# AADHAAR: PRIVACY SINE QUA NON OF FUNDAMENTAL RIGHTS

Written by ***Shubham Kumar Singh***

Student, B.A.LLB(Hons.), Amity Law School Delhi (Indraprastha University)

## ABSTRACT

Aadhaar has become a matter of contention between the state and bevy of legal experts questioning its constitutionality and validity vis-à-vis 'right to privacy'. In order to establish Aadhaar as anti-privacy or pro privacy scheme and declare it as valid or ultra vires, we need to understand the nature of 'right to privacy' and also the architecture, composition and execution of Aadhaar scheme. This very essay would trace the importance and the fundamental nature of right to privacy since its nascent state to the recent Supreme Court privacy judgment of 24th august 2017. It will also draw many parallels of 'right to privacy' in Canada, United Kingdom, United States and will also look for viability of Aadhaar in Indian legal framework via various cases and contemporary constitutional reasoning. In order to have a fair analysis, both sides of the coin need to be scrutinized that is both boon and bane of Aadhaar will be thoroughly examined. Finally Aadhaar comes out to be pro 'social benefit distribution' scheme but anti 'right to privacy' which required proper modification and changes in order to circumscribe it within all legal and constitutional provisions of Indian jurisprudence.

## INTRODUCTION

Amid all legal, political, social and economic conundrum enraged since the inception of the very scheme of 'Aadhaar', it has become a benchmark showcasing current government excellent work in terms of public welfare schemes and its digital India flagship program. Even then Aadhaar has always been a political vendetta and a bone of contention between the government and a bevy of legal experts, alleging it to be abhorrent to the quintessential yet controversial 'Right to Privacy'.

The Unique Identification Authority of India (UIDAI) a statutory body established under the provision of Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefit and Services) Act, 2016 with an object to provide Unique Identification Number (UID) named "AADHAAR" to every citizen of India.

The data collection scheme of UIDAI got initially challenged in 2015 and Union of India argued that privacy is not a fundamental right. Joining center many states came up with same line of argument and tried to upheld the validity of Aadhaar which stood in conspicuous violation of right to privacy. Therefore 'Right to Privacy' once again took the center stage in the political and judicial arena in India.

To measure the acceptability of the Aadhaar experiment that has grown in size and scale to the extent of issuing "120 cr. Aadhaar numbers"[1] it has to be examined on the touchstone of right to privacy which has now been declared as sacrosanct inalienable part of 'Right to life and personal liberty' enshrined in article 21 of the constitution of India.

Prima facie Aadhaar looks like a classical tussle between the government prowess and the belligerent civil society actors whose interest lies in the core of public welfare. They always have been in this crossfire of public reasoning, that whether constitutional dogma can be altered or sacrificed in order to achieve a greater common good. It throws a very complex question in the public domain that, whether we are ready to experiment with Aadhaar scheme which promises to stop the pilferage of identities in the web world at the cost of our personal liberty that have been endowed upon us by the virtue of being born as human?

[1] Unique Identification Authority of India, Government Of India (6th June, 2017, 6:54pm), http://www.uidai.gov.in/about-uidai/about-uidai.html.

Therefore for better insight into the subject matter we need to trace the legal sanctity of the doctrine of 'Right to Privacy' and present day sanction by the Indian constitution thereof and then checking all possible transgressions that Aadhar could do.

## RIGHT TO PRIVACY

### *1) Development in UK*

United Kingdom and the sovereign thereof as rightly called in the later Anglo Saxon times as the 'fountain of justice' is also the origin of the concept of right to privacy.

When in 1215 King Jhon of England sealed the great charter of Magna Carta wherein clause 39 can be termed as the seed out of which notion of right to privacy germinated and further got incorporated into the fourteenth amendment to the constitution of United States of America.

***"No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land."***[2]

We have a landmark cases that laid down the foundation stone of the notion of privacy in United Kingdom jurisprudence:-

*SEMAYNE'S CASE* (1604) of English Common law wherein the then Attorney general of England *Sir Edward coke* whose quote got immortalized and comes handy in many privacy related cases that "***the house of every one is to him as his castle and fortress, as well for his defence against injury and violence as for his repose***"[3]

This very case also laid down the rule of '**Knock-and-announce**' and the '**castle doctrine**' that could be well understood as precursor of privacy doctrine.

