

APPENDIX

Suggested amendments to the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016

The following amendments have been suggested to the Aadhaar Act from a data protection perspective. They must be read alongside Chapters XI and XII of the proposed data protection bill which deal with enforcement action and individual remedies. The rationale for these amendments have been explained in the Report from pages 98 to 101. The amendments may be duly considered by the Government and suitable legislation introduced as deemed appropriate.

1. Amendment of section 2. — In section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereinafter referred to as the principal Act),

(1) in place of the current clause (a), the following clause shall be substituted, namely:—

“(a) “Aadhaar number” means a twelve-digit identification number issued to an individual under sub-section (3) of section 3 and includes any alias thereof generated in a manner specified by regulations”

(2) after clause (b), the following clauses shall be inserted, namely:—

“(ba) “Adjudicating Officer” means an adjudicating officer appointed under sub-clause (1) of section 33B;”

“(bb) “Appellate Tribunal” means the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997;”

(3) after clause (m), the following clause shall be inserted, namely:—

“(ma) “Entities in the Aadhaar ecosystem” includes enrolling agencies, Registrars, requesting entities, offline verification-seeking entities and any other entity or group of entities as specified by the Authority;”

(4) after clause (p), the following clauses shall be inserted, namely:—

“(pa) “Offline verification” means the process of verifying the identity of the Aadhaar number holder without authentication, through such offline modes as may be specified by regulations;”

“(pb) “Offline verification-seeking entity” means any entity desirous of undertaking offline verification of an Aadhaar number holder.”

2. Amendment of section 4.— In place of the current sub-section (3) of section 4 of the principal Act, the following sub-section (3) of section 4 shall be substituted, namely:—

“(3) An Aadhaar number, in physical or electronic form subject to authentication or offline verification and other conditions, as may be specified by regulations, may be accepted as proof of the identity of the Aadhaar number holder for any purpose.”

3. Amendment of section 8.— (1) In place of sub-section (1) of section 8 of the principal Act, the following sub-sections shall be substituted, namely:—

“8. Authentication of Aadhaar number .—

(1) The Authority shall perform authentication of the Aadhaar number of an Aadhaar number holder on the request of a requesting entity only when such authentication is:

- (a) mandated pursuant to law made by Parliament;
- (b) required by a public authority for performing a public function, subject to prior approval of the Authority on such conditions as the Authority may deem fit.

(1A) In determining whether to grant approval under sub-section (1), the Authority shall take into account the following factors:

- (a) the nature of the interest of the requesting entity seeking authentication;
- (b) the standards of security employed by the requesting entity; and
- (c) any other factor which is relevant in protecting the privacy of an Aadhaar number holder.

(1B) The Authority may, by regulations, classify requesting entities into such categories as may be necessary to determine whether such requesting entity may request an Aadhaar number holder for the Aadhaar number itself during authentication or only any alias or aliases thereof.”

(2) After clause (b) of sub-section (2) of section 8 of the principal Act, the following clause shall be inserted, namely: —

“(c) ensure the availability of alternate and viable means of identification of an Aadhaar number holder in case of a failure to authenticate on account of

illness, injury or infirmity owing to old age or otherwise, and any technical reasons as may be specified.”

4. Insertion of section 8A.— After section 8 of the principal Act, the following section 8A shall be inserted, namely:—

“(8A) Offline verification of Aadhaar number.—

- (1) Any offline verification of an Aadhaar number holder shall take place on the basis of consent provided to such verification by the Aadhaar number holder.
- (2) Any offline verification-seeking entity shall,
 - (a) obtain the consent of an individual before verifying him offline, in such manner as may be specified by regulations; and
 - (b) ensure that the demographic information or any other information collected from the individual for offline verification, if any, is only used for the purpose of such verification.
- (3) An offline verification-seeking entity shall inform the individual undergoing offline verification the following details with respect to offline verification, in such manner as may be specified by the regulations, namely: —
 - (a) the nature of information that may be shared upon offline verification;
 - (b) the uses to which the information received during offline verification may be put by the offline verification requesting entity;
 - (c) alternatives to submission of information requested for, if any.
- (4) An offline verification-seeking entity shall not:
 - (a) subject an Aadhaar number holder to authentication;
 - (b) collect, use or store an Aadhaar number or biometric information of any individual for any purpose;
 - (c) take any action contrary to any obligations on it, specified by regulations.

