

AADHAAR: THE ELECTRONIC LEASH ON THE INDIAN POPULATION

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ABSTRACT

Ever since the Aadhaar scheme has come into existence, it has always been subjected to criticism and debate. The initial objective for coming up with such a project was to provide a uniform method of identification to the people of India, so as to improve national security. As the years rolled by, the government decided to attach various other benefits as well to this scheme such as, providing subsidies directly to the needy so that it would not have to pass through a chain of government authorities and in the process this would also reduce the scope of corruption.

But as this scheme was implemented, the Indian population became live spectators of the battle between political parties that were relentlessly competing with one another to pass the Aadhar Act, so as to write it off as another achievement under their collar. In this process, a number of provisions laid down under the Constitution were violated and the legislators lost sight of the national interest of the scheme and went ahead to pursue their personal political interests.

In this paper the Author argues that the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016 was not a Money Bill as claimed by the Lok Sabha. This paper analyses the provisions laid down in the Constitution and the arguments that were put forth by the framers of the Constitution during the Constituent Assembly Debates regarding money bills and parliamentary privileges. A number of case laws have also been looked into to ascertain whether the Courts have the power of judicial review in legislative matters and whether the Aadhaar scheme violates an individual's right to privacy.

Keywords – Aadhaar, Money Bill, Constitution, Judicial Review, Privacy

Introduction –

In today's world the relationship between human beings and their existence together as a group is being called a network rather than a society. As most of our interactions and communications have become digital, so have our identities. Gone are the days when information was stored in books and records. As we are technologically conquering every sphere of life, we have resorted to storing our information in the 'clouds' thereby making it accessible to everyone in the world. Within a matter of seconds' individuals separated by vast oceans and continents can communicate with each other face to face and with a click of a button we can find answers to all our questions.

With every passing day human beings are becoming more reliant on technology even for their most basic needs. We are actively participating in a process where our identities are being quantified by computer servers. The more we let go of human emotions and compensate it with objective descriptions of ourselves the easier it is for the internet, which ironically is starting grow as a conscious entity can find us better suited results.

Albert Einstein on witnessing how technological advancement had made war an uglier affair by treating lives as mere numbers on a screen had said "Technological progress is like an axe in the hands of a pathological criminal"¹. Technology no doubt has made our lives easier but at the same time has it made us more vulnerable? We have read numerous cases where technology has created havoc in man's life. The severity of the issue is so harsh that it has even created a new category of crime, known as cybercrimes.

Bearing this in mind the Indian government has still gone ahead with its plan of creating the world's largest biometric database through the Aadhaar Project and more than 88% of the population has already enrolled in it². And the protection of this personal information that is to be provided by the government according to the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 is to be ensured by adopting 'appropriate'

¹ ALBERT EINSTEIN, ALBERT EINSTEIN, THE HUMAN SIDE: NEW GLIMPSES FROM HIS ARCHIVES, (Princeton University Press, 88, 1981).

² Alison Saldanha, *1.12 billion Indians have Aadhaar numbers by now. Here's how Modi government plans to sign up the rest*, THE ECONOMIC TIMES, Mar.30, 2017, <http://economictimes.indiatimes.com/news/politics-and-nation/1-12-billion-indians-have-aadhaar-numbers-by-now-heres-how-modi-government-plans-to-sign-up-the-rest/articleshow/57914441.cms> (last visited on 18/01/2018).

technical and organizational security measures³. Nonetheless, it seems these appropriate security measures have fallen short as there have already been instances where information has been hacked and leaked⁴.

In this paper, the author argues that such a scheme of digitizing a person's identity poses serious security threats and raises privacy issues. But more importantly, through this paper the author shall throw light on how the Aadhaar Act itself is not legally valid as it was passed in an unconstitutional manner having no regard for the procedural rules that are laid down for the same.

Who is for the Aadhaar project? A closer look into Aadhaar's legislative history

- Aadhaar Project in view on national interest or political interest?

