



**AADHAR DEBATE: PRIVACY REMAINS CENTRAL CHALLENGE**

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*Aadhar a 12 digit unique identity number given to every Indian citizen by the initiative of BJP government, this paper examines the official justifications for aadhar and the concept of Right to Privacy. As for the present Modi government aadhar is the tool used for “development” Aadhar is facilitating India’s transition into a society where critics are enemies rather than a necessary part of democracy. Aadhar project is one of the significant projects in India to bring the universal trend of digital innovation. The launch of this project was focused on the interoperability of various e-governance functionalities to ensure the optimal utilization of Information, Communication and Technology Infrastructure. Towards this Government of India has recently made aadhar card mandatory for many government schemes and also has promoted aadhar enabled transactions. There are many issues related to security of the aadhar data that need to be addressed and touched upon. This paper highlights such cases.*

**RIGHT TO PRIVACY: FUNDAMENTAL RIGHT OR NOT?**

Article 21 reads as:  
*“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”<sup>1</sup>*  
 As per Black’s Law Dictionary, privacy means “right to be let alone; the right of a person to be free from unwarranted publicity; and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned”. Right to privacy is not a right expressly given by the Indian Constitution but a ‘penumbral right’ i.e. a right that has been declared by the Supreme Court as integral to the fundamental right to life and liberty. The country could not have got a better gift from the judiciary for its 70<sup>th</sup> year of independence. According to Justice Dr. DY Chandrachud the essential nature of privacy and informational privacy has three major requirements, i.e. Legality, the need for a legitimate aim and proportionality. The nine judge bench of the supreme court has unanimously conveyed its judgment in equity *K.S. Puttaswamy v. UOI*<sup>1</sup> holding that security is a naturally shielded right which not just rises up out of the certification of life and individual freedom in article 21 of the constitution, yet additionally emerges in differing setting from alternate aspects of opportunity and nobility perceived and ensured by the major rights contained to a limited extent in part III of the Indian constitution.

In *PUCL v. UOI*<sup>1</sup>, the Court ruled that “right to privacy is a part of the right to “life” and “personal liberty” enshrined under Article



21 of the Constitution. Once the facts in a given case constitute a right to privacy; Article 21 is attracted. The said right cannot be curtailed “except according to procedure established by law”. The court has further ruled that Telephone conversation is an important facet of a man’s private life. Right to privacy would certainly include telephone conversation in the privacy of one’s home or office. Telephone tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law. The procedure has to be just, fair and reasonable.”

### **INTRODUCTION TO AADHAAR LINKING**

The Unique Identification Authority of India (UIDAI) is a statutory authority established under the provisions of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (“Aadhaar Act 2016”) on 12 July 2016 by the Government of India, under the Ministry of Electronics and Information Technology (MeitY).

Prior to its establishment as a statutory authority, UIDAI was functioning as an attached office of the then Planning Commission (now NITI Aayog) vide its Gazette Notification No.-A-43011/02/2009-Admn.I) dated 28th January, 2009. Later, on 12 September 2015, the Government revised the Allocation of Business Rules to attach the UIDAI to the Department of Electronics & Information Technology (DeitY) of the then Ministry of Communications and Information Technology.

UIDAI was created with the objective to issue Unique Identification numbers (UID), named as "Aadhaar", to all residents of India

that is (a) robust enough to eliminate duplicate and fake identities, and (b) can be verified and authenticated in an easy, cost-effective way. The first UID number was issued on 29 September 2010 to a resident of Nandurbar, Maharashtra.

Under the Aadhaar Act 2016, UIDAI is responsible for Aadhaar enrolment and authentication, including operation and management of all stages of Aadhaar life cycle, developing the policy, procedure and system for issuing Aadhaar numbers to individuals and perform authentication and also required to ensure the security of identity information and authentication records of individuals.

The objective of this section is to highlight the scope and advantages of linking Aadhaar card to various systems. The government of India has been linking the Aadhaar card with various government schemes such as for cooking gas subsidies, house allotments, school scholarships, admission into remand and welfare houses, passports, e-lockers (eg. Digilocker), for archiving documents, bank accounts under PMJDY (PradhanMantri Jan DhanYojana), provident funds account, pensions, driving license, insurance policies, loan waivers and many more<sup>1</sup> Recently it has also been made mandatory for ATM Cash Transaction<sup>1</sup>, railway reservation<sup>1</sup> and applying PAN (Permanent Account Number) card, and filing income tax returns<sup>1</sup>

### **AADHAAR CARD: CHALLENGES AND IMPACT ON DIGITAL TRANSFORMATION**

The objective of this section is to highlight the scope and advantages of linking Aadhaar card to various systems. The proposal for national identity card was first floated in 1999 by the Kargil Review Committee, set



up to study national security in the aftermath of the Kargil war. In May 2001, a group of Ministers headed by the then Home Minister L.K. Advani, accepted and expanded this recommendation, suggesting that a “multi-purpose national identity card” be issued to every citizen. In December 2003, the Citizenship (Amendment) Bill, 2003 was introduced in the Lok Sabha by the Home Ministers, with a clause empowering central government to “compulsorily register every citizen of India and issue National Identity card to him.”

