



A Critical Analysis of Aadhar Act 2016

Dr. Anjani Singh Tomar

Associate Professor of Law Gujarat National Law University

ABSTRACT

Aadhar was the mighty project of UPA (United Progressive Alliance) government. This was taken up by the present government & it could be seen that government was very keen enough to get this Act passed in Parliament. They have introduced it as Money bill. After going through the text of the Act which is officially available, it could be understood that there are some lacunae as to the content. There are provisions which could be replaced by more appropriate texts. The constitution of the UIAI (Unique Identification Authority of India) is not the only thing that need to be done. It must be seen that the Information Technology Act is also amended or better if data protection laws are being passed. The present article wants to bring about a general analysis of the Aadhar Act. The consolidation of the Act is not sufficient, there must be something concrete to be done in order to achieve the required goal. India is in the transit era, where we have to think on the lines of the developed countries with limited resources. Hence the article wants to bring out these finds which is basically the original work of the author. It is mostly based on the bare provisions available online on the website of government. The problems in the Information Technology Act are also discussed here.

KEYWORDS

Aadhar Act, Data Protection, IT Act.

INTRODUCTION:

The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 is the new Act that is passed by the Parliament very recently. There were several issues as to the declaring of this bill as the Money bill in the Lok Sabha, the debate in Rajya Sabha, its amendment in Rajya Sabha along with its being passed unaltered form in Lok Sabha making it a statute. But the present article is being written with an objective of its analysis as to the pros & cons that are attached with this Act. Also to make it distinguished from the bill of 2010 & the conclusion is with the suggestions that should be incorporated in the Act, looking to the present context. It is imperative to note here that this Act is passed & become a reality, but major aspect of it is not answered & left for us to write, debate, defence & contradict. There are many provisions which need to be relooked from the different angles. There must be some supplementary provisions being made by the government to be on the safer side of the execution of the Act.

REVIEW OF LITERATURE: The Act available at government site is analyzed & its commentary available at the PRS India website is relied upon.

SIGNIFICANCE/NEED OF THE STUDY: The Act is a very ambitious project of the present government where they have targeted that every related scheme of the govt. should reach through this card.

OBJECTIVES AND HYPOTHESES: The objective of this article is to critically analyze the Aadhar Act & to find out real outcome of this Act.

The hypothesis of the present article is that this Act was passed in haste by government & much is need to be done in this direction.

RESEARCH METHODOLOGY: It is doctrinal & based on the analysis of statute itself.

ARTICLE

Aadhar is now a reality. There was time in India that its existence is much debated & opposed but now the things have been much changed. The people who were deadly against it

are now praising this & are also making all possible efforts to get this into ground reality. This is very good as we are developing towards the global competence & at the same time many more are looking at India for the guidance. The Aadhar Act or the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, is targeting timely delivery of financial, & other subsidies that are given by government of India, also all the benefits & service that are provided by it. Thus there is one clarity, it is not obligatory for the state governments that they have to depend upon the Aadhar number for giving any facility to the persons in their states.

Let's understand the concept of this benefit that may be linked to the Aadhar, the Act¹ defines benefit as:

"benefit²" means any advantage, gift, reward, relief, or payment, in cash or kind, provided to an individual or a group of individuals and includes such other benefits as may be notified by the Central Government.

So it's clear that the Aadhar is now a compulsory document that need to be there with every resident in India that is taking any type of benefit from Government of India.

The Act is including two things, one being the biometric information & core biometric information which includes as,

"biometric information³" means photograph, finger print, Iris scan, or other such biological attributes of an individual as may be specified by regulations

"core biometric information⁴" means finger print, Iris scan, or such other biological attribute of an individual as may be specified by regulations.

This is what need to be made as distinction here is that Act does the differentiation just on the basis on the presence of photograph of the person. Without photo it will be core biometric & with photo it will be termed as the biometric information. While the identity information is placed with the definition of,

"identity information⁵" in respect of an individual, includes his Aadhaar number, his biometric information and his demo-

graphic information.

The demographic information is defined as,

“demographic information⁶” includes information relating to the name, date of birth, address and other relevant information of an individual, as may be specified by regulations for the purpose of issuing an Aadhaar number, but shall not include race, religion, caste, tribe, ethnicity, language, records of entitlement, income or medical history.

Thus it may be clear with this that the Aadhaar is dependent on following important information that need to be provided by the Indian resident to the Authorities for getting all the benefits & services linked to Aadhaar. This included the biometric information, & demographic information, as may be specified by the regulation, which means that there may be a chance of this definition being changed, amended or all together altered from time to time. The author does not think that it will happen compulsorily but there is possibility of same. We have seen this from time to time that things have changed in many documents in our country. The best aspect of this is that it excluded in all situation the information about race, religion, caste, tribe, ethnicity, and language, records of entitlement, income or medical history.

But in case if these requirements are changed in future what will happen to this record & entire process, it is not prescribed. There are many issues related with his Act. First of all the preamble itself is mentioning about the burden of this number to be borne by the consolidated fund of India. This is not only strange but very unusual, as nowhere this type of provisions are mentioned in the preamble only. No doubt that it is a Central Act & it has to be regulated by the funds that are within its purview, there was no need to get it mentioned in the preamble itself. The general understanding of the word, benefit make it clear that it includes all the type of the services given by the government of India, be it the Public Distribution Centers, Banks or Railways. If a resident want to avail these, he must have the Aadhaar number & more over must be authenticated Aadhaar. As mentioned there is no provision of person who are also receiving the benefits of the central government but are not resident of India.

