

Is Aadhar Bill a Fraud to the Constitution of India?

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ABSTRACT:

Aadhaar is a 12 digit unique identity number issued to all Indian residents based on their biometric and demographic data. The data is collected by the unique identification authority of India (UIDAI), a statutory authority, under the ministry of electronics and information technology. Aadhaar was drafted to take command over few internal problem of the system and to have a check over the person residing in India. To understand it more clearly we can imagine a scenario as if there is any welfare program of government, it does not reach the poor because of the leakage in the system. India being a welfare country has the motive to help the needy but they are not able to do so. The first and most criticized problem relating to Aadhaar is that it is introduced as a money bill which is against the article 110 of the constitution India. Secondly it is potentially possible that right of privacy may be infringed because of Aadhaar unique identification number and Section 33(2) permits disclosure of information under Aadhaar act, including identity and authentication information, made in the interest of national security in pursuance of a direction of an officer not below the rank of Joint Secretary to the Government of India specially authorized in this behalf by an order of the Central Government. This paper focuses on brief history of Aadhaar, its card utility, and most controversial question that is Aadhaar bill is a money bill or not and whether it infringe right to privacy of individual.

I. INTRODUCTION

The Indian Constitution provides six fundamental rights to each and every person of the country; Right to Privacy is an integral part of article 21, which is right life, which states that No person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life also cover the aspect of privacy and hence right to privacy was inserted as the fundamental right by the judicial review in the case Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors¹. There were many debates and discussions before inserting privacy as a right but the judges in this case has recognized the importance of privacy and how this can affect any individual. When we talk about right of life as per article 21 of the constitution of India then there is implied acceptance of living the life with honor and dignity but this dignity is questioned by government by introducing a identity which is limited to a number only. A person in India only has identification in the form of number which they get after giving their biometric identification. It is against the constitution of India to deprive anyone's fundamental right. This further leads to the longest heard case i.e., The Aadhaar Case. Before going into the depth of this case firstly, let us understand aadhaar. Aadhaar is a 12 digit unique identity number issued to all Indian residents based on their biometric and demographic data. The data is collected by the unique identification authority of India (UIDAI), a statutory authority, under the ministry of electronics and information technology. Every person in India goes through the biometric identification to

¹ Justice K.S. Puttaswamy (Retd.) & Anr. V. Union Of India & Ors WRIT PETITION (CIVIL) NO 494 OF 2012

generate its unique identity number and hence generate his aadhaar card and then that number becomes the identification of that person.

II. NEED OF AADHAAR

Aadhaar was drafted to take command over few internal problem of the system and to have a check over the person residing in India. To understand it more clearly we can imagine a scenario as if there is any welfare program of government, it does not reach the poor because of the leakage in the system. India being a welfare country has the motive to help the needy but they are not able to do so. Let us take an example of pension, government announce 500 rupees as a pension to the person who need it. Now when we closely examine this transactions there will be three parties, one is the government other is the needy and the third person will be a middle man who will act as a passage between the other two. Government will sanction the full amount to the middle man but that will not reach the needy in the same manner. The amount of 500 will get reduced and the remainder pocketed with this middle man. This raises two main issues of the country; first is leakage in system and other is duplication. What does duplication means? When a number of needy are inflated as per their wish this conclude as duplication. Let us take an example of village where there are 200 people who are entitled for pension but the number will get inflated to 600 by the middle man and then these 400 beneficiaries are the ghost beneficiaries and ultimately the amount get pocketed by these middle man. To tackle these problems government had thought to come up this idea of unique identification number and this simultaneously gives birth to the Aadhar card. This unique identification number involves a biometric identity of a person that means the figure prints, retina are scanned to create an identity therefore it can only be given to the person and cannot be duplicated, so this how the problem of duplication is tackled. Now for leakage, the role of middle man is erased as the benefited amount will directly be credited to the account of the beneficiary. The bank accounts need to be connected with the aadhar card to confirm that the account belong to a person and not a ghost account. When the government thought about introducing aadhaar then there became a way for the UIDAI (unique authority of India). In 2009, the then UPI government created an authority UIDAI (unique authority of India), this authority function under the planning commission but there was a problem because there was no law which can back aadhaar. In absence of law many question were raised that without the permission of law how anyone can take a biometric identification of a person, and then comes 2016, the parliament pass the aadhar act of 2016. After 2016, every resident of India is entitled to obtain an aadhaar number. Resident can be any person who lives in India or has been there for 182 days including foreigners but it will not provide any type of domicile or citizenship, it is an identity only. UIDAI is now an authority of aadhar. The function of UIDAI is:

- to specify demographic and biometric information is collected during enrolment
- to assign aadhar number to the individuals

- to authenticate aadhar numbers
- to specify the usage of aadhar numbers for delivery of subsidies and services.