Privacy as a right got legislative sanction under The Human Rights Act 1998 incorporating European Convention on Human Right into UK law and data protection act,1998 :-

[2] 'The 1215 Magna Carta: Clause 39', *The Magna Carta Project*, trans. H. Summerson et al. [http://magnacarta.cmp.uea.ac.uk/read/magna_carta_1215/Clause_39 accessed 08 June 2018]
[3] *PETER SEMAYNE VS. RICHARD GRESHAM (1604)77Eng. Rep.19.*

***"Right to respect for private and family life***

***1)Everyone has the right to respect for his private and family life, his home and his correspondence.***

***2)There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."***[4]

Recently European Union's GDPR (General Data Protection Regulation) got royal sanction and came into force across European nations including Great Britain on 25th may 2018 replacing previous 1995 Data Protection Directive thereby asserting the fact that privacy is an indispensible right of an individual.

***2. Development in USA***

Roots of 'Right to Privacy' (emanating out of English 'castle doctrine') in United States can be traced back in 1789 when the legal imprimatur to privacy was granted by the 4th amendment to the American constitution that also formed the part of famous 'Bill of Rights' and states that *"**the right of the people to be secure in the persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.**"*[5] This provision alone is sufficient for substantiating the sound democratic nature of individual liberty oriented American constitution, which nullified arbitrary unreasonable intrusion in privacy and freedom of an individual.

Further in fourteenth amendment (1868) to the constitution of United States introducing the sacrosanct doctrine of 'Due process of law' in American jurisprudence, congress clarified the extent to which government could infringe upon the privacy of its citizens thereby stating in

[4] The Human Rights Act 1998 art 8 ( UK).
[5] *U.S. CONST. amend. IV. Pt. I.*

its section one that *"**no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law nor deny any person the equal protection of the laws.**"*[6]

In the light of the fourth and fourteenth amendment, Supreme Court of United States in landmark case of *Mapp* vs. *Ohio*[7] (1961) overturning the judgment of *Wolf vs. Colorado*[8] said ***"right to privacy, no less important than any other right carefully an particularly reserved to the people."***[9]

Upholding the right of marital privacy in another landmark judgment of *Griswold vs. Connecticut* (*1965)* US Supreme court held in the words of *Justice William O Douglas* that although Privacy is not explicitly mentioned in the Bill of Rights but it can be found in penumbras of other constitutional protection and is indispensible to make other rights meaningful.

***"The foregoing cases suggest that specific guarantees** (right to privacy) **in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."***[10]

In 1890 a highly influential oeuvre "*The Right to Privacy*" co-authored by *Samuel Warren* and *Louis Brandeis* which talked about how limitation on publication of matters even that of public or general interest was the need of the hour. Back then emerging technology driven vast scale publication, that were disclosing private and personal information of individuals, making his private life public with no concept of consent involved thereby abrogating his right to be let alone.

[6] *U.S. CONST. amend. XIV, §1.*

[7] *Mapp vs. Ohio 367U.S. 643 (1961).*

[8] *Wolf vs. Colorado, 388 U.S. 25 (1949).*

[9] *Supra 7, 367U.S. 643, 645 (1961).*

[10] *Estelle T. Griswold and C. Lee Buxton vs. Connecticut, 381 U.S. 479, 484 (1965).*

***"It is our purpose to consider whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual; and, if it does, what the nature and extent of such protection is."***[11]

In 1960, very succinctly *William Prosser* categorized four anti-privacy demeanor and they were:-

"**1. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs.**

**2. Public disclosure of embarrassing private facts about the plaintiff.**

**3. Publicity which places the plaintiff in a false light in the public eye.**

**4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness."**[12]

He asserted that these four torts interfered into an individual right, in the phrase coined by *Judge Cooley* "**right to be let alone**"[13]

***3) Development in Canada***

The constitution of Canada in its eighth section enshrines the right of privacy and personal liberty of its citizens in the following words:-

*"**Everyone has the right to be secure against unreasonable search and seizure.**"*[14]

Supreme Court of Canada further upholds thereto in *R. VS. Telus communications co. (2013).*[15]