As the major concern is the security and privacy of the data, UIDAI soon going to adopt a new encryption standard on the Aadhaar biometric devices from June 1, 2017. The new encryption standard would be added as a third layer of security. First layer is the encryption from merchants/agency side and second layer is from UIDAI itself. Third layer which is being added is implemented in the biometric device itself. UIDAI officials have informed the vendors and merchants to let the device go through the STQ (Standardization Testing and Quality) certification. Therefore, UIDAI ensured that only registered devices are allowed to make Aadhaar transaction. The objective is to tighten the security as devices are set to take biometric-based digital payments. Although the UIDAI going to take good initiatives but still there are some questions over the accuracy of biometrics, as thumb impression and iris of citizens may get changed or damaged who are involved in casual labour, and the chance of a false positive in India is 0.057%. A large portion of Indian population is involved in casual labour so it may result lakhs of false results. In fact some reports from Rajasthan and other states

of India have already been received that biometrics scans are not showing a match. Therefore the usage of biometric may also lead to major security threats. However the government of India has already spent a lot of money on the Aadhaar project, and the findings of the paper entitled ‘A cost-benefit analysis of Aadhaar’ published by The National Institute of public finance suggest that the benefits of the Aadhaar project will surpass the costs.

### EVOLUTION THROUGH CASE LAWS

Big brother calling the wrong number, aadhaar. This digital mapping of all Indian citizens is violating the article 21 of The Indian Constitution as stated recently in the K.S.Puttaswamy case where the Judgement delivered by a nine-judge bench in the Supreme Court is that; Aadhaar identification programme violates an individual's fundamental right to privacy.

It was in 2012 when former High Court judge, K S Puttaswamy, files a petition contending that Aadhaar violates fundamental rights of equality and privacy. Several more petitioners-including activists Aruna Roy, Bezwada Wilson and Nikhil Dey-had moved to the court with the petition so the apex court decided to link all the 20-plus Aadhaar-related petitions to this case. The petitioners also objected not only the privacy but also the national security by virtue of unpredictable enrolment of illicit foreigners. In September 2013 the Supreme Court passed an interim order that the unique identification number cannot be made mandatory for gas connections, scholarships, vehicle registrations, marriage registrations. To outweigh the mandatory clause the UIDAI claimed that PSU oil companies have detected duplicate



connections of around 45,000 people only with the help of aadhaar. In march 2014 the apex court ordered the centre to withdraw all instructions which make aadhaar mandatory. The court questioned the centre on how can they still make aadhaar mandatory after an interim order passed not allowing to make it mandatory. In 2015 the Centre argued that the constitution makers did not intend to make right to privacy a fundamental right, they added to it that privacy could not also be given as an absolute right as we live in an era of terrorism and forgery, hence the petitions under article 32 of the Indian Constitution should be dismissed. By the year ending 2016 several more petitions relating to aadhaar and its constitutional validity were filed in the Supreme Court. In February 2017 the parliament challenged the judiciary had no jurisdiction to encroach on legislative procedure in parliament, where the speaker was the final authority. To which the Chief Justice J.S Khehar countered that "if the speaker says red is green, the judiciary will tell her the red is not green it is red". In April 2017 senior advocate Shyam Divan humbly submitted before a bench of Justices A.K. Sikri and Ashok Bhushan the newly-inserted Section 139AA in the Income Tax Act, which mandates the linking of Aadhaar with PAN, is a "Faustian bargain" i.e., a deal with the devil! . Mukul Rohtagi –Attorney General stated that taking fingerprints and iris impressions for Aadhaar is not an invasion of a citizen's body. Mukul Rohtagi also included that the preoccupation of assets to shell companies through PAN cards can only be prevented by making aadhaar card a mandatory one. In May 2017 Magsaysay award winner and the former chairperson of National Commission for Protecting Child