Looking into the chain of events that have led to the planning and implementation of the Aadhaar scheme it becomes evident that the political parties rather than looking into the pros and cons of such a scheme were more interested in opposing one another. Both the UPA and NDA led governments were against the scheme when their rival was in power. But, the minute authority was placed in their hands, both parties were in a hurry to pass the Act to give legal backing for the scheme.

This reflects the character of Indian politics, to look at achievements not in perspective of the nation but of the political party. Had the National Identification Authority of India Bill, 2010 been passed it would have been considered the achievement of the Congress party, and the achievement of the BJP party since the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill has become a law. Both parties were against the very idea they had proposed when the opposition party was carrying it forward. What was failed to be recognized was that such a scheme is not an achievement of any political party but the achievement of the Indian government as it strives to take up measures to improve the welfare of its citizens.

³ The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, §28 (4)(a).

⁴ Nishant Shah, *Identity and Identification: The Individual in The Time Of Networked Governance*, NLSIU BANGALORE - SOCIO-LEGAL REVIEW, 33, (2015).

The political parties in a battle to oppose every action taken up by its rival, lose sight of their main objective, that is providing the best for the people who have elected them to power. Rather they look into their own selfish interests and in the process the interest of the Nation is sidelined. India is considered as a Union, yet there seems to be no unity as the leaders of the nation continue to oppose one another regardless of whether they think such actions are good or bad. The Aadhaar Scheme is one such example, though its genesis was brought about in view of national security, as the years rolled by it was only a political battle between parties trying to put their name tag on the implementation of the legislation.

Aadhaar Act a money bill?

Since the introduction of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill in March 2016, it has been subjected to a lot of debate and criticism. Issues have been raised stating that the Bill was categorized as a money bill only to avoid it from being rejected by the Rajya Sabha⁵. Thus, to hasten the process of having the Bill being passed Arun Jaitley, as part of the new financial budget introduced the Aadhaar Bill as a money bill⁶. The Bill was passed in the Lok Sabha where the NDA held the majority and when it was sent to the Rajya Sabha (where the NDA was in minority) the Bill was sent back with amendments. Since it was a money bill, the lower house was under no obligation to accept the amendments made by the Upper House for the Bill to be passed, it now only required the President's assent. The Bill was passed on 11th March 2016 and continues to remain in force.⁷

It was at this time when Jairam Ramesh, a politician belonging to the Indian National Congress Party filed a writ petition before the Supreme Court questioning the action of classifying the

⁵ Aarthi S. Anand, *India, the Aadhaar Nation That Isn't Legally Equipped to Handle Its Adverse Effects*, THE WIRE, Dec. 8, 2016, <https://thewire.in/84925/aadhaar-privacy-security-legal-framework/> (last visited on 15/01/2018).

⁶ Maneesh Chhibber, *Budget Session of Parliament: NDA takes Lok Sabha route for Aadhaar Bill, Oppn protests*, THE INDIAN EXPRESS, Mar. 4, 2016, <http://indianexpress.com/article/india/india-news-india/budget-session-of-parliament-nda-takes-lok-sabha-route-for-aadhaar-bill-oppn-protests/> (last visited on 15/01/2018).

⁷ HT Correspondent, *Aadhaar gets President nod, will take some time to come into force*, HINDUSTAN TIMES, Mar. 29, 2016, <https://www.hindustantimes.com/india/aadhaar-gets-president-nod-will-take-some-time-to-come-into-force/story-ZTcZsaN7zmY3JzhzGmj8aN.html> (last visited 29/04/2018).

Aadhaar bill as a money bill and the action of the Lok Sabha Speaker, Ms. Sumitra Mahajan of passing the same as erroneous.⁸

Various issues have cropped up with respect to this petition. First, whether Mr. Jairam Ramesh had any locus standi in filing such a petition under Article 32 of the Constitution, when no fundamental right has been violated?⁹ And second, whether the Court has the authority to exercise its power by looking into procedural irregularities that have taken place in the Parliament?

- What is a money bill?

