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The Aadhaar Act: A Detailed Study

KIRUBA KANDASWAMY¹ AND H. DHARSHINI²

ABSTRACT

In the world we live in, people prefer obtaining resources in a secured identity based manner. None appreciates any type of disrupt in the access to government benefits and subsidies. People use their respective ration cards, driving license etc as their identity proofs. However, these identity proofs can easily be scammed or duplicated. This calls for the need of biometric based unique identification with numbers, the Aadhaar. This was highly approved as it helped authenticating an individual based on the biometrics, fingerprints, iris scan and issuing 12 digit Aadhaar numbers by the Unique Identification Authority of India (UIDAI). The Aadhaar Act was introduced in the lower house with the motto of distributing subsidies and benefits in the form of various other services in the year 2016 as a step to ensure efficient and good governance. This biometric based unique identity number was first initiated in 2009 to deal with duplication problems. Though it is a secured identity, various issues arose linking to the usage of Aadhaar in terms of legality, privacy and security. This paper will attempt to highlight those issues in a wider context involving the Aadhaar Act, sections that were struck down and the landmark cases that were taken as precedents.

I. INTRODUCTION

The word 'Aadhaar' means Identity and the makers of this Act aimed at unique identification of people for effective distribution of financial and various other subsidies, benefits and services. This act like any other act in India was applicable to the whole of India except Jammu and Kashmir. It also clearly stated terms like 'Aadhaar number', 'holder', 'benefits' etc. This Aadhaar was given by the government of India in the form of cards holding 12 digit numbers which was or can be obtained by any individual irrespective of gender, age etc. However this involved a process, a person willing to obtain the Aadhaar card was to submit his/her basic demographic details like Name, Date of Birth, Address etc. This was another social welfare scheme on economic and social inclusion and was devoid of any kind of differentiation and did not classify people on caste, religion, income or geography. But this act was a proper derivation of the National Identification Authority of India Bill, 2010 with a

¹ Author is a Student at School of law, Sastra University, India.

² Author is a Student at School of law, Sastra University, India.

very few minor differences such as Section 8 and the removal of identity review committee.

II. USES OF AADHAAR

1) For the government- The Aadhaar as introduced by the government prima-face to contribute towards targeted delivery of subsidies and benefits reduces its burden by providing accurate data of the beneficiaries which helps in better co-ordination for the government. Since there is no duplication on information, the authorities can use this and curb leakages and make sure the benefits reach the beneficiary intended³.

2) For the residents⁴- Through this scheme, every resident has a unique identity and with its inherent features of uniqueness the residents can use it as an effective tool to reach government benefits. It is also a portable proof of identity which enables them to move from one part of the country to another.

III. LANDMARK CASE LAWS

1. Smt. Parvati Kumari And Ors. Vs State Of U.P. It was held that if in case a person relies on Aadhaar Card in regard to address, date of birth etc, under the Evidence Act it cannot be said that the entries in those regards are conclusive proof of those facts. If question in these issues arises, the source of giving date of birth etc., are required to be verified in the events of investigation in criminal cases.

2. Justice K.S.Puttaswamy (Retd) Vs Union Of India & Ors⁵
The following and important things were held-

I) The Union of India shall give wide public awareness in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card

II) The production of an Aadhaar card will not be conditioned for obtaining any benefits otherwise due to a citizen;

III) The Unique Identification Number or the Aadhaar card will have the restricted usage by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of food grains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be witnessed under the purpose of LPG Distribution Scheme.

³ <https://uidai.gov.in/my-aadhaar/about-your-aadhaar/usage-ofaadhaar.html#:~:text=It%20also%20provides%20the%20government,ensure%20targeted%20delivery%20of%20benefits.>

⁴ <https://uidai.gov.in/my-aadhaar/about-your-aadhaar/usage-of-aadhaar.html#:~:text=It%20also%20provides%20the%20government,ensure%20targeted%20delivery%20of%20benefits.>

