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DURING THE SHORT DURATION DISCUSSION ON

AADHAAR- ITS IMPLEMENTATION & IMPLICATIONS

10TH APRIL 2017

Sir, thank you for permitting me to initiate this discussion on Aadhaar. I think, it is a long overdue discussion, and I will start with referring to a recent Press interview by the ex-Chairman of UIDAI who referred to all critics of Aadhaar as …

Sir, I am making a reference to an interview recently in the media where the former Chairman of the UIDAI referred to those who were criticizing Aadhaar as 'hand-wavers' and 'colonized'. I would draw the attention of the Minister to that interview and I would clarify that neither am I a hand-waiver nor am I a colonizer. My views on Aadhaar have been remarkably consistent since 2010 when I have raised issues relating to Aadhaar flaws and its weak architecture, and most of those issues are coming true today. Sir, let me start by first acknowledging the sharp difference in the approach of the current Government vis-à-vis the UPA Government.

The UPA Government spent thousands of crores on Aadhaar with no debate inside or outside Parliament, no legislative backing for it and, most importantly, Sir, there was not one word uttered during UPA on the legal accountability for the authenticity of this biometric database. As a result, Sir, thousands of crores of public money was spent on creating a biometric database which conducted very poor verification of identities and did not and still does not have any details of citizenship. The only time Aadhaar was scrutinized, Sir, was by the Standing

Committee on Finance of which I was a Member, and the Standing Committee rightly concluded that this database was going to be ineffective even for the purposes of directing subsidies and recommended that it must be merged with the National Population Register.

Sir, this Government inherited this unverified database and instead of throwing it out and wasting public money, it moved to address its shortcomings. It brought the Aadhaar Bill, as the Minister mentioned, repositioned it as a subsidy-delivery platform and encouraged parliamentary debate. It has developed a strategy to use Aadhaar and other tools to launch a sharp attack on the vexed and cursed problem of leakages, ghost and fraudulent claimants to public subsidies. It has addressed the issue of lack of verification and fake entries by making UIDAI statutorily responsible for verifying the entries through Section 3.3 of the Act. But, Sir, this is where the problem starts and that is why, Sir, I will raise three quick issues.

The first issue is the use of Aadhaar as a broader identification in the context of the following, and I would draw the Minister's attention to this. The Act was passed in 2016 and before 2016, hundred crore entries were in the Aadhaar database. That does not come under Section 3.3. Who was responsible for verifying these hundred crore entries before it is used as an identity for elections, bank accounts and for entering airports through the CISF?

Please tell us how Aadhaar entries that were poorly verified during the period between 2010 and 2016 could be used in a plastic cover, forged for Rs. 40 in Palika Bazar and used for access to airports. Please tell us how the same unverified Aadhaar database can be used as the sole KYC for opening bank

accounts outside the Jan Dhan Yojana. When there is clear evidence all over of fake Aadhaars before 2016, what safeguards has UIDAI taken before Aadhaar is being permitted to be used as an identification beyond delivering subsidies and benefits?

Sir, these are the questions that need to be answered either by the Minister here or at some other forum. Sir, the question of rampant fake Aadhaar entries is a real one and it is a direct consequence of the sloppy way in which this database was built. Sir, the Aadhaar Act was passed in 2016; Section 3.3 makes it the responsibility of the UIDAI to issue Aadhaar numbers only after verification. The Minister and the Government must know that between 2010 and 2014, there were over 60 crore enrolees and, between 2014 and 2016, 40 crores. That means, before the Act and before Section 3.3 came into effect, there were 100 crore Aadhaar enrolees in the database. Sir, this question is still relevant; what has the UIDAI done since 2016, when the Act was passed, to ensure that Section 3.3 has been complied with for all Aadhaar entries prior to 2016? As far as I know, there has been no disclosure, or audit reports of UIDAI or Aadhaar, and no prosecution of any enrolment agencies that have created these fakes. So, Sir, the long and short of it is simple; Aadhaar remains, to a large extent, an unverified database, which has crores of biometrics, with no one to certify if the name or ID against the biometric is correct.

