THE AADHAR PROJECT: EXAMINING THE DIVISIVE IMPLICATIONS AND URGENCY FOR PUBLIC ACTION TO CONSERVE FREEDOM

Dr. Faisal Ahmed

Assistant Professor, Lloyd Law College

ABSTRACT

The AADHAR project launched by the Unique Identification Authority of India (UIDAI) is a deeply divisive topic. Critics of the program has been pointed out that the idea of a unified database having the complete profile of 130 crore citizens is a flawed one and is a sure recipe for disaster. In the absence of widespread awareness about the techno-legal implications of a gargantuan project it is imperative to understand the finer aspects for a clearer picture on the issue. There is a distinct lack of academic focus in India on a critical issue which has the potential of subjecting the citizens to invasive violation of their constitutional freedoms. In this paper the researcher has examined the several issues related to AADHAR in the light of the misgiving against AADHAR including the charge that it is a program for exclusion of the most vulnerable sections of the society, also it potentially puts the privacy of the citizens at the mercy of the State. Reliance is being placed upon the practical problems and happenings related to the AADHAR, it has been found that most of the misgivings against AADHAR have turned out to be true, the project has serious ramifications about the privacy, dignity and freedom of the citizens which the courts have sadly overlooked and thus it needs a rethink. This change of course is perhaps not possible through the legal channels and thus may be requiring a broad based public movement.

I.　INTRODUCTION

The UIDAI project of India which has been hailed as a "game changer", "revolutionary", "innovation for poverty alleviation" and "common man's right" has proved to a very controversial project, critics not only point out the problems in its design but also question the whole premise on which it has been constructed. Ever since the UIDAI had been set up and started with the program of issuing 12 digits AADHAR number based upon the biometrics of the individual as a distinguishing aspect there have been concerns raised over its effectiveness. Not only has the idea of a centralized database of biometrics been criticized as being fraught with risks but activists have also pointed out the unprecedented practice of using biometrics to issue "unique numbers" to citizens as a classic case of Indian citizens being used as guinea pigs for untested technique.[1] With the result that the AADHAR program which very close to the government has witnessed as many as 27 petitions challenging its validity with questions being raised upon its utility, constitutional validity, the fear of creating a surveillance state and the increasing push by the government entities, corporations, agencies etc to insist upon getting the AADHAR number even for things like getting treatment in a hospital.[2] This is not all, while the Apex Court was hearing the matters related to the AADHAR project it had to deal with the question of whether there is any right to privacy under the Indian Constitution which resulted in the setting up of a 9 judge bench of the Supreme Court. While the Court has settled the law related to privacy yet the decision of the Court on AADHAR has virtually reduced the privacy judgment as redundant and thus has opened the floodgates for the aggressive push for AADHAR as the only identity of an average citizen.[3]

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[1] Prasad, R. Murali, Polaiah Bojja, and Madhu Nakirekanti. "Aadhar based electronic voting machine using arduino." *International Journal of Computer Applications* 145.12 (2016): 39-42.

[2] Divan, Shyam. "The Prime Minister's Fingerprints: Aadhar and the Garrotting of Civil Liberties." *Nat'l L. Sch. India Rev.* 26 (2014): 159.

[3] Srinivasan, Badrinath. "Harship & Substituted Performance as Defences against Specific Performance: Critique of the Recent Developments." *National Law School of India Review,* vol. 31, no. 1, 2019, pp. 53-71.

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In this paper it is the endeavor of the author to examine the issues related to AADHAR and then try to take a holistic view of the overall program with a view to analyze the benefits along with the risks associated with the program so as to understand the ramifications of the program .The paper is divided into four sections whereas the first section deals with the overview of the whole issue, second section deals with the major concerns related to AADHAR including those of privacy, misuse of data, exclusion from government welfare schemes etc. The third section deals with the judicial scrutiny of the AADHAR project , the fourth portion deals with the persistent cases of data leakage and the misuse of AADHAR by unscrupulous elements and the fifth and last part deals with the way out of the quagmire of AADHAR.