Under article 110(1) Of the Constitution of India, a Money Bill is defined as –

“(1) For the purposes 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 regulation of any tax;
- (b) the regulation of the borrowing of money or the 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;

⁸ Krishnadas Rajgopal, *Jairam Ramesh takes Money Bill row to Supreme Court*, THE HINDU, Feb. 14, 2017, <http://www.thehindu.com/news/national/Jairam-Ramesh-takes-Money-Bill-row-to-Supreme-Court/article17296317.ece> (last visited on 29/04/2018).

⁹ Amber Sinha, *The Aadhaar Act is Not a Money Bill*, THE WIRE, Apr. 24, 2016, <https://thewire.in/31297/the-aadhaar-act-is-not-a-money-bill/> (last visited on 15/11/2017).

(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.”¹⁰

The Article also provides under clause 2 that –

“A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes”.¹¹

This Article was based on the Article 1 clause 2 of the United Kingdom Parliament Act of 1911, which defines a money bill as –

“A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation. money, or loan raised by local authorities or bodies for local purposes”.¹²

Even while framing the Indian Constitution, during the Constitutional debates Ghanshyam Singh Gupta argued that the term ‘only’ limits the scope of the money bill and excludes several other aspects from its ambit.¹³ He proposed that the word ‘only’ be deleted from the provision. However, his proposal was rejected by clearly showing that it was intended to narrow the scope of the provision. Another reason why Money Bills were not required to be accepted by the Upper House was done so as to ensure that with respect to financial matters made in national interest, the process of passing the Bill can be expedited because any delay can lead to huge economic losses.¹⁴ Furthermore, the Lok Sabha constitutes of the elected representatives of the people and the drafters of the Constitution found it imperative that with matters that pertain to appropriation of money out of the Consolidated Fund of India, which consists of the tax-payers

¹⁰ The Constitution of India, Art. 110, cl. 1.

¹¹ The Constitution of India, Art. 110, cl. 2.

¹² United Kingdom Parliament Act, 1911, Art. 1, cl. 2.

¹³ 8 CONSTITUENT ASSEMBLY DEBATES (Proceedings from 6th May – 16th June), 368-75, (1949).

¹⁴ Pratik Datta, Shefali Malhotra & Shivangi Tyagi, JUDICIAL REVIEW AND MONEY BILLS, 10 NUJS Law Review 2 (2017).

money, it is the decisions of these elected representatives which shall have primacy over that of the Rajya Sabha.¹⁵

Though the Aadhaar Bill does contain provisions dealing with subsidies, financial benefits and services that are to be provided by the government from the Consolidated Fund of India, the main objective of the Bill was to provide a uniform process of identification for the people¹⁶. The financial aspect of the Act was only an appendage in this mega project. A Bill which contains all or any of the matters enumerated in sub clause (a) to (g) of clause (1) of Article 110 and additionally any other matter, shall be called a financial bill¹⁷. Also, after having drafted a contentious Bill, the Authority provided only a short two-week window for public feedback, which in spite of multiple demands, was not re-opened¹⁸.

- Does court have the power of judicial review?

In light of the rule of ‘separation of power’ that is followed in India, in many instances the judiciary has refrained from interfering in many matters dealing with procedural irregularities that take place in various government authorities.¹⁹

Also with respect to the Money Bill, Article 110 clause 3 states that – “If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final”²⁰. The scope of judicial review is further minimized under article 122 of the Constitution which reads as – “Courts not to inquire into proceedings of Parliament - (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure”²¹.

Such immunity is granted to the Parliamentarians because it is essential that a law maker must be free from any hindrances or inhibition so as to perform his job efficiently. Even during the

¹⁵ Id. at 76.

¹⁶ Amber Sinha, *Can the Judiciary Upturn the Lok Sabha Speaker’s Decision on Aadhaar?*, THE WIRE, Feb. 21, 2017, <https://thewire.in/110795/aadhaar-money-bill-judiciary/> (last visited on 15/02/2018).

