



RAJEEV CHANDRASEKHAR
MEMBER OF PARLIAMENT
RAJYA SABHA

Member of Standing Committee on Defence
Member of Consultative Committee on Defence
Member of Central Advisory Committee for the National Cadet Corps
Co-Chairman, Vigilance & Monitoring Committee, Bangalore Urban District
Vice Chairman, National Military Memorial Management Trust, Bangalore

April 4, 2016

S,

I write to seek your consent under Rule 187 of the Rules of Procedure and Conduct of Business in the Council of States ('Rules') to raise a question involving a breach of privilege of the Council.

The Hon'ble Supreme Court of India has been considering a bunch of public interest litigations challenging the constitutionality and validity of Aadhaar. I have intervened in those matters as an Impleading Applicant and I am being heard in court. During the hearings in the Supreme Court, the Telecom Regulatory Authority of India (TRAI) through its counsel submitted that Aadhaar was necessary in order to avoid the issuance of mobile SIM cards to terrorists. TRAI's position before the Supreme Court was widely reported in the media, and I am attaching herewith various press articles in that regard.

I raised a Parliamentary Question No. 2287 on the subject 'Purchase of SIM Cards by terrorists', in which I specifically questioned the Government on: (a) whether it has taken cognizance of TRAI's submissions in the Supreme Court which suggested that terrorists are able to purchase SIM cards with ease due to absence of Aadhaar; (b) whether TRAI has provided any evidence or data in that regard and if so, the details thereof; and (c) the specific action taken by the Government to ensure that terrorists are not able to procure SIM cards, in light of TRAI's submissions.

The question was answered on the floor of the House by the Hon'ble Minister of Communications and Information Technology on 18th December, 2015. The response of the Hon'ble Minister to my question was simply that "*TRAI has not filed such an affidavit in the Supreme Court*".



My Parliamentary Question No. 2287 specifically related to TRAI's position and submissions in the Supreme Court and did not aver to any affidavit filed before the court. TRAI's submissions in court have been widely reported in the press. Further, I am also aware of such submissions given that I am an intervener in the public interest litigations that are pending consideration before the Hon'ble Supreme Court. I would like to point out that subsequent to the receipt of this answer, I had written to the Hon'ble Minister on this matter on the 28th of December 2015 (copy enclosed) which remains un-replied to.

The Hon'ble Minister's response to my Parliamentary Question is *prima facie* in contradiction with the facts. That apart, the Hon'ble Minister's response skirts the issue and constitutes *suppressio veri suggestio falsi*. In particular, his response constitutes suppression of truth which he is bound to disclose, and as a consequence thereof, renders his suggestion on the floor of the House false.

The issue that I have raised herein is restricted to a specific matter of recent occurrence and the matter requires the intervention of the Council. It therefore satisfies the conditions of admissibility under Rule 189 of the Rules.

I, therefore, request you to consider my right to raise this question of privilege and grant me consent under Rule 187; and leave to raise the question under Rule 190 of the Rules, and initiate such action as you deem appropriate in this regard.

Sincerely,


RAJEEV CHANDRASEKHAR

Shri M. Hamid Ansari
Hon'ble Chairman, Rajya Sabha
Parliament of India
New Delhi.

Encl :

1. Copy of my letter to Hon'ble Minister of Communications & IT dated 28 December, 2015



RAJEEV CHANDRASEKHAR
MEMBER OF PARLIAMENT
RAJYA SABHA

Member of Standing Committee on Defence
Member of Consultative Committee on Defence
Member of Central Advisory Committee for the National Cadet Corps
Co-Chairman, Vigilance & Monitoring Committee, Bangalore Urban District
Vice Chairman, National Military Memorial Management Trust, Bangalore

28th December 2015

Dear Ravi Shankar Ji,

I write to you with reference to the response received to my Parliamentary Question No. 2287 from your Ministry, on the subject "*Purchase of SIM cards by terrorists*" (copy enclosed).

The question, which was answered on 18th December 2015, made a pointed enquiry of the Ministry with regard to the Telecom Regulatory Authority of India's (TRAI) submission to the Hon'ble Supreme Court, that Aadhaar was necessary in order to avoid the issuance of SIM cards to terrorists. It also sought the details of the evidence held by TRAI to substantiate this claim.

The response of the Ministry to my question simply states that TRAI has "*not filed such an affidavit in the Hon'ble Supreme Court.*"

I am attaching herewith various Press articles that reported on TRAI's claims to the Hon'ble Supreme Court on the same, which contradict your Ministry's reply to my Parliamentary Question. I would like you to explain this at the earliest, because if this is an attempt to deliberately mislead me and/or the House, this amounts to serious breaches. If true, this could also be pursued by me as a matter of breach of privilege under the appropriate rules.