II.   MAJOR RED FLAGS WITH AADHAR

A. Biometrics Are Not Infallible

One of the main arguments of the Government and UIDAI while pushing for universal AADHAR enrollment has been that the biometrics of a citizen are non-duplicable which eliminates the risk of duplicate ID's. In fact this argument has been very strongly pleaded before the Apex Court in both the cases of Right to privacy as well as the interlinking of PAN card with AADHAR by the Attorney General. However, this assumption is based totally on inaccurate analysis as firstly the biometrics of a person do not remain so unique in case if he interchanges left and right hands or even uses index finger for middle one and little finger for ring finger. Even in case of the iris scan ophthalmologists have cautioned that with advancement of age the retina and eye structure changes considerably which effects the biometrics of eye, also the usage of contact lenses by a person can considerably change the iris scan and can be easily used by any impersonator/fraudster. Therefore, to say that biometrics are foolproof, non-duplicable or unique is nothing but deliberately overlooking the obvious deficiencies which it has, this myth of the "invincibility" of the biometrics is a myth which for reasons best known to the government and UIDAI is being peddled to the gullible masses most of whom have practically very little or no idea about biometrics and their vulnerability to be manipulated.[4] Another problem with the authentication of biometrics is that service provider like PDS shop owner etc can easily use copy of biometrics being and use them to authenticate/deny them as per their own convenience.[5]

B. Database of the Biometrics is a Huge Security Risk

The foundation of the Unique ID project is another extremely problematic area as it uses biometrics for identification, the central database of which is not with the Government but with private entities. Despite various RTI applications being sent to the UIDAI it has refused to divulge the details of the entities/corporations which are holding the biometrics of the enrolled people. This raises serious questions about the security of the biometrics, generally for any government issued identity proof it is the government through one of its instrumentality which is the custodian of the personal detail of the citizens, however AADHAR is a unique ID, therefore another unique feature of AADHAr is that the biometric data of the enrolled is not with government, that much we know and has been conceded by the UIDAI but the data is in the custody of which organization(s) is still unknown due to the stubbornness of UIDAI. [6]

This whole issue of data of citizens being with a non-government entity is a potential catastrophe in more than one way. Firstly, it is rumored (though not confirmed due to UIDAI's efforts) that part of the biometric database is with foreign firms who may have business dealings, agreements with security agencies of other countries. Even

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[4] Upadhyaya, Shrikrishna, and Sukriti. "A Case for Universal Basic Income in India." *NUJS Law Review,* vol. 11, no. 2, April-June 2018, pp. 1-57. *HeinOnline*, https://heinonline.org/HOL/P?h=hein.journals/nujslr11&i=176.

[5] Yalavarthy, Anvitha Sai. "Aadhaar: India's National Identification System and Consent-Based Privacy Rights." *Vanderbilt Journal of Transnational Law,* vol. 56, no. 2, March 2023, pp. 619-[ii].

[6] Bhandari, Vrinda, and Renuka Sane. "A Critique of the Aadhaar Legal Framework." *National Law School of India Review,* vol. 31, no. 1, 2019, pp. 72-97.

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if they do not have such links then also the mere possibility that any foreign agency has data of the whole population of India with them should cause alarm bells with the security establishment and policy makers. Sadly, such is the apathy of the establishment that this issue is hardly ever discussed in a manner which it deserves, any foreign entity even though it may be the most friendly one cannot and should not be trusted with the database of citizens, particularly so when it is not even accessible to the person who has been issued the AADHAR number.[7] There is a lingering fear that the biometrics of the citizen may be tampered with and thus we may have the scenario where a foreign spy/operative may be planted by overriding his/her biometrics over an Indian citizen and thus making him the concerned citizen. Secondly, even if we assume that the firm holding the data is incorruptible even then the database will always remain a sitting duck to the cyber terror attacks/hackers who can very easily cause irreparable damage to the body politic by breaching the database then through any physical attack (This has been proved time and again by the various data breaches). There have been so many reports of the database being made available on payment of a small fees, the UIDAI in a classic case of Ostrich like stubbornness has not only refused to admit the lapses on its part (which frankly is impossible to correct according to cyber security experts) but has also made sure that the people who bring to light such issues are actively hounded by the law enforcement agencies.[8]

