

OFFICE OF RAJEEV CHANDRASEKHAR MEMBER OF PARLIAMENT

PRESS STATEMENT

FOR IMMEDIATE RELEASE

“I AM CONFIDENT THAT THE VERDICT WILL CLEARLY DEFINE DATA FIDUCIARY AND DATA PRINCIPAL RELATIONSHIP AND I HOPE THAT JUSTICE SRIKRISHNA COMMITTEE’S CONCLUSION ABOUT OWNERSHIP OF DATA REMAINING VESTED WITH THE INDIVIDUALS/ DATA PRINCIPAL WILL BE REITERATED BY SUPREME COURT. THAT WILL LEAD TO THE DEVELOPMENT OF A CULTURE WHERE ACCOUNTABILITY AND RESPONSIBILITY OF THE DATA FIDUCIARY/STATE WILL BE GIVEN PRIME IMPORTANCE”: MP RAJEEV CHANDRASEKHAR

New Delhi, 25th September 2018: I have written, spoken extensively about and legally fought for a framework of legal rights for consumers and citizens – a critical issue as Technology transforms and disrupts our lives, business and relationship between citizen and Govt.

I have been arguing and fighting for Digital consumer rights from some years ago – anticipating the situation that we find ourselves as a nation today of hundreds of millions of our citizens and businesses coming online. We are transforming into one of the world’s largest digital/Data economies. I have taken my fights and arguments into and outside Parliament, including petitioning the Supreme court in a range of related issues like Sec66A, Aadhaar and Privacy as a Fundamental Right.

This effort is part of what I believe is a much needed framework for consumer rights – a Digital Magna Carta – a basket of legal consumer rights that include Data protection, Quality of service, Net neutrality, Free and Fair competition, Privacy etc.

Most of you are aware of my long-standing work in ensuring rights to digital consumers. I have extensively spoken in and outside Parliament and when faced with unresponsive governments as was the case during UPA, have also approached courts with PILs.

I have always been a big supporter and advocate of embedding Technology into Governance, and so, have always supported the creation of the National ID platform, which the UPA called Aadhaar. Aadhaar in its initial form was conceived during the Atal Bihari Vajpayee government. UPA spent thousands of crores of public money on Aadhaar with no scrutiny or even legislative backing. As way back as 2010 when I raised the issue of Privacy in Parliament, the response of UPA government was always to cloak Aadhaar in a blanket of spin and opacity. As I was one of the petitioners that took the issue of Privacy to the Supreme Court, I recall a “spin article” on the eve of the Supreme Court verdict that was titled “Aadhaar is designed for Privacy”. It was a desperate attempt to continue to spin the unspinnable and to try and avoid the inevitable ruling that Privacy would be a Fundamental Right.

It is to the current Narendra Modi Government’s credit that it rescued Aadhaar and put it to work as it should be. This Government has put Aadhaar to work as a subsidy delivery Platform – ensuring that the UPA’s clumsy and unforgivable attempts to use this poorly verified database as an ID platform was halted.

I started critiquing Aadhaar and its very flawed design and weak verification procedures way back in 2010. Aadhaar during the UPA involved 1000s of crores of public money being spent on a project that had no discourse or debate and no legislative sanction. This deliberate lack of debate and scrutiny has led us to a situation where a huge database constructed clumsily had no reciprocal legal protections for those whose were enrolled into Aadhaar and had volunteered data into it.

I started flagging the issue of Privacy in Parliament, as a challenge to Aadhaar's weak architecture and its threat to Privacy. Aadhaar was terribly designed, loosely verified and thousands of crores of public money was spent by the UPA government without any scrutiny, debate or legislation. I also highlighted how data of crores of citizens are at risk due to breaches by banks, telcos and other private entities.

