

AADHAR CARD CONTROVERSY: RIGHT TO PRIVACY DEBATE

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1 The benefits of AADHAR card must be weighed against the concerns over right to privacy.

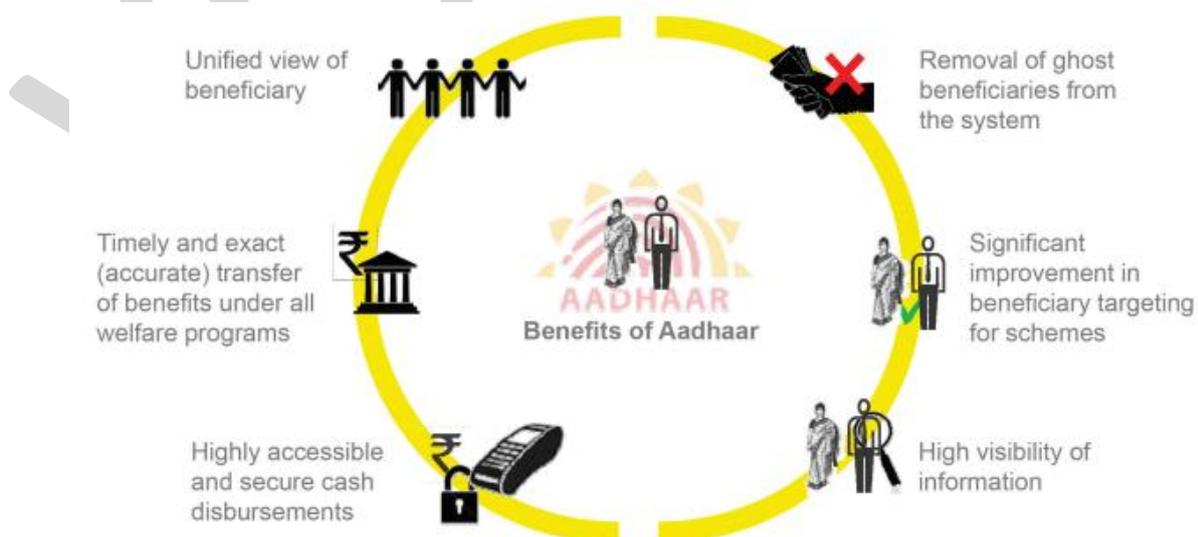
1.1 What is Aadhar?

Aadhar is a 12 digit individual identification number issued by the Unique Identification Authority of India (UIDAI) on behalf of the Government of India.

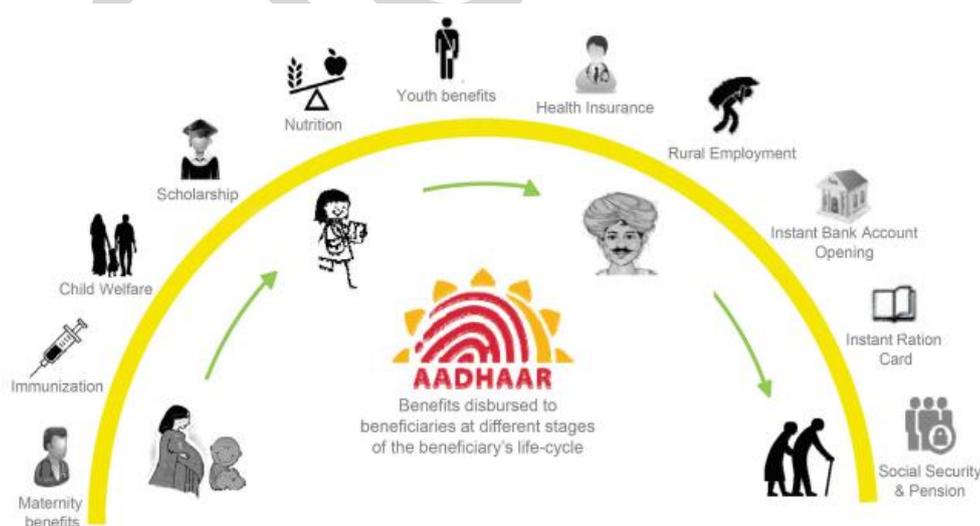
- This number serves as a proof of identity and address, anywhere in India.
- Any individual who is a resident in India can enrol for Aadhar.
- Each Aadhar number will be unique to an individual and will remain valid for life.
- Aadhar is easily verifiable in an online, cost-effective way.
- Unique and robust enough to eliminate the large number of duplicate and fake identities in government and private databases.
- The government perceives Aadhar card as a tool for better governance in many areas.
- It is a voluntary service that every resident can avail irrespective of present documentation.