¹⁷ PROF. S.R BHANSALI, THE CONSTITUTION OF INDIA, 831, (2nd. ed, Universal Law Publishing, 2014). [BHANSALI].

¹⁸ Ruchi Gupta, *Justifying the UIDAI: A Case of PR over Substance?* Vol. 45, ECONOMIC AND POLITICAL WEEKLY, 135-136, (2010).

¹⁹ *Pandit M. S. M. Sharma vs. Shri Sri Krishna Sinha and Others*, 1959 AIR SC 395; *Messr Mangalore Ganesh Beddi Works vs State of Mysore & Anr*, AIR 1963 SC 589; *Ramdas Athawale vs Union of India & Ors*, 2010 4 SCC 1.

²⁰ The Constitution of India, Art. 110, cl. 3.

²¹ The Constitution of India, Art. 122, cl. 1.

Constituent Assembly debates it was argued whether an exhaustive list of privileges to the law makers must be drafted but the proposal was rejected by Dr. Ambedkar²².

However, recently the Courts have carefully construed a difference between the term irregularity and illegality when analyzing Article 122. In the case of *Raja Ram Pal vs. The Hon'ble Speaker, Lok Sabha*²³ the Supreme Court reiterated the fact that the Court does not have the power to interfere in legislative matters as laid down under Article 122 of the Constitution, but can do so when there is illegality present in the working of the parliament. In this case, the Court looked into the extent and scope of Parliamentary privileges and stated that in cases of gross illegality, the judiciary's power of review cannot be done away with²⁴.

In the *Sat Pal Dang case*²⁵, the Supreme Court held that a ruling given by the Speaker adjourning the House, when he was powerless to do so because of an Ordinance, was declared to be "null and void" and of "no effect" as the Speaker had acted contrary to law and constitutional injunction.²⁶

The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity cannot be held protected from judicial scrutiny by Article 122(1)²⁷.

Any attempt to read limitation into Article 122 so as to restrict the court's jurisdiction to examination of Parliament's procedure in case of unconstitutionality as opposed to illegality would amount to doing violence to the constitutional text²⁸.

In *Re: Delhi Laws Act*²⁹ the Supreme Court under its advisory jurisdiction held that, the Parliament is not a sovereign body. It is controlled by the provisions laid down in the Constitution and its powers are limited as conferred by the constitution. Though the parliament

²² 10 CONSTITUENT ASSEMBLY DEBATES (Proceedings from 6th Oct. - 17th Oct.), 350-55, (1949).

²³ *Raja Ram Pal vs The Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184.

²⁴ Shubhankar Dam, *Parliamentary Privileges As Façade: Political Reforms And The Indian Supreme Court: Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Others*, SINGAPORE JOURNAL OF LEGAL STUDIES, 162-183 (July 2007).

²⁵ *State of Punjab vs. Satya Pal Dang*, AIR 1969 SC 903.

²⁶ BHANSALI, *supra* note 17, at 844.

²⁷ DR. DURGA DAS BASU, *INDIAN CONSTITUTIONAL LAW*, 535 (3rd ed, Kamal Law House, 2011).

²⁸ *Id.* at 535.

²⁹ *In Re: Delhi Laws Act case*, AIR 1951 SC 32.

exercises wide discretion in conducting of business in the House, it cannot depart from the Constitutional mandate.

There is a reason why the term 'judicial activism' has been coined. It is because it is the duty of the judiciary to ensure that when various government bodies and authorities are not working efficiently the judicial system which is the Guardian of the Constitution can bring things back in order. The reason why the *Keshavananda Bharti case*³⁰ is a landmark judgment is because the Supreme Court through judicial activism extended the scope and power of judicial review.

