

IS AADHAAR A BREACH OF PRIVACY?

By- AYUSHI SRIVASTAVA

INTRODUCTION

- **Aadhaar** is very important for every Indian citizen as it is one of the most important identity card issued by the Government.
- **Aadhaar** is the most trusted and widely held unique identification system available in India today.
- **Aadhaar** empowers 119 crore Indians with a credible identity and inspires more trust and confidence between person to person and person to a system than any other identity document in the country.
- **Aadhaar** project is said to be one of the significant project in India to bring the Universal trend of digital innovation.
- **Aadhaar** project was introduced under scheme “**UIDAI**” (Unique Identification Authority of India) by UPA (United Progressive Alliance) government in year 2009.
- **UIDAI** – notified by the Planning Commission on 28 Jan, 2009. **UIDAI** –
 - Regulatory authority
 - Issue **Aadhaar** number
 - Update resident information
 - Ensure proper law
 - Nandan Nilekani , co-founder of Infosys was appointed as Chairman of **Aadhaar** project.
 - Launched on 28 Jan 2009. Control under the Ministry of Electronics & Technology.
- Features-
 - Demographic feature- Name of the citizen, Father’s & Mother’s name, Date of Birth, Sex, Address of citizen.
 - Biometric feature- Photographs, Fingerprints, Iris(eye).
- **Aadhaar** number- 12 digit random numbers issued by **UIDAI** to the citizens of India after proper verification perform by the authorities.
 - Eg- 2657 8664 4553 called UID (Unique Identification).
- **Aadhaar** allow individual to enrol for only once & only one **Aadhaar** shall be generated to achieve uniqueness.
- **Aadhaar** no. verification done online & cost effective way.

- Individual resident of India can enrol for **Aadhaar** .
- In foreign also with UID, citizens can be easily identify by their Indian Identity.
- **Aadhaar** based on 3 principles-
- Minimal information
- Optimal ignorance
- Federated database
- Benefits -
 - As an identifier
 - Prevention against fake identities
 - Prevention of Black money
 - Beneficiary Identification
 - High visibility of information

➤ OTHER IMPORTANT BENEFITS OF AADHAAR IN RECENT TIME-

- Enabled record savings for the government. This money is being used for providing better **Aadhaar** based subsidy transfers have ensured that people are getting their entire entitled govt. Benefits.
- No fake identities possible with **Aadhaar** based verification of databases.
- More benefits to the entitled saving of public money.
- **Aadhaar** helping identify duplicates in the system.
- Countries around the world are interested in implementing an **Aadhaar** like initiative to help their people to access schemes easily. Sri Lanka is keen to introduce an **Aadhaar** like initiative.
- **Aadhaar** based authentication will ensure the identity of both buyers and sellers and helps to keep check on benami properties. **Aadhaar** to be big weapon against benami properties: PM Narendra Modi.
- **Aadhaar** has reunited lost children with their loved ones, bringing joy to their families. About 500 missing children traced through **Aadhaar** : UIDAI
- **Aadhaar** based subsidy transfers have services to the people.
- LPG subsidy distribution became more efficient with **Aadhaar**, Direct accounts credits led to savings for both the government and the people as well as elimination of black marketers
- **Aadhaar** verification of each bank account will ensure that no one is able to use fake account for money laundering or illegal activities. **Aadhaar** to help catch money launderers, fake account holders: Ravi Shankar Prasad

- **Aadhaar** – PAN linking enabled identification of the false/duplicate PANs which were being used to evade taxes.

➤ ISSUES WITH AADHAAR -

- Violation of rights- It was argued that the **UIDAI** might share the biometric information of the people with the other government agencies and thus would violate people's right to privacy.
- Issues with sharing information collected under **Aadhaar** - According to the provisions in the **Aadhaar** Act, 2016 with regard to the protection of identity information and authentication records may be affected by recent verdict by Supreme Court that Right to privacy is a Fundamental right.
- Question of Legal Backing- Current legal backing of **Aadhaar** is via a money bill. The **Aadhaar** Act of 2016 came into force in 2016 but this is now challenged in Supreme Court.
- Discretionary powers of **UIDAI**- The Act empowers the UID authority to specify demographic information that may be collected. The only restriction imposed on the authority
 - Is that it shall not record information pertaining to the race, religion, caste, language, records of entitlements income or health of the individual.
- Time period for maintaining records- The bill does not specify the maximum duration for which authentication records may be stored.
- Potential to profile individual- The act does not specifically prohibit law enforcement and intelligence agencies from using the **Aadhaar** number as a link across various datasets in order to recognise patterns of behaviour.