For the last several years, Aadhaar and its designers kept hiding behind glib statements like "Aadhaar is designed for Privacy" which unfortunately many in Govt and media accepted blindly. However, privacy is an issue that impacts every Digital Indian as more and more of us, as our lives, our businesses are transformed through the power of innovation and technology. The realization has grown amongst consumers, Media and civil society that Aadhaar and other aspects offer little or no protection for the individual.

I first brought the spotlight on the issue within Parliament in 2010 through various interventions and have continued doing so over the past seven years. After failing to get the necessary responses from the then UPA government and in Parliament, I approached the Hon'ble Supreme Court in March 2014 to highlight that the implementation of UID/Aadhaar is in violation of fundamental rights of citizens.

Time Line of my legal efforts have progressed over the last 4 and half years:

11th March 2014 – Filed an impleadment application in the Supreme Court highlighting the violations of the Fundamental Rights of the Citizens due to the implementation of Aadhaar in its present form.

14th March 2014 – The Supreme Court issued an order asking agencies to revoke any orders made by them making Aadhaar mandatory for availing benefits and forbade the UIDAI from sharing any information in the Aadhaar database with any agency without the data subject's consent.

11th August 2015 - A three Judge bench of the Supreme Court referred the challenges to the Aadhaar program arising on the issue of violation of Privacy to a Constitutional Bench, with a mandate to determine the existence of Right to Privacy as a Fundamental Right.

15th October 2015- A five Judge Bench headed by the CJI while limiting the use of Aadhaar for the delivery of select government subsidies also referred the question of Privacy as a fundamental right to a larger Constitutional Bench.

19th July 2017- A five Judge Bench specially constituted for hearing the petitions challenging the constitutional validity of Aadhaar, referred the limited question 'whether right to privacy is a fundamental right or not' for the consideration of a Nine Judge Bench – a delayed but required move.

24th August 2017: The Supreme Court in its landmark judgment upheld Right to Privacy as a fundamental right under Article 21 of the Indian Constitution.

10th May 2018: A five-judge constitution bench headed by CJI Dipak Mishra who were hearing the case on the constitutional validity of Aadhaar reserved the verdict.

Further, in case of Aadhaar – Thousands and lakhs of Indians are agitated over its implementation. Thanks to UPA's poor enactment, there is a large amount of unverified, fake entries in the Aadhaar database – which it continues to remain – which has crores of biometric with no one to certify that the name or biometrics are correct.

The UIDAI will have to make necessary legal modifications for making Aadhaar mandatory for targeting beneficiaries, so that it does not violate the privacy of citizens. We already know that Aadhaar of the NDA govt shares very little with the Aadhaar of the UPA.

The NDA Aadhaar has legislative backing, its verification process is far stricter and numerous fake accounts enrolled during the UPA regime are being removed.

Aadhaar will continue to be a cornerstone of the government's attack on corruption in subsidy and delivery of benefits. I don't agree that making Aadhaar mandatory for identification for subsidies is bad. I think it is good and important to ensure that benefits reach the right people and not the corrupt ones.

In the recent years there has been a breakdown of trust between UIDAI and citizens. A good data protection law will serve to rebuild that trust.

I am sure SC will uphold Aadhaar as a subsidy delivery authentication biometric database and I am also sure Aadhaar will see more improvements and protections after Supreme Court's decision.

I am confident that the verdict will clearly define Data Fiduciary and Data Principal relationship and I hope that Justice Srikrishna Committee's conclusion about ownership of data remaining vested with the individuals/ Data Principal will be reiterated by Supreme Court. That will lead to the development of a culture where accountability and responsibility of the Data Fiduciary/State will be given prime importance.

As India leaps to meet its goal of not just being the world's largest democracy but also soon to be the world's largest digital democracy, I am confident that tomorrow's judgment will give a boost to PM Narendra Modi's vision of digitizing and transforming India into a nation where economic empowerment, political empowerment and human dignity all go hand in hand.

- RAJEEV CHANDRASEKHAR
MEMBER OF PARLAIMENT