THE POLITICAL MEANING OF PRIVACY AND IDENTITY

• *Interview with Usha Ramanathan* •

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Usha Ramanathan is an Indian intellectual and activist working on the frontier between law, poverty and rights. Her research interests include human rights, displacement, torts and environment. She has published extensively in India and abroad.

Her texts are read in India through vehicles such as The Wire, The Hindu *and* The Indian Express. *In 2011, in the essay* A constitutional value for privacy,[1] *Ramanathan defended the distinction between a transparent state and a private citizen and criticized the "extraordinary momentum to get to know the people of India" and the "unique identification" (UID) project announced as the basis for a process of convergence of pre-existing and structural data for public policies to combat poverty.*

While the World Bank, bureaucrats and big investors celebrate the implementation of digital civil identity projects, Usha has constructed a theory of privacy connected with the freedoms and risks of surveillance and political monitoring of citizens. The battle against the UID and Aadhaar,[2] which culminated in a landmark ruling in India's Supreme Court that imposes limits on the state's use of biometrics, is an example of the kind of activism led by Usha. It is not without reason that in 2018 she was given a Human Rights Heroes award by Access Now for her advocacy work on Aadhaar.

In this interview,[3] Usha Ramanathan analyses the history of the struggle against a unified identity system in India, the lessons learned from the process of political and legal mobilization and the limits of the decision in the Supreme Court of India, which is generally not fully understood in Brazil and Latin America. Usha also challenges the narrative that claims that the protection of personal data offers adequate solutions to contemporary problems of the violation of rights in the use of new technologies by the state and the private sector.

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Sur Journal • What is the Unique Identification project in India and what are the main risks involved?

Usha Ramanathan • The UID project was said to be a game changer, but there was no explanation of what the project was meant to do. It was launched in 2009 and there was no law, no feasibility study – just an executive notification saying that they were setting up something called the Unique Identification Authority of India (UIDAI), that this would create a database and that the UIDAI would "own" that database which would have our information on it.

Briefly, the UID tries to do two things: assign a number to every person by which they shall be "uniquely" identified and entrench the UID as necessary to validate every person in other documents and databases. The UID is the one ID that has no purpose of its own other than populating different IDs and different databases. When they set out what was going to be done by the UIDAI, the project crept things in like a national population register, which was a political (mis)adventure that had not yet begun. Through the years, the ambitions of the project kept shifting.

There are three words that have been central to understanding this project's ambitions: "unique", "ubiquitous" and "universal". Unique because they wanted every person to be identifiable with a unique number. In the beginning, we thought uniqueness was about biometrics, but then reports began to emerge, from within the UIDAI, revealing that they did not know whether biometrics would even work in this country. They were just rolling it out, like an experiment on the whole population. Ubiquitous, which means "to be everywhere", since the unique number would be in every database, such as the ones in banks, mobile companies and assistance for disabled people. If I had to get cooking gas, I couldn't get it unless I put my UID number into that database. It was to be everywhere, a hurdle to cross to access even simple things. So, from being a promise of inclusivity, it very quickly shifted to becoming something that would exclude you if you refused, or were unable for any reason, to be a part of it.

For instance, the biometric issue I just mentioned: we found that they hadn't even tested biometrics before they decided to adopt it. A report published in December 2009 stated that for enrolling in the database, fingerprints alone might not be enough, since 2-5% of 25,000 people they had tried it with did not have fingerprints that "worked". Then, they had the idea of using the iris along with the fingerprint, again without testing it.

But, as their Mission Director said in an interview in 2011, people like manual workers may have difficulty with their biometrics because of the nature of their work. The probability of exclusion was known even then. In other words, they acknowledged it could be a problem but just told us they would figure it out in time! That still hasn't happened. The idea was to experiment with people, and I think that bothered all of us.

Until 2012, enrolment was projected as voluntary. But then, the government began to make the UID mandatory. The UIDAI Chairperson stated that before he finished his five-year term, half of the population would have to be on the database. And in India, that's a lot. That's like 650 million people. Unless an urgency could be conjured, why would people enrol? So, they started finding different ways by which people could be impelled to get on the database. For the poor, the easiest way was to deny rations unless they were enrolled for a UID and linked their number to the ration system. The message was hardly disguised: "if you don't enrol, you don't get food". I mean, how are we even viewing poverty?

That strategy for making the UID mandatory didn't work with the rest of the population who did not need to rely on state support for basic needs. In 2016, 2017, it was made mandatory to verify mobile phone numbers using the UID, which meant that everybody had to link their phones to the database to avoid their phones getting disconnected. This was extended to bank accounts and to tax payments. So, from a promise of inclusivity, very quickly it shifted to becoming something that would disable services, freeze accounts and make you a defaulter if you did not comply.