1.2 Benefits of Aadhar to India

- It provides a single view of beneficiary data and information, aiding in streamlining policy decisions for the state
- **Social benefits delivery services:** Enables State Governments to directly transfer benefits to beneficiary accounts under various schemes.
- **Beneficiary Identification:** Helps in sanitizing the State's/Department's databases and uniquely identifying beneficiaries by removing ghost/duplicate identities



- **Demographic and development planning:** Enables valuable anonymized demographic data to help development planning at State, District and local government levels.
- **Preventing leakages:** Welfare programs, where beneficiaries need to be confirmed before service delivery, also stand to benefit from UIDAI's verification service. Examples of such usages include subsidized food and kerosene delivery to Public Distribution System (PDS) beneficiaries. This usage would ensure that services are delivered to the right beneficiaries only.
- **Aadhaar as an identifier:** People belonging to marginalized sections of the society often do not have a valid proof of identity. As a result, they miss out on availing social benefits provided by the government. Aadhaar has been successful in solving this problem. One of the quintessential properties of Aadhaar is its uniqueness. It is an identification that a person can carry for a life time and potentially use with any service provider thus, fundamentally becoming a pro-poor identification infrastructure.
- **Black Money:** Use of Aadhaar card in real estate transaction could provide trail of transactions and aid in crackdown of black money
- **JAM trinity:** The JAM Number Trinity- *Jan DhanYojana, Aadhaar and Mobile numbers*- allows the state to offer this support to poor households in a targeted and less distortive way.
- It can be used **to monitor development related parameters** in such critical sectors as healthcare, education, etc. This can also facilitate development of electronic applications to bridge any gaps observed.
- It can help to map skilled manpower, based on the vocational training acquired by the individual, to suitable job vacancies/ skill requirements of the State
- It enables instant paperless bank account opening, instant issuance of insurance and acts as a permanent financial address



1.3 Issues with Aadhar card

- **Services Denied:** Many instances occurred in which government and its agencies have been found insisting on producing Aadhar number as a precondition to avail benefits or public services
- **Exclusion:** Labourers and poor people, the primary targets of the Aadhar process, often do not have clearly defined fingerprints because of excessive manual labour. Even old people with “dry hands” have faced difficulties. Weak iris scans of people with cataract have also posed problems. In several cases, agencies have refused to register them, defeating the very aim of inclusion of poor and marginalised people.
- **Consent:** No informed consent about the uses to which the data will be subjected
- **Exit Option:** The absence of an exit option to get out of the UIDAI data base

1.3.1 Privacy Concerns and violation of rights

- **No Statutory backing:** The UIDAI and the Aadhar project are still functioning on the basis of an executive action since it was set up. The Supreme Court, while delivering judgments in various cases relating to state surveillance and privacy has always emphasized that any action of the government must be backed by a formal statute or legislation.
- **Wide Mandate:** UIDAI has wide mandate which includes defining the usage and applicability of Aadhaar for the delivery of various services. Giving so much power to a body which has no legislative sanction is, indeed, unprecedented and extremely worrying.
- **Lack of accountability:** The UIDAI also lacks accountability to Parliament if there is a failure in the system and someone suffers in consequence.
- **Private Players:** There are many private players involved in the whole chain of registering for and generation of Aadhaar numbers before the database finally goes to the government-controlled Central Identities Data Repository (CIDR).
- **‘Seeding’:** This is about the introduction of the Aadhar number into different data bases. Once the number is seeded in various data bases, it makes convergence of personal information remarkably simple. So, if the number is in the gas agency, the bank, the ticket, the ration card, the voter ID, the medical records and so on, the state, as also others who learn to use what is called the ‘ID platform’, can ‘see’ the citizen at will.
- **Violation of rights:** The critics of the Aadhaar has always maintained that the UIDAI might share the biometric information of people with other government agencies thereby violating people’s right to privacy. They also thought that using the biometric data, people might be singled out, tracked, harassed and have their rights violated.