5. Substitution of section 21.— In place of the current section 21 of the principal Act, the following section 21 shall be substituted, namely:—

“21. Officers and other employees of Authority.—

- (1) The Authority shall determine the number, nature and categories of other officers and employees required for the discharge of its functions under this Act.
- (2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Authority shall be such, as may be specified.”

6. Amendment of section 23.— After section 23 of the principal Act, the following sections shall be inserted, namely:—

“23A. Power of Authority to issue directions.—

- (1) The Authority may, in exercise of its powers or for discharge of its functions under this Act, or any rules or regulations made hereunder, issue such directions from time to time to entities in the Aadhaar ecosystem, as it may consider necessary.
- (2) Any direction issued under sub-section (1) for providing alternate and viable means of identification in case of failure to authenticate shall have effect, notwithstanding anything contained in any law in force.
- (3) If the Authority finds, on the basis of material in its possession, that any person has violated, or is likely to violate, any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation, or give such directions as may be necessary for the purpose of securing compliance with that condition or provision.”

“23B. Power of Authority to conduct inquiry.—

- (1) The Authority may conduct an inquiry where it has reasonable grounds to believe that—
 - (a) the activities of an entity in the Aadhaar ecosystem are being conducted in a manner which is detrimental to, or in violation of the privacy of an individual or an Aadhaar number holder; or
 - (b) any entity in the Aadhaar ecosystem has violated any of the provisions of this Act or the rules prescribed or the regulations specified or directions issued by the Authority thereunder.
- (2) For the purpose of sub-section (1), the Authority shall, by an order in writing, appoint an Inquiry Officer to conduct the inquiry where such order shall set out inter alia the scope of inquiry and reasons for commencing inquiry and the Inquiry Officer shall prepare an inquiry report to be submitted to the Authority.
- (3) Every person acting under the direct authority of the entity in the Aadhaar ecosystem, service provider or a contractor where services are being obtained by or provided to the entity in the Aadhaar ecosystem, as the case may be, shall be bound to produce before the Inquiry Officer,

all such documents, records and data in their custody or power and to furnish to the Inquiry Officer any statement and information relating to the affairs of the entity in the Aadhaar ecosystem as the Inquiry Officer may require within the time stipulated by such officer.

- (4) The Inquiry Officer shall undertake the inquiry only after providing a written notice to the persons referred to in sub-section (3) stating the reasons for the inquiry and the relationship between the entity in the Aadhaar ecosystem and the scope of the investigation.
- (5) The Inquiry Officer may keep in its custody any documents, records and data referred to in sub-section (3) for six months and thereafter shall return the same to the persons concerned.
- (6) Without prejudice to the provisions of this Act or any other law, an Inquiry Officer may examine on oath, any person acting under the direct authority of the entity in the Aadhaar ecosystem, or a service provider, or a contractor where services are being obtained by or provided to the entity in the Aadhaar ecosystem, as the case may be, for conducting an inquiry.

“23C. Powers of Search and Seizure.—

- (1) Where the Authority has reasonable grounds to believe that—
 - (a) any person referred to in sub-section (3) of section 23B has failed or omitted to produce any documents, records or data in her custody or power; or
 - (b) any such documents, records or data mentioned in clause (a) of sub-section (1) are likely to be tampered with, altered, mutilated, manufactured, falsified or destroyed; or
 - (c) a contravention of any provision of this Act has been committed or is likely to be committed by an entity of the Aadhaar ecosystem,

it may authorise any officer of the Authority not below the rank equivalent to that of a Gazetted Officer of the Central Government (hereinafter referred to as “Authorised Officer”) to—

- (i) enter and search any building or place where she has reason to suspect that such documents, records or data are kept;
- (ii) break open the lock of any box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
- (iii) access any computer, computer resource, or any other device containing or suspected to be containing data;
- (iv) seize all or any such documents, records or data found as a result of such search;
- (v) place marks of identification on such documents, records or databases or make extracts or copies of the same.