I am frankly shocked and surprised at the Ministry's response since I am a petitioner in the matter *Aruna Roy and Others v/s Union of India*. In a hearing on this matter held in October this year, TRAI had explicitly submitted that terrorists were able to procure sim cards easily as currently, *Aadhaar* enabled verification for SIM cards was not mandatory - as the attached articles also bear out. In the face of this, you will agree that your Ministry's response is wrong.

The issue that my Parliamentary Question was raising was the claim made by the TRAI and the need to question and challenge it. Regulators are expected to conduct themselves in the realm of facts, data and rationale, and not manufactured claims and rhetoric to further a cause, however important they believe the cause to be. The assertions made by the TRAI to the Court have significant implications on a legitimate debate and discussion on privacy and related matters.



I would request you to urgently clarify your Ministry's response and its contradiction with the facts, failing which I will bring this to the attention of the Government/House/Parliament through a breach of privilege motion, under appropriate rules of the Rajya Sabha.

I also take this opportunity to wish you and your family best wishes for the season and a happy New Year.

Sincerely,

RAJEEV CHANDRASEKHAR

Shri Ravi Shankar Prasad
Hon'ble Minister of Communications & IT
Government of India
New Delhi

Encl.:

- Copy of your Ministry's Response to my Parliamentary Question on "Purchase of Sim Cards by terrorists" dated 18 December, 2015
- Copies of press articles in Tribune, Telegraph and NDTV of October 2015, on TRAI's claims to the Hon'ble Supreme Court

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**GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY
DEPARTMENT OF TELECOMMUNICATIONS**

**RAJYA SABHA
UNSTARRED QUESTION NO. 2287
TO BE ANSWERED ON 18TH DECEMBER, 2015**

PURCHASE OF SIM CARDS BY TERRORISTS

2287. SHRI RAJEEV CHANDRASEKHAR:

Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

- (a) whether Government has taken cognisance of the TRAI's comments in the Supreme Court, which suggest that terrorists are able to purchase SIM cards with ease due to absence of Aadhaar;
- (b) whether TRAI has provided any evidence or data in this regard, if so, the details thereof; and
- (c) the specific action being taken by Government to ensure that terrorists are not able to get SIM cards, in light of the TRAI's submission?

ANSWER

**THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY
(SHRI RAVI SHANKAR PRASAD)**

- (a) Sir, Telecom Regulatory Authority of India has not filed such affidavit in Hon'ble Supreme Court.
- (b) & (c) Does not arise in view of (a) above.

The Tribune

VOICE OF THE PEOPLE

SC curbs on Aadhaar to continue; pleas referred to constitution bench

Published on: Oct 7 2015 6:29PM

Legal Correspondent

New Delhi, October 7

The Supreme Court restrictions on Aadhaar will continue as a three-member Bench today refused to go into the pleas by the Centre and its agencies for allowing voluntary use of the identification card for implementing welfare schemes other than public distribution system (PDS) and cooking gas (LPG) subsidy.

The Bench headed by Justice J Chelameswar had passed an interim order on August 11, 2015 on a batch of PILs against Aadhaar, restraining the use of the card to PDS and LPG. Subsequently, the Centre and the regulators for banking, insurance, stock market and telecom approached the SC seeking relaxation for effective implementation of all the schemes for the poor and the middle class.

Aadhaar would also help deal with black money and terrorism, while its non-use had stalled the implementation of schemes such as jobs under MNREGA, zero-balance banking facility under the Jan Dhan Yojana and for payment of pension at doorstep, they pleaded.

After hearing their arguments the entire day yesterday, the Bench had reserved its order for today.



Use of Aadhaar Card Hangs on Supreme Court Verdict Today

All India | Written by A Vaidyanathan | Updated: October 07, 2015 07:33 IST

NEW DELHI: Whether the Aadhaar card can be used for services like opening bank accounts and taking phone connections will be decided by the Supreme Court today.

The government's ambitious unique identity or UID programme has been challenged in court over privacy concerns since it uses biometric data like fingerprint and iris scans.

The top court has already ruled that Aadhaar card can be used only for availing subsidies under the public distribution system and purchasing kerosene and cooking gas and that, too, voluntarily.

The court has also referred a related debate over whether privacy is a fundamental right to a constitution bench.

