

theirview

VRINDA BHANDARI AND RENUKA SANE

are, respectively, a practising advocate in Delhi and an associate professor at the National Institute of Public Finance and Policy, New Delhi.

The Aadhaar legal framework is broken

The regulations are weak on grievance redressal and completely absent when it comes to authentication and data security

Aadhaar has in recent times become an important tool in the government armoury. From welfare receipts to filing tax returns, an Aadhaar number is now an all-pervasive prerequisite. As Aadhaar becomes the core around which our relationship with the state revolves, we need to ask ourselves if the surrounding legal framework provides enough clarity on the enrolment, authentication, and storage processes. Are there adequate protections against misuse? Do citizens have access to an adequate grievance redressal mechanism? We think the answers to these questions are a resounding no.

Before explaining further, it is important to understand the authority that runs and regulates Aadhaar. The Unique Identification Authority of India (Uidai) is the agency responsible for Aadhaar enrolment and authentication, ensuring the security of individuals' identity information, and managing the grievance redressal mechanism. Two legal instruments shape Uidai's behaviour: the Aadhaar Act, 2016, and the Aadhaar Regulations, 2016, on enrolment, authentication, data security, and sharing of information. We need these to be precise, and to provide for adequate checks and balances to hold Uidai accountable.

Herein lies the problem. There is not enough clarity on important aspects pertaining to the Aadhaar scheme. The Aadhaar Act left several aspects, such as the information required for enrolment and verification, the procedure of sharing identity information, and the security protocols, to be specified "by regulations". So we have a law that has decided to not specify these core issues, in the expectation that they would be fleshed out in future regulations.

However, even the regulations issued by Uidai left key aspects to be specified by it at a future undetermined date. For instance, the "standards" for collecting biometric and demographic information, and the procedure for updating biometric information of children are to be "specified by the Authority". Similarly, Uidai shall generate the Aadhaar number after de-duplication and "other checks as specified by the Authority". Throughout the regulations, the phrase "specified by Authority" has been used 51 times. So, today, seven years after the first Aadhaar number was issued, we still do not have clarity on several issues that are key to Aadhaar's functioning (goo.gl/GSJolQ).

It may sometimes be justified, as in the case of technical information, for Uidai to leave things unspecified. But when issues that determine how sensitive, personal information is collected, authenticated, stored, used, and shared with third parties are left unspecified, it becomes cause for concern. Moreover, we do not even know if, and when, Uidai will specify these issues, as there seems to be no obligation on it to do so.

The regulations are also weak on grievance redressal (see more at goo.gl/d7ptuw), and are completely absent in the case of the Aadhaar Regulations on authentication and data security. There is little information about the actual process of redress, how it will work, the composition of the "contact centres", the performance standards and timelines on which their work will be evaluated, the binding nature of the resolution mechanism, the identity of the final decision-maker, and the possibility of appealing/challenging Uidai's decision.

Even when it comes to the omission or deactivation of an Aadhaar number, the regulations provide little panacea. First, there is no requirement for Uidai to hear the person whose Aadhaar number is sought to be omitted or deactivated, and thus no requirement to follow principles of natural justice. Second, Uidai's decision (based on a report submitted by its nominated "agency" after following procedures "to be specified" in the future) is final, and no appellate remedy has been provided for. Finally, the Aadhaar number holder will simply be informed about this decision by text and his/her only remedy will be to use the

completely inadequate grievance redressal mechanism ("contact centres"). When you consider the consequences of deactivation, such that a person may get excluded from benefit receipts, or may not be able to file tax returns, the lack of substance in the grievance redressal process becomes hugely problematic.

The Aadhaar Act and regulations also say little on enforcement. The Act has a specific chapter on offences and penalties, where it criminalizes certain actions such as unauthorized access or disclosure of identity information. However, unlike most other statutes, only Uidai can file a criminal complaint for violations of the Act, and not the person aggrieved. Thus, if Uidai thinks that a complaint is not worth pursuing, then the Aadhaar number holder has no remedy and no means of holding Uidai to account. Further, the Aadhaar Act does not talk about damages to the affected person. There are also no clear procedures for imposing liabilities on enrolment or authentication service agencies, thus reducing the incentives of these service providers to comply with the legal framework.

Aadhaar is the centrepiece of the government's agenda. However, the enrolment and authentication processes are still operating in a sort of legal vacuum. In the absence of a privacy law in India, the need for an effective accountability and enforcement mechanism in the Act becomes even more important. There is thus an urgent need to introduce amendments to the Aadhaar Act and regulations to address these problems.

Comments are welcome at theirview@livemint.com

There is not enough clarity on important aspects pertaining to the Aadhaar scheme