C. AADHAR Act Violates the of Constitution of India

The AADHAR program which is based upon the usage of biometrics has a very long shadow of violating the various Constitutional provisions. It is needless here to mention how the AADHAR act is violating the right to privacy which even the government has accepted in the Apex Court, however, it is important to remember that privacy which has been now accepted as a fundamental right of the citizens cannot be negotiated. Another important yet lesser discussed effect of AADHAR is that it also violates the right to a dignified living by exposing the people who suffer from AIDS, Tuberculosis etc and rely on the state institutions for treatment as the government has increasingly made AADHAR number compulsory for getting medicines, treatment etc at government hospitals which is a blatant violation of the dignity of the people and many have actually stopped getting treatment lest they are socially ostracized or targeted for being affected with diseases like these.[9]

On top of it the manner in which the AADHAR act was passed by giving it the effect of a money bill thereby totally negating the role of the upper house shows unnecessary effort on the part of the government to pass the act while showing total disregard for the Constitutional scheme for money bills which is an emergency provision meant strictly for ensuring that the government of the day is not crippled for funds to run its day to day function. Indeed, it is even more shocking that there is hardly any debate over this particular aspect which sets a very dangerous precedent whereby any government can render the Rajya Sabha redundant by giving any proposed law the color of money bill so as to circumvent the Constitutional scheme of checks and balances which is inherent in passage of bill by Rajya Sabha.[10]This issue which was termed as "fraud on the Constitution" by Justice Chandrachud has sadly not got the attention it deserved as it has wider implications and potentially it has made

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[7] Chandrasekhar, Ramya. "Identity as Data: A Critique of the Navtej Singh Johar Case and the Judicial Impetus towards Databasing of Identities." *NUJS Law Review,* vol. 12, no. 3-4, July-December 2019, pp. 1-25.

[8] Prasad, R. Murali, Polaiah Bojja, and Madhu Nakirekanti. "Aadhar based electronic voting machine using arduino." *International Journal of Computer Applications* 145.12 (2016): 39-42.

[9] Yalavarthy, Anvitha Sai. "Aadhaar: India's National Identification System and Consent-Based Privacy Rights." *Vanderbilt Journal of Transnational Law,* vol. 56, no. 2, March 2023, pp. 619-[ii].

[10] Divan, Shyam. "The Prime Minister's Fingerprints: Aadhar and the Garrotting of Civil Liberties." *National Law School of India Review,* vol. 26, no. 2, 2014, pp. 159-168.

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the Upper House of the Parliament redundant as any law can be passed in the name of money bill, invariably every law incurs expenditure which has been used as an excuse to pass the AADHAR law.[11]

D. Targeted Subsidies As a Concept Is Fiction

One of the biggest argument that has been given by the government and the UIDAI in support of making AADHAR is that it is a 'revolutionary' step which will plug all the loopholes in the government supported welfare schemes like subsidised food grains through Public Distribution System, payment of pensions to the widows, disabled, mid-day meal to students etc. In fact the government has come up with outlandish claims of having saved thousands of crores of rupees annually due to the targeting of subsidies by channeling them through AADHAR.[12] This has been sold to the public in such a manner and with such conviction that even the people who are otherwise skeptical of the AADHAR project start to appreciate it for its miraculous power of saving the resources of the country from being usurped by the corrupt middlemen.[13] However, a closer analysis of the savings alluded to AADHAR would reveal that the number claimed by the government is highly exaggerated and the actual savings of the government are much lesser, not only that the critics of targeted subsidies have pointed out with the help of government department data itself that the savings alluded to AADHAR are a fraction of what the UIDAI and government have been claiming with much fanfare.[14] There is yet another reason to have apprehensions about the "massive" savings of the government though targeted subsidies, i.e. Most of the programs for which AADHAR is being used for transferring cash directly to the bank accounts of the beneficiaries are meant for the poorest and most vulnerable sections of society who are neither sound in financial planning nor moneywise with the result that in many cases the money which has been transferred as a measure of commitment of the state to welfare of its citizen may actually lead to their social ruin. For example money transferred in lieu of subsidy for gas/kerosene may very easily be used by poor labourers on alcohol etc. which totally defeats the very purpose of the schemes. This whole business of targeted subsidies should be scrapped on this ground alone, moreover the AADHAR program fails miserably in identifying the people who should be eligible for getting the government subsidies, and this task will still be done by the infamous bureaucrats of the state. In such a scenario the claims of UIDAI about the massive savings and a boost to welfare schemes of the government is nothing but a form of skullduggery