- (2) The Authorised Officer may requisition the services of any police officer or of any officer of the Central Government, or of both, as the case may be, for assistance related to any of the purposes specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition.
- (3) The Authorised Officer may, where it is not practicable to seize any such document, record or data specified in sub-section (1), serve an order on the person who is in immediate possession or control thereof that such person shall not remove, part with or otherwise deal with it except with the previous permission of such officer.
- (4) The Authorised Officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any documents, records or data, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act.
- (5) The documents, records or data seized under sub-section (1) shall not be retained by the Authorised Officer for a period exceeding six months from the date of the seizure unless the approval of the Authority for such retention is obtained.
- (6) The Authority shall not authorise the retention of documents, records or data for a period exceeding thirty days after all the proceedings under this Act, for which the said documents, records or data are relevant, are completed.
- (7) The person from whose custody the documents, records or data are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the Authorised Officer at such place and time as may be designated.
- (8) If a person legally entitled to the documents, records or data seized under sub-section (1) objects for any reason to the approval given by the Authority under sub-section (5), such person may make an application to the Appellate Tribunal stating her objection and requesting for the return of the same.
- (9) On receipt of the application under sub-section (8), the Appellate Tribunal may, after giving the parties an opportunity of being heard, pass such order as it thinks fit.
- (10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1).
- (11) Without prejudice to the generality of the foregoing, rules may be prescribed in relation to the process for search and seizure under this section as may be deemed fit by the Authority.

“23D. Action to be taken by Authority pursuant to an inquiry.—

- (1) On receipt of a report under sub-section (2) of section 23B, the Authority may, after giving such opportunity to the entity in the Aadhaar ecosystem

to make a representation in connection with the report as the Authority deems reasonable, by an order in writing—

- (a) issue a warning to the entity in the Aadhaar ecosystem where the business or activity is likely to violate the provisions of this Act;
 - (b) issue a reprimand to the entity in the Aadhaar ecosystem where the business or activity has violated the provisions of this Act;
 - (c) require the entity in the Aadhaar ecosystem to cease and desist from committing or causing any violation of the provisions of this Act;
 - (d) require the entity in the Aadhaar ecosystem to modify its business or activity to bring it in compliance with the provisions of this Act;
 - (e) temporarily suspend or discontinue business or activity of the entity in the Aadhaar ecosystem which is in contravention of the provisions of this Act;
 - (f) initiate proceedings under section 33A of this Act;
 - (g) make a complaint under section 47 of this Act;
 - (h) require the entity in the Aadhaar ecosystem to take any such action in respect of any matter arising out of the report as the Authority may think fit.
 - (i) issue any other direction as it deems fit under sub-section (3) of section 23A of this Act;
- (2) An entity in the Aadhaar ecosystem aggrieved by an order made under this section by the Authority, except an order under clause (f) and (g) of sub-section (1), may prefer an appeal to the Appellate Tribunal.”

7. In place of the current section 25 of the principal Act, the following section shall be substituted, namely:—

“25. Other fees and revenues.—

The fees or revenue collected by the Authority shall be credited to a fund called the Unique Identification Authority of India Fund to be managed by the Authority.”

8. In place of the current sub-section (4) of section 29 of the principal Act, the following sub-section (4) shall be substituted, namely:—

“29. Restriction on sharing information.—

- (4) No Aadhaar number, demographic information or photograph collected or created under this Act in respect of an Aadhaar number holder shall be published, displayed or posted publicly, except for purposes, if any, as may be specified.

Provided, nothing in this sub-section shall apply to core biometric information which shall only be governed by sub-section (1).”

- 9. Insertion of Chapters after Chapter VI.**—After Chapter VI of the principal Act, the following Chapters shall be inserted, namely:—

**“CHAPTER VIA
CIVIL PENALTIES**

33A. Penalty for failure to comply with provisions of this Act, rules, regulations and directions.—

Whoever fails to comply with any provision of this Act, the rules or the regulations made hereunder or directions issued by the Authority under the provisions of this Act, or fails to furnish any information, document, or return of report required by the Authority, shall be liable to a civil penalty which may extend to one crore rupees for each contravention and in case of a continuing failure, with additional penalty which may extend to ten lakh rupees for every day during which the failure continues after the first contravention.

