



AADHAAR AS UNIQUE IDENTIFICATION NUMBER AND RIGHT TO PRIVACY IN INDIA

Jyoti Sharma

Assistant Professor, C.R. Law College, Hisar

mailjyotisharma@gmail.com

Abstract-- A unique 12 digit number has become so important in our lives today that without it we are not able to avail common services. The rationale behind is to centralize the data of all citizens so that government can keep record of everyone. It is a positive effort as will help government in keeping a check over different types of crimes. But voices have been raised against it due to its encroachment over the right to privacy of the individuals. The author through this paper wants to throw some light over the lack of protection efforts on the part of government to keep the numbers safe. This paper also discusses that aadhaar is a boon or bane for the country.

Keywords: Aadhaar, encryption and government

Aadhaar has become a lifeline of our system. Indian Government is trying to link each and every public service with the aadhaar. Ultimatum has been given by bank to link our bank accounts with the aadhaar card before 31st December 2017 but recently the date has been extended to 31st March 2018. We frequently receive messages to link our mobile connections with the aadhaar. Even while applying for jobs it has became mandatory to submit the aadhaar numbers. It was claimed by the government that it is for having the centralized data of all the citizens. But soon after passing of Aadhaar Act, 2016 and pressurizing by the government to the linking of aadhaar with all type of services somehow violates the right to privacy of the individuals.

WHAT IS AADHAAR

Aadhaar, which means 'foundation' is a 12 digit unique-identity number (supposedly) 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 established in January 2009 by the Government of India, under the Ministry of Electronics and Information Technology, under the provisions of the Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Act, 2016. It is the world's largest biometric ID system, with over 1.19 billion enrolled members as of 30 Nov 2017. As of this date, over 99% of Indians aged 18 and above had been enrolled in Aadhaar¹.

It is pertinent to mention here it that every individual is not concerned with the issue of privacy and aadhaar. As for some it is type of empowerment and good effort by the government. Many people even fail to understand that actually there can be misuse of aadhaar card also and thus can infringe our right to privacy. For few technicians right to privacy is associated with the data encryption. For them issue is resolved if we have strong databases which can protect our numbers, ID's, passwords etc. But the real issue of infringement of right to privacy in aadhaar is raised by the lawyers who are highlighting and discussing aadhaar with the civil liberties. Before going into discussion over how Aadhaar invades privacy it is important to discuss what is right to privacy?

RIGHT TO PRIVACY

It is guaranteed under Article 21 of Indian Constitution. Article 21 states that "No person shall be denied his life or personal liberty barring the procedure recognized by law" 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"². The expanded scope of

¹ <https://en.wikipedia.org/wiki/Aadhaar>

² <https://thelawdictionary.org/right-of-privacy/>



article 21 has been explained by the apex court in *Unni Krishnan v. State of A.P* providing that the ambit of article 21 also includes the various other rights as mentioned below³:

1. Right not to be subjected to bonded labor and to be rehabilitated after release.
2. Right to hearing
3. Right to information
4. Right to privacy
5. Right to go abroad
6. Right to legal aid
7. Right against public hanging
8. Right to reputation
9. Right against solitary confinement
10. Right against delayed execution
11. Right of decent burial or cremation
12. Right to freedom from noise pollution
13. Right against custodial violence
14. Right against bar falters and handcuffing
15. Right to family pension (release)
16. Right to good health
17. Right to speedy, fair and open trial

HOW AADHAAR INFRINGES RIGHT TO PRIVACY

Right to Privacy is one of the rights which an individual values the most. Enrollment under the AADHAAR scheme is optional but there have been several incidents whereby people have been deprived of their benefits, reason being they weren't enrolled under the AADHAAR scheme. So it brings us to the point that, to be eligible for such benefits, individuals have to submit their demographic and biometric credentials, which is a gross violation of their right to privacy. Currently, there is no provision for securing personal data of a person, and there are no penalties invoked in case there is a breach of an individual's personal credentials. Furthermore, the AADHAAR scheme is not supported by any legislation, which again violates the person's right to life and personal liberty⁴.

On July 18-19, the case is finally being presented in front of a five-member bench to decide all issues pertaining to Aadhaar, which include mandatory unique identification for accessing benefits and violation of privacy. The bench is also likely to address the constitutional validity of the Aadhaar Act, 2016 – which was passed as a money Bill. This decision was announced by a three-judge benching hearing *Shanta Sinha vs Union of India*, which questions making Aadhaar mandatory for government schemes such as midday meals and scholarships. Shyam Divan, the lawyer on behalf of the petitioner, argued that the whole country was becoming a "concentration camp" as even children below the age of 18 years are being forced to part with their biometrics to access government benefits. Divan argued that the government has been issuing notices compelling people to get the biometric ID, even though the Supreme Court had ruled through an interim order that Aadhaar would not be mandatory. Divan, while arguing against the mandatory linking of Aadhaar cards with PAN numbers for tax filing, had argued that Aadhaar threatens the right to bodily integrity, dignity and informational self-determination under Article 21 but the bench had declared that no arguments related to privacy would be heard. So far, issues with regard to privacy have not been heard, and this Constitution Bench is expected to decide the

³ Dr. Durga Das Basu, *Introduction to the constitution of India* 118(21st ed.,2013)

⁴ Koner, Sudipto , "Constitutional validity of aadhaar: is it a violation of right to privacy" available at <http://jcil.lsnyndicate.com/wp-content/uploads/2017/08/Sudipto.pdf>



future of Aadhaar in India⁵. Another example is that MS Dhoni's Aadhar number and the rest of the information was leaked when he went to register his Aadhar and one of his 'fan' had posted all information on Twitter. When his wife Sakshi complained, the action was taken⁶.