E. AADHAR is a Security Threat

One of the myths which is being peddled about AADHAR is that it is "foolproof", "unique", "non-duplicable" and basically a sort of omnipotent identity. Whereas none of these claims is even close to reality, there is no identity mechanism which is foolproof. In fact out of all the government issued i.d's it is easiest for any fraudster to get a fake AADHAR card, it is due to the reason that most of the enrollment centers have been outsourced to private operators who have practically zero experience, accountability and responsibility in the proper utilization of the scheme, their only motive (just like most of people involved in AADHAR project) is money, on one hand they charge the enrolled people any amount for AADHAR ranging from 50 to 500 Rs(sometimes even more), on the other hand many of them have been found to be sharing/misusing the biometrics data of the enrolled.[15] The

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[11] Raghavan, Vivek, Sanjay Jain, and Pramod Varma. "India stack---digital infrastructure as public good." *Communications of the ACM* 62.11 (2019): 76-81.

[12] Upadhyaya, Shrikrishna, and Sukriti. "A Case for Universal Basic Income in India." *NUJS Law Review,* vol. 11, no. 2, April-June 2018, pp. 1-57.

[13] Prasad, R. Murali, Polaiah Bojja, and Madhu Nakirekanti. "Aadhar based electronic voting machine using arduino." *International Journal of Computer Applications* 145.12 (2016): 39-42.

[14] Chandrasekhar, Ramya. "Identity as Data: A Critique of the Navtej Singh Johar Case and the Judicial Impetus towards Databasing of Identities." *NUJS Law Review,* vol. 12, no. 3-4, July-December 2019, pp. 1-25. *HeinOnline*, https://heinonline.org/HOL/P?h=hein.journals/nujslr12&i=320.

[15] Ashwini Deshpande,https://thewire.in/government/aadhaar-and-my-brush-with-digital-exclusion.

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UIDAI has blocked many of the enrollment agents but has steadfastly refused to divulge the specific details and the particular reason for which they have been blocked, not only this but at every instance of data breach/abuse of data the UIDAI has stubbornly stuck to the line that AADHAR data is 100% safe and there is no need to worry about the security of the data. It is nobody's case that any government issued proof of identity is foolproof, quite the contrary every one of it can be forged/duplicated, what makes AADHAR 'unique' in this respect is that for the first time private players have been given the carte blanche to verify the documents etc which are needed for enrollment to the AADHAR program, even worse is the fact that a person can have as many "original" copies of AADHAR without any process of check and balance which makes it a sitting duck for fraudsters for e.g. suppose I get an "AADHAR card" from my tenant/employee etc. once I have that "AADHAR card" the only thing I need for using it at most places is to superimpose my image over that of the original i.d. holder, this aspect of AADHAR has been hardly discussed and has the potential of creating havoc.[16] If we compare this with the other government issued i.d where even for getting a duplicate copy in case of loss/theft of the i.d. one has to file a police complaint and then apply afresh using the copy of complaint, with AADHAR this system of intimating to the government agencies to alert them about the possible misuse of the AADHAR is totally negated. Therefore, "AADHAR Card" is a dream come true for any criminal, terrorist, spy etc. who earlier had to use forged/tampered i.ds but now he can easily use anyone else's "AADHAR Card" or better still he/she can get an original "AADHAR Card" by paying a small price to the enrollment person which totally exposes the fallacy of Unique i.d being foolproof.