33B. Power to adjudicate.—

- (1) For the purposes of adjudication under section 33A and imposing a penalty thereunder, the Authority shall appoint any officer, not below the rank of a Joint Secretary to the Government of India, to be an Adjudicating Officer for adjudicating disputes in the manner prescribed by the Central Government.
- (2) The proceedings under sub-section (1) can only be initiated by the Authority against entities in the Aadhaar ecosystem.
- (3) While conducting the proceedings the Adjudicating Officer shall, —
 - (a) provide the entities in the Aadhaar ecosystem against whom a penalty is proposed to be levied, an oral hearing;
 - (b) have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject matter of the proceedings.
- (4) Based on the information received pursuant to sub-section (3), if the Adjudicating Officer is satisfied that any entity in the Aadhaar ecosystem has failed to comply with any provision of this Act, the rules or the regulations made hereunder or directions issued by the Authority under the provisions of this Act, or has failed to furnish any information, document, or return of report required by the Authority, the Adjudicating Officer may, by order, impose such

penalty as he thinks fit in accordance with the provisions of section 33A.

- (5) Every Adjudicating Officer shall have the powers of a civil court, for the purposes of—
 - (a) Sections 193 and 228 of the Indian Penal Code, 1860;
 - (b) Sections 345 and 346 of the Code of Criminal Procedure, 1973;
 - (c) Order XXI of the Code of Civil Procedure, 1908.

CHAPTER VIB

APPEALS

33C. Appeals to Appellate Tribunal.—

- (1) Any person aggrieved by an order passed by an Adjudicating Officer under sub-section (4) of section 33B, may prefer an appeal before the Appellate Tribunal.
- (2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date of receipt of the order appealed against and it shall be in such form and manner and shall be accompanied by such fee as may be prescribed.
- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the Adjudicating Officer.
- (5) Any appeal filed under sub-section (1) shall be dealt with by the Appellate Tribunal as expeditiously as possible and every endeavour shall be made by it to dispose of the appeal within six months from the date on which it is presented to it.
- (6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Adjudicating Officer, either on its own motion or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

33D. Procedure and powers of the Appellate Tribunal.—

The provisions of sections 14I to 14K (both inclusive), 16 and 17 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) shall *mutatis mutandis* apply to the Appellate Tribunal in the discharge of its functions under this Act, as they apply to it in the discharge of its functions under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997).

33E. Orders passed by Appellate Tribunal to be executable as a decree.—

- (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of a civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.
- (2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

33F. Penalty for willful failure to comply with orders of Appellate Tribunal.—

If any person willfully fails to comply with the order of the Appellate Tribunal, he shall be punishable with a fine which may extend to one lakh rupees, and in case of a second or subsequent offence with a fine which may extend to two lakh rupees, and in the case of continuing contravention with an additional fine which may extend to two lakh rupees for every day during which such default continues.

33G. Appeal to Supreme Court.—

- (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court only if it raises a substantial question of law.
- (2) No appeal shall lie against any decision or order made by the Appellate Tribunal which the parties have consented to.
- (3) Every appeal under this section shall be preferred within a period of forty-five days from the date of the decision or order appealed against.

33H. Recovery of penalty or compensation.—

- (1) For the purpose of this Act, the Authority shall, by an order in writing, appoint at least one officer or employee as a Recovery Officer who shall be empowered to seek the assistance of the local district administration while exercising the powers under this section.
- (2) Where any person fails to comply with— an order of the Adjudicating Officer imposing a penalty under the provisions of this Act, the Recovery Officer may recover from such person the aforesaid amount in any of the following ways, in descending order of priority, namely—
 - (a) attachment and sale of the person's movable property;

- (b) attachment of the person's bank accounts;
 - (c) attachment and sale of the person's immovable property;
 - (d) arrest and detention of the person in prison;
 - (e) appointing a receiver for the management of the person's movable and immovable properties.
- (3) For the purpose of such recovery, the provisions of section 220 to section 227, and sections 228A, 229 and 232, the Second and Third Schedules of the Income Tax Act, 1961 (43 of 1961) and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, shall apply with necessary modifications as if the said provisions and rules—
- (a) were the provisions of this Act; and
 - (b) referred to the amount due under this Act instead of to income tax under the Income Tax Act, 1961 (43 of 1961).
- (4) In this section, the movable or immovable property or monies held in a bank account shall include property or monies which meet all the following conditions—
- (a) property or monies transferred by the person without adequate consideration;
 - (b) such transfer is made:
 - (i) on or after the date on which the amount in the certificate drawn up under section 222 of the Income Tax Act, 1961 (43 of 1961) had become due; and
 - (ii) to the person's spouse, minor child, son's wife or son's minor child.
 - (c) such property or monies are held by, or stand in the name of, any of the persons referred to in sub-clause (b), including where they are so held or stand in the name of such persons after they have attained the age of majority.

