

Wednesday, March 16, 2016

Subject: List of Recommendations on the Aadhaar Bill, 2016

To whom it may concern,

On Friday, March 11, the Lok Sabha passed the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016. The Bill was introduced as a money bill and there was no public consultation to evaluate the provisions therein even though there are very serious ramifications for the Right to Privacy and the Right to Association and Assembly. The Bill has made it compulsory for all Indian to enroll for Aadhaar in order to receive any subsidy, benefit, or service from the Government whose expenditure is incurred from the Consolidate Fund of India. Apart from the issue of centralisation of the national biometric database leading to a deep national vulnerability, the Bill also keeps unaddressed two serious concerns regarding the technological framework concerned:

- **Identification without Consent:** Before the Aadhaar project it was not possible for the Indian government or any private entity to identify citizens (and all residents) without their consent. But biometrics allow for non-consensual and covert identification and authentication. The only way to fix this is to change the technology configuration and architecture of the project. The law cannot be used to correct the problems in the technological design of the project.
- **Fallible Technology:** The Biometrics Standards Committee of UIDAI has acknowledged the lack of data on how a biometric authentication technology will scale up where the population is about 1.2 billion. The technology has been tested and found feasible only for a population of 200 million. Further, a report by 4G Identity Solutions estimates that while in any population, approximately 5% of the people have unreadable fingerprints, in India it could lead to a failure to enroll up to 15% of the population. For the current Indian population of 1.2 billion the expected proportion of duplicates is 1/121, a ratio which is far too high.¹

Based on these concerns, and numerous others, we sincerely request you to ensure that the Bill is rigorously discussed in Rajya Sabha, in public, and, if needed, also by a Parliamentary Standing Committee, before considering its approval and implementation. Towards this, we humbly submit an initial list of recommendations to highlight the aspects of the Bill that require immediate attention:

¹ See: http://cis-india.org/internet-governance/blog/Flaws_in_the_UIDAI_Process_0.pdf.

1. **Implement the Recommendations of the Shah and Sinha Committees:** The report by the Group of Experts on Privacy chaired by the Former Chief Justice A P Shah² and the report by the Parliamentary Standing Committee on Finance (2011-2012) chaired by Shri Yashwant Sinha³ have suggested a rigorous and extensive range of recommendations on the Aadhaar / UIDAI / NIAI project and the National Identification Authority of India Bill, 2010 from which the majority sections of the Aadhaar Bill, 2016, are drawn. We request that these recommendations are seriously considered and incorporated into the Aadhaar Bill, 2016.
2. **Authentication Using the Aadhaar Number for Receiving Government Subsidies, Benefits, and Services cannot be Made Mandatory:** Section 7 of the Aadhaar Bill, 2016, states that authentication of the person using her/his Aadhaar number can be made mandatory for the purpose of disbursement of government subsidies, benefits, and services; and in case the person does not have an Aadhaar number, s/he will have to apply for Aadhaar enrolment. This sharply contradicts the claims made by UIDAI earlier that the Aadhaar number is “optional, and not mandatory”, and more importantly the directive given by the Supreme Court (via order dated August 11, 2015). The Bill must explicitly state that the Aadhaar number is only optional, and not mandatory, and a person without an Aadhaar number cannot be denied any democratic rights, and public subsidies, benefits, and services, and any private services.
3. **Vulnerabilities in the Enrolment Process:** The Bill does not address already documented issues in the enrolment process. In the absence of an exhaustive list of information to be collected, some Registrars are permitted to collect extra and unnecessary information. Also, storage of data for elongated periods with Enrollment agencies creates security risks. These vulnerabilities need to be prevented through specific provisions. It should also be mandated for all entities including the Enrolment Agencies, Registrars, CIDR and the requesting entities to shift to secure system like PKI based cryptography to ensure secure method of data transfer.
4. **Precisely Define and Provide Legal Framework for Collection and Sharing of Biometric Data of Citizens:** The Bill defines “biometric information” is defined to include within its scope “photograph, fingerprint, iris scan, or other such biological attributes of an individual.” This definition gives broad and sweeping discretionary power to the UIDAI / Central Government to increase the scope of the term. The definition should be exhaustive in its scope so that a legislative act is required to modify it in any way.
5. **Prohibit Central Storage of Biometrics Data:** The presence of central storage of sensitive personal information of all residents in one place creates a grave security risk. Even with the most enhanced security measures in place, the quantum of damage in case of a breach is extremely high. Therefore, storage of biometrics must be allowed only on the smart cards that are issued to the residents.

² See: http://planningcommission.nic.in/reports/genrep/rep_privacy.pdf.

³ See: http://164.100.47.134/lsscommittee/Finance/15_Finance_42.pdf.

6. **Chain of Trust Model and Audit Trail:** As one of the objects of the legislation is to provide targeted services to beneficiaries and reduce corruption, there should be more accountability measures in place. A chain of trust model must be incorporated in the process of enrolment where individuals and organisations vouch for individuals so that when a ghost is introduced someone has can be held accountable blame is not placed simply on the technology. This is especially important in light of the questions already raised about the deduplication technology. Further, there should be a transparent audit trail made available that allows public access to use of Aadhaar for combating corruption in the supply chain.
7. **Rights of Residents:** There should be specific provisions dealing with cases where an individual is not issued an Aadhaar number or denied access to benefits due to any other factor. Additionally, the Bill should make provisions for residents to access and correct information collected from them, to be notified of data breaches and legal access to information by the Government or its agencies, as matter of right. Further, along with the obligations in Section 8, it should also be mandatory for all requesting entities to notify the individuals of any changes in privacy policy, and providing a mechanism to opt-out.
8. **Establish Appropriate Oversight Mechanisms:** Section 33 currently specifies a procedure for oversight by a committee, however, there are no substantive provisions laid down that shall act as the guiding principles for such oversight mechanisms. The provision should include data minimisation, and “necessity and proportionality” principles as guiding principles for any exceptions to Section 29.
9. **Establish Grievance Redressal and Review Mechanism:** Currently, there are no grievance redressal mechanism created under the Bill. The power to set up such a mechanism is delegated to the UIDAI under Section 23 (2) (s) of the Bill. However, making the entity administering a project, also responsible for providing for the frameworks to address the grievances arising from the project, severely compromises the independence of the grievance redressal body. An independent national grievance redressal body with state and district level bodies under it, should be set up. Further, the NIAI Bill, 2010, provided for establishing an Identity Review Committee to monitor the usage pattern of Aadhaar numbers. This has been removed in the Aadhaar Bill 2016, and must be restored.

Yours sincerely,

Amber Sinha, Sumandro Chattapadhyay, Sunil Abraham, and Vanya Rakesh

The Centre for Internet and Society

Bengaluru and Delhi, India

<http://cis-india.org/>