F. AADHAR Linking to Bank Is Invasion of Financial Freedom

Since the last few years the government has been in an overdrive to get people enrolled for AADHAR id, initially the program which was touted as giving ids to those people who had none has been expanded to get even those who had not signed up to get enrolled. One important aspect of this 'voluntary' program being made 'compulsory' is the manner in which the people have been arm twisted by the telecommunication companies and banks to get the AADHAR number 'verified' with the mobile operators and get the AADHAR number 'seeded' with the bank account. In fact this has been the point where people have actually started to question the actual motive of the AADHAR program as some uncomfortable questions have begun to be asked about AADHAR.[17] Although, it would be beyond the purview of this paper to examine all the issues related to linking of AADHAR with mobile phones and bank accounts, we would be examining the risk of cyber frauds. In the present times increasingly people are using the internet/mobile banking for paying bills/making purchases etc., even now the system is not fully secure and leads to frequent cases of bank scams, phishing attacks etc. But with the linkage of AADHAR to cellphones and bank accounts it would be a definite disaster as firstly all banks use one time password (OTP) to authenticate the internet banking transaction which is sent to registered mobile phone number, once anyone links them it would be open to anyone to get a duplicate sim based on AADHAr and use it for defrauding the poor customer. Even worse aspect of the AADHAR bank linking is that it is a haven for money launderers who can easily open new bank accounts solely by using AADHAAR of any person and get their illegal money parked there with the option of withdrawing all of it at their convenience, and all that would be done even without the AADHAR holder getting to know anything about it.[18] This technique of using 'mule' bank accounts to launder money would be an ideal tool for drug dealers, tax thieves etc whereas the suffering would be entirely for innocent customers, and lest anyone has any doubts about this technique because already a telecommunication company has used this technique to open accounts using the AADHAR number of customers it received vide

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[16] Krishna, Raj. "Data Management in India: A Case Study of Aadhaar Project." *Application of Big Data and Business Analytics*. Emerald Publishing Limited, 2020. 127-138.

[17] Abraham, Itty. "Prehistory of Aadhaar: Body, law, and technology as postcolonial assemblage." *East Asian Science, Technology and Society: An International Journal* 12.4 (2018): 377-392.

[18] Singh, Smriti. "Understanding Aadhaar: The unique identification authority of India and its challenges." *Human Rights Defender* 27.3 (2018): 21-24.

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mobile linking without taking either their consent or even their knowledge, to top it all despite this huge scam the company has been allowed to go ahead with its banking operation without any action taken against it.

g. AADHAR Has the Seeds for an Orwellian Surveillance State

In any democracy the government is considered as a service provider and the instrument for welfare state. The legislature, executive and judiciary thus are only meant to serve the people, for this purpose many a times government issues identity proofs for a specific purpose and limited application which sometimes is accepted for identifying the person as well. The AADHAR program was touted as one which will give identity to those who do not have any identity as an enabling device for inclusiveness, however contrary to the claim of the UIDAI you can only be enrolled for AADHAR based upon an existing government issued id, in fact over 99% of people who have enrolled for AADHAR have done it by using some other government issued I.Ds. Strangely, there is an unnecessary haste on the part of government as well as other entities to insist upon using AADHAR as a necessary proof of ID, in certain instances agencies have insisted on AADHAR even in preference to the passport which just to recall is issued after checking the credentials of the applicant not once but twice by the law enforcement agencies. It is indeed surprising to say the least that the government entities are insisting upon AADHAR for treatment in government hospitals, for admissions to schools, colleges, universities, even for filing First information Reports, for filing petitions in High Court and on top of it even for doing *darshan* at some temples.[19] The worst part of it is that all of this leads to a unified platform where data from different entities/agencies can be collated which can give 360 degree view of the citizen like what places he visits, what mode of transportation he uses, what amount he spends through credit card, what health checkups he has had. In effect AADHAR is becoming a single identity which effectively renders every other identity card redundant. It does not end at that the UIDAI has the power to suspend/deactivate the AADHAR account of person without affording him any opportunity of being heard or even proving any illegal practice on his part, to add insult to injury any complaint related to suspension, cancellation of AADHAR can only be submitted to UIDAI only.