The UIDAI authority consists of a chairperson, two part time members and a chief executive officer. The chair person and members are required to have experience of at least ten years in matters such as technology, governance, etc.

III. DEARTH IN AADHAAR

Aadhaar is made to tackle few problems and come up as a boon to the society but there are many dearth's in the aadhaar. The first and most criticized problem relating to aadhaar is that it is introduced as a money bill which is against the article 110 of the constitution India which states that, for the purpose of this chapter, a bill shall be deemed to be a money bill if it contains only provisions dealing with all or any of the following matters, namely

- a) The imposition, abolition, remission, alteration or regulations of any tax.
- b) The regulation of the borrowing of the money or giving of any guarantee by the government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the government of India.
- c) The custody of the consolidated fund or the contingency fund of India, the payment of moneys into or the withdrawal of moneys from any such fund
- d) The appropriation of moneys out of the consolidated fund of India
- e) The declaring of any expenditure to be expenditure charged on the consolidated fund of India or the increasing of the amount of any such expenditure
- f) The receipt of money on account of the consolidated fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the union or of a state
- g) Any matter incidental to any of the matters specified in sub clause (a) to (f)².

If the bill did not fall under any of these categories than it is not a money bill. The other issue to this aadhaar act was that it does not comply with the rules of the constitution of India. It somewhere stands against the constitution of India, namely article 21 of the constitution which is a fundamental right to life. The aadhaar card provides us a number of identification which afterwards has turned into the license for existence as everything is being attached to aadhaar and if somehow a person does not have an aadhaar number then his existence is in shadow. Aadhaar is made for the unique identification but there no such rules or authority to exactly control the

² INDIA CONST. art. 110, cl. 1

duplication of these aadhaar card as many resident have a fake aadhaar card and this issue is just left untouched. There were many such lacks in the aadhaar bill but the three most criticized ones are as noted and discussed further:

- Whether aadhaar card affect the right to privacy of a person or not.
- Whether aadhaar act can qualify as money bill or not.
- Whether aadhaar reduces a person's identity to a number only.

IV. RIGHT TO PRIVACY AND AADHAR

Right to privacy is vested within right to life and liberty under article 21 of the Indian Constitution, which states that, No person shall be deprived of his life or personal liberty except according to procedure established by law. After reading the Article 21, it has been interpreted that the term 'life' includes all those aspects of life which go to make a man's life meaningful, complete and worth living³. 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. Before getting into the discussion of right to privacy and its infringement first we should be clear with the word that is "Privacy". According to black's law dictionary "right to be left alone; 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". The scope of article 21 is very broad and it covers every aspect of life which is required for an individual to live a healthy and secured life. Right to privacy and right to life are the most entertained rights of an individual. Every person has the authority of its life, he can write it down as per his will and wish, no other person can restrict his right voluntarily. Right to privacy has been discussed and debated in many cases and has revolved by this, its interpretation has been different by different person. The right to privacy declared as a fundamental right by the Supreme Court of India in the Justice K.S. Puttaswamy case forms a major victory for the privacy debate in India. The data protection and privacy rights based legislative framework is also witnessing major progress with the B N Srikrishna committee tabling the report as well as the draft data protection bill⁴. The three –factor test as provided in the right to privacy case, Puttuswamy v. Union of India (2017) was also relied in the majority judgment. Justice Chandrachud in the right to privacy case mentions about three-fold requirement for any reasonable assessment for discounting the privacy rights:

³ Hinailiyas, Right To Privacy Under Article 21 and the Related Conflicts, LEGAL SERVICE INDIA
<http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html>

⁴ Dr. Deva Prasad And Suchithra Menon, Aadhaar Judgment : Certain Concerns, LIVE LAW, September 30, 2018,
<https://www.livelaw.in/aadhaar-judgment-certain-concerns/>

- The first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21
- The requirement of a need, in terms of a legitimate State aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness
- The third requirement ensures that the means, which are adopted by the legislature, are proportional to the object and needs sought to be fulfilled by the law.⁵