Rights Shanta Sinha's petition against 17 government notifications making aadhaar a mandate for all welfare schemes and benefits. Aadhaar is not uncertain, problematic, pointless and wrong innovation venture, which is being foisted with compulsion on the most defenseless segment of Indians and is debilitating their sacred and legitimate rights and privileges each day. The apex court upholds Section 139AA of the Income Tax Act. The Supreme Court says that the new provision that makes Aadhaar mandatory for income tax assesses is not in violation of the fundamental right to equality, or the fundamental right to practice one's profession or trade. Also in the hearing of petition by Ms. Shanta Sinha the court held that there will be no freeze on the government notification of making aadhaar mandatory even for mid-day meals scheme. The Supreme Court delivered its historic Judgement quoting that right to privacy is "intrinsic to life and liberty" and is inherently protected under the various fundamental freedoms enshrined under Part III of the Indian Constitution. West Bengal now enters the aadhaar arena by filing a petition against the centre's challenging its push to make aadhaar mandatory. The court hauls up the state government by saying that how can a state challenge parliament's order, to which state countered that a chief minister can file a petition in his own capacity. Another petition now lined up which challenged the provision of Money Laundering Act, which made compelled RBI to link all bank accounts with aadhaar. After all the 27 petitions in all filed in the Supreme Court the historic judgement delivered will be delivered as quickly as time permits and this will be a gift to the



entire nation in its 70<sup>th</sup> year of independence.

Other cases where previously the apex court held that there was no fundamental right expressly given in the constitution are <sup>1</sup>Kharak Singh v The State Of U. P. & Others where the verdict given by a six-judge bench was that there is no such fundamental right is the correct expression of constitutional provisions. <sup>1</sup>M.P.Sharma v Satish Chandra wherein verdict given was that, “at the point when the Constitution creators have figured fit not to subject such control to constitutional limitations by acknowledgment of the fundamental right to privacy there is no defense for bringing in into it, a totally different fundamental right by some process of strained construction.”

The space and the freedom to do mischief, to provoke, to instigate, or indeed to be idle will not be snatched away and there can be larger number of projects brought under the Aadhaar umbrella.

### **DISCUSSION AND CONCLUSION**

Data Privacy and Data protection are rights for every individual residing in this country and every citizen must be aware of that. Every IT technician’s main focus is to implement the strongest security which no one can breach. However a Network may not be 100% secure but if one cannot make it 100% secure, there should be a legislation or system to deal with data breach cases. In India some of the Data Privacy and Protection laws are somewhat included under the sections of ‘IT Act (2008)’, and many are yet to be implemented and are under consideration. In Aadhaar act there are also some issues need to be understood. This section deals with such issues. □ It is to be noticed that Aadhaar is not a unique

identity card, it’s just a number. It does not contain any security feature like PAN card and Voter ID does. Multiple copies of Aadhaar can be downloaded from their SSUP portal. Yet, it is used as valid proof of identity at some places. □ Aadhaar is used as proof of address. UIDAI doesn’t even verify the address of the applicants. Still, Aadhaar has been accepted as a proof of address in banking sector and telecom companies. □ Aadhaar cannot be used as a proof of citizenship as Clause 9 of Chapter III Aadhaar Act 2016 which states that “The Aadhaar number or the authentication thereof shall not, by itself, confer any right of, or be proof of, citizenship or domicile in respect of an Aadhaar number holder.” Also, Aadhaar Act 2016, Chapter I Clause 2(v) states that “If a resident who has resided in India

for more than 182 days or more than that is applicable to enrol for Aadhaar”. For applying passport, Aadhaar can be used as a valid document for proof of concept and on the other hand, passport becomes a proof of citizenship which has lead to various immigrants from Nepal, Bangladesh, Bhutan etc. to get valid documents for Indian Citizenship. □ Recently, twitter’s top story was MS Dhoni Aadhaar data got leaked which also depicts some flaws in Aadhaar Act which is Chapter VI Clause 4 of Aadhaar Act 2016 depicts that “No Aadhaar number or core biometric information collected or created under this Act in respect of an Aadhaar number holder shall be published, displayed or posted publicly, except for the purposes as may be specified by regulations.” Also Clause 30 of IT Act 2000 states that biometric or demographic data are recognized as an ‘electronic and



sensitive data of an individual' and Chapter VII Clause 37 of Aadhaar Act 2016 states "Whoever, intentionally discloses, transmits, copies or otherwise disseminates any identity information collected in the course of enrolment or authentication to any person not authorised under this Act or regulations made there under or in contravention of any agreement or arrangement entered into pursuant to the provisions of this Act, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both".

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