

Dialling The Wrong Number

Shortly after the Supreme Court declared privacy to be a fundamental right, most cellphone users received a message from their telecom operators which seemed to negate it. The message threatened disconnection of cellphone connections if a user failed to link their [Aadhaar](#). These messages and calls have only increased in frequency. This re-verification requires a user to visit a telecom service centre, undergo biometric authentication by putting their fingerprints on an authentication device, and hope that the details in the Aadhaar database match with their cellular connection.

This exercise has led to anxiety, irritation and even anger for a large number of people. These include those who still may not have enrolled for Aadhaar, some willing to link it due to privacy concerns, another set whose biometrics are rejected or details do not match and much more who are tired of standing in lines to link their Aadhaar to another essential service. To their chagrin, the government has stated that the *raison d'etre* is a direction by the Supreme Court. Such justification is at best suspect and at worst damages the institutional credibility of the Court.

The Centre is the custodian of the airwaves and having the power to issue licences has permitted private companies to provide mobile voice and data services. Telecom operators are governed by regulations including those for subscriber verification by the Department of Telecommunications (DOT). Pre-existing norms required cellular users to not only be required to furnish a valid government identification for availing mobile services but also required some form of additional verification. However, by a series of circulars issued by the DOT from March 2017, telecom operators were directed to re-verify existing users by Aadhaar authentication by February 28, 2018. The circulars cited stray sentences from a dismissal order in February of a public interest petition in the Supreme Court titled as *Lokniti Foundation v. the Union of India*.

For a variety of reasons, this does not amount to a "direction" to the government as claimed in the DOT circular. First, the basis of the order and the references to Aadhaar emerges from a counter-affidavit filed by the government in the Lokniti case. Rather than volunteering information on the pre-existing court orders that limit the Aadhaar programme to a voluntary service restricted to specific services, the government instead advocates its use for re-verification. Second, the SC nowhere uses the phrase, "direction" which is a term of art contained in court orders to impart a binding force. While the lexicology of Aadhaar may now define "voluntarily" to mean as "mandatory", the lex still recognises a distinction between an "observation" and a "direction".

The meaning of the order becomes clear in the penultimate paragraph when the Court states that, "we dispose of the same with the hope and expectation, that the undertaking given by this Court, will be taken seriously, and will be given effect to, as soon as possible.". Hence, the purported court order requiring re-verification by Aadhaar, on closer examination, contains no such direction but expressions of good faith in the measures suggested by the government. Again, this is done without reference to any of the Aadhaar cases as the government fails to inform the Court on the pre-existing orders which limit the scope and use of Aadhaar.

Viewed independently of this non-existent court direction, the DOT circulars contain no legal force or grounding in law. They do not cite or reason any statutory or regulatory support. They are crouched behind a non-existent SC directive. This becomes apparent as the circular, states, "all licensees shall intimate their existing subscribers through advertisement in print/electronic media as well as SMS about the orders of Hon'ble Supreme Court for re-verification." It is peculiar that the linking deadline of February 28, 2018 is not mentioned in any of these communications. Irrespective of legality or constitutional propriety, an aggressive push continues to instil fear in people that their mobile phone connections will be disconnected due to the Supreme Court. This

becomes especially problematic given that the Supreme Court has indicated that the pending litigation on Aadhaar will be finally heard in November.

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