This clearly has the potential of dispossessing the citizen of all the legal remedies and making him a subject where the UIDAI is the supreme authority with its power surpassing every institution and organ of the state. The way in which AADHAR is being pushed it would appear as if it is a case of one identity to identify them all one identity to rule them all.[20]

h. Concept of "Compulsory" Registration Is Contrary to Democracy

The whole premise of AADHAR was built upon it being a voluntary program, in fact the government has submitted affidavit in the Apex Court and has assured the Court that it does not intend to make it mandatory. However, the actions of government and various entities related to it pains a totally different picture as despite the assurances given to the Court increasingly the government agencies/bodies have been pushing for quoting of AADHAR despite it being one of the government ids amongst many others.[21] Such has been the push for insisting on AADHAR for different services that practically a citizen may either get an AADHAR or he may have to forego some of the most essential services of the state. Agencies are asking for AADHAR for birth certificate, death certificate, mid-day meal, government hospitals, for food grains, for treatment of life threatening disease like AIDS, Tuberculosis etc. One aspect of this has been the forced enrollment for AADHAR through stealth by depriving them of essential services like healthcare, education etc. After much initial denial the cat came out of the bag when the Finance Minister himself admitted before Parliament that the government is making AADHAR

[19] Yalavarthy, Anvitha Sai. "Aadhaar: India's National Identification System and Consent-Based Privacy Rights."*Vanderbilt Journal of Transnational Law,* vol. 56, no. 2, March 2023, pp. 619-[ii]. *HeinOnline*, https://heinonline.org/HOL/P?h=hein.journals/vantl56&i=637.

[20] Parekh, Chinmay. "Aadhar Card and Right to Privacy." *Int'l JL Mgmt. & Human.* 1 (2018): 285.

[21] Bhatia, Gautam. "The Supreme Court's Right to Privacy Judgment." *Economic and Political Weekly* 52.44 (2017): 22-25.

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mandatory. The concept of mandatory registration in a democratic entity is unheard of and looks much more suited to a totalitarian police state. The governments indirectly making AADHAR mandatory goes against the basic ethos of a welfare state and cannot be sustained under any situation.[22]

I. Aadhar is Exclusive not Inclusive

One of the biggest arguments repeated for the implementation of the AADHAR program is that it seeks to include the vulnerable sections of the society in the welfare programs of the state. While this goal is laudable, nonetheless as the proverb goes, 'devil lies in detail'.

Firstly, there have been numerous cases where people have been denied the 'targeted benefits' of public distribution system, employment guarantee programs, old age pension schemes etc since either they did not had AADHAR or else there was a problem with the authentication of biometrics/retinal scan. Several instances have been reported of government officials who could vouch for the bonafides of the beneficiary yet they could not be given the benefits as the computerized database would verify the beneficiaries only through AADHAR authentication and not any other identity proof .[23] This is a textbook case of exclusion and denial of state support to a number of citizens who are the victim of a flawed system. The UIDAI officials also accept the fact that there is a standard rate of failure of biometrics due to age and other complications, despite this the insistence on biometrics as the sole or even primary mode of authentication is cruelty beyond explanation on the most vulnerable. The catastrophic effects of this has been observed in the case of the weakest section of the society who lost their AADHAR number and in the absence of a regular cell phone number could not retrieve it.