⁵ <https://indiankanon.org/docfragment/62671103/?formInput=aadhaar%20card>

Aadhar is both a voluntary and a mandatory material which symbolizes your proof of living. Mostly it is mandatory as India's Supreme Court has come down to the mandatory linking of Aadhar to everything. Identity proof of an individual is certain. Aadhar is considered the most eligible proof for an individual to represent. Few controversies made it to the bench. The five-member Constitution bench headed by Chief Justice of India Dipak Misra, while taking into consideration the concerns of the petitioners, struck down and re-looked some of the provisions of the Aadhaar Act and Regulations. This move is also expected to make the legal build of Aadhaar more citizen-friendly by responding to the concerns around privacy of personal data, including biometrics. The Supreme Court has struck down the section 33(2), section 47 and section 57 from the Aadhaar act. Section 33(2) is held that disclosure of information in the basis of national security cannot be questioned with. However, for determining such a situation, an officer higher than the rank of a Joint Secretary should be given such a power. Further, in order to avoid any issues in the process, a Judicial Officer (preferably a sitting High Court Judge) should also be associated with. In view thereof, Section 33(2) of the Act in the actual form is struck down and is being re-worked with suitable provisions with respect the above mentioned facts. Section 47 refers to the cognizance of the offences under this act by the court except the ones reported by the authority officer or the person authorized by it. It also disallows courts below that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate to try any offence punishable under this Act. Section 57 refers to the right of any corporate body or a person to reveal the identity of the individual through Aadhar. The private companies like Paytm and Airtel Payments Bank sought Aadhaar details from customers. This will prevent the private companies from using Aadhaar data for authenticating customers. The update enables a struck situation where they will no longer be able to do so. The court also read down the section 2(d) of the Aadhaar act and ordered that no authenticated records must contain Meta data. This will ensure that none can fraudulently replicate the records of another to create a fake profile of the Aadhaar number holder and conduct transactions. The five year rule for the mandated records is considered bad in Law, hence it has been upheld to the validity of six months.

An important question which arose with *Puttaswamy vs union of India* in which the case referred to the consideration of Aadhar as money bill. The bench revealed that the majority stood by Aadhar as the money bill. The reconsideration of this result took place as this would nullify the powers of rajya sabha. This will enable any Government, which has a majority in the Lok Sabha, to simply by-pass the Rajya Sabha where it may be in a minority. All that is now essential for any bill to merely contain a provision involving expenditure to be paid out

of the Consolidated Fund of India. The Aadhaar Bill was first implemented as a Money Bill in 2016. This Bill contained 59 sections of which only section 7 states about the Consolidated Fund of India. A bill is considered as a money bill if it follows all the given provisions under article 110(1) of the constitution. Section 7 refers to expenditure which is “incurred” from the Consolidated Fund of India but Article 110(d) states only the expenditure “charged” to Consolidated Fund of India. Significantly the expenditure through Aadhaar is not charged to the consolidated fund of India as enumerated. The majority held the bill as money bill as it had a substantial linking to the appropriation of the consolidated fund of India and is also directly connected to the article 110. The reconsideration of this decision took place on the grounds that it completely destroys the meaning of the word “only”, which is an evident restriction on the powers vested in the Lok Sabha. The majority has wrongly assumed that expenditure under section 7 is “charged” to the Consolidated Fund of India. Expenditure on the Aadhaar scheme is “incurred” from the Consolidated Fund of India and will not be covered by Articles 110(c) or 110(e). Eventually the decision loses its hold. It also faced several objections by the Standing Committee of the Finance under the minority view. Although the earlier Bill failed to contain a provision that was similar to section 7 of the present Aadhaar Act, it still would not make the present enactment as a Money Bill. It is recorded that the minority view of Justice Chandrachud is absolute and is in consonance with the Constitutional regime.

The Income Tax Department has announced that it will automatically issue PAN to all taxpayers who do not have a Permanent Account Number and to those who are using Aadhaar for filing income tax returns (ITR). Any Aadhaar card holder, who has not been allotted a PAN card but has quoted his Aadhaar number in lieu of PAN shall be deemed to have applied for allotment of PAN. The ITR filer will not be required to apply or submit any documents under this Aadhaar-pan rule. PAN and Aadhaar will be made replaceable for filing of income tax returns. After the Supreme Court upheld the section 139AA, the government announced that the deadline for linking PAN-Aadhaar was available till March 31, 2021. If the pan is not linked to the respective Aadhaar, then the pan will be inactive from April 1, 2021. Aadhaar is now being essential for receiving the health identity card for the public. This ID will store medical data like prescriptions, reports and discharge summaries. An individual’s basic details and mobile number or Aadhaar would be required to make an ID.

As the Aadhaar has now become optional for most of the non-governmental schemes, our government has introduced world’s first ever facial biometric data-based seafarer identity document which is based on improved facial biometric technology. The BSID introduces

modern security features and cards based on this innovation and it has already been issued to five Indian seafarers.⁶ The software has been developed for scanning the facial biometrics and its authentication through the public key infrastructure. For the SID to be approved, it requires the collection of biometric and demographic details of the seafarers, their verification and then issuance of the card to them. The first country in the world to issue Biometric Seafarer Identity Document (BSID), capturing the facial bio-metric data of seafarers is India. This is an upgraded version of Aadhar. Facial biometric technology-based chip enabled cards is the future of Aadhar.

⁶<https://m.economictimes.com/wealth/personal-finance-news/is-this-aadhaar-of-the-future-facial-biometric-technology-based-chip-enabled-cards-issued/articleshow/70875918.cms>