***"The judicial discretion to issue the warrant must give full effect to the protection of reasonable expectations of privacy as set out in the abundant jurisprudence under section 8 of the Canadian Charter of Rights and Freedom."***[16]

---

[11] Samuel Warren & Louis Brandesi, The right to Privacy, IV HARVARD.L.R193, 197.
[12] William L. Prosser, Privacy, 48 California.L.R383, 389.
[13] *COOLEY, TORTS 29 (2d ed. 1888).*
[14] *Canadian Charter of Rights and Freedoms § 8.*

[15] *R. vs. Telus Communication co. 2013 scc 16.*

[16] Supreme court of Canada, *R. vs. Telus Communication co. 2013 scc 16, Lexum (June 9, 2018, 4:30PM) https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12936/index.do.*

In recent times Canadians privacy is well protected by two important legislations namely;-

i) The Privacy Act (1983).

ii) The Personal Information Protection and Electronic Document Act (2000).

***6) Development in India***

a) Ancient India

It is hard to find any equivalent terminology for the word privacy in ancient India legal lexicon. This linguistic lacuna cannot alone be a determining factor for the pre-modern understanding of the term 'privacy' in Hindu jurisprudence. We have to draw a nexus between many provisions of Hindu jurisprudence which overlap with multi-facet notion of privacy.

Vedic period (c. 1500 – c. 500 B.C.E.) named after the four most comprehensive archaic sacred texts (Rig-Veda, Sama-Veda, Yajur-Veda, Artharva-Veda) of India, we find *Manusmriti* a *locus classicus* of Hindu jurisprudence, states that **"At midday or midnight, when his mental and bodily fatigues are over, let him deliberate, either with himself alone or with his ministers on virtue, pleasure , and wealth"** [17]

Making privacy of thoughts and solitude an indispensible part of human affair Arthashastra by Kautilya also prescribes that forest areas should be set aside for meditation and introspection for the peaceful and harmonious stay of ascetics.

b) Modern India

Privacy in its modern sense was introduced in India via:-

i) Constitution of India Bill, 1895

Inspiring leader of this Bill was Bal Gangadhar Tilak who declared "Swaraj is my birth right". 'Swaraj' stands for 'self-rule' and has a wide connotation encompassing right to privacy,

[17] *25 Sacred Book Of The East VII 151 (George Bühler).*

implied in its essence 'self -determination', 'sovereignty of the self'. Self-rule is only viable in a free environment, free not only in terms of administrative rule but liberty in thoughts words and action.The text of the bill expressed that "**Every citizen has in his house an inviolable asylum**"[18]

ii) The commonwealth of India Bill, 1925

By this bill which was drafted under the chairmanship of Sir Tej Bahadur Sapru, Mahatma Gandhi and Bipin Chandra Pal, Sarojini Naidu as members of the committee, where the notion of privacy was extended to personal liberty and security of one's property apart from one's home

*"**Every person shall have the fundamental right to liberty of person and security of his dwelling and property**"*[19]

iii) Constituent Assembly

A subcommittee under the Constituent assembly was formulated to work on promulgation and incorporation of fundamental rights, in April 1947. Dr B R Ambedkar, K T Shah and KM Munsi draft lexicon conspicuously vehemently supports privacy rights.

*"**The right of the people to be secure in their persons, house, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched and person or thing to be seized. The right of every citizen to the secrecy of his correspondence**."*[20]

---

[18] *Constitution of India Bill (Unknown, 1895) art. 17, Constitutional Assembly Debate (Jun 9th,2018, 6PM) https://cadindia.clpr.org.in/historical_constitutions/the_constitution_of_india_bill__unknown__1895__1st%20January%201895.*

[19] *the commonwealth of India Bill(National Convention, India, 1925) art.7(a), Constitutional Assembly Debate (Jun9th,2018,6PM). https://cadindia.clpr.org.in/historical_constitutions/the_constitution_of_india_bill__unknown__1895__1st%20January%201895.*

[20] *Rahul Matthan, Even If Privacy Is Not a Fundamental Right, We Still Need a Law to Protect It, The Wire (Jun 10th ,2018, 4:35PM) https://thewire.in/law/privacy-is-not-a-fundamental-right-but-it-is-still-extremely-important.*

However the same was further dropped by the assembly but was in part accepted under Article 19 and 21 of the constitution of India.

