

Positive SC Order On PAN-Aadhaar Link Means Government Has Won Half The Battle

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No court can, when more than one billion people have parted with their biometrics without much ado, ignore the larger gains of Aadhaar while correctly protecting privacy.

Aadhaar, the unique biometric ID, won an important victory last week when a two-judge Supreme Court bench comprising justices A K Sikri and Ashok Bhushan upheld the validity of section 139AA of the Income Tax Act, which has made it mandatory for PAN cardholders to quote their Aadhaar numbers while filing returns.

While allowing those filing returns this year to do so without quoting their Aadhaar numbers, from next year this can become compulsory. This judgment will be strengthened if the constitutional bench that is looking at the broader issues around Aadhaar – especially the right to privacy and whether the collection of biometrics violates the provisions of article 21 – upholds the broad principle of making Aadhaar compulsory for certain government initiatives.

Article 21 deals with the protection of life and liberty, and says that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” Aadhaar’s critics claim that by collecting a person’s biometrics – fingerprints and iris-prints – the government is intruding into an area which is essentially private and hence contravenes article 21’s guarantees.

However, the Sikri-Bhushan judgment, while skirting the article 21 issue, makes it very plain that government does have the legislative competence to frame laws for Aadhaar even though the Supreme Court has said that Aadhaar will be voluntary for those seeking benefits from the state.

The judgment said that the purpose of Aadhaar when used for delivering benefits to the poor is entirely different from the purpose of Aadhaar when intended to detect tax evasion under the Income Tax Act. *The Indian Express* quotes from the judgment thus: “For achieving the said purpose, viz, to curb black money, money laundering and tax evasion, etc, if Parliament chooses to make the provision mandatory under the Income Tax Act, the competence of Parliament cannot be questioned on the ground that it is impermissible only because under Aadhaar Act, the provision is directory in nature. It is the prerogative of Parliament to make a particular provision directory in one statute and mandatory/compulsory in other.”

This actually lays the ground for the Supreme Court to enable Aadhaar to be mandatory even in the case of subsidies and welfare delivery, for if Aadhaar is fine for filing returns, why is it wrong for claiming cash benefits from government?

The larger question on which the Supreme Court needs to decide is not whether Aadhaar can be made compulsory, but under what circumstances. The question the constitution bench needs to answer is how much can government intrude into personal spaces, and what kind of safeguards it can provide to protect sensitive citizen data. Logically, the Supreme Court can uphold the validity of Aadhaar and the collection of biometrics since this is already being done in many cases, including the collection of fingerprints for registration or property or

legal documents. If biometrics can be compulsory for some purposes, they can be equally valid for other purposes.

Not only that, but as Nandan Nilekani, the creator of Aadhaar, pointed out, **your smartphone is a larger risk to privacy than Aadhaar**. With many smartphones now using fingerprint recognition technology to lock and unlock phones, private sector companies are already collecting and storing your fingerprints with no safeguards. To hold that government must not collect biometrics or private data is to deny to accountable governments what people easily give to unaccountable corporations like Google and Facebook, not to speak of loads of Chinese smartphone companies that now dominate the middle-range gadgets market.

Your telecom operator can know where you are now; and Google can know the same and also a lot of your personal choices; Facebook is privy to your most private thoughts, especially if you post them on the site. Aadhaar is not intruding into your privacy any more than Google, Facebook, your phone company or gadget seller do.

If you can store your fingerprints in a gadget sold by a Chinese company, which can technically be stored on servers in China, why deny the same right to your own government? What you need is privacy protection, and this applies not only to Aadhaar, but the entire range of sensitive data collected by private sector tech giants, not to speak of banks, telecom companies, and even your doctor or insurance company.

The Sikri-Bhushan judgement thus lays the ground for giving Aadhaar reasonable validity, and not for its scrapping. The chances are the constitution bench looking at the validity of Aadhaar will focus on how the privacy of data can be protected, and where it needs to be purely voluntary.

No court can, when more than one billion people have parted with their biometrics without much ado, ignore the larger gains of Aadhaar while correctly protecting privacy.