

## **Aadhaar Can't Turn India into a "Big Brother"**

- **Ajay Bhushan Pandey**

The news report published on 8<sup>th</sup> April in *The New York Times* titled “**India’s ‘Big Brother’ Program**” tries to create an impression that Aadhaar is turning India into a “Big Brother” – an Orwellian State. With due respect, the said description is not supported by any iota of research or data, and therefore is entirely unfounded. In fact, Aadhaar has emerged as a world’s largest biometric technology platform which now not only empowers 1.2 billion people living in India to establish their identity online from anywhere, anytime but also enables them to receive their entitlements and exercise their rights without any fear of their rights being taken away. People use Aadhaar to apply for jobs, open bank accounts, avail door-step banking, make digital payments through their fingerprints and receive benefits under government social welfare schemes directly without leaving any chance for some unscrupulous middlemen to usurp them. Payments to the beneficiaries are made directly into their bank account from the government treasury. So the Aadhaar has brought transparency in governance and delivery system and has cleansed delivery databases of fakes, duplicates and connen/intermediaries and has yielded savings to the tune of US \$ 13 billion<sup>1</sup> during the last three years. The World Bank has estimated that Aadhaar has potential to save US \$ 11 billion in subsidies every year<sup>2</sup>. Furthermore, Aadhaar is being used in bank accounts, investments, and taxation to check tax evasion, money laundering, terror financing, etc.

Aadhaar is a game changer for the poor and India as a whole and, hence, under scathing attack from various quarters including the beneficiaries of

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<sup>1</sup> The details of savings are given on [www.dbtbharat.gov.in](http://www.dbtbharat.gov.in)

<sup>2</sup> World Bank’ report on Digital Dividend, 2016

the erstwhile leaky system who were able to manipulate and siphon resources meant for the poor and marginalised sections of the society. No doubt, Aadhaar has enhanced government's ability to directly connect, reach, and serve people which unfortunately is being projected by the critics as an increase in the state power and has led to Aadhaar being perceived an instrument of state surveillance. But in reality, Aadhaar empowers people and not the State, is the vital point that the NYT report misses. India's effort to provide unique identification to its people and digitise its citizen databases, public or private, is mistaken as an exercise towards invasion of privacy. They must realise that non-digitisation of databases is not an option in the digital era. Often, the current debate and particularly this report of NYT remind us of Europe's Luddite movement in the 19th Century when mechanisation was opposed due to fears of job loss.

We must understand how other developed democracies have used unique identification numbers to cleanse their system. USA introduced Social Security Number (SSN) through an enactment in 1935 for a limited purpose of providing social security benefits during the Great Depression. However, in 1942, President Franklin Roosevelt expanded the scope through a historic executive order no. 9397 which mandated all Federal agencies to exclusively use SSN in their programs. In 1962, SSN was adopted as official Tax Identification Number (TIN) for income tax purposes. In 1976, Social Security Act was further amended to say that any State may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law utilize the social security account numbers for the purpose of establishing the identification of individuals and may require any individual to furnish SSN.

The mandatory use of SSN by State was challenged in US courts which eventually held mandatory use of SSN to be constitutional. In *Doyle vs.*

*Wilson*, it was held that “mandatory disclosure of one’s social security number does not so threaten the sanctity of individual privacy as to require constitutional protection.” In *Bowen v. Roy* the US Supreme Court held that requiring applicants to provide their SSNs as a condition of eligibility for federal benefits, such as AFDC or food stamps does not violate constitution. In other cases, courts held that “requiring an SSN on a driver’s license application is not unconstitutional, nor is a requirement that welfare recipients furnish their SSNs” and “preventing fraud in federal welfare programs is an important goal, and the SSN requirement is a reasonable means of promoting that goal”. The CIP (Customer Identification Program) regulations issued pursuant to Section 326 of the USA PATRIOT Act require disclosure of a person’s SSN for opening a bank or credit card account or financing a car through a loan from a financial institution. In United Kingdom too, almost every important service requires National Insurance Number (NIN). It is required from those who want to work, open bank accounts, pay taxes, want to receive child benefits, and even those who want to vote.

