

## Summary of discussions on Oct 28, Nov 3 & Nov 8.

Talk by Usha Ramanathan on 13.10

Talk by Elizabeth Bernet on 25.10 (State of Aadhaar)

<http://stateofaadhaar.in/>

### Digital identity and threat to privacy: summary.

- Unrestricted surveillance of citizens/residents is undeniably a threat to civil liberty and democracy.
- 'Panopticon', 'disturbing balance of power between citizen and state', 'making the state opaque and citizens transparent' are indeed risks of digital identity and needs to be addressed.

However these concerns are too general and we need to make them more specific before any 'requirement analysis' is possible. (No system with unbounded specifications can ever be analysed!)

- De-dup is a crucial feature of a digital identity. A "voluntary" digital id is meaningless because it makes de-dup infructuous.
- During KYC with a digital id, one is disclosing no more information than she anyways would to obtain a service.

- The argument that a digital id is necessarily anti-poor (Usha R) is the same as "panopticon".
- A digital id and recording transactions with it projects a citizen into a data space. Any subsequent loss of privacy can only happen through the data pathway. So, the criticism that data protection is a narrow view of privacy protection (Reelika Khara) doesn't make much sense. All privacy loss in the context of digital id can only happen through the data pathway.
- Forcing people to register a digital id without legal sanction violates liberty.
- Fingerprints and iris scans are images, much like photographs, and are not part of one's body. Obtaining a fingerprint or iris scan are not bodily violations if photographs are not. The purpose of all are dedup. They differ only in efficacy of dedup, and not in principle.
- The use of biometrics is egalitarian (does not discriminate between illiterate and educated, or rich and poor). So cultural objections to biometrics (another cheap etc) are prejudices.

- Ultimately, the extent to which an individual should be transparent to the state, the limit of the proportion, the balance of power bet<sup>n</sup> the individual and the state has to be determined by a democratic process by passage of laws. | Laws determine limits of informational self-determination.
- Any use of a digital id not backed by a law has to be treated as a violation of a fundamental right to privacy.
- The state must establish compelling and legitimate state interest for every use of a digital identity.

<https://legal-dictionary.thefreedictionary.com/State+Interest>

<https://barandbench.com/legitimate-state-interest-test-aadhaar/>

- So, it boils down to

Is it possible to prevent all unauthorized use of digital id not backed by law, and to prevent data leaks that may lead to loss of privacy?

- of course the issues of correctness and efficiency of implementation, user education, grievance redressal, process error etc are crucial; also efficacy of biometric based and identity verification. But such a study is beyond the scope of the course. A study such as being attempted by Elizabeth Bennett is what is required.

Further reading:

- The privacy judgment : [http://supremecourtfindia.nic.in/pdf/LU/ALL%20WP\(C\)%20No.494%20of%202012%20Right%20to%20Privacy.pdf](http://supremecourtfindia.nic.in/pdf/LU/ALL%20WP(C)%20No.494%20of%202012%20Right%20to%20Privacy.pdf)
- Gautam Bhatia's 10 part : <https://indconlawphil.wordpress.com/2017/08/27/the-supreme-courts-right-to-privacy-judgment-i-foundations/>
- Analysis of the privacy judgment (also EPW) <http://www.epw.in/journal/2017/44/commentary/supreme-courts-right-privacy-judgment.html>
- Some other analysis of the privacy hearings:

<http://www.thehindu.com/opinion/op-ed/naming-a-right/article19504549.ece>

<http://lawandotherthings.com/2017/07/stray-thoughts-on-the-privacy-hearings/>

<http://indianexpress.com/article/technology/opinion-technology/sc-judgment-on-right-to-privacy-what-does-it-mean-for-data-privacy-aadhaar-4813046/>

<https://thewire.in/171787/aadhaar-act-constitutional-change/>

- Some implementation and policy issues:

<http://www.downtoearth.org.in/news/welfare-interrupted-58472>

<http://www.livemint.com/Home-Page/s22gUzxOULwQxqukfcBMiM/The-economics-of-Aadhaar.html>

<https://news.vice.com/story/indias-biometric-database-is-a-massive-achievement-and-a-dystopian-nightmare>

Some views of the instructor: <http://www.cse.iitd.ac.in/~suban/reports.html>

- Discussion topic for next week.

<https://blogs.scientificamerican.com/roots-of-unity/review-weapons-of-math-destruction/>

book available with the instructor.