There is a simple rule for databases - - its only as good as what you put in. Sir, I wish to draw the attention of the Minister here. This is compounded by the fact that all Government departments and agencies seeking to use Aadhaar are taking shelter under Sections 3.3 and 4.3 of the Act, creating the perception that UIDAI stands guarantee for the authenticity of Aadhaar. This is a very important issue,

because most Government departments today are washing their hands off their notifications by taking refuge under Section 3.3, saying that the UIDAI has verified Aadhaar and, therefore, they can, if necessary, be blissfully unaware or unconcerned about the existence of fake and ghost entries. Sir, even the Minister is aware of the existence of fake Aadhaar entries, including the most recent case of two Pakistani spies being caught with Aadhaar cards in fake names, but with their biometrics. So, it was their biometric but with a fake name. So, what would the Minister want us to do when there are future instances of fake IDs in Aadhaar? Should we go to court, and whom should we sue? If this results in a terror attack, whom should the families of those future victims approach? Should they approach the UIADI? There are solutions to this, but to develop these solutions, we need to first accept that there are problems, that there is a large number of unverified, fake entries in the Aadhaar database. So, if Sections 3.3 and 4.3, both, are to be truly delivered by UIDAI, the problems of ghost and fake entries in Aadhaar will need to be squarely addressed through an audit, a cleanup or a gradual re-verification of the database. This is unavoidable, Sir. Ignoring it is unacceptable in the interest of the country.

Sir, I now move to another issue, which is to deliver better public subsidies. There has been a debate about 'mandatory' and 'nonmandatory'. I think this is a misplaced debate, because it really is an issue of exclusion and non-exclusion. I believe, Sir, that Aadhaar can be and must be developed into the gateway to deliver subsidies, because the poor and the needy are the ones that are suffering from leakages in subsidies. So, I personally don't subscribe to the view that there is anything against Aadhaar being made mandatory. But Aadhaar should be made mandatory after ensuring that making it mandatory does not mean

exclusion of any poor and needy from subsidies or services that the Government provides. So, a roadmap to ensuring non-exclusion is important, with some predetermined conditions precedent before Aadhaar can be made mandatory.

Sir, many Government Departments are issuing rules, right, left and centre, which are being interpreted as being mandatory or non-mandatory. Even I have asked a question in Parliament of the HRD Ministry where their answer to the question is contradicting their own notification. So, this confusion, in my humble opinion, Sir, is being created by regulations of the UIDAI, specifically Regulation 12 (Enrollment and Update) that seems to encourage a breach of Section 7 of the Act. A lot of the problem around Aadhaar can be placed squarely at the doorstep of the UIDAI's vague regulations and lack of clear guidelines on the use of Aadhaar. Proper oversight of UIDAI is lacking. I would urge the Minister to create a structure where the UIDAI's regulations and guidelines are subject to much more stringent oversight. I may even suggest, Sir, that there may be a Parliamentary Standing Committee on the issue of national identity. Sir, the third issue is the issue of data integrity and the broader issue of privacy and that, Sir, has taken on some form of a debate and discussion.

As more and more people have become aware of Aadhaar and its expansion to new areas, more and more concerns about its design, operation and misuse have surfaced. Sir, these are legitimate concerns and so to call these concerns hand-waving colonizing, and to deny it we must accept that these are natural consequences of digitization of our economy and digitization of the country. Some are legitimate concerns and many are caused by lack of understanding and lack of communication and transparency by UIDAI. The concerns of a surveillance State are, Sir, completely misplaced if the Minister and the Government can

articulate your safety measures that are being put into place to prevent misuse. Surveillance only comes out of misuse of information and data within institutions and Government. Sir, we have in this House many, many months ago, the issue of the Leader of the House's call records being leaked. We have discussed in this House many months ago call tapping. These are all signs of misuse by people within the system of powers that are given to them and that is a legitimate concern even in the case of Aadhaar and any of these large databases of the Government that they create.