33I. Civil Court not to have jurisdiction.—

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer appointed under this Act or the Appellate Tribunal is empowered, by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

10. Amendment of sections 38 and 39.— In sections 38 and 39 of the principal Act, for the words “imprisonment for a term which may extend to three years”, the

words “imprisonment for a term which may extend to ten years” shall be substituted.

11. Substitution of section 40.— In place of the current section 40 of the principal Act, the following section 40 shall be substituted, namely:—

“40. Penalty for unauthorised use by requesting entity.—

Whoever, being a requesting entity, fails to obtain the consent of an individual before collecting his identity information for the purposes of authentication in contravention of clause (a) of sub-section (2) of Section 8, shall be punishable with imprisonment which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees, or with both.”

12. Insertion of sections 41A, 41B, 41C, 41D.— After section 41 of the principal Act, the following sections shall be inserted, namely:—

“41A. Penalty for failure to obtain consent for authentication or offline verification.—

Whoever, being a requesting entity or an offline verification seeking entity, fails to obtain the consent of an individual before collecting his identity information for the purpose of authentication in contravention of clause (a) of sub-section (2) of Section 8, or necessary information for the purpose of offline verification in contravention of clause (a) of sub-section (2) of section 8A, shall be punishable with imprisonment which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees, or with both.

41B. Penalty for unauthorised use of core biometric information.—

Whoever uses core biometric information collected or created under this Act for any purpose other than generation of Aadhaar numbers and authentication under this Act, shall be punishable with imprisonment which shall not be less than three years but which may extend to ten years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to fifty lakh rupees, or with both.

41C. Penalty for unauthorised publication of Aadhaar number or photograph.—

Whoever wrongfully publishes, displays or posts publicly, Aadhaar numbers collected or created under this Act, or demographic information or photograph in respect of an Aadhaar number holder, except for the

purposes specified under this Act or regulations, shall be punishable with imprisonment which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees, or with both.”

41D. Penalty for offline verification-seeking entities.—

Whoever, being an offline verification-seeking entity, collects, stores or uses the Aadhaar number of an Aadhaar number holder or makes an Aadhaar number holder undergo authentication, unless mandated pursuant to any law enacted by Parliament, shall be punishable with imprisonment which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees, or with both.”

13. Amendment of section 42.— In section 42 of the principal Act, for the words “imprisonment for a term which may extend to one year”, the words “imprisonment for a term which may extend to three years” shall be substituted.

14. Amendment of section 53.— In section 53, in sub-section (2), —

(1) after clause (d), the following clauses shall be added, namely:—

“(da) the process for search and seizure under sub-section (11) of section 23C;”

(2) In section 53, in sub-section (2), after clause (g), the following clauses shall be added, namely:—

“(ga) the manner of appointment of an adjudicating officer under sub-section (1) of section 33B;”

“(gb) the form, manner, and fee for an appeal to be filed under sub-section (2) of section 33C.”

15. Amendment of section 54.— In section 54 of the principal Act, in sub-section (2),

(1) after clause (a), the following clauses shall be added, namely :—

“(aa) the manner of generating an alias of Aadhaar under clause (a) of section 2;”

“(ab) the entities or group of entities in the Aadhaar ecosystem under clause (ma) of section 2;”

“(ac) the modes of offline verification of Aadhaar number under clause (pa) of section 2;”

(2) after clause (f), the following clauses shall be added, namely :—

“(fa) the classification of requesting entities under sub-section (1B) of section 8;”

“(fb) the technical reasons necessitating the specification of alternate and viable means of identification under clause (c) of sub-section (2) of Section 8;”

“(fc) the manner of obtaining consent under clause (a) of sub-section (2) of section 8A;”

“(fd) the manner of providing information to the individual undergoing offline verification under clause sub-section (3) of section 8A;”

“(fd) the obligations of offline verification-seeking entities under clause (c) of sub-section (4) of section 8A;”

(3) after clause (u), the following clauses shall be added, namely :—

“(ua) the purposes for which Aadhaar number, demographic information or photograph collected may be published, displayed or posted publicly under sub-section (4) of Section 29;”

16. Amendment of section 57.— In the proviso to section 57 of the principal Act, after the words “under section 8” the following words and numbers shall be inserted namely :—

“, section 8A”