

AADHAR CARD AND HUMAN DIGNITY OF THE WELFARE CLAIMANTS

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Abstract

Immanuel Kant said that the human beings should be treated as an end in themselves and not as a means to something else. The normative characteristic of Human Dignity demands that the State should not objectify an individual human being to achieve its objectives. In this paper, it is being argued that the requirement of having Aadhar card for the welfare claimants to avail their fundamental right to access the basic necessities amounts to an objectification of the human beings. A State action is presumed to have protected the Human Dignity only if it was passed through the standards of deliberative democracy, whereas the Aadhar legislation was enacted without any public debate and discussion. The participation of the welfare claimants in the process of the enrolment of aadhar cannot be considered as voluntary because of their undeveloped socio-economic conditions. They do not have any bargaining power to resist the aadhar program. Under these circumstances, their so-called 'voluntary participation' does not mean that they have waived off their fundamental right to live with human dignity and right to informational self-determination. Judge Aharon Barak said that the limitations imposing on the human dignity should be proportional to the compelling interests of the State action. However, the collection of biometric information of the welfare claimants is disproportionate in nature. The storage and linking capacity of the computer technology processing biometric information along with its automatic decision-making abilities would increase the vulnerable conditions of the welfare claimants. The present paper also questions how better the aadhar card is than the existing methods of identification and verification for bringing social justice in the country. The purpose of Aadhar, which is to bring transparency, accountability and good governance in the public distribution scheme, is questionable when the constitutional courts of India has emphasised on the institutional reforms to check the corrupt practices in the public system.

Keywords: Human Dignity; Aadhar Card; Welfare Claimants; Deliberative Democracy; Proportionality

INTRODUCTION

Immanuel Kant said that the human beings should be treated as an end in themselves. His understanding about the normative characteristic of Human Dignity prohibits both State and society from *objectifying* an individual human being to achieve their intended objectives. After the Second World War, seeing the crimes against the humanity during holocaust in Nazi Regime and the disrespect of the value of dignity of the human beings, many nations adopted the word "human dignity" in their constitutions. Over the period of time, the world legal systems having the rule of law and their judiciaries have read the idea of human dignity into the basic values including respect, honour, reputation, privacy, etc. Considering the significance of these values, the present paper focuses on three aspects of human dignity in order to investigate the constitutionality of the *Aadhar* Card. *Firstly*, Human dignity is respected when the human beings have access to the basic necessities. *Secondly*, Human Dignity is involved in the people's right to participate in the democratic decisions. *Thirdly*, the respect, honour and reputation, which are the core values of the human dignity, would get protection if the individuals have right to informational privacy.

HUMAN DIGNITY AND WELFARE CLAIMANTS' RIGHT TO ENJOY BASIC NECESSITIES

The Constitution of India was adopted by the people of India in order to remove the inequalities caused by discrimination, subjugation, lack of political representation and so on. Despite the fact that *India is a vast nation which have the eternal, sacred and natural potential to give readymade food and abundant natural resources to all of its inhabitants*, only few had the control over the resources. And, the individuals at large scale were denied their *inherent right to access to the natural readymade food or the natural opportunities to produce food from the fertile land*, and to access to other natural resources for satisfying their basic necessities. In 1950, the people of India by commencing the Constitution of India promised themselves to transform the society, and to bring social, economic and political justice for all of its inhabitants. The duty of the *welfare State* formed under the Constitution is to achieve the objectives of the "people of India" by enabling all individuals to have above mentioned *inherent and constitutional right to access to the natural resources*. For achieving such purpose, the State did abolish *de jure* the *zamindari system*; restrict the right to property reasonably on the ground that nobody has an absolute right over the property and natural resources of the nation. Now, this means that the State is under the constitutional obligation to ensure that the *people of India* have the *peaceful atmosphere*,

which was intended by the Constitution makers, while exercising their *inherent right to access food and other natural resources*; to ensure that nobody is being discriminated or threatened while accessing the natural resources; to distribute the *constitutionally acquired* land of the zamindars or estates *equitably* among the inhabitants of the nation. On the same line of argument, even where the individuals are not able to access the basic necessities because of the non-availability of the natural readymade food or other reasons, the State is the under the obligation to provide them the basic necessities. In both cases of availability and non-availability of the natural resources, the individuals, being the *welfare claimants* of the *welfare State*, have the *inherent and constitutional right to have the basic necessities including food, clothing and shelter*. These are basic rights. Without it, civil and political rights or democratic rights are meaningless. Starvation cannot encourage the individual to exercise his or her right to vote in an informed way.

