

A FINE BALANCE

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A five-member Constitution bench of the Supreme Court led by Chief Justice Dipak Misra has delivered a sensitive ruling on the constitutionality of [Aadhaar](#), which upholds both the government's need to deliver targeted welfare for empowerment and rapid development, and the privacy concerns of citizens. The court has reverted Aadhaar back to an instrument of welfare and closed off the possibility of expanding it to feed the rapacity of data miners, or to satisfy the unhealthy curiosity of governments about the private affairs of citizens. The Court has done the due diligence that should have been performed by Parliament. The government, which had rushed the Aadhaar Act through as a money bill, laid itself open to restraint by its own stratagem. In essence, the court has ruled that Aadhaar will be required to avail of services which draw upon the Consolidated Fund of India, but cannot be made mandatory for any other purpose. In all other cases, prior ID documents which were accepted by the Unique Identification Authority of India (UIDAI) will remain acceptable. The sole exceptions to the principle are direct taxation, for which Aadhaar must be linked to PAN cards, and matters of national interest, in pursuit of which data can be shared, but safeguards have been tightened. Commercial entities cannot collect or access Aadhaar data, and metadata must be stripped from transactions in which Aadhaar is quoted.

That is the substance of the majority ruling read by Justice A K Sikri, but the dissenting note filed by Justice D Y Chandrachud is of equal importance. Dissent is generally for future jurists to ponder but in this case, it also serves an immediate purpose. Chandrachud has reminded the government that deviation from legislative propriety invites the wrath of the law. He had sought the annulling of the Aadhaar legislation as wholly unconstitutional, since it should not have been piloted as a money bill. This robbed the Rajya Sabha of decisive agency, and did not comply with the definition of a money bill under Article 110 of the Constitution. Given that Aadhaar has a functioning ecosystem developed at public expense, razing it entirely on account of weak foundations may have been self-defeating. But the dissenting note serves as a powerful warning to governments which may seek to short-circuit Parliament in the future. And it ensures that a question mark will hang over the Aadhaar Act until it is re-examined and amended, following a robust discussion, by Parliament.

While maintaining the unique value of Aadhaar for authentication, the court has recognised every concern raised about its ecosystem, and sifted the grain from the chaff. No room remains now for childish Twitter challenges and raucously politicised TV debates, which had confused the picture beyond recognition. The debate about Aadhaar security has focused on an irrelevant question: Has UIDAI's silo been breached? The government had responded with the preposterous argument that it was stored behind thick walls, as if it were a jewel in the Tower of London. It sidestepped the uncomfortable fact that data had been leaked repeatedly by government agencies which use Aadhaar numbers, and commercial entities which are part of the ecosystem had become a security risk. By disbaring private or commercial entities like banks and service providers from collecting Aadhaar data, the court has reassured the public.

However, much remains to be clarified. What will be the fate of data which citizens have already shared with private entities? Will they have to file suit individually to have it permanently deleted? Besides, it may be recalled that while the legal validity of Aadhaar remained undecided by the courts, it was made indispensable in practice by both governments and private agencies

eager to collect data. This month, the Delhi government sought the Aadhaar data of the parents of schoolchildren, correlated with their educational qualifications. Now, it is no longer mandatory for school admission or tests like NEET. Aadhaar had also become mandatory for property transactions, and it had become impossible to open a bank account, apply for a credit card, or get a mobile connection without it. Such coercive imposition of Aadhaar was de facto rather than de jure, but it flourished nevertheless. The danger of coercion in such grey areas must be flagged for future reference.

Aadhaar earned much bad will when the poor and marginalised, for whose benefit it was created, were denied basic rights on authentication failure. Deaths have resulted from the violation of the right to food, and activists have complained that access to MGNREGA work was reduced. These came to national attention because Aadhaar had impacted the middle and upper classes, and now the Court has directed that no deserving person can be denied. But now that the concerns of the upper echelons are addressed, their attention must not be withdrawn from the effects of Aadhaar on the poor. They, too, have the right to privacy, which the Aadhaar ecosystem must honour in operation.

This was the second-longest hearing in the Supreme Court, after the Kesavananda Bharati case which established the doctrine of the basic structure. Apart from the many practical steps taken, the broad principles which emerge are that an intrusive, coercive government is not welcome, that the right to privacy and sovereignty over personal data cannot be taken lightly, that Aadhaar is a marker of identity and dignity for the marginalised, and that citizens cannot be viewed with suspicion by default. These will exert a powerful cautionary influence beyond the limited question of Aadhaar.

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