

Governance

# Supreme Court ruling will only strengthen Aadhaar, says UIDAI chief

RUHI TEWARI • 26 September, 2018



CEO of UIDAI, Ajay Bhushan Pandey | ThePrint

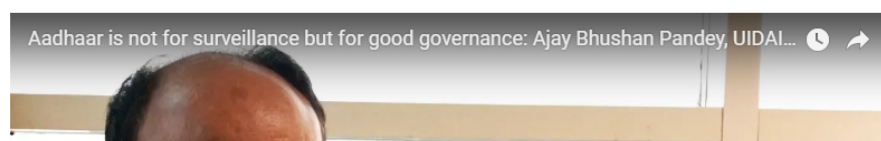
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**Ajay Bhushan Pandey says SC verdict on Aadhaar is historic since it rules biometric ID meets standards of good governance & is not for surveillance.**

**New Delhi:** The Unique Identification Authority of India (UIDAI), which is the nodal agency for Aadhaar, believes that Wednesday's Supreme Court ruling is historic not just because it upholds the constitutionality of Aadhaar, but also because it says the biometric ID meets the standards of "good governance and constitutional trust".

"The Supreme Court has passed a historic and landmark verdict. Not only has it upheld the validity of Aadhaar, it has also held the Aadhaar Act meets the concept of limited government, good governance and constitutional trust," UIDAI chief Ajay Bhushan Pandey told ThePrint in an exclusive interview.





The top court Wednesday ruled in favour of Aadhaar, saying it didn't violate the Constitution.

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The UIDAI and the government have been on the back foot on the issue of privacy, with certain sections criticising it for what they believe to be lack of safeguards and alleging that the state plans to use Aadhaar data for surveillance purpose.

"The court has gone on to say the (Aadhaar) Act does not tend to create a surveillance infrastructure, and has further said that Aadhaar ensures dignity of individuals and empowers the marginalised sections of society," Pandey added.

According to sources in the UIDAI, the verdict's emphasis on these issues will help steer clear the perception war.

#### **A UPA initiative**

While Aadhaar was conceptualised by the Congress-led UPA government, it is Narendra Modi-led BJP government that has given it a decisive push, bringing in an Act and linking it to all of its welfare schemes and initiatives, as well as to financial aspects such as PAN and IT returns.

Making Aadhaar the basis of these is something that has been severely criticised by some sections who claim this impinges on privacy and can lead to exclusion.

"One good thing is that the mandatory nature of Aadhaar for welfare schemes has been upheld... any welfare scheme in which earlier a lot of siphoning and duplication happened will be curbed now," the UIDAI CEO said.

"At the same time, SC has also upheld mandatory linkage of Aadhaar with PAN card and income tax returns. This will help check tax evasions, *benami* transaction, etc," Pandey claimed.

#### **'Private entities can't insist on Aadhaar'**

However, even as the apex court upheld Aadhaar, it did strike down certain sections of the Act such as Section 33(2), which permits disclosure of authentication information to the government on grounds of "national security" and Section 33(1) which allows disclosure of Aadhaar information to a district judge.

In addition, the top court struck down Section 57 of the Act that allowed private entities and corporate bodies to make Aadhaar mandatory, saying banks, telephone service providers cannot insist on Aadhaar.

Making Aadhaar mandatory for private services has also been a long-standing criticism, especially against the Modi government which has favoured it.

"I believe SC has put certain safeguards and restrictions which will go a long way in strengthening Aadhaar. The court has set aside Section 57 of the Act which permitted the use of Aadhaar by private corporates pursuant to a contract and which did not have the backing of law," Pandey said.

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“So, what the SC judgment implies is any mandatory usage of Aadhaar has to be backed by a statute,” he added.

Asked about Justice D.Y. Chandrachud’s dissenting view, calling Aadhaar “a fraud on the Constitution”, Pandey said “it is the majority judgment that prevails”.

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# Why Justice D.Y. Chandrachud gave a dissenting judgment on Aadhaar

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Justice Dhananjaya Yeshwant Chandrachud | Facebook

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**Legal experts have said that Justice Chandrachud’s loud dissent against the Aadhaar verdict will be valuable if ruling is reviewed in future.**

**New Delhi:** Justice D.Y. Chandrachud penned a dissent against the Supreme Court constitution bench’s verdict on Aadhaar Wednesday, saying “identity is necessarily a plural concept”.

Legal experts have said that Chandrachud’s loud dissent in the 4:1 verdict, which practically rejects every finding of the majority opinion, would be valuable if the ruling is reviewed in the future.

In his 480-page opinion, Justice Chandrachud struck down the Aadhaar Act in its entirety. The dissenting opinion was filed by



entirely. Inerrant analyses why he did so.

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### Three-fold test

The Supreme Court's privacy ruling last year had laid down a three-fold test to check whether a statute violates the right to privacy. The test is that, apart from enacting a valid law, the executive must have a legitimate interest to intrude into a citizen's private life, and the law must be proportional and not arbitrary.

Justice Chandrachud in his opinion held that Aadhaar fails two of the three criteria.

"In understanding the interface between governance, technology and freedom, this case will set the course for the future. Our decision must address the dialogue between technology and power," Justice Chandrachud wrote in the opening paragraphs of his opinion.

"Can technologies which are held out to bring opportunities for growth also violate fundamental human freedoms? Second, if the answer to the first is in the affirmative, how should the balance be struck between these competing interests?" the judge wrote, outlining the questions he would answer.

### Aadhaar as Money Bill

While the majority opinion held that the Aadhaar Act could be validly categorised as a Money Bill, Chandrachud rejected this. He said that a Money Bill must deal "only" with tax-related issues, but Aadhaar is wider in its scope.

Since the law is not validly passed, it fails the first criteria.

### Legitimate state interest

Justice Chandrachud agrees that the state is right in making a law that could be in conflict with fundamental rights, since it has a legitimate interest in ensuring that its subsidies are not misused.

However, he disagreed with the view that one right can be taken away at the cost of the other to meet even legitimate interests.

Chandrachud cited the 2017 nine-judge privacy ruling, which he was a part of, to reject the government's stand that the court must balance the apparent conflict between civil-political rights of some individuals versus the socio-economic rights of others.

### Proportionality

Discussing at length the role of the Unique Identification Authority of India (UIDAI), the "umbrella body" under the Aadhaar statute, Justice Chandrachud said it has been given excessive powers.

He also questioned the fact that biometric information was collected before the Aadhaar Act was passed in 2016, as well as the legality of contracts between UIDAI and private entities to collect data.

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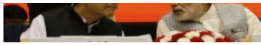
Significantly, Chandrachud questioned UIDAI's claim of Aadhaar being a unique identity.

"Neither the central government nor UIDAI have the source code for the de-duplication technology which is at the heart of the programme," he wrote, noting that the source code belongs to a foreign entity while UIDAI is only a licensee.

"Identity is necessarily a plural concept. The Constitution also recognises a multitude of identities through the plethora of rights that it safeguards. The technology deployed in the Aadhaar scheme reduces different constitutional identities into a single identity of a 12-digit number, and infringes the right of an individual to identify herself/himself through chosen means," the judge said.

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