### *7) Judicial journey of 'right to privacy' in India*

The honorable supreme court of India addressed the constitutional ambiguity regarding the term 'privacy' which is nowhere explicitly mentioned but yet lies in the essence of all the other rights so explicitly mentioned therefore complete denial of the right to privacy would turn all other rights futile.

Following are few case studies that dealt with the matter in question:-

*i) SMT. MANEKA GANDHI VS. UNION OF INDIA & ANR. (1978)*

A seven judge bench in this very case asserted 'personal liberty' guaranteed as a fundamental right under Article 21 and gave additional protection under Article 19 making few facets of privacy a *sina qua non* of fundamental rights.

It gave 'TRIPLE TEST' procedure to check constitutionality of any law interfering with the personal liberty of Indian citizens:-

"*it must prescribe a procedure

* the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation

*it must withstand test of article 14"[21]

*ii) MP SHARMA & OTHERS VS. SATISH CHANDRA, DISTRICT MAGISTRATE, DELHI & OTHERS MARCH 15, (1954)*

Case related to search and seizure of documents of some Dalmia group companies following investigations. On the order of the DM searches were carried out at 34 places of the group company. Mass records were seized. A writ petition was filed by the aggrieved party

[21] *Maneka Gandhi vs. Union of India 1978 AIR 529, Indian Kanoon (Jun 10th,2018, 5:30PM), https://indiankanoon.org/doc/1766147/.*

challenging the constitutional validity of the search and seizure violating his fundamental rights to acquire, hold and dispose of property[22] and protection against self-incrimination.[23]

Cheif justice Mehar Chand Mahajan and Justices B Jagannadhadas, Ghulam Hasan, Natwarlal H Bhagwati, T LVenkatarama Aiyyar, BK Mukherjea, Sudhi Ranjan Das and vivian Bose held 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, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction"***[24]

*iii) KHARAK SINGH VS THE STATE OF UP & OTHERS DECEMBER 18, (1962)*

The petitioner Kharak Singh who was a prime accused in a case of dacoity but was later released due to lack of evidence. Uttar Pradesh police subsequently kept him under surveillance and the same was challenged.

Supreme Court held:

*"**Right to privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III"***[25]

*iv) JUSTICE KS PUTTASWAMY (RETD.),AND ANR. VS UNION OF INDIA AND ORS (2017)*

The uproar due to the massive pooling of personal data by UIDAI (Unique Identification Authority of India.) via Aadhaar posed some serious threat onto the privacy and thereby liberty

[22] *INDIAN CONSTI. art 19 cl.1(f).*

[23] *INDIAN CONSTI. art 20 cl.3.*

[24] *Rajesh Vellakkat, How Fundamental are Privacy Rights? Financial Express (Jun 10th,2018, 5:30PM), https://www.financialexpress.com/india-news/how-fundamental-are-privacy-rights/780249/*

[25] Id at 11.

& freedom of people therefore ignited the urge to reconsider privacy as a fundamental right and clarify the constitutional stand on it.

Considering the enormity of the constitutional conundrum Aadhar created, the supreme court of India constituted a nine judge bench to check the validity of the right to privacy as fundamental right or not.

In due struggle of 70 years, Supreme court of India on 24 August 2017 solved the riddle wrapped in enigma regarding the amorphous nature of Privacy in context of Indian jurisprudence .The nine judge bench unanimously declared privacy as a fundamental right overruling its own two old judgments of Mp sharma (1954) and Kharak singh (1962).

The 547 page judgment lays down bulk of *ratio decidendi* by all the learned judges on the bench.

Justice Chandrachud speaking for then CJI(Chief Justice of India) khehar , justice Rk Agrawal and justice Abdul Nazeer gave following rational for the judgment :-

* In Naz foundation case SC judgment gets it wrong on privacy and rights of LGBT

* ADM jabalpur overruled

*privacy not an elitist construct- court said in context of Aadhar by using and illustration of a women of impoverished family suffering from cervical cancer, the only right blocking government from conducting her forced health trail or compulsory sterilization is her right to privacy. Therefore even government welfare program can't get away without been tested on the terms of right to privacy.

*privacy essential for dignity of an individual therefore abrogating the same would eviscerate article 21 and other facets of freedom and dignity endowed by PART III of the constitution.