III.   Judicial Response to Aadhar

The Indian Judiciary has often been credited with being the upholder of the rights of the citizen and the last citadel standing against the authoritarian tendencies of the state. This assumption comes with a number of caveats and unfortunately the practical experience with the court has provided a contrary experience in numerous matters. A particularly worrying tendency of the Judiciary has been to uphold the majoritarian tendencies of the Republic while using colorful terminologies to rationalize their decisions.[24] Nonetheless, to be fair to the judiciary it still enjoys wide support of the citizens who look up to protecting their freedom. Like with any ambitious government program the AADHAR rollout also was challenged through the court of law and there were a number of constitutional challenges mounted against it. One of the central issues with each of the challenges against AADHAR was the violation of privacy which itself was a shady affair as there was no clear cut acceptance of privacy as a fundamental right guaranteed by the Indian Constitution. On one hand there were decisions of the court which recognized privacy as a fundamental right on the other hand there were contrarian judgements which rejected the notion that privacy is a fundamental right. To settle the controversy over AADHAR the court could not proceed without addressing the privacy concerns, hence it set up a nine judge bench to settle the issue of privacy.[25]

In this case the stand of the government was indicative of the overall intentions to violate the privacy of the citizens, thus it used every argument to convince the court that there was no right to privacy in India. Nevertheless, in a welcome move the court unanimously held that privacy was a facet of Article 21 of the

[22] Bhandari, Vrinda. "Use of digital ID for delivery of welfare." *Centre for Internet & Society, Digital Identities Project* (2020).

[23] Banerjee, Shweta. "Aadhaar: Digital inclusion and public services in India." *World Development Report* (2016): 81-92.

[24] Bhandari, Vrinda, and Karan Lahiri. "The surveillance state, privacy and criminal investigation in India: Possible futures in a post-Puttaswamy world." *U. Oxford Hum. Rts. Hub J.* (2020): 15.

[25] Tarafder, Agnidipto, and Arindrajit Basu. "Taking a Fresh Guard: Rethinking Data in Light of the Privacy Judgment." *Economic and Political Weekly* 52.40 (2017): 18-23.

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Constitution and hence it was sacrosanct, any act which violates it would be a blatant abuse of the Constitution. This judgment raised the hope that the court will restrict the AADHAR program and would use privacy to strike down the AADHAR act, sadly despite the fact that it had accepted the privacy as a part of right to life miserably failed to apply it in case of the AADHAR act and by a majority upheld the constitutional validity of the law. [26] This was a catastrophic decision for the privacy activists since it once again reinforced the notion that the Judiciary which champions the cause of freedom of liberty in abstract forms develops cold feet when it comes to the implementation of the same concepts in practical world situations. Thus, the validity of the Act meant that the 'reasonable restrictions' put up on the act could be invasive enough to make the whole concept of 'privacy' redundant.[27] The only silver lining of the whole judgment was the strong dissent of Justice Chandrachud who held that the Act apart from failing the test of Article 14 additionally also violates the informational privacy, self-determination and the manner in which it was passed as a money bill is a fraud on the Constitution. Nonetheless, being a minority judgment it is inconsequential in the larger scheme and has hardly any practical value apart from the academic discourse.[28]

Subsequent events after this judgment have only reaffirmed the apprehensions of the anti AADHAR activists and have once again displayed the folly of having a unified database of citizens.

IV.   Bleeding Data: the Curse of Aadhar

Even prior to the judgment of the Apex Court in the AADHAR matter there were numerous instances of the leakage of the AADHAR data of the citizens. These breaches had not occurred at the end of the central database of the UIDAI, nevertheless such is the architecture of AADHAR ecosystem that there are numerous duplicates and mirror bases of the AADHAR data due to incessant and relentless insistence on AADHAR as practically the only identity proof used across platforms. Thus an average citizen will have to provide AADHAR number for getting a reservation in trains, for getting a birth certificate, for getting food grains from PDS, for getting admission into school and colleges, for getting a cellphone connection, for getting marriage registered and even for getting a death certificate, to name just a few instances. At each stage whenever AADHAR is used there is the vulnerability of data breach, sadly the people are unaware of the consequences and thus they are happy to provide the AADHAR for every service and the government for reasons best known to it is not strict in dealing with the data breaches. With the result being that the AADHAR data is a sitting duck for unscrupulous elements who have repeatedly struck the jackpot when it comes to data piracy. Thus we have had instances where the data of the farmers who benefitted from the government schemes to honor them, the AADHAR database being sold for a partly sum of 500 rupees for 10 minutes, additionally there has been AADHAR data leakage vide the corona vaccine portal. [29]

