freedom of the people of India and with the Supreme Court now expressly ruling it changes the entire debate altogether. What the current scenario of Aadhaar is with the government rolling it out as a mandate and the privacy concerns still looming over the scheme the current position is still vague.

PRIVACY LAWS IN OTHER COUNTRIES

Every country in the world is governed by their own history, their constitution and legal structure. However, what remains unchanged is that all laws revolve around the fundamental concept of 'human beings and their natural rights'. The privacy judgment which came like a knight in shining armour for the citizens of India has previously been recognised in several other countries whose cases have been referred to by our judiciary as precedents in the final verdict that declared to the citizens of India that their privacy is important and shall now be recognised as a fundamental right.

There are however, certain limits to a comparative approach which have to be kept in mind and foreign judgments must be read with caution ensuring that the matter is not isolated from the setting.

²⁵ Available at: <http://indianexpress.com/article/india/govt-admits-aadhaar-data-leak-critics-cite-civil-liberties-4639819/>

1. *United Kingdom*: Privacy as a right was fused explicitly under the British law only after the Human Rights Act, 1998 came into force. The incorporation of the right was based on the European Convention on Human Rights which pledges privacy as a fundamental right. Article 8 (1)²⁶ of the Convention defends the right to privacy. The Human Rights Act has clarified the existence of a right to privacy in UK and has also resolved the debate for the future.
2. *United States of America*: The Constitution of the United States of America does not contain a direct right to privacy like our Indian Constitution yet, the American jurisprudence guard's privacy under numerous amendments of the Constitution. The First, Third, Fourth, Fifth and Fourteen Amendments all play a key role in distinguishing the concept that is privacy. The Ninth Amendments' scope has been extended to include privacy in ways that it has not been protected by the previous amendments. The Courts have relied upon a 'reasonable expectation of privacy' theory while developing the concept of privacy.
3. *Canada*: The Canadian Charter of Rights and Freedoms of 1982 does not distinctly discuss privacy as a guarantee to their citizens. Section 7²⁷ and Section 8²⁸ of the Charter recognize the concerns regarding an individual's privacy. The Privacy Act, 1983 came into force to regulate how the government collects, uses and discloses personal information.²⁹ The Courts have used the Charter to extend the scope of privacy as more than just a physical right.

CONCLUSION

The architects of the Constitution had before them a rather monumental task of framing the laws for a country of 330 million at the time of partition. They had to take into account the rights of every individual who had been deprived of their rights and liberty under the British rule. The draftsmen were conscious of the ubiquitous abuse of human rights and the horrors

²⁶ Article 8 (1): Everyone has the right to respect for his private and family life, his home and his correspondence.

²⁷ Section 7: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

²⁸ Section 8: Everyone has the right to be secure against unreasonable search or seizure.

²⁹ In *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, (2002) 2 SCR 773, the Supreme Court of Canada recognised the Privacy Act as having a "quasi-constitutional" status, as it is "closely linked to the values and rights set out in the Constitution". The Court also stated that the "The Privacy Act is a reminder of the extent to which the protection of privacy is necessary to the preservation of a free and democratic society"

that India – Pakistan partition brought with it. With this context in mind, the makers had added pressure to formulate a law that would bring an end to injustice suffered by the people.

The content of the rights guaranteed to the citizens' evolved over the years with precedents set by the judiciary. Common law takes form in this style, progressively sprouting to harmonize new technologies and social patterns while remaining unswerving with the past from which it arose. The right to privacy developed in India over a period of six decades. With the landmark verdict in the case of *K.S Puttaswamy v. Union of India*³⁰ the judiciary made it crystal clear that the people are entitled to enjoy the right and it is an inalienable right.

Thus, the ruling has made way for a national dialogue discussing the right to privacy and what it means in the Indian context. A lot of homework and public education is now the need of the hour in order to educate the citizens about their right in a scenario where there has been uproar about beef, about a person's sexual orientation and other such sensitive issues. The status of Aadhaar and the right to information are all at stake with this judgment. The nine-judge bench with their decision has left a lot of questions unanswered, yet this is a start and it has set the stage for new beginnings and in the short term while this may seem as a victory, it has lead India into uncharted waters.

³⁰ *Supra* note 6