➤ GOVERNMENT INITIATIVES OF CONNECTING AADHAAR -

- Government has made **Aadhaar** mandatory for the purpose of opening bank accounts as well as for carrying out any financial transactions.
- Government had asked to link **Aadhaar** numbers to their bank accounts by DEC 31, 2017.
- Government made **Aadhaar** compulsory for filing of income tax returns as well as for applications for PAN from JULY 1, 2017.
- **Aadhaar** to be linked with caste, domicile certificate to curb harassment faced by citizens to obtain these certificates.
- Helps in the timely grant of scholarship to students belonging to Scheduled Castes (SCs) and Scheduled Tribes (STs) without any delay.

- The Unique Identification Authority of India (UIDAI) has launched 'm-Aadhaar', a new mobile application for syncing Aadhaar data on mobile phone. The application allows users to have their Aadhaar profile on their mobile as a quick and convenient identification proof.
- BHIM-Aadhaar or BHIM app has been launched for making digital payments using the Aadhaar platform. It enables the citizens to make digital transaction in a much easier way.

RIGHT TO PRIVACY-

- **Origin-** The origin of the right to privacy can be traced back in 19th century.
- In 1890, Samuel D. Warren and Louis D. Brande published an article on "The Right to Privacy" which postulated a general common law right of privacy.
- After this publication, in U.S. Court hundreds of cases were presented in the range of privacy issue.
- **Art.21 of the constitution Part-III-**

"No person shall be deprived of his life or personal liberty except according to procedure established by law"
- It is a concept in which one's personal information is protected from public scrutiny.
- Art.21 is very essential for individual to ensure a dignified & meaningful life.
- A fundamental right which protects the inner sphere of the individual from State.
- SC has focused in Art.21 towards the improvement of quality of life & to denote people about their bundle of rights available to them.
- Art.21- It was concluded that 'life' do not merely means 'animal existence' but to live with 'human dignity.'
- **BLACKSTONE-** "The power of locomotion, or moving of one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint unless by due process of law."
- **Ram Jethmalani and others V. Union of India-** "Right to privacy is an integral part of right to life, a cherished constitutional value and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner."
- "Privacy" has to open the door when "Public interest" knocks the door.

➤ RIGHT TO PRIVACY- INTERNATIONAL CONVENTIONS

- Internationally the right to privacy has been protected in a number of conventions.
- Right to privacy is integral part of the Universal Declaration of Human Rights & International Covenant on Civil & Political Rights, 1966.
- “The natural dignity of Man”- UN Charter 1945, Universal Declaration of Human Rights 1948 & International Covenant on Civil & Political Rights 1966.
- **Universal Declaration of Human Rights, 1948 under Art. 12** provide that:
 - “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”
- UDHR protects any arbitrary interference from the State to a person’s right to privacy.
- International Covenant on Civil and Political Rights, 1976 Art.17 imposes the State to ensure that individuals are protected by law against any unlawful or arbitrary interference.
- Art.16 of the Convention on the Rights of the Child (CRC) provides protection to a minor from any unlawful interference to his/her right to privacy. But there are exceptions also when the law on privacy does not apply even in case of a minor.
- Art.8 of European Convention on Human Rights-
“Right to respect for private & family life.”

EVOLUTION OF RIGHT TO PRIVACY IN INDIA THROUGH JUDICIAL JUDGEMENTS-

- **M.P. SHARMA V. SATISH CHANDRA 1954-** 8 Judges Bench of Honourable SC held that,
 - Right to Privacy is not a fundamental right.
- **KHARAK SINGH’S CASE 1964-** 6 Judges Bench were the petitioner challenged U.P. Police on ground of constantly supervising him which restricted & violated his privacy under Art.19 & 21.Judges of SC held that Right to Privacy cannot be guaranteed under constitution.