2 Right to Privacy in India

2.1 Supreme Court Rulings

- Two Constitution Bench judgments — *Sharma (1954)*, an eight-judge decision, and *Kharak Singh (1962)*, a six-judge judgment — held that the *Right to Privacy* was not a fundamental right.
- In *Govind vs. State of Madhya Pradesh (1975)*, the Supreme Court held that “many of the fundamental rights of citizens can be described as contributing to the *Right to Privacy*”. After this, the approach to interpretation of fundamental rights had undergone a fundamental change. The scope of article 21 of Constitution was broadened through subsequent judgments.

- However, in **Govind** the Bench clarified that the *Right to Privacy* was not an absolute right and must be subject to restriction on the basis of compelling public interest
- In **Maneka Gandhi** (1978), the SC held that any law and procedure authorizing interference with personal liberty and *Right of Privacy* must also be right, just, and fair, and not arbitrary, fanciful, or oppressive.”
- In **R Rajagopal vs State of Tamil Nadu (1994)**, Supreme Court held that the Right to Privacy is implicit in the right to life and liberty guarantee by Article 21. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters.

From these rulings, it can be inferred that though the Constitution does not specify ‘right to privacy’ as a fundamental right, but the subject has evolved considerably in India, and privacy is now seen as an ingredient of personal liberty.

2.2 International Conventions

- Right of Privacy is integral part of the Universal Declaration on Human Rights and International Covenant on Civil and Political Rights, 1966
- European Convention on Human Rights: Article 8 recognizes the “right to respect for private and family life”
- The UN Charter (1945), Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), affirm “the natural dignity of man”.

India is signatory of all major international conventions which advocates Right to Privacy. They are The UN Charter (1945), Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966)

2.3 Why right to Privacy is so important?

- The right to dignity which inheres in each individual as a human being is incomplete without the right to privacy and reputation.
- The ability to make choices and decisions autonomously in society free of surrounding social pressure, including the right to vote, freedom of religion — all of these depend on the preservation of the “private sphere”.
- The right to personal liberty of human is unsubstantial without adequate protection for right to privacy
- Modern Technology: The advent of modern tech tools has made the invasion of privacy easier. Also, several national programmes and schemes are using computerised data collected from citizens which is vulnerable to theft and misuse.

2.4 Recommendations of Experts Group on Privacy law under Justice A P Shah

The group set out principles that legislation safeguarding privacy should abide by. It includes:

- The legislation on privacy should ensure that safeguards are technology neutral. It means information is protected from unauthorized use regardless of the manner in which it is stored: digital or physical form.
- It should protect all types of privacy, such as bodily privacy (DNA and physical privacy); privacy against surveillance (unauthorised interception, audio and video surveillance); and data protection.
- The safeguards should apply to both government and private sector entities.

- There should be an office of a '**Privacy Commissioner**' at both the central and regional level.
- There should be **Self-Regulating Organisations** set up by the industry who will develop framework that protects and enforces an individual's right to privacy

3 Way Forward

In its zeal to aggregate data in electronic form and target subsidies better, the government cannot ignore its responsibility to protect citizens from the perils of the cyber era.

- Legislation: It is imperative that the Union Government enact a privacy legislation that clearly defines the rights of citizens consistent with the promise of the Constitution.
- The government should factor in privacy risks and include procedures and systems to protect citizen information in any system of data collection.
- It should create institutional mechanism such as Privacy Commissioner to prevent unauthorised disclosure of or access to such data.
- Our national cyber cell should be made well capable of dealing with any cyber attack in shortest time.

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