

A game of Chinese whispers in the Aadhaar case

The time has come for courts to allow journalists to report court proceedings in real-time so that the news on which we base our public opinions is accurate and unbiased

Last Published: Tue, May 01 2018. 10 30 PM IST

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Of late, a few lawyers have taken advantage of this latitude afforded to them to live-tweet the proceedings in the Supreme Court. Photo: Mint

Last week, I had the opportunity to listen to the Aadhaar arguments in the Supreme Court (SC). Senior counsel Rakesh Dwivedi was on his feet, arguing on behalf of the Unique Identification Authority of India (UIDAI), and just before he sat down, he reminded the court that he'd promised them an answer on the question of mandatory linking of SIM cards.

In the course of a genial exchange, Justice D.Y. Chandrachud mentioned that the court had never issued any directions in the Lokniti judgement—the case on which the government had based its decision to require the linkage of Aadhaar numbers to SIM cards. For a moment, Dwivedi was nonplussed but then readily

accepted this contention. Nothing further was made of it, and he moved on with his arguments.

As you might know, there are restrictions on the live reporting of proceedings in our courts. Cameras are not allowed and journalists are confined to the visitors' gallery, forced to record transcripts of the proceedings, as best they can, with pen and paper. Security personnel are particularly vigilant in ensuring that visitors are not carrying their cellphones into court. But this restriction doesn't apply to lawyers and, of late, a few lawyers have taken advantage of this latitude afforded to them to live-tweet the proceedings in the SC.

One such live-tweeting lawyer reported this exchange, quoting Dwivedi as having said that SIM linkage was being done on the recommendation of the Telecom Regulatory Authority of India, even before the Lokniti judgement.

Ten minutes later, someone else picked it up calling it out as evidence of the government's perfidy—arguing that the Attorney General (AG) had repeatedly claimed that SIM linking was mandated by the SC in Lokniti but now, the state was conceding that the order did no such thing. This, he claimed, was three years of Aadhaar litigation summed up in a moment.

Within moments, the entire Twitter-verse had seized on to this narrative. By evening, it was the main story on prime time news.

I was surprised at the direction that the public narrative had taken as I had seen nothing in court to suggest that any concession of this sort had been made. I had to re-read the judgement to try and find out what it was that I had so obviously missed.

The Lokniti writ petition sought a direction from court to establish a mobile phone subscriber verification scheme, to ensure that fake subscribers cannot misuse their mobile phones. In response, the government filed a counter affidavit stating that a scheme for Aadhaar-based e-KYC for mobile connections had been initiated on 16 August, 2016, with the use of which “there will be almost ‘NIL’ chances of delivery of SIM to wrong person and the traceability of customer shall greatly improve”.

The AG assured the court that this procedure would adequately address the concerns of the petitioners. The AG also indicated that anyone applying for a new connection would have to do so using the e-KYC process and that a similar mechanism could be put in place for existing subscribers. He suggested that, on that basis, the process of identity verification of all subscribers could be completed within a year.

In its order, the court was appreciative of the steps being taken by the government. It observed that it was “satisfied, that the prayers

made in the writ petition have been substantially dealt with, and an effective process has been evolved to ensure identity verification”. It then went on to dispose of the petition “with the hope and expectation, that the undertaking given to this court, will be taken seriously, and will be given effect to, as soon as possible.”

Clearly, no direction was issued by the court. Justice Chandrachud’s observation was, to that extent, accurate and Dwivedi was correct in conceding the point immediately. However, the language of the order makes it clear that the court expected the government to follow through on its promise—going so far as to set out an explicit expectation that the undertaking given to the court should be taken seriously and given effect to as soon as possible. Whilst not an explicit direction, this was an observation that the government could ill-afford to ignore.

None of this has been presented in any of the news reports that followed—though arguably, this nuance would have provided us a more balanced perspective.

I’d like to make it clear that I don’t hold any of this against the lawyers tweeting from within the Supreme Court. They are already performing a selfless service in keeping us abreast of what’s going on in court and should be under no obligation to keep the tenor of their tweets neutral.

However, we should not be relying on lawyers tweeting part-time for our news. That is the job of journalists whose job it is to report the news in accordance with the strict standards of their profession—a code of ethical conduct that requires them to report news accurately and fairly. If we want an unvarnished account of the facts, we need to rely on professionals who are under an ethical obligation to present a neutral point of view and who know that they can be taken to task if they do not.

The time has come for courts to allow journalists to report court proceedings in real-time—taking advantage, if need be, of modern mobile communication platforms like Twitter—so that the news on which we base our public opinions is accurate and unbiased.

If not, there will be little difference between what we read in the papers and Chinese whispers.

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First Published: Tue, May 01 2018. 10 15 PM IST