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1. M.P. SHARMA V. SATISH CHANDRA, 1954 AIR 300, 1954 SCR 1077.
 2. KHARAK SINGH’S CASE 1964, AIR 1295, 1964 SCR (1) 332

- **GOVIND V. STATE OF M.P.** - In this case the apex court finally recognised Right to Privacy under Art. 19 & 21 of the constitution but later a note was added that it is not absolute right & reasonable restrictions can be imposed.
- **R. RAJGOPAL V. STATE OF TAMIL NADU 1994-** In this case, accused had written his autobiography in which he has revealed his relation with some of the officials of public. SC held that to publish any information without the consent of the person on whom it is mentioned is violation of Art.21.

‘Right to Privacy is an integral part of the fundamental right to life enshrined under Art.21 of the Constitution.’

EXTENSION OF ARTICLE 21 FOR PRISONERS-

- Protection to the under trail prisoners.
- If no trail launched for person for years. (Case- Pahadia V. State of Bihar)
- Prisoners subjected to ill-treatment.
- Free legal aid to poor accused. (Case- Khatoon V. State of Bihar)
- Prisoners’ right to publish books. (Case- State of Maharashtra V. Panduranga)

HISTORICAL CASES RELATED TO RIGHT TO PRIVACY-

SMT. MANEKA GANDHI V. UOI 1978-

- SC Bench of 7 Judges held- ‘Personal Liberty’ under Art.21 covers variety of rights & status of Fundamental Rights.
- In this case, confinement of the passport was questioned. Later, it was held that the denial of passport may affect the right to profession abroad etc. Hence, Passport was issued to the petitioner.
- As per Art.21 this restricted petitioners’ “Right of Movement”.
- The law & procedure authorising when the interfering with personal liberty & right of privacy must be- right, just & fair and not arbitrary, fanciful & harsh.

3. GOVIND V. STATE OF M.P, 1975 AIR 1378, 1975 SCR (3) 946
 4. R. RAJGOPAL V. STATE OF TAMIL NADU 1994, 1995 AIR 264, 1994 SCC (6) 632
 5. Pahadia V. State of Bihar, Writ Petition (crl.) 5943 of 1980
 6. Khatoon V. State of Bihar, 1979 AIR 1369, 1979 SCR (3) 532
 7. State of Maharashtra V. Panduranga, 1966 AIR 424, 1966 SCR (1) 702
 8. Maneka Gandhi v. Union of India AIR 1978 SC 594

NAZ FOUNDATION CASE 2009- Delhi HC

- It came out to be landmark decision on consensual homosexuality.
- Examination of Sec. 377 of IPC & Art. 14, 19&21 of constitution took place.
- Right to Privacy-
- “Private space must be provided to man in whom he may become free to be himself”

PEOPLE’S UNION FOR CIVIL LIBERTIES (PUCL) V. UNION OF INDIA 1996-

- Public Interest Litigation filed protesting against the phone tapping system of politicians by CBI.
- In this case, it was held that Right to Privacy is inherited under Art. 21.

SUPTD, CENTRAL JAIL V. CHARULATA JOSHI 1999

- Issue was regarding the interviewing Murder Under trial prisoner.
- It was held that right of freedom of press was subject to the personal right of the prisoner in regard to volunteer information and contending to its publication.
- In this case, other rights related to the jail authorities also recognised.

NEERA MATHUR V. LIC 1991

- In this case, the petitioner contested of a wrongful termination of her after she returned from maternity leave.
- Respondent gave the reason of it that she had withheld information about her pregnancy in questionnaire which she has filled at the time of her appointment.
- SC founded that process requires females to provide information about the date of their menstrual cycle and past pregnancies.
- Court declared that, the question to be invasion of privacy and court directed the LIC to delete such columns from its future questionnaires.

9 NAZ FOUNDATION CASE 2009, WP(C) No.7455/2001

10 PUCL V. UNION OF INDIA 1996, AIR 1997 SC 568

11 SUPTD, CENTRAL JAIL V. CHARULATA JOSHI 1999, 63 (1996) DLT 90

12 NEERA MATHUR V. LIC , 1992 AIR 392

PRIVACY BILL, 2011-

- Bill was drafted on 19th April, 2011 which aims to create a statutory right to privacy in India.
- The Government of India decided to bring out a legislation that will provide protection to individuals in case their privacy is breached through unlawful means.
- Aim- Right to privacy to citizens of India.
- Regulate & maintain use of personal information.
- Punishment to be given for violation of such rights.