Justice chelameshwar also mentioned that privacy essential for human liberty but also opened a vent for Aadhar by declaring right to privacy as not an absolute right but certainly can be curtailed on following two broad grounds :-

* Just fair and reasonable

* Compelling state interest

Justice Kaul judgment focused mainly on technological aspect of privacy and highlighted need for data protection .

## EFFECT OF RIGHT TO PRIVACY ON AADHAAR

Soon after landmark privacy judgment people went hammer and tongs opening scathing attacks on the viability of Aadhar and its axiomatic infraction of newly born fundamental right to privacy. The timorous Aadhaar now needed to assert its validity on the touchstone of right to privacy otherwise its repudiation would become indispensible.

Aadhar along with its various pros and corns need to be scrutinized in the light of various legal and constitutional provisions. Let's examine the need for this *Sui Generis* identification in India.

## BOON OF AADHAAR

Under the digital flagship program of the Indian government to empower and change the fate of Indians via invoking technological spirit. Aadhaar found a place in the digital India BRIDGE (Bringing Revolution in Digital Governance and Economy) initiative with e-sign, digital lockers, Aadhaar pay and BHIM (Bharat Interface for Money).

Inter alia Aadhar came out to be a huge success in its flourishing part with a massive coverage of "**116 cr**."[26] authentications.

"The Narendra modi government is able to tap the true potential of the Aadhaar platform and use it to transform the lives of the poor, and strengthen digital governance. The use of Adhaar enables nearly 3 cr. e- authentications everyday at no cost. Citizens can get new mobile

[26]*Ravi Shanker Prasad, 'E-possibilites',Indian Express(jun10,2018,5pm)*

*http://indianexpress.com/article/opinion/columns/e-possibilities-digital-india-e-money-job-bhim-bridge-modi-4798511/.*

connections, open bank accounts or avail government services based on Aadhar-based e-KYC in a paperless manner."[27]

Linkage of Aadhar with PAN was aimed to curb the cases of money laundering, unaccounted cash, corruption, black economy, terror funding, naxalism, electoral mal-practices and market distortions by creating a digital identity and then matching it with physical identity to eliminate identity duplications or fake identity formation.

"Former PM Rajiv Gandhi had famously said that of the Rs 100 released by the Centre, only Rs 15 reaches the beneficiary."[28]

This massive lacuna need to be tackled which would require a high degree of transparency that would transgress the boundaries of individual privacy but that transgression should fall in the realm of the exceptional circumstances and the same should be prescribed by due process of law.

## BANE OF AADHAAR

The reason that compelled honorable Supreme Court to re-consider right of privacy in the light of Aadhar spat was that, the UIDAI had created massive reservoir of data at the mighty will of the government to use or misuse it. There is even no mechanism to share information regarding data breach obfuscating a grave threat behind the veil of public welfare.

In this tech era where *data is the new oil* and Aadhaar poses a major threat to the confidentiality of private data of an individual that is being dished out to the government who further keep and shares it in obscurity.

Aadhaar act does provide some safeguards but they are limited to only biometrics whereas there seems a lot elasticity in sharing and acquiring Identity and personal information of an individual.

a) Biometric information

[27] *Id. at 14.*

[28] *Id. at 14.*

"In the Aadhaar Act, biometric information essentially refers to photograph, fingerprints and iris scan, though it may also extend to other biological attributes of an individual specified by the UIDAI. The term core biometric information basically means biometric information minus photograph, but it can be modified once again at the discretion of the UIDAI." [29]Biometric information seems to be secure to some extent as citizens can now lock them on UIDAI website which renders it inaccessible to anyone else other than the owner himself.

b) Identity information

The data accumulation regime of Aadhaar further opens up a pool of demographic information of an individual taken at the time of Aadhaar enrollment .These information been left at the will of the state vents out the chances of our data being shared with the big business houses and puts us under direct surveillance of these corporate giants as well as political experts who insidiously manipulate and shape our interests.

c) Personal information

Not specifically mentioned in the Aadhaar act but can easily be deduced via all other information being provided at the time of enrollment *"**for instance where she travels, whom she talks to on the phone, how much she earns, what she buys, her Internet browsing history, and so on."**[30]*