In April this year, more than a million Aadhaar numbers were leaked by a Jharkhand government website. Officials involved were similarly unaware of how the data made its way onto the public domain and the glitch revealed the names, addresses, Aadhaar numbers and bank account details of the beneficiaries of Jharkhand's old age pension scheme. The Unique Identification Authority of India (UIDAI) moved swiftly to shut down the website but days after the Jharkhand leaks, at least four other data breaches were reported.

It is said that all the details of citizens are there with the government and these finger impressions can be recreated and easily misused. Though it is alleged by the government that it is safe still one cannot be hundred percent sure. It is so because we have witnessed a lot fake Aadhaar cards with fake names and fake IDs. Not only this recently we all have witnessed how the data from Aadhaar cards have been used by Reliance Jio agents for activation of the sims.

The law is either silent or weak on several of these aspects. The safeguards (say against data breaches) in the Aadhaar Act are weak. Further, the implementation of the law is even worse – publishing UID numbers is punishable by up to three years in jail. Yet, after the 'Aadhaar leaks' scandal in which several state departments and central ministries were found to be violating the Act, the UIDAI has not filed a single FIR against anyone. Meanwhile, one department implicated in the 'Aadhaar leaks' scandal, Jharkhand's social welfare department, issued a press note denying the data leak. To make matters worse, if data is 'leaked', only the UIDAI – not the affected person – is authorised to file an FIR under the Aadhaar Act. In a nutshell, the Aadhaar Act is weak, its implementation worse⁷.

Other reported incidents are like the Aadhaar card bore a picture of the popular Hindu god, addressed him as the son of 'Pawan' and even displayed a mobile number and thumbprint. But a shocked postman in Sikar district of Rajasthan couldn't find any takers to deliver the card, which was dispatched from Bangalore. Not only this A man was arrested after he got his dog an Aadhaar card in Madhya Pradesh's Bhind district in 2015. Another incident is from Punjab A Punjab government website in August exposed the Aadhaar numbers of more than 20,000 people who applied for low-cost housing in Ludhiana and Jagraon, the latest in a string of blunders by administrative officials that jeopardize citizen privacy. Links were removed later but PDF files remained online a day after the leak being pointed out⁸.

Though it cannot be said that government is not taking action as there is example of Fraud detection and security measures taken by UIDAI like In February, UIDAI lodged criminal complaints against Axis Bank, Suvidha Infoserve, eMudhra for illegally storing and using Aadhaar data to impersonate people and carry out transactions. Allegedly, Suvidha Infoserve and e-sign provider eMudhra had conducted multiple transactions using the same fingerprint, which implied that organisations are illegally storing biometric data on their servers⁹. A Bengaluru-based software developer was arrested in August for allegedly accessing the Aadhaar database through a mobile application he had developed. Abhinav Shrivastav, an alumnus of IIT-Kharagpur, developed the app 'Aadhaar E-KYC Verification' which accessed the Aadhaar database through the e-Hospital application of the National Informatics Centre – an authentication user agency¹⁰.

⁵ Aadhaar case in Supreme Court: Your privacy at stake available at <https://www.dailyo.in/politics/aadhaar-pan-right-to-privacy-modi-sc-shyam-divan-uidai-biometrics-leak/story/1/18426.html>

⁶ What are the privacy issues with Aadhaar available at <https://www.quora.com/What-are-the-privacy-issues-with-Aadhaar>

⁷ Khera, Ritika, "The Different ways in which Aadhaar infringes privacy" available at <https://thewire.in/159092/privacy-aadhaar-supreme-court/>

⁸ Right to privacy as fundamental right and controversies available at <http://www.hindustantimes.com/india-news/right-to-privacy-a-fundamental-right-7-aadhaar-controversies-that-raised-concerns/story-UGTtXhgJDtaWrmyuli2lwO.html>

⁹ Supra refer to footnote no 6

¹⁰ Supra refer to footnote no 8



In its judgment in August, a nine-judge bench decreed that that right to privacy is part of the fundamental rights to life and liberty enshrined in the Constitution. The judgement has been interpreted by many as a setback to the Aadhaar scheme, under which the government collects vital personal information of the citizens. Mr. Jaitley said that some of the judges also went into what would be the exceptions to the law of privacy. “The first exception they say is national security. The second exception they say is detection and prevention of crime. And the third exception judges say is distribution of socio-economic benefits,” he said adding that the third exception had been carved out specifically to protect Aadhaar¹¹.

CONCLUSION

One cannot deny this fact that it has more pros than cons but what is required is that a strong legislation in this regard. Except, strong legislation there is need to have proper implementation of laws with more conviction rates. Aadhaar is a good effort in positive direction but the thing there must be some check over the use and abuse of same. Moreover it is wrong that we need it in all services. It must be used but with limitations to the extent that the right to privacy of the individuals will not get infringed.

¹¹ Supreme Court’s privacy ruling protects aadhar: Jaitley available at

<http://www.thehindu.com/news/national/supreme-courts-privacy-ruling-protects-aadhaar-jaitley/article19838215.ece>