Exceptions to the Right to Privacy in bill of 2011-

- Sovereignty, integrity and security of India, strategic, scientific or economic interest of the State.
- Preventing incitement to the commission of any offence.
- If preventing done in order of public disorder or detention of any crime.
- Protection of rights and freedom of others.
- In the interest of friendly relations with foreign State.
- Any other purpose specifically mentioned in the Act.

RIGHT TO PRIVACY AS FUNDAMENTAL RIGHT-

- A 9-judge bench of the Supreme Court on 24 August 2017 made a landmark judgement that Indian citizens have “Privacy as their Fundamental right” protected under Art.21 of the Indian Constitution.
- Judgment was given in the case – Justice K.S. Puttaswamy V. Union of India.
- Supreme Court bench headed by Chief Justice- J.S. Khehar.
- It overruled the previous judgement in the case of M.P.Sharma & others V. Satish Chandra 1954 and Kharak Singh V. The State of UP & others 1962.
- **Bench of 9 Judges** –
Justice Khehar, Justice Jasti Chelameshwar, Justice S.A. Bobde, Justice R.K. Agarwal, Justice Rohinton Nariman, Justice A.M. Sapre, Justice D.Y. Chandrachud, Justice S.K. Kaul & Justice Abdul Nazeer.

POSITIVE & NEGATIVE EFFECT OF THE JUDGEMENT-

Positive effect-

- Will maintain dignity of the individual as per the Preamble of our Constitution.
- Provide security against the Government when their policy tries to encroach citizen's privacy.
- Provide encouragement to Right to personal liberty under Art.21 of the Constitution.

Negative effect-

- It may hamper the performance of very important welfare schemes of India like **Aadhaar** & Direct Benefits Transfer.
- It may create hindrance in development programs.
- It may bound the officials and other police authorities who are involved in the investigation process & their work is to collect personal information about particular person.

RECOLLECTING HISTORY-

- 2012- Former H.C. Judge Justice K.S. Puttaswamy was first to file petition challenging **Aadhaar** .
- He was of the view that **Aadhaar** violates "Right to Privacy" & was having no legislative backing.
- Government was of the view that in Constitution there is no absolute fundamental right to privacy.
- 2015- 3 judge bench hearing matter ordered that the apex court should decide this question.
- Oct,2015 – SC Constitutional bench led by H.L. Dattu – "**Aadhaar** card purely voluntary & could not be made mandatory"
- On 24 Aug,2017- Unanimously landmark judgement was made.

SOME VIEWS OF FAMOUS PEOPLE REGARDING THIS ISSUE-

- Kapil Sibal- "Privacy is a Constitutional right but not an absolute one"
- Justice J.S. Khehar- "If what you have been asked to disclose bothers you, then it infringes your right to privacy"
- Justice S.A. Bobde-"If man has to die with dignity, he has to have some privacy"

AADHAAR CARD ACT OF 2016-

- Passed by the Lok Sabha in form of a voice note.
- It was introduced as Money Bill.
- Passed on- 11 March 2016
- Aim- Giving statutory backing for transfer of subsidies & providing benefits to targeted people by assigning them **Aadhaar** number (UIN).
- **Aadhaar** is legally backed by the **Aadhaar** Act, 2016, Covers-
 - Privacy protection
 - Collection of limitation
 - Sharing restrictions
- Section 3.1 of the **Aadhaar** Act 2016 – “Only a resident shall be entitled to obtain an **Aadhaar** number”. Non-Resident Indians (NRIs) are not eligible to get **Aadhaar** .

NRIs / OCIs are advised not to give false declaration for **Aadhaar** Enrolment

ISSUE RELATING TO AADHAAR & ITS PRIVACY-

- **Aadhaar** requires full information of personal data of a person this has created some controversy because-
 - Inevitable danger of data theft or privacy hack.
 - Biometric details could be misused.
 - Cyber security is not very strong in India.
 - Lacking of statutory back up (before **Aadhaar** Card Act of 2016).

GOVERNMENT STEPS TOWARDS THIS ISSUE-

- Strict law against any misadventure done to sensitive data.
- Independent data protection authority must be constituted.
- Steps should be taken to strengthen Cyber Security System.
- Proper line should be demarcated between a person’s public & private life.