There was some discussion about this earlier, Sir, and my senior colleague Mr. Chidambaram tried to raise it. But, I don't think he presented it right. This is not an issue of hacking. This is an issue, Sir, of the rights of the users whose data is in the database and the reciprocal accountability of those who collect and store and provide access to these data. Sir, the Aadhaar Act -- with great respect, because I participated in the debate and I said it even then -- places no accountability on UIDAI as an institution to protect the database and the personal information that users and consumers provided. While there are Section 3 and Chapter VI lay responsibility for verification and protection on UIDAI, despite such mandatory and substantive provisions laying out the requirement of verification, the Aadhaar Act and the regulations made thereunder remain silent on the liability of the UIDAI, or its personnel, in the case of non-compliance, contravention or violation of such provisions. And this is very important. On one hand, if the Minister wants to use his database as the gold standard identity for access to sensitive areas, or for entering the financial system, if the entry correspondingly is unverified, is fake or fraudulent, who is responsible? This is the question that the Government must answer. This is a legitimate question that needs to be answered.

Sir, I just want the Minister and the Government to be aware of this that there are several thousands and thousands of cases of data breaches and misuse but none being followed through with prosecution. Aadhaar Numbers are available for Rs.2 per entry. I can give as many as the Minister wants. The recent fiasco of EKYC where many entities accessing Aadhaar were storing and reusing data without permission is also widely known. Sir, there has to be institutional and legal reform for this. I am not against Aadhaar. I completely support what the Government is attempting to do and creating a digital eco-system to make sure public services and subsidies delivered better and more effectively. But we must understand the consequences of allowing some of the mistakes that have been put into place in the past unaddressed.

Sir, on the broader issue of privacy, I have heard, with great interest, to some of my colleagues who earlier spoke in the Parliament about the issues of privacy. It is both, a broader and a more important issue, that goes beyond Aadhaar. It raises legitimate questions about the role and the responsibility of the State, or other agencies, that are custodians of our digital footprints at the time of rapid digitization of our lives and economies. The Leader of the House himself also had conceded, during the Aadhaar debate, that he believed that privacy is a fundamental right, even without waiting for the Supreme Court to opine on the PIL, to which I was also a party. (Time bell) I will just take two more minutes. The current protections to the consumers and the citizens under both, Aadhaar Act and IT Act, are skewed in favour of those who hold the data and places an extraordinary burden on the individual or the user to get justice. I would encourage the Government to enter into this discussion because many people are concerned about this. It is better for the Government to initiate it rather than

have the Courts step in. I had similarly urged the UPA Government to have a debate on Section 66. They ignored me and finally, it took a Supreme Court petition, to which I was also a party, to strike down that provision in the law.

Sir, as the world's largest democracy and soon, perhaps, the world's leading digital democracy, we must take an enlightened and global lead in showing how we can balance our citizens' rights to privacy and our national security considerations. I have heard the Minister say that there are enough safeguards in the IT and Aadhaar Acts. With great respect to him, Sir, I would like to say that he is wrong. If he believes that, I would gently point out to him that he is in the minority. We need to have a discussion on this and not to take a rigid position. I would urge him to show the confidence and leadership towards this. The people of our country, especially the youth, deserve this.

Sir, let me end by saying that constant change is normal in the digital world. These kinds of debates will help the Government and the Parliament keep reviewing and adapting to these changes and challenges. I request the Government again to consider the views expressed here today carefully. The risk and problems that I have outlined are real and will need to be addressed, preferably by the Government. There is a real need to be adaptive and changing, especially in the case of evolving Aadhaar from an unverified biometric database into a robust, reliable and authentic National Identify Platform. Thank you, Sir, and Jai Hind.