

Unique Question: Will We Have a Life After Aadhaar?

The Needle's Eye



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If you are of a certain age, and not one of the millennial Indians who will turn 18 this year and be eligible to vote, you might remember watching *The Net*, the 1995 thriller starring Sandra Bullock as a cybersecurity expert who gets into a whole lot of trouble with cyberterrorists, who erase her identity and cut her off from her home, job and credit cards.

Or you might remember the 1998 movie *Enemy of the State*, in which Will Smith plays a lawyer who inadvertently gets caught up in a US National Security Agency (NSA) plot and has his own personal life wiped clean, his bank accounts frozen, and his marriage nearly wrecked.

Both movies portrayed the Internet at its most sinister. But that was two decades ago. The appetite and the ability of the state to monitor every citizen's life down to her minutest activity has enormously expanded since then. In 2007, the NSA launched a program called PRISM, which gathered and analysed Internet traffic from around the world, ostensibly aimed at thwarting terrorist attacks but also encompassing US citizens.

Both PRISM and another NSA program called Boundless Informant were exposed by Edward Snowden in 2013.

The noise and fury over India's unique identity number programme Aadhaar is growing by the day. On January 17, a five-judge constitution bench of the Supreme Court will begin hearings on the pleas against Aadhaar in the petitions clubbed under Justice KS Puttaswamy (Retd) vs Union of India. Last August, these petitions triggered a review by a larger nine-judge constitution bench of the concept of privacy.

In six historic, erudite, well-reasoned and unanimous opinions spanning 547 pages, the SC overturned its own past rulings and unequivocally declared that "The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution."

The privacy judgment makes for fascinating reading. It ranges across Indian and foreign constitutional jurisprudence, as well as international privacy laws, while also examining the meaning and implications of the global information-based society we live in. The author of the substantive portion of the judgment, Justice DY Chandrachud, explains the essential nature of privacy.

"Privacy postulates the reservation of a private space for the individual, described as the right to be let alone," Justice Chandrachud

writes. "The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual..."

One would hope that by spelling out its ring-fencing protection for the individual's privacy, the SC has presaged its ruling in the Aadhaar case. But that is not a given.

The Justice BN Srikrishna committee, set up last July to draft a data protection and privacy bill, has proposed setting up a data-protection authority as well as audits and penalties. But I'm not holding my breath: We can add layer upon layer of regulations, it's the leaky implementation that defeats



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ordinary mortals.

I am not blindly opposed to a unique (and uniform) identity system for all residents in India. I have lived and worked in several countries where important transactions and activities were identifiable with my unique number. The same ID number appeared on my bank statements, driving licence, income-tax returns and residence permits.

But that is where it stopped. In India, we already have an untidy array of identities: our voter cards, our Permanent Account Numbers, our driving licences, and our government-employee and armed forces ID cards. Prime Minister Narendra Modi, after first passionately opposing Aadhaar when he was Gujarat chief minister, has now mandated that Aadhaar must be linked to everything, from our PAN cards to our bank accounts, investments, property transactions, mobile phones and much else. We have been

bombarded with coercive and threatening reminders to do so or be left penniless and sans communication. Although the deadline for compliance has been extended to March 31, the SC's Aadhaar ruling may come too late for the recalcitrant.

Aadhaar was originally designed as a voluntary enrolment for residents of India. Section 7 of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act of 2016 says verification of an individual's identity will be necessary for transfers from the Consolidated Fund of India (i.e. the state exchequer). In reality, the demand for Aadhaar is now being used by growing numbers of service providers.

Aadhaar was aimed at eliminating corruption in subsidies and enabling direct transfers to beneficiaries. In practice, its biometric (fingerprint and iris) verification has been found not to be fool-proof. As *The Tribune* reporter proved last week, unscrupulous agents are already peddling access to the database of names, addresses, email IDs and so on (though not so far of biometrics). How much longer will it take for our most intimate details to fall into the paws of those who do not give a fig about our lives?

Much of the hand-wringing about Aadhaar has come from people who will not actually need to use Aadhaar regularly. The system's weaknesses will hit the poorest the most. Already, from outrages like refusals to issue death certificates to refusing a retired serviceman his pension to blocking a young man from obtaining a 'hall ticket' for an important examination, Aadhaar is proving exclusionary for the people it was meant to benefit the most.

Lawyer Arvind Datar, who is appearing for one of the petitioners in the SC, cites examples like an elderly man near Manipal who could not authenticate his ration card because the ridges on his fingerprints had changed with age. This man had a fistful of other identifications, but was forced to travel to another town for iris authentication. "This is extreme bullying," says Datar.

The SC is not likely to abolish the programme: more than 1.19 billion Aadhaars have been generated, and over 15 billion transactions already authenticated using Aadhaar. The big question is: what will all our data be used for?

In *The Net*, Sandra Bullock's character is more exposed because she does everything on her computer, including ordering pizza online, and is barely known to her neighbours. In a tongue-in-cheek 2013 review, *Wired* magazine wrote the main discovery was that "our entire lives are recorded on computers, from our work to our taste in movies. In 1995, this was a shocking problem that people had to learn to deal with. In 2013, it's basically how Facebook works."

In a 1934 interview, Mahatma Gandhi said: "I look upon an increase of the power of the State with the greatest fear; because although while apparently doing good by minimizing exploitation, it does the greatest harm to mankind by destroying individuality, which lies at the root of all progress."