CASES RELATED TO AADHAAR -

- Jharkhand leaks- During the month of April in 2017, many of the **Aadhaar** card numbers were leaked by Jharkhand government sites. Officials were unaware of the fact that how the data were leaked. Later, UIDAI – shut down the website.
- M.S.Dhoni’s details of **Aadhaar** got published- Incident took place in month of March of 2017. Details got leaked in the agency’s twitter post.

- Software developer illegal access to **Aadhaar** database- Abhinav Shrivastav of Bangalore developed a mobile application & was accessing the **Aadhaar** database. He was arrested in August, 2017.
- Government website displaying **Aadhaar** -Incident took place in month of July were about 210 websites of Central & State government department found displaying personal details of **Aadhaar** card.
- Fraud cases related to **Aadhaar** - Andhra Bank witnessed 4 such cases where money was withdrawn from customers' accounts using their **Aadhaar** details without their knowledge.

Aadhaar details just for Rs 500- There was a media report which claimed that anonymous people were selling details of a billion **Aadhaar** card account holders over whatsapp group just for Rs 500.

- Illegal storing of **Aadhaar** data- In Feb,2017 **UIDAI** lodged criminal complaints against Axis Bank, Suvidha Infoserve and eMudhra for illegally storing and using **Aadhaar** data to impersonate people and carry out the transactions. They conducted multiple transactions using the same fingerprint, which implied that organisations are illegally storing biometric data on their servers.

STEPS TAKEN BY UIDAI AFTER AADHAAR PRIVACY ISSUE-

Aadhaar users to be verified using face authentication-

- The Unique Identification Authority of India (**UIDAI**) announced that there have been introduction of “Face authentication” feature for **Aadhaar** users by 1 July, 2018.
- It can be helpful for elder people or others who are facing issues with fingerprint authentication

Aadhaar to introduce “Virtual ID”-

- **UIDAI** shall implement the VID service by 1st March, 2018.
- To improve privacy (**UIDAI**) has announced a “Virtual ID”& restricted the “Know Your Customer” (KYC) service for data safety.
- For temporary purpose 16- digit Virtual ID, which will be randomly generated & can be used instead of actual **Aadhaar** number authentication

- Use of VID would be optional. The **Aadhaar** holder can choose to use **Aadhaar** number instead.
- VID will be a temporary number that shall be automatically revoked once the **Aadhaar** holder generates a new VID or after the validity of the current VID lapses (specified by **UIDAI** policy).
- Only **Aadhaar** holder would be able to generate the VID. No one else including the authentication agency can generate this VID on behalf of the **Aadhaar** holder.

DATA PROTECTION BILL-

- After a landmark judgement by the SC on Right to Privacy, Ravi Shankar Prasad, Minister of Electronics and Information Technology, has indicated that the Data Protection Law would be placed by the December.
- The Union Minister said that the new bill would be drafted keeping the recent right to privacy judgement in mind.
- The bill will be drafted taking key inputs from the former Supreme Court Judge, B.N. Srikrishna.

SUPREME COURT ON AADHAAR -

NEED TO MAINTAIN BALANCE BETWEEN CITIZENS' RIGHT TO PRIVACY AND NATIONAL INTEREST-

- Justice Chandrachud- "In the time of problems faced by the country due to terrorism and money laundering, and when the government is spending thousands of crores for the social welfare, a balance between state interest and citizens' privacy has to be maintained."
- Bench also remarked that the government authorities, private companies, could not use **Aadhaar** data to keep surveillance and track movements of citizens as the Centre was bound by the Constitution.
- Justice Chandrachud- "Everything that falls under liberty needs not necessarily fall under privacy. Privacy is a very small part of liberty".
- "Right to privacy as a amorphous right which is not absolute".
- Justice Chandrachud- "My right to cohabit with my wife or sexual orientation is a right to privacy, but your right to decide to which school your child will go is a matter of choice."

CONCLUSION-

The **Aadhaar** scheme has lived up to its objectives. Apart from the purpose of verification **Aadhaar** also helps individual to open new bank account, rail or bus ticket to be booked online, getting new mobile connections etc. But as per the recent news the threat towards the privacy of the **Aadhaar** needs to be sorted out. Global trends are important but the happening of the unsocial elements which can manipulate with someone's personal data is to disgrace the spirit of democracy in India. The issue should be dealt in the right perspective.

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