

'Likely misuse of Aadhaar no ground'

Justice Chandrachud said the apex court had already acknowledged the availability of personal data in the public domain in its privacy judgment. Even consent given to private entities is only “notionally consensual”, Justice Chandrachud observed. It was thus that the court had called for a strong data protection regime in order to arm citizens against data breaches by both the state and private entities.

Referring to the government’s decision to introduce Aadhaar-bank account linkage through the Prevention of Money Laundering Act (PMLA), Justice Chandrachud drew Mr. Sibal’s attention to Section 57 of the Aadhaar Act, 2016 to show that the Aadhaar number could be used to “establish the identity of an individual for any purpose, whether by the state or any body corporate or person, pursuant to any law for the time being in force.”

“Can’t the state seek Aadhaar under the PMLA or any other Act, provided the request seeks to achieve the objective of the particular Act?” Justice Chandrachud asked.

“So how will just an Aadhaar number tell you if a person is a terrorist or a money launderer?” Mr. Sibal countered.

Justice Sikri agreed, saying the presumption that the state tries to introduce is that “anybody can be a money launderer and hence you first show your Aadhaar.”

“Yes. Everybody is a money launderer until she shows her Aadhaar card,” Mr. Sibal said.

He argued that at the heart of the Aadhaar issue is the “right to choice”, a fundamental right under Article 21 of the Constitution.

“But the state tells me that in order to get a certain service I am entitled to, I have to get Aadhaar. The state says I have no other choice. If I am a Scheduled Caste or Scheduled Tribe community member, my caste certificate or my ration card or BPL card will not establish my identity. Only an Aadhaar card will do. The state can regulate me, but it cannot deny me,” he submitted. “My status gives me the right to my entitlement. My identity has nothing to do with my entitlement. So how can there be a condition in law to deny me my rightful entitlement because my identity cannot be established except by Aadhaar? Is this procedurally and substantively reasonable,” Mr. Sibal asked.

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