Therefore, the State cannot assume that the welfare claimants of the objectives of the Constitution of India are the liabilities. The welfare claimants are participating in the process of achieving the objectives of the Constitution of India. The welfare claimants do have the inherent right to food, clothing and shelter in the *constitutionally protected India's abundant natural resources* because they are human beings. An individual human being does not need to prove anything more than the fact that he or she is human. This value of respecting every human being among the individuals is not an alien feeling for the Indians. Ancient liberal religious and spiritual texts, which are very common and are being observed and practiced by the Indians, do guide its readers to respect every person and all species living on this planet. These spiritual sayings suggest the humans to take care of each other's basic necessities; to share food themselves; to give shelter to the needy ones, etc. These liberal words need not be substantiated with any citation. These are very common among the people of India. Besides, the spiritual understandings about the respect and dignity of all human beings were so sacred and pious to the constitution-makers that these ideas were adopted in the Constitution as well. For example, the Preamble of the Indian Constitution says that the "people of India" promises themselves to spread "fraternity" and "dignity" among all human beings. Similarly, the same idea of dignity and respect was found from Article 21 of the Indian Constitution by the Supreme Court of India. Article 21 protects right to life or personal liberty of *all persons and all human beings*. In the series of cases, the Supreme Court of India has declared that the *right to enjoy the basic necessities*-including food, education, shelter, clothing, etc- is a part of the fundamental *right to live with human dignity under Article 21 of the Indian Constitution*. The court has held that an individual human being is not only born to live mere animal existence. All individuals are born to develop their both inner and outer personalities. The Court held that food, clothing and shelter are fundamental rights.

The Supreme Court in *Chameli Singh v. State of U.P.*¹ said:

The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.²

In *Bandhua Mukti Morcha v. Union of India*,³ the Supreme Court said that the State cannot close its eyes to the inhuman exploitation of the labourers. The Court directed the concerned governments to take initiatives to prevent bonded labour in the society. It was observed that:

[T]his right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clause (e) and (f) of "Article 39 and Arts. 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and nor State - neither the Central Government - has the right to take any action which will deprive a person of the enjoyment of these basic essentials."⁴

It means that these rights are not mere Directive Principles of State Policy which are enforceable through the process of legislation. Food, clothing and shelter are essential for basic livings. And, their enforcement cannot be dependent upon the people's right to vote. It is the prime duty of the welfare State to enforce right to food, clothing and shelter immediately without claiming any defence of economic capacity. If the State could not enforce the basic rights within *reasonable period of time*, it would not be wrong to say that the State has failed to achieve the objectives of the *Transformative Constitutionalism*.

The incorporation of the idea of dignity in the Preamble and the liberal construction of Article 21 to include food, clothing and shelter for all human beings means that the constitutional scheme is not to ask the welfare claimants anything more than the fact that he or she is human being. However, the mandatory requirement of submitting the biometric information for availing the food, shelter, etc, is against the constitutional scheme. It

¹ (1996) 2 SCC 549.

² *Id.* at 555-556.

³ (1984) 3 SCC 161.

⁴ *Id.* at 183.

seems that the human beings have to submit themselves completely to the State as if there is a scarcity of the natural resources in the country. If this is the case, why the Supreme Court had to ask the government to store the abundant wheat and grain in the protected warehouses?; why the Supreme Court had to ask the government to distribute the wheat or other grains if the government fails to store it? The idea of scarcity is against the *constitutional idea of India's abundant natural resources*. And, on the basis of the unconstitutional idea of scarcity, demanding biometric information for providing food and shelter is disproportionate and unconstitutional. While declaring that the right to food is a fundamental right to life, the Supreme Court in *Peoples Union for Civil Liberties (PUCL) v. Union of India*⁵ said:

In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. *Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems.*⁶

Moreover, the large population of the welfare claimants are completely relied on the welfare State for their daily meal because the State is not yet able to provide them the accesses to the *natural readymade food or the natural opportunities to produce food from the fertile land* and other natural resources so that they could work for themselves and earn their livelihood and food. Under these circumstances, the imposition of Aadhar card on the *Article 21's persons* halted the *welfare claimants' daily right to food, right to daily shelter, etc.*