Similarly it has been mentioned that these data, once collected by the Unique Identification Authority of India, here in after, UIAI, it will not be transferred to anyone, including the government agencies except on two conditions, one is the call for the national security & other is on the orders of the courts. Again author want to submit here that the word national security must have been defined in the Act itself. The power given in the hands of executive is very vast in this case. Many times in our history it is seen that this is misused.

The Act itself provides that the information related with Aadhaar need to be updated from time to time with the authority, which means that person living in rural areas have to keep a watch on this changes, rather it was suggestive that another alternative method could be suggested as renewal process after some time & that too by the authorities mentioned at places of the Aadhaar holder.

The UIAI⁷, which is formed under the Act for the execution of the processes of enrolment and authentication for Aadhaar, is formulated to be a Body corporate. This word is not defined in the Act but it has been mentioned in the Information Technology Act 2000⁸, which is as follows:

“body corporate” means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities

The objective of keeping this authority as body corporate is only for the purpose of it having a seal, & perpetual succession. It would have been better that any other word other than body corporate would have been used, as it is defined

under Information Technology Act to include only the companies & firms with its ambit.

Chapter IV of the Act mentions the measures that need to be adopted by the authorities to secure the data. The respective section in the act is mentioned as,

28. (1) The Authority shall ensure the security of identity information and authentication records of individuals.

(2) Subject to the provisions of this Act, the Authority shall ensure confidentiality of identity information and authentication records of individuals.

(3) The Authority shall take all necessary measures to ensure that the information in the possession or control of the Authority, including information stored in the Central Identities Data Repository, is secured and protected against access, use or disclosure not permitted under this Act or regulations made thereunder, and against accidental or intentional destruction, loss or damage.

(4) Without prejudice to sub-sections (1) and (2), the Authority shall—

(a) Adopt and implement appropriate technical and organizational security measures;

(b) Ensure that the agencies, consultants, advisors or other persons appointed or engaged for performing any function of the Authority under this Act, have in place appropriate technical and organizational security measures for the information; and

(c) Ensure that the agreements or arrangements entered into with such agencies, consultants, advisors or other persons, impose obligations equivalent to those imposed on the Authority under this Act, and require such agencies, consultants, advisors and other persons to act only on instructions from the Authority.

(5) Notwithstanding anything contained in any other law for the time being in force, and save as otherwise provided in this Act, the Authority or any of its officers or other employees or any agency that maintains the Central Identities Data Repository shall not, whether during his service or thereafter, reveal any information stored in the Central Identities Data Repository or authentication record to anyone:

Provided that an Aadhaar number holder may request the Authority to provide access to his identity information excluding his core biometric information in such manner as may be specified by regulations.

There are provision in the same chapter further regarding the restriction on the sharing of the Core biometric information with anyone except under the orders of the competent court, not below the level of the District court & in matters concerning social security. But it is very pertinent to note that today in India we do not have any data protection laws. Neither the Information Technology Act provide for any such measure. Also the Aadhaar Act is silent about this, so how this security will be achieved is not clear to us. Secondly there is no remedy in any case where one can find the breach of the provision of the Act. There is not a single section devoted to this. India is lacking the data protection laws severely & with this Act, making it a mandate for all of us to have our data stored with government, it becomes even more necessary to ensure the protection of the privacy & information of the citizens of India.

Even the Act provide that the core biometric information may not be available to the person himself in any case of request to the authority. This provision is very ridiculous as if any point of time my thing has been taken by the government & I want

it that need to be shared with me at all costs. Or I have the duplicate of that, rather I have my own biometrics with me to be made copies of, so this provision also need relooking into the facts¹.

A detailed provisions of the offences & penalties has been given in the Act for the matters concerning the violation of the provisions of the Act. But it does not provide for the mode of the security & security breach, which means that it is quite possible that one thing may not be strictly breach but it may be considered to be so. This is going to be very difficult & tough for the officers of the court & for the individual too as both are left with neither the tooth nor claws.

Conclusion: The very scheme of the Aadhar Act, its objectives & purpose seem to be very correct as well as appropriate. India is fastly growing country & we have lot of computer resource. There are lot of our information which is stored in the computer systems, now with this Act, very basic information about every Indian will be stored in computers. We are facing serious problems with the Information Technology Act, as it is silent in many matters, but now with coming up of the Aadhar Act will make it imperative that we should amend our existing laws. Or else create one that will suit all of us. The way this Act has been passed was also not expected. Here it is pertinent to note that what will happen if the work of the collection of data for Indians will go in hands of private companies from India & abroad, with no proper laws in place? How will my privacy will be ensures? Worth to mention here about an article of Ms. Usha Ramanathan published on 16th March 2016², in which it was revealed that some private company in Delhi was claiming about the biometric information of the persons that may be employed as helpers at home. This is very small but very huge impact aspect which need immediate attention of government that may led to misuse of our information. Whether this claim is right or wrong, only investigations can reveal it. But with this article it is a request to the government to relook into the matters concerning Aadhar & solve all our worries by enacting strong laws of Data security in India.

References

1. <http://www.prsindia.org/uploads/media/AADHAAR/Aadhaar%20act,%202016.pdf>
2. Section 2(f) of the Aadhar Act
3. Section 2(g) of the Aadhar Act
4. Section 2 (j) of the Aadhar Act
5. Section 2(n) of the Aadhar Act.
6. Section 2 (k) of the Aadhar Act
7. Section 11(1), (2) of the Aadhar Act
8. Section 43A of IT Act 2000, explanation
9. Section 28 & 29 of the Aadhar Act.
10. <http://scroll.in/article/805201/the-future-is-here-a-private-company-claims-to-have-access-to-your-aadhaar-data>