Conclusion –

Classifying the Aadhar bill as a Money Bill is a clear violation of Article 110 (1) & (2) of the Constitution. Though there is a restriction on the scope of judicial review as laid down under Articles 110 (3) and Article 122, following the principle of utilitarianism, in order to uphold the interest of the Nation and prevent malafide actions of the government it becomes necessary for the judiciary to exercise its power. After all, the concept of Aadhar was conjured not just to provide for an identification system but to also avoid corruption. It was seen that the subsidies that the government had made to help the needy was instead being siphoned off by corrupt politicians. By the time these subsidies that were discharged by the Central Government reached the people, majority of the share that rightfully belonged to them was eaten away by the politicians. Thus the Aadhaar scheme was implemented with the aim of preventing such illegal use of power.

In such a situation, when the law makers themselves have blatantly violated the rules laid down under the Constitution, does it not go against the very essence of the Aadhaar project itself, which was to prevent flouting of rules and regulations ?

Also, the corrupt politicians have lost no time in making the most out of the present scenario as well. Several instances have cropped up revealing that a number of fake Aadhaar cards have

³⁰ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

been created by the politicians and therefore they continue to get access to government subsidies through these fake Aadhaar accounts.³¹

There have also been instances where personal information that is given in the Aadhaar card has been leaked in public. Thus the question arises, what standard of security is the UIDAI going to provide for protecting the individuals personal information? Also, the Act itself provides that the information can be shared with third parties as well. How can the people who have given their personal details for making an Aadhaar card be able to keep track on who has access to their information?³²

The case filed by Justice K S Puttaswamy³³ in the Supreme Court looks into the issue whether the Aadhaar Act is violating an individual's right to privacy and where it was held that this right is a fundamental right under Article 21. In *R. Rajagopal v. State of Tamil Nadu*³⁴, the Supreme Court held that the right to privacy was a fundamental right, enforceable against private persons as well. In *Mr. X v. Hospital Z*³⁵, the Court held that in case of conflict between rights, the right which advanced 'public interest' or 'public morality' would be enforced by the Court. In *Gobind v. State of Madhya Pradesh*³⁶, the Court held that an individual and "those things stamped with his personality" would be protected against official interference unless "a reasonable basis for intrusion exists". The same was upheld in the *PUCL v. Union of India case*³⁷, famously known as the 'wiretapping' case. Though in a number of cases the Courts have identified the right to privacy as a fundamental right, it has also placed restrictions on the implementation of the same³⁸.

Though there have been a number of criticisms that have been raised against the Aadhaar project, the entire scheme must not be looked at with a negative approach. The intent of creating

³¹ Omar Rashid, *Fake Aadhaar card network busted in Kanpur*, THE HINDU, Sept. 11, 2017, <http://www.thehindu.com/news/national/uttar-pradesh-police-busts-fake-aadhaar-card-network/article19660140.ece> (last visited 15/04/2018).

³² Kalyani Menon Sen, *Aadhaar: WRONG NUMBER, OR BIG BROTHER CALLING?*, NLSIU BANGALORE - SOCIO-LEGAL REVIEW, (2015).

³³ Justice K. S. Puttaswamy (Retd.) and Anr. vs. Union Of India And Ors., WRIT PETITION (CIVIL) NO 494 OF 2012.

³⁴ *R.Rajagopal v. State of Tamil Nadu* , AIR 1995 SC 264.

³⁵ *Mr. X v. Hospital Z*, (1998) 8 SCC 296.

³⁶ *Gobind v. State of Madhya Pradesh* , AIR 1975 SC 1378.

³⁷ *PUCL v. Union of India* , (2003) 4 SCC 399.

³⁸ *Amba Uttara Kak & Swati Malik, Privacy And The National Identification Authority Of India Bill: Leaving Much To The Imagination*, NUJS KOLKATA - THE NUJS LAW REVIEW, (2010).

this legislation is noteworthy and deserves to be commended. But unfortunately the legislators in a hurry to implement the Act failed to evaluate or consider the consequences that the implementation of such Act would have on the Indian population. Thus, they overlooked various rules laid down under the Constitution and also into the question as to whether the security standard laid down to protect the information collected would be adequate. It is hoped that the amendments to this legislation will remedy the gaps in procedure and include privacy safeguards, so that this 'move forward' is one which rests on the meaningful.

