

India' Digital Identity Scheme Passes Supreme Court Challenge

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Summary

The Indian government's ambitious scheme of giving a unique biometric identity number – Aadhaar – to all residents of the country was challenged by privacy advocates on the ground that the increasing requirement to furnish the Aadhaar number to access public and even private services violated their fundamental right to privacy. The Supreme Court ruled that Aadhaar was constitutional but, in a clear acknowledgement of privacy concerns, imposed strict limits on its use. How the government will respond to the court's judgement is as yet uncertain.

On 26 September 2018, in a landmark judgement, the Indian Supreme Court upheld the constitutional validity of Aadhaar, the government's ambitious scheme of giving a unique biometric identity number to all residents of the country.

The court was ruling on a challenge by privacy advocates who contended that the mandatory requirement of furnishing the Aadhaar number to access virtually all government services and even services provided by private entities like banks violated their fundamental right to privacy. In a clear acknowledgement of this concern, the Court, even as it held Aadhaar to be constitutional, imposed strict limits on its use. In particular, Aadhaar can be mandatory only to access the government's welfare benefits and to file tax returns. For all other purposes, it would be optional. Besides, private companies have been barred from accessing Aadhaar.

Aadhaar, by far the largest, and possibly the most sophisticated, digital identity scheme ever attempted, was launched in 2009 by the previous United Progressive Alliance government, mainly to clean up the beneficiary rolls under the government's extensive welfare schemes. The malady was familiar. Millions of eligible beneficiaries were left out even as huge numbers of ineligible people were palming off the government's largesse. On this count alone, Aadhaar should be reckoned a resounding success. Anecdotal evidence suggests that the government has already saved over US\$15 billion (S\$25.6 billion) by eliminating ghost cards and middlemen, more than recouping the nearly US\$9 billion (S\$12.4 billion) it spent on the Aadhaar project.

Aadhaar's impact extended beyond plugging corruption and leakage in government transfers. In a country where nearly half the people did not even have a birth certificate and only less than five per cent paid income tax, a unique Aadhaar number that established their identity empowered the poor in a dramatic way. They could now fend off exploitation by unscrupulous middlemen and venal government officials, open a bank account and be recognised in government schools and hospitals. Notably, [the World Bank lauded Aadhaar](#) for reducing the gender gap in access to financial services.

Indian Prime Minister Narendra Modi, in opposition when Aadhaar was launched, riled against it, but once in office his government not only eagerly embraced the scheme, but also

gradually extended its mandate. On his watch, enrolment was rolled out vigorously with [1.2 billion of the country's 1.3 billion population covered](#) under the scheme. Simultaneously, its scope was widened with Aadhaar being made compulsory to operate a bank account and to get a mobile phone connection on the argument that this was necessary to tackle tax evasion and terror threats. Even as that was seen as intrusive, what unnerved a variety of interest groups though was the mission creep – talk of government plans to extend Aadhaar linkage to get passports, school and college admissions and even train and flight reservations, and the increasing access allowed to many financial services and technology companies to use Aadhaar to authenticate new customers.

The opposition to the government's attempt to turn Aadhaar from being an enabling to an exclusionary tool was fierce and varied. Privacy campaigners worried about the government snooping into peoples' lives, civil liberty groups felt threatened by having to part with personal data to private entities such as banks and telecom companies, cyber security experts warned of potential disruption and havoc due to hacking, and the political opposition cried foul seeing this as a sinister plan by the government to build an Orwellian surveillance state. Although not explicitly argued, the current global concern about the use of big data echoed in the Aadhaar debate – just who owns the data and what gives an entity, public or private, the right to use that data without the individual's knowledge, much less consent?

Circumstances lent credence to the opposition's fears and concerns. [Several security breaches were reported over the last few years](#), including flaws in the Aadhaar app available on the Google Play Store, which allowed attackers to access the Aadhaar database while accessing demographic data. In response to a 'right to information' query, the Unique Identification Authority of India (UIDAI), the government agency that manages the Aadhaar project, admitted that the Aadhaar details of citizens were unwittingly disclosed on as many as 210 government websites. The Centre for Internet and Society pointed out that about 130 million Aadhaar numbers, along with other sensitive data, leaked from various government schemes, were available on the internet. The posting of the Aadhaar application form of an Indian cricket player on Twitter turned out to be a huge embarrassment for the UIDAI.

In what is a testimonial to the balance in the court judgement, virtually all parties to the battle claimed victory. The government saw it as a vindication of its use of Aadhaar to further public good, the opposition saw it as a rebuke to the government for its attempts to push the boundaries of state surveillance, while privacy activists celebrated the restraints imposed by the court on the use of Aadhaar.

How Aadhaar will unfold in the wake of the court judgement is unclear. Will the government take an aggressive stance and push for laws that will empower it to use Aadhaar for purposes beyond basic identity or will it accept the restraints imposed by the court and limit the use of Aadhaar? The challenge for the government is to navigate the huge grey area between the good and the bad.

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