V. AADHAR ACT AS A MONEY BILL?

The most severe criticism was reserved for the majority opinion that the Aadhar Act qualified as a Money Bill. A Money Bill is one that contains provisions for taxes, appropriation of funds etc. Money Bills can be introduced only in the Lok Sabha, and the Rajya Sabha cannot make amendments to such bills passed by the Lok Sabha. The Rajya Sabha can suggest amendments, but it is the Lok Sabha's choice to accept or reject them. The NDA government chose to introduce the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016 as a Money Bill. The Lok Sabha cleared the Bill and passed it to the Rajya Sabha. The Opposition's main concern was with the usage of Aadhaar data to facilitate mass surveillance. Originally, the Aadhaar project was supposed to be voluntary, but this Bill makes enrolment compulsory. The Bill contains a blanket 'national security' clause, a clause bound to induce misuse. In article 110 there is a use of word "only", which specify that money bill can be passed for a money or financial matter only but aadhaar is nowhere related to it. Rajya sabha is an important part of the parliament and its role is very significant, that cannot be eliminated. When a bill passed a money bill then the role of rajya sabha is almost neglected because if the bill is passed from lok sabha then rajya sabha is bound to pass the bill, they can propose changes but that are not mandatory considered, it is up to lok sabha either they want to change or not. There were many further discussions that how a aadhaar can be qualified as a money bill but they were left unanswered, Ultimately, the majority judgment fail to answer the most important question in the context of Article 110, at what point does a law which has some mix of money bill provisions and "incidental provisions" cease to become a money bill⁶.

VI. IS AADHAR RESTRICT PERSONS IDENTITY TO NUMBER?

The concerns that the petitioners in the case had raised was that if over time, every service was linked to Aadhar, "the disabling of Aadhar would mean civil death." Government made aadhaar a necessary for living, everything is being linked to aadhaar like accounts, mobile numbers, pan card etc. and here comes the issue of

⁵ Ibid.

⁶ Ashok Kini, [Aadhaar] Read The Summary Of Majority (4:1) Judgment, LIVE LAW, September 26, 2018, <https://www.livelaw.in/aadhaar-read-the-summary-of-majority-41-judgment/>

existence. Missing of aadhar number somehow leads to the civil death of that person. If a person don not have an aadhar he cannot have excess to many benefits. We all live in a democratic country and have an identity that cannot be determined by a number. Aadhar card strictly prohibit our identity to that number, it's more like living in a jail and having a number more than living in a democratic country. The State becomes blind to individuals, and only recognizes and reduces them to a number. In a democracy, individuals must be afforded a choice of how they can be identified.

Section 33(2) permits disclosure of information under Aadhar act, including identity and authentication information, made in the interest of national security in pursuance of a direction of an officer not below the rank of Joint Secretary to the Government of India specially authorized in this behalf by an order of the Central Government. Section 57 of the Act permits private entities to use Aadhaar information to authenticate identity of the person. The judgment of Justice Sikri has read down Section 33(1) of the Act, which enables disclosure of aadhaar information on the orders of District Judge, to state that the owner of information should be given opportunity of hearing before issuing such orders. The judgment has struck down Section 47 of the Act, which stated that criminal complaints for data breach can be filed only by UIDAI. The exclusion of individuals from filing complaints was held to be arbitrary⁷.

VII. CONCLUSION

Taking considerations of all the above discussed elements of the aadhaar bill this is can easily be concluded that it is not a one sided story, it has both advantages and disadvantages attached to it. But the aadhaar bill is contrary to the constitution of India as it limits the identity to the numbers only. By decreasing its demand in every aspects of life and limiting it to few elements only the judges has given a little relax and has inclined it toward the constitution of India. The aadhaar act is a somewhere beneficiary but not in whole sense. There are many reforms which are to be made; the judgment of this case is quite appreciable as aadhar is converted to be the identity only not as a source of living. Calling it as a fraud to the constitution, will neither be right nor wrong, as it contradicts constitution in many ways. Firstly, it invades the privacy, secondly, it does not qualify as a money bill and thirdly it restricts the identity of a person. The objective of aadhaar was to identify every person but there are many fraudulent aadhaar's which are being made. UIDAI is a authority to provide the number but it does not have any control over the biometric identifications, that all are done the supervision that particular person or authority. No such particular authority is made for that. The objective towards the making of aadhaar was appreciable but that objectives are also not being totally fulfilled or being processed. There are

⁷ Live Law News Network, Breaking : Sections 33(2),47 & 57 Of Aadhaar Act Struck Down; National Security Exception Gone; Private Entities Cannot Demand Aadhaar Data [Read Judgment], LIVE LAW, September 26, 2018, <https://www.livelaw.in/breaking-sections-33247-national-security-exception-gone-private-entities-cannot-demand-aadhaar-data/>

many changes that can be made to this identification number. Few are contradictory to our prevailing laws and hence there is a need to review and reconsider it, to clarify that it is not a fraud to the constitution of India.