HUMAN DIGNITY AND PEOPLE'S RIGHT TO PARTICIPATE IN THE DEMOCRATIC DECISIONS

Jürgen Habermas opines that human dignity is involved in the political participation.⁷ Unless people talk, debate or discuss, the laws restricting human dignity cannot be presumed as reasonable and proportional. The semantics and the subject-matter of such laws do have proximate relationship with the individual's right to live with human dignity and social morality. It also involves the apprehension that the State could use the patterns of the social morality for avoiding its constitutional obligation. However, the *Aadhar* legislation was passed as a Money Bill and not subjected to any critical debate and discussion. The participation of the welfare claimants in the process of the enrolment of *aadhar* cannot be considered as voluntary because of their undeveloped socio-economic conditions. They did not have any bargaining power to resist the *aadhar* program. Under these circumstances, their so-called 'voluntary participation' does not mean that they have waived off their fundamental right to live with human dignity and right to self-determination.

Judge Aharon Barak said that the limitations imposing on the human dignity should be proportional to the compelling interests of the State action. Moreover, the strict judicial scrutiny rule demands that a law has to satisfy three tests including compelling governmental interest, specificity of the purpose and *least restrictive measures*. On the contrary, the purposes of *Aadhar*, which is to bring transparency, accountability and good governance in the public distribution scheme, have been tried to be achieved by the government by imposing excessive burden on the welfare claimants instead of showing its any progress report on bringing *institutional reforms* in the public system which were prescribed by the Honourable Supreme Court of India (*as a representative of the "people of India"*) in number of landmark judgments. Working on the democratic institutions, including quality education and quality health, for which the government receives loan from the World Banks against the *India's eternal, sacred and natural potential to give readymade food and abundant natural resources to all of its inhabitants*, for reasonable period of time is more democratic and constitutional than to take monotonous decision of imposing *aadhar* card. Mandatory imposition is like exacting the population with the help of Artificial Intelligence; like making uniform society. But such approach is against the principle of *inclusive society* enshrined in the "we the people of India".

HUMAN DIGNITY AND RIGHT TO INFORMATIONAL PRIVACY

The values of respect, honour and reputation are involved in the idea of human dignity. The idea of human dignity is involved in the fact that an individual does not want to be disrespected, humiliated, harassed or persecuted for his or her *constitutionally protected personal information and personal choices*. Therefore, an individual's right to live with human dignity depends upon the protection of his or her right to informational privacy, which means the individual's control over the personal information or decisions. Such protection of informational privacy is needed against the prejudices, discrimination or stereotypes existing in the society. A

⁵ Peoples Union for Civil Liberties (PUCL) v Union of India & Others WP (Civil) No 196 /2001, 23 July 2001, unreported. Cited in Jayna Kothari, "Social Rights Litigation in India: Developments of the Last Decade," in Daphne Barak-Erez, Aeyal M. Gross (eds.), *Exploring Social Rights: Between Theory and Practice*, 175 (2007).

⁶ *Id.* at 179.

⁷ Jürgen Habermas, "The Concept Of Human Dignity And The Realistic Utopia Of Human Rights," *Metaphilosophy*, Vol. 41, No. 4, 464-480 (July 2010)

society still *judges* on basis of an individual's caste, religion, sex, sexual orientation, ideology, appearance, etc. And, the judgmental behaviour decides the *societal way* of treatment of the concerned individual. It definitely affects the individuals' right to personal autonomy over their personal decisions relating marriage, procreation, worship, education, etc.

Until the State teaches citizens about the *constitutional morality* through the democratic means, an individual seeks protection to his or her personal information. For the same reasons, the concerned individual seeks the reasonable expectation of privacy at public places as well. It means that even if the State collects the personal information upon the welfare claimants for the *constitutional purposes*, the same shall be used for that purpose only. For example, people do give their personal information to the government for Census purposes, and believe that the information would be used for crafting the national policies only. Such personal information cannot be used for any political purpose which is unconstitutional in nature. Similarly, the same personal information should not be given to the unauthorized persons. If the collected information is lost to the unauthorized persons, the data subject would easily be subjected to the above mentioned discrimination, prejudices or stereotypes existing in the judgmental society. Increasingly, an individual also needs protection to its personal information from the commercial or business entities. These bodies want to exploit the individual's personal information for commercial purposes including target advertisement, consumer behaviour techniques, insurance marketing, credit, bank loan, etc.

