

SC Judgement on Aadhaar: Implication for Fin Tech Sector

Abhishek¹

The Financial Technology Industry in India was on a definite rise, with the backing of the quick e-KYC authentication procedures provided by UIDAI. With around 6 crore e-KYC transactions taking place since its inception, e-KYC had become a popular method of authentication. But, there seems to be a hitch in the trajectory of Fin Tech players.

The Supreme Court seems to have thrown a spanner into their workings- In an epochal judgement, the Supreme Court – by striking down major parts of Section 57 of the Aadhar Act has declared it unconstitutional for any corporate body or person to avail Aadhar Authentication services as it felt that this would allow the commercial exploitation of an individual’s biometric and demographic information by private entities. Undoubtedly, this is a massive blow for the Fin Tech industry, and it needs to reform, and rethink of alternative ways along with the main stakeholder UIDAI to make use of the Aadhar platform to continue its rapid pace of growth.

But clearly, the Supreme Court’s apprehensions of widespread linking and e-KYC services provided by Aadhar has rightly informed the government, and respective stakeholders that threatening customers, coercing them and mandatorily forcing them to link Aadhar definitely violates the person’s right to privacy, and is not to be encouraged in any form whatsoever. With the Aadhaar case disallowing the use of Aadhaar based authentication of individuals by private companies, using OTP based e-KYC ceases to be an option for these fin-tech companies. Under the current regime, this removes the possibility of a non-face-to-face customer identification process, consequently increasing the time and cost of enlisting customers. So UIDAI, and industry will have to thrash out a new enabling framework that is as inclusive as the one in the past, and capable of spreading quickly, but respects an individual’s privacy as well.

Let us see who these measures effect. Persons receiving government subsidies will still link their bank accounts with Aadhar for receiving subsidies and can also open bank accounts using e-KYC as long as they declare the bank account will be used for receiving government subsidies. Aadhar can still be used in its physical form for verification purposes for non-beneficiaries, but what are the ways to ensure that we continue to retain the benefits of Aadhar under the current framework for other platforms using efficient mechanisms?

One solution provided by UIDAI may help in ensuring that we continue to take advantage of Aadhar’s quick authentication mechanism- QR codes. QR codes can be a very effective offline authentication mechanism, as service providers can use them to authenticate basic demographic details, and customers can be assured of hassle-free secure authentication by an inbuilt app leveraging the UIDAI platform that deciphers the QR Code. In addition, the QR code authentication method also ensures that biometric details are not being shared and sharing of data is completely voluntary. But, even this mechanism requires face to face interface.

Additionally, to ensure that we continue to have a non-face to face solution, UIDAI should look to build a common technology platform on lines similar to Virtual Aadhar- masking the original

¹ Pursuing Masters at Madras School of Economics

Aadhar number to provide only the basic demographic details to a private player in a manner that it can take place online. Another possible non-face to face solution could be a common platform set up by the UIDAI where the customer can set up a request to confirm his demographic details, excluding biometrics, to a registered Financial Technology player. A private entity only requires basic demographic details while registration, and as this data is not stored it should not be a privacy concern.

Although the authentication issue is sorted using this mechanism, as Aadhar related data cannot be stored, eliminating duplication will certainly be a challenge for private intermediaries. Credit information bureaus had earlier planned on relying on the Aadhar mechanism to identify and eliminate duplication of borrowers, thereby limiting credit extended. But, it remains a challenge to understand how they will implement this under the current framework- a nifty mechanism for them will be to ask customers to give their PAN details, and store credit transactions of each customer in a common database that can be cross referenced by all credit agencies, and as the PAN card is likely to be unique as it is linked to Aadhar, the chance of duplication is minimized to only cases of forgery.

Lastly, a highly debatable topic is of a legislative solution to the framework. Certain sections claim a new law could be passed altogether clearly laying down the specifications for the use of Aadhar by private players given that Aadhar Act is a money bill and has limited remit. On the other hand, a section of lawyers claim that any law extending Aadhar to private players would be tantamount to breaching the Supreme Court judgement that has clearly limited its use by private players. Given differing opinions, a legislative solution will be highly controversial as it requires both considerable political capital, and well thought out contours especially with context to the privacy of a person. Policymakers will need to be very careful while weighing down their options for such a law as it could also be the death knell for private sector participation, if it fails to be well formulated, and accepted by parliament.

Due to Supreme Court's judgement the Financial Technology industry will definitely have to rethink its business model and face increased customer acquisition costs under the prevailing environment, and higher costs of doing business, possibly at the expense of low volume customers at the bottom of the pyramid. For the short term, increasingly relying on 3rd Party verification like PAN Cards, or banking statements could provide succor, but in the longer run all stakeholders will need to formulate systems that efficiently provide authentication, but do not infringe on the fundamental rights and liberties of customers. The Supreme Court was forced to intervene in this matter due to limited understanding of basic tenets of the Constitution, and lack of foresight of lawmakers. Lawmakers need to get their act together and ensure that subject to privacy concerns, Aadhar's desired objectives of uniqueness and inclusiveness reach the masses for their greater good.