The critics would say that neither SSN nor NIN is based on biometrics. Critics need to specify what are they objecting to -collection of biometrics or the system of central number which can, as per their claims, potentially link all the databases or both? Collection of biometrics for a legitimate purpose is an established practice sanctioned by law even in advanced democracies in the world. Courts in US have upheld mandatory collection of biometrics for legitimate state interests in many areas. In *Thom v. New York Stock Exchange*, Federal district court held that “possession of an individual’s fingerprints does not create an atmosphere of general surveillance” and went on to add that “Fingerprints provide a simple means of identification no(thing) more”. US Supreme Court in *Vernonia School*

*District* case went to the extent of upholding randomized collection and testing of urine samples of unsuspecting school students for detecting drug abuse. For enrolling into TSA pre-check program in USA, one is required to give fingerprints. Can someone in USA argue that right to free and unhindered movement is his basic constitutional right under the Fourteenth Amendment and therefore he cannot be compelled to give his fingerprints?

The critics need to ask themselves whether mandatory usage of SSN in wide ranging areas such as food stamps, bank accounts, financial aid and loans for education, subsidized housing, birth registrations, death certificates, medi-care benefits and its presence in most citizen databases, which potentially empowers the State to track every person, has rendered US citizens vulnerable and has turned US into a surveillance state? If the mandatory requirement of SSN for food stamps, bank accounts, etc., and compulsion of biometrics in a variety of programs have not turned US into a “Big Brother” state, then how fair is it for the NYT to accuse India of becoming a “Big Brother” if it is using Aadhaar for the similar purposes? One may argue that there are safeguards in USA which prevents such possibilities. Similarly, India which is the world’s largest democracy has strong legislature, independent judiciary and free press which prevent any such attempt or overreach by the executive branch of the state. Indian Parliament brought in Aadhaar Act in 2016 with strong safeguards to eliminate the possibility of any state surveillance. Aadhaar Act is based on the principle of privacy by design - Minimal Data, Federated databases and Optimal Ignorance which in turn ensure that no agency -UIDAI or Government or private, is able to track or profile any individual. We, during Aadhaar enrolment, collect minimal data that is name, address, date of birth, gender and biometrics. We don’t ask income, religion, profession, caste, etc. and during authentication do not ask for purpose and details of

transaction. As a contrast, critics may look at the US birth registration form and see the extent of personal information sought there and compare them with those required for Aadhaar.

The report speaks about data leakage from 210 Government websites. What the author has failed to see that the information published was drawn from public records containing details such as name, address, bank account number, Aadhaar number, etc., of beneficiaries who received public assistance under various programs of the government. It was published as a measure of transparency and therefore by no imagination can be termed as leak. If someone has received public assistance, why the details should not be made available as pro-active disclosure under Right to Information to the tax payers whose money was spent? In any case, how can name, address, age, etc be confidential? Most of this information are available in voter list, telephone directory, and even on Wikipedia. Every cheque has the person's name, address, and his bank account number and therefore bank account number cannot be confidential. So far as Aadhaar number is concerned, it too is not confidential. Unlike SSN in USA, Aadhaar number requires biometrics for authentication and therefore mere knowledge of someone's Aadhaar number will not lead to his identity theft and cause him any harm. One also needs to compare public information available on US counties' websites. For example Minnesota's Hennepin County website, every home owner' name, address, home value, tax, past sale/purchase details are publicly displayed. Can it be said that the counties' websites in US are leaking the personal information of every American home owner? Similarly, multitudes of websites such as [www.beenverified.com](http://www.beenverified.com), [www.usidentify.com](http://www.usidentify.com), [www.searchbug.com](http://www.searchbug.com) etc. can provide to any third party for a nominal fee whole lot of personal information on practically every person in US than what was displayed on 210 Government websites.

It would have been appropriate if the author had done proper research before making a statement on so called leaks on Aadhaar.

Finally, Aadhaar which is India's technological marvel empowers its 1.2 billion people without compromising their privacy in any manner whatsoever and thus can't turn India into a surveillance state.

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