

CONTENT MANAGEMENT: ON AADHAAR-SOCIAL MEDIA LINKAGE

Relevant for: Developmental Issues | Topic: E-governance - applications, models, successes, limitations, and potential incl. Aadhaar & Digital power

The submissions in the Supreme Court on behalf of the Tamil Nadu government in support of linking social media profiles of registered users with their Aadhaar numbers are not well-founded in the law as it now stands. It is noteworthy that a Division Bench of the Madras High Court, which is hearing two writ petitions on this matter, did not see merit in the idea. The Bench had during the hearings observed that following the Supreme Court's decision in the Aadhaar case, the unique 12-digit-number can be used only for subsidies and welfare benefits; and pointed out that Section 57 of the Aadhaar Act has been struck down to the extent that it authorised body corporate and individuals to use the number to establish someone's identity. The petitioners had approached the High Court with such a prayer on the ground that many people got away with inflammatory posts on social media because of the lack of traceability. However, the Bench has since then expanded the writ petitions' scope to examine the adequacy of the legal framework on cybercrimes and the responsibilities of intermediaries who provide telecommunication and online services. The State government is batting for better assistance from intermediaries and social media companies to trace offending messages. As two other High Courts are also hearing similar matters, Facebook, WhatsApp and Twitter have sought a transfer of all these cases to the apex court so that there are no conflicting judgments.

While the Supreme Court will decide the question of transferring these cases to itself, the Madras High Court will continue its hearing. A word of caution. The Union Ministry of Electronics and Information Technology notified new draft rules for intermediaries last year and called for public comments. The proposed rules envisage new obligations for service providers. One of the changes proposed is that intermediaries should help identify originators of offensive content. This has created some understandable misgivings at a time when there is widespread suspicion about online surveillance. Technology companies that use end-to-end encryption have pleaded inability to open a back door for identifying originators. The issue concerns the global policy of these companies as well as the wider public interest of millions of registered users. After the *K.S. Puttaswamy* decision (2017) in the 'privacy' case, any state intervention in the regulation of online content has to pass the test of proportionality laid down by the court. It will be desirable if courts do not impart needless urgency to the process of introducing a balanced regulatory regime to curb content that promotes undesirable activities such as child pornography, sectarian conflict and mob violence, without affecting individual privacy. The balance must be right between protecting privacy and allowing the state leeway to curb crime.

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