

Unique distinction

The SC's clarification on the use of Aadhaar gives the government space for key reforms

The Supreme Court's oral observations on Monday regarding the use of Aadhaar numbers by the government are significant, for they alter the narrative and potential scope of the ambitious unique identification programme. While reiterating its position that no beneficiary of a welfare scheme shall be denied benefits due to her for want of an Aadhaar number, a Bench led by Chief Justice J.S. Khehar said the government is free to "press" for Aadhaar for 'non-welfare' transactions or activities. These include filing income tax returns, opening bank accounts or getting a mobile phone connection. This assumes significance as the government announced two such changes over the past week itself. First, it included amendments to the Finance Bill of 2017, now approved by the Lok Sabha, making Aadhaar mandatory for all applications for PAN (Permanent Account Number) cards and filing of income tax returns. Earlier, following the surge in bank deposits after the demonetisation of high-value currency notes, the Income Tax Department had already asked banks to ensure that all savings bank accounts are seeded with PAN details by the end of February. The only exemptions to this norm are the no-frills savings accounts such as those opened under the Pradhan Mantri Jan Dhan Yojana. Effectively, this means that all other new savings bank accounts will require an Aadhaar number. And last week the Department of Telecommunications directed all telecom service providers to re-verify the credentials of their nearly 100 crore subscribers through an Aadhaar-based, electronically authenticated Know Your Customer process within a year.

While the Supreme Court's observations do not amount to a judicial order, they dispel some of the ambiguity relating to the scope, even future, of Aadhaar. In its interim order in October 2015 the court made it clear that the Aadhaar scheme cannot be made mandatory till the matter is finally decided "one way or the other". But it has set the stage for the 12-digit Unique Identification (UID) numbers being used as the basic identity proof for all residents. As Finance Minister Arun Jaitley has pointed out, biometrics captured under the Aadhaar enrolment process will ensure no individual can hold more than one PAN card to evade tax dues. Those concerned about privacy may be right about the need for an effective law to ensure that private data aren't misused. But tagging this concern solely to the UID programme is short-sighted. In an age where data are stored in electronic form, it is possible to collate vast amounts of information from various databases ranging from applications for passports, driving licences, ration cards, and more. The apex court is yet to decide on whether Aadhaar violates the right to privacy. Meanwhile, savings from weeding out ghost beneficiaries have begun to pay off the investment on building the now 111-crore strong Aadhaar database. But the Centre must not stretch the leeway granted by the court.

If not Aadhaar, what?

No alternative suggested to curb leakages/evasion

Though Aadhaar-critics have stepped up their opposition to its mandatory usage in provision of various subsidies/benefits as well as in PAN, the Supreme Court (SC) has done well to ignore the latter. When the matter was brought up before the SC on Monday and the court reminded of its order that prohibited the use of Aadhaar except in certain welfare schemes, the bench observed that PAN was not a benefit. Given the large number of fake PANs used to avoid paying taxes, as finance minister Arun Jaitley had argued, linkage with Aadhaar will eliminate this—once there are no fake PANs, those buying gold/cars etc or using multiple bank accounts will be forced to use their genuine PANs, as a consequence of which the taxman will have complete details of their earnings/expenses.

Given the manner in which the SC has increased the number of schemes for which Aadhaar can be used, it would appear it is just a matter of time before all welfare spending can be covered. In August 2015, the SC had allowed Aadhaar to be used for PDS (food, kerosene) and LPG and, two months later, this was expanded to allow MGNREGA, pensions, Jan Dhan Yojana and EPFO. The problem, however, is that SC orders are ambiguous and that, in fact, are causing the kind of problems being witnessed today. While giving its order, the SC has said it will not be mandatory for citizens to obtain an Aadhaar card and having an Aadhaar number “cannot be made mandatory till the matter is finally decided by this Court one way or the other”. If Aadhaar is to be purely voluntary as the SC has said, why will citizens opt for it in even the schemes the apex court has approved, especially since they know no benefits can be denied to them if they don’t have an Aadhaar? It is not clear how, in the event, either the SC or the activists are expecting the government to stop the 30-50% leakages that appear to be the norm in most government schemes. Surely, maintaining the status quo cannot be the preferred alternative? And while the SC’s reluctance to make the scheme mandatory made sense when the coverage of Aadhaar was poor, that cannot apply when most of the country’s population has an Aadhaar number. While the apex court needs to address this issue of Aadhaar not being mandatory, it also needs to revisit its September 2013 order that said “it should not be given to any illegal immigrant”—since Aadhaar is not a citizenship paper, but is a record of identity, there is no way to stop even terrorists from getting an Aadhaar if they live in the country. As for the issue of privacy, though the Aadhaar Act seeks to prevent misuse of any biometric or other data collected, if this can be further strengthened through a privacy law, that is to be welcomed.