In the whole world, the practice of linking biometric information, including facial recognition, eyes details, DNA, finger impression, etc., with the individual's religion, nationality, caste, race, colour and so on is a part of the mass surveillance projects. David Lyon argues that these mass surveillance programs, including national identity cards, have the full potential to make social-profiling; it would be prejudicial to the minorities who are already living under the vulnerable conditions. Social-sorting or social profiling was the weapon of the dictators, like Hitler during Nazi Regime, to strategically execute Jewish people, and other minorities which the dictators thought were the liabilities on the society. In the contemporary Europe, the orthodox idea of so-called pure race is again becoming popular among the people. Even this idea is being reflected in their national policies as well. Refugees' rights under the international law are being violated because of such feelings of animosity. And the governments, who want to appease the proponents of hatred propagandas, are using the artificial intelligence monitoring technology to create racial-profiling over all individuals. For example, even if an Asian individual has become the citizen of Europe, he or she may be under the artificially intelligent surveillance. Every online and offline activity is being monitored. In China, the Muslim minorities are under the mass surveillance programs.⁸ Therefore, all these racial surveillances are segregating the societies, and violating the human dignity. Caste politics and racial politics prevent the people to communicate with each other. Dr. B.R. Ambedkar said:

The Caste system prevents common activity and by preventing common activity it has prevented the Hindus from becoming a society with a unified life and a consciousness of its own being.⁹

Mass surveillance programs are affecting the individuals' fundamental right to privacy. David Kaye (US) said that the danger of excessive monitoring include "attacks on free and independent media, including journalists and bloggers; attacks on political dissent and unpopular opinion; repression of civil society; attacks on the expression of members of vulnerable groups, especially religious and ethnic minorities and persons who identify as lesbian, gay, bisexual or transgender (or LGBT); and widespread undermining of the right to seek, receive, and impart information online, regardless of frontiers."¹⁰

The *Aadhar* card has collected the biometric information, which is sensitive personal information, of all residents of India. Although the government claimed that the unique identification number cannot disclose the collected biometric information to anyone, the ongoing development in the artificial intelligence technology, which have the capacity to link the biometric information automatically with other sensitive information including caste, religion, colour, race, etc, and its easy accessibility to all, is a real threat for all the individuals who do not want to be humiliated, embarrassed or persecuted for their constitutionally protected personal information or personal choice. These automatic decision-making abilities can increase the vulnerable conditions of the welfare claimants. Besides, where people do have superior or inferior notions about someone's *surname* and *occupation*, the *aadhar* card tells the whole story about its holder.¹¹ Linking *aadhar* with the *census survey* could be catastrophic under the threat of social profiling because census contains more personal information. Similarly, the government claim does not seem very strong when many national

⁸ Paul Mozur, "One Month, 500,000 Face Scans: How China Is Using A.I. to Profile a Minority," The New York Times, April 14, 2019

⁹ B. R Ambedkar, *Annihilation of Caste*, 27-28 (1937).

¹⁰ Quoted in William New, "UN Expert Urges Encryption, Anonymity Online To Preserve Freedom Of Expression," Intellectual Property Watch, 18/06/2015, available at: <http://www.ip-watch.org/2015/06/18/un-expert-urges-encryption-anonymity-online-to-preserve-freedom-of-expression/> (last visited on October 14, 2019).

¹¹ Akshay Deshmane, "Identity crisis," *Frontline India*, April 28, 2017.



newspapers reported that the aadhar database is leaked. Moreover, David Lyon argues, “it is unclear how new ID cards could contribute beyond already existing means of verification and identification.”¹²

Right to be forgotten or erasure is also part of the right to informational privacy. It means that once the purpose for which the information was collected is achieved, and it is not required for any public interest, the collected personal information should be deleted from the database. This has been recognised under the General Protection Regulation (GDPR). This right enables the individual to have control over the constitutionally protected personal information, and to keep it away from any unnecessary kind of public gossiping. Right of Erasure protects the concerned individual from being humiliated, harassed or persecuted. The Supreme Court of India directed the private intermediaries to delete the aadhar information which they have linked with mobile phones and other private services. However, there is no mechanism by which an individual could know whether his or her information has been deleted or not. This is very dangerous especially when the India has not yet passed its Data Protection law.

¹² David Lyon, “National ID Cards: Crime-Control, Citizenship and Social Sorting,” 1 *Policing: A Journal of Policy and Practice*, 17 (2007).