After a slew of blows to the UID scheme, the Centre, Reserve Bank of India, stock market watchdog SEBI, telecom regulator TRAI, and a number of states moved the Supreme Court for extending the voluntary use of Aadhaar card to other services.

In a two-hour-long hearing on Tuesday, high drama unfolded in court with heated exchanges between Attorney General Mukul Rohatgi, representing the Centre, and challenged by lawyer Shyam Diwan.

The Attorney General argued that when people are prepared to forgo the right to privacy for availing a "larger benefit" why should court "stand in the way?"

Representing petitioners Justice KS Puttaswamy and an NGO, Nagarik Chetna Manch, lawyer Shyam Diwan argued that Right to Privacy, whether it is for the poor or the illiterate, is "sacrosanct and can't be compromised".

Mr Rohatgi claimed around Rs. 14,000 crore was saved by the government exchequer in one year by using the Aadhaar card and flushing out bogus beneficiaries for subsidies.

Petitioners opposing Aadhaar argued that since there was no law on forsaking privacy of citizens and the debate had been referred to a larger panel, this bench of three judges should not hear it.

“Countering this, the Attorney General said, “We don't know when the larger bench will be constituted. It may take few months and till such time, should citizens wait? This court opened its doors at 2 am for an individual, can the court shut for crores of people?”

TRAI asserted that since the mandatory use of the Aadhaar card had been stopped by the Supreme Court, it was now “easy” for terrorists to get mobile connections.

Once the hearing concluded, the Court said it will pass orders at 3:30 pm on Wednesday.

Story First Published: October 06, 2015 21:42 IST

The Telegraph

calcutta, india

Govt takes up cudgels for Aadhaar in court

Our Legal Correspondent

New Delhi, Oct. 6: The Narendra Modi government today asked the Supreme Court why it could not vacate an interim stay on linking grant of benefits to the Aadhaar card when it could sit at 2am to hear the mercy plea of Bombay blasts convict Yakub Memon.

Playing the "black money" and "terrorism" cards, the Centre pleaded before the bench of Justices J. Chelameshwar, S.A. Bobde and C. Nagappan to vacate the stay immediately instead of waiting for a constitution bench to decide on the validity of the scheme.

Attorney-general Mukul Rohatgi led the arguments for the government. The strong appeal for Aadhaar is an about-turn for Modi, who before becoming Prime Minister had described the flagship programme of UPA II as a "scam".

Additional solicitor-general Tushar Mehta, appearing for Sebi and Trai, told the court the Aadhaar card can help curb black money routed through the stock market and prevent terrorist activities.

On August 11, the bench had said a constitution bench would decide on the validity of the Aadhaar scheme, after a batch of petitioners appealed for it to be scrapped on the grounds that it impinged upon a citizen's privacy.

The court, which had earlier restrained the Centre and states from insisting on Aadhaar cards, also said until the constitution bench gave its verdict Aadhaar cards could be made mandatory for the limited purpose of extending PDS, kerosene and LPG benefits.

The petitioners have argued that since the matter has been referred to a constitution bench, it should be left to that bench to decide on vacating the stay. The constitution bench is yet to be set up.

Rohatgi said when the top court could hear an individual's case at 2am, there was no reason why it could not vacate the stay. The court said it would pass an order at 3.30pm tomorrow.

The attorney-general said so far 92 crore people have been covered under the voluntary scheme. # "No personal information is shared except the name and photographs."

Rohatgi demonstrated in court a handheld instrument being used by "Bank Correspondents" employed by banks to help people open accounts in remote rural areas. "The workers need only an Aadhaar card for linking their identity with the respective banks."

The scheme cannot be brushed away merely because some 20-odd people have expressed fears of possible misuse of the data, he argued.

Senior counsel K.K. Venugopal, appearing for the Centre for Civil Society, supporting the scheme, said that right of privacy includes the right to waive the privacy.

But Justice Bobde said: "Lot of illiterate people do not know that they are parting with personal information. You may do it if the consent is informed. Just because somebody is poor and starving, it does not mean he does not have right to privacy."

Senior counsel Shyam Divan, appearing for the main petitioner Justice K. Puttaswamy Gowda, said: "You are collecting fingerprints and iris scan from millions of people without your (government) representative being present at the site. The data is collected by French, US and other foreign companies, which can go for the use of the CIA and FBI...."

Another senior counsel, Meenakshi Arora, appearing for another petitioner, said: "We have demonstrated to them (Aadhaar authorities) that certain adhesive like Fevicol can be used to take the fingerprints of one individual and use it to modify the fingerprints of another. The iris scan is also not foolproof...."