The result is that anyone with a minimum level of internet literacy and very scant amount of money can access and proliferate the most private details of the citizens which can then be used for marketing, targeted advertising, identity theft, money laundering and plethora of other illegal activities. Ironically one of the main aims of introducing AADHAR was to crack down on these activities, while in reality it is being used by the same groups whom it was supposed to hurt. Additionally we also have the whole population being subject to an Orwellian state

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[26] Bhatia, Gautam. "The Supreme Court's Right to Privacy Judgment." *Economic and Political Weekly* 52.44 (2017): 22-25.

[27] Bhatia, Gautam. "Judicial Evasion, Judicial Vagueness, and Judicial Revisionism: A Study of the NCT of Delhi vs Union of India Judgment (s)." (2020).

[28] Bhandari, Vrinda, and Karan Lahiri. "The surveillance state, privacy and criminal investigation in India: Possible futures in a post-Puttaswamy world." *U. Oxford Hum. Rts. Hub J.* (2020): 15.

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where every activity right from traveling to spending etc is being potentially monitored by the state. This is not the end of the story though there are proposed amendments to the criminal laws which would effectively rely upon the biometric database of UIDAI to map and prosecute the crimes which would not only be a violation of the AADHAR act but also Article 20, the presumption of innocent until guilty which already is a fragile concept eroded by a number of laws overriding this assumption would be dealt a death blow if the proposed changes are accepted. Once again this proves correct the apprehensions of the scholars who had alleged that the purpose of the AADHAR database is not to provide unique identity to the citizens but create a surveillance state where the minutest details of the citizens are available with the state.[30]

V. CONCLUSION

The AADHAR program which was launched in the aftermath of the Mumbai terror attacks has been a colossal disaster for the nation, far from being the pioneer in using the technology for the improvement in the lives of vulnerable groups it has proved to be a nightmare. There have been widespread instances of people being excluded from the social welfare measures, denial of life saving drugs, denial of pensions, exclusion from the voter list, refusal to be enrolled in the employment guarantee schemes etc. apart from the exponential increase in the leakage of biometric data to the clandestine groups.

This is not simply a case of ordinary strains of switching to a newer system or what is called the 'teething troubles' , indeed it has been over a decade since the roll out of the program and rather than decreasing the persistent issues related to the program continue to plague the whole system. Unfortunately, due to the stamp of approval on the AADHAR Act the whole program has been pushed even more aggressively and in many instances in clear violations of the safeguards directed by the court to be followed. Thus, we are in a situation where there is no end in sight to the ordeal faced by the people with respect to AADHAR. The privacy issue notwithstanding, even the other loopholes in the system are a reason enough to scrap the whole system, shockingly there is hardly any concern raised even by the political opposition who ironically were at the forefront of this program. Therefore, it is perhaps asking too much from the political class to scrap the project on a priority level if they return to power. Nevertheless there is a strong case for the citizens group to create awareness about the impending disasters of the AADHAr project to the citizens. This can be the starting point of trying t overturn the AADHAR project by challenging the Apex Court judgment upholding the AADHAR act, unless there is a broad based awareness program against the ill effects of AADAHAR there is hardly any hope of overcoming the impending Orwellian state which awaits the country.

The situation is not very easy nonetheless all is not lost and if the combined effort is being made then the Frankenstein's monster in the form of AADHAR can indeed be defeated.

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[30] Bhandari, Vrinda, and Karan Lahiri. "The surveillance state, privacy and criminal investigation in India: Possible futures in a post-Puttaswamy world." *U. Oxford Hum. Rts. Hub J.* (2020): 15.