

Aadhaar: still too many problems

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Mint

Abstract

While one wishes to welcome govt's attempt to bring Aadhaar within a legislative framework, the fact is there are too many problems that still remain unaddressed for one to be optimistic

The Aadhaar Bill has been introduced as a money bill, even though it doesn't qualify as such under Article 110 of the Constitution. If the Speaker agrees to this, it will render the Rajya Sabha toothless in this matter, and will weaken our democracy. The government should reintroduce it as an ordinary legislative bill, which is what it is.

While the government has in the past argued before the Supreme Court that Aadhaar is voluntary, Section 7 of the bill allows the government to mandate an Aadhaar number (or application for an Aadhaar number) as a prerequisite for obtaining some subsidies, benefits, services, etc. This undermines its arguments before the Supreme Court, which led the court to pass orders holding that Aadhaar should not be made mandatory. This move to make it mandatory will now need the government to argue that rather than contravene the apex court order, it has instead removed the rationale for it.

Interestingly, the Bharatiya Janata Party (BJP)-led National Democratic Alliance (NDA) government seems to have done a U-turn on the issue of the unique identification number not being proof of citizenship or domicile. The previous Congress-led United Progressive Alliance (UPA) government never meant the Aadhaar number to be proof of citizenship or domicile. This was attacked by the Yashwant Sinha-chaired standing committee on finance, which feared that illegal immigrants would get Aadhaar numbers. Now, the BJP and the NDA seem to be in agreement with the original UPA vision of Aadhaar.

Importantly, there is very strong language when it comes to the issue of privacy and confidentiality of the information that is held by the Unique Identification Authority of India (UIDAI). Section 29 (1), for instance, says that no biometric information will be shared for any reason whatsoever, or used for any purpose other than Aadhaar number generation and authentication. However, that provision is undermined wholly by Section 33, which says that "in the interest of national security", the biometric info may be accessed if authorized by a joint secretary. This will only fan the fears of those who have argued that the

real rationale for Aadhaar was not, in fact, delivery of services, but to create a national database of biometric data available to government snoops.

Further, there are no remedies available for governmental abuse of this provision.

Lastly, in terms of privacy, the concern of those people who have been opposing Aadhaar is not just that the biometric and other identity information may be leaked to private parties, but also that having a unique Aadhaar number helps private parties to combine and use other databases that are linked with Aadhaar numbers in a manner that is not within the subject's control. This is not at all addressed in this bill, and we need a robust data protection law in order to do that.

There are some other crucial details that the law doesn't address: Is user consent, to be taken by third parties that use the UID database for authentication, needed for each instance of authentication, or would a general consent hold forever? How can consent be revoked?

There were many other objections that were raised against the Aadhaar scheme that have not been addressed by the government. For instance, in a recent article in the *Economic and Political Weekly*, Hans Varghese Mathews points out that going by the test data UIDAI made available in 2012, for a population of 1.3 billion people, the incidence of false positives—the probability of the identities of two people matching—is 1/112.

This is far too high a ratio to be acceptable.

Actual data from the field in Andhra Pradesh—of people who were unable to claim rations under the public distribution system (PDS)—paints a worse picture. A survey commissioned by the Andhra Pradesh government said 48% of respondents pointed to Aadhaar-related failures as the cause of their inability to claim rations.

So, even if the Aadhaar numbers were no longer issued to Lord Hanuman (Rajasthan), to dogs (e.g., Tommy Singh, a mutt in Madhya Pradesh), and with photos of a tree (New Delhi), it might not prove to be usable in a country of India's size, given the capabilities of the fingerprint machines. As my colleague Sunil Abraham notes, the law cannot fix technological flaws.

So, while one wishes one could welcome the government's attempt to bring Aadhaar within a legislative framework, the fact is there are too many problems that still remain unaddressed for one to be optimistic.

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