## AADHAAR AND POWER

There is deep correlation between knowledge and power, well studied by *Michel Foucault* as he writes:-

*"**Knowledge linked to power, not only assumes the authority of 'the truth' but has the power to make itself true. All knowledge, once applied in the real world, has effects, and in that sense at least, 'becomes true.' Knowledge, once used to regulate the conduct of others, entails constraint, regulation and the disciplining of practice. Thus, 'there is no power relation***

[29] *Jean Drèze, All that data that Aadhaar captures, The Hindu(Jun 10th,2018, 9:47) http://www.thehindu.com/opinion/lead/all-that-data-that-aadhaar-captures/article19646150.ece.*

[30] Id. at 15.

***without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time, power relations***"[31]

Aadhaar serves as digital 'panopticon'. 'Panopticon' an architectural design put forth by Jeremy Bentham in the eighteenth century whereby all the members of various institutions were put on surveillance inducing a very sophisticated coercion in order to kill any form of dissent that may arise.

The more you know about someone the more you get the power to control them, manipulate their thoughts, actions and words completely destroying any scope of dissent and thereby rendering 'liberty' and 'freedom' futile, fancy and decorative words. They embellish our law books but being eviscerated of any meaning as such.

## CONCLUSION

Aadhaar being the warp and woof of various social welfare schemes but it requires proper structuring and modification in order to bring it in conformity with the sacrosanct fundamental right to privacy thereby removing its obliterating effect thereof. The inexactitude legislation is filled with loopholes giving extra edge to the state to execute its discretion in an unreasonable manner which is hanging like the sword of Damocles above the head of democracy and freedom of individuals. As *Dicy* well pointed out *"**wherever there is discretion there is room for arbitration".***[32]

World Bank commended Aadhar link distribution of food and other social benefits to the targeted population and urged other countries to emulate India.

[31] Moya K. Mason, Foucault and His Panopticon (Jun 10th, 2018, 9Pm) http://www.moyak.com/papers/michel-foucault-power.html.

[32] Srikanta Mishra, Labour Laws and Industrial Relations 3(1998).

***"As the government is in the process of linking Aadhaar cards with an array of schemes and programmes amid criticism, the system has been lauded by World Bank chief Economist Paul Romer He feels that other nations should also adopt this system".***[33]

But as per the privacy judgment of 24thAug 2017 *in pari materia* with the landmark judgment of *Keshvananda Bharati vs State of Kerla (1973) 4 SCC 225* clearly postulates that any act passed, laws/ordinance/by laws formulated, even for public welfare cannot transgress and violate the basic structure of the constitution of which fundamental right to privacy is now an integral part.

## SUGGESTIONS

- The Aadhaar Act to be *intra-vires* needs modification *inter alia* section 7 that mandates Aadhaar for any service for which funds are drawn from the consolidated fund. That should be truncated to only specific subsidies and welfare programs but not for all services available to the taxpayers.
- The government should set up an independent regulatory authority with constitutional status to look after any irregularities thereof and to redress any grievances arising out of any mal-practices therein. Centre should also formulate an opt-out provision for the said scheme. The large network of private authentication service provider entities, who puts personal data at greater risk of spill, should be reduced and if not be brought under the supervision of a local state authority who can keep a daily eye on the functioning of the service providers.
- Centre in order to gain public faith and comforting people to dispense there personal information without any fear of spill, have to make strong statutory provisions to penalize any breach therein.
- The user should have prior notice in case of his personal information being accessed by the state or any private player in the market.

[33] *Business Standard, World bank gives aadhaar thumbs up; wants other nation to adopt it too, Business standard (Jun 10th,2018, 1:20PM) https://www.business-standard.com/article/economy-policy/world-bank-gives-aadhaar-thumbs-up-wants-other-nations-to-adopt-it-too-117031700241_1.html*

- The user should also be given choices regarding collection of only limited data necessary for the purpose so intimidated.

Every individual dwells in two zones that is 'private' & 'public' and for a democratic state it is imperative to not interfere in the general matters of an individual's private zone until he wants it to be public or in accordance with 'due process of law'.

In an era where *'DATA IS THE NEW OIL'* the government should make provisions providing safeguards for private data of its citizens otherwise its spill can cost emotional, economic, physical and mental destruction.