Even since 2010, they had said that food, clothing and shelter was now *passé*, and that the future was about three numbers: the UID, the bank account and the mobile phone. One number, then, could not prove identity; you needed three. The mobile phone has become the number on which the UID now depends. So, for instance, I don't have a mobile phone, time passes and I grow old. As you grow older, your biometrics fade, change and become uncertain. In the UID system, if I have to update my name, gender, age, email, mobile number or any other information on the database, they ask that I verify who I am with my biometrics. My biometrics don't work. They say, "OK, give me your mobile phone number that is registered on the database". I don't have a mobile phone. That is it. When my biometrics fail me, and there is no phone, I cease to exist. We call it "civil death". No mobile phone, biometrics that don't work, an error in the database that cannot be corrected or updated – you no longer exist. This system that says it will weed out fakes, ghosts and duplicates; this is how it creates ghosts.

Sur • What were the legal problems around the Unique Identification project? How was it legally challenged in court?

UR • The UID case (politically, I don't accept the term Aadhaar) was taken to court almost four years after the project had been launched in 2009. The case was first taken to the Supreme Court in late 2012, and in 2013, more people started approaching the court to challenge the project, focussing on different aspects. Since the beginning, from 2009 basically, many of us started being concerned because nobody answered the questions we were raising.

The project was launched without due care (we still believe that even the people running the project were not aware of its full import). It kind of rolled itself out and, even as it did, it seemed to provide the state with the potential to reduce its expenditure on subsidies. The possibilities of surveillance began to emerge, and business interests found they may be able to use personal information for profit.

In September 2013, the Supreme Court issued an order prohibiting the refusal of services due to the lack of an UID; that is, the government was ordered to refrain from making the UID mandatory while the case was still pending. This order was flouted, left, right and centre; still, we had something on the basis of which we could fight back.

In its final ruling, however, the majority opinion of the court basically said that it's alright to violate the right to privacy of the poor. They didn't say the project was not violating the right, but that it was okay to deny the poor the right. For the others, the court said, the government must demonstrate that it has a legitimate reason for whittling down the right, that it should conform to the doctrine of proportionality, and even then, the restriction of the right must be in a law. The judgement did endorse the linking of taxes to the UID but struck down the linking of the UID with bank accounts, or with mobile phones as infringing the right to privacy. It is very difficult to miss the class distinction in how the majority judgment has understood rights. It is an acting out of George Orwell's "Animal Farm": "all animals are equal, but some animals are more equal than others".

Our assessment of this case's ruling is that it was based on pragmatism. The majority felt that the state was saying that it needed this UID to govern, and so, they decided to let the state have what it wanted, willing themselves to believe that the state would take care that no other rights were violated. But, of course, that was a belief without basis for, most tragically, in September 2017, the first recorded death occurred due to a failure in the system. An eleven-year-old, whose family was enrolled in the UID database but who were unable to link the UID number to the ration database, died of starvation after eight days spent in hunger. Negotiating the technology was more than they could do.

It was horrifying and for many of us, I must say, we felt deep guilt, because we had known that something like this could happen – we just didn't know how to stop it.

When it happened, it hit us really hard. This was a child who we got to know about. We couldn't tell how many people were just falling through the cracks. When this happened, the case was still in court. We said, "we have to tell the court. The court needs to know this. Newspaper reports are not enough".

So, there were a series of affidavits filed by a range of people from around the country. For instance, when two deaths occurred and we got to know, an activist went to each of those places, collected information about what had happened, put it in an affidavit and placed it before the court. There were people, for example, who had leprosy whose fingers didn't work. They were losing their support from the state because their biometrics wouldn't work. Their hands were wounded, as were their eyes. What were they going to do?

There were a range of these "exclusion affidavits" that were filed to acquaint the court with what was happening to the most vulnerable because of the UID project. The court acknowledged these affidavits, but only to say that "the activists, academics and others have put together these affidavits and sent them to us, but the government contests this and we are in no position to decide this. So, we are leaving it to the government to make sure this doesn't happen". That's it.

The court could have done more; there are innumerable precedents. The court could have set up a committee and asked the committee to "go and check it out and come and tell us the truth about this". They didn't do that. Among other things, the court had to deliver its judgment quickly because the Chief Justice, who was also on the bench, was retiring, and the judgment had to be delivered before that happened. Yet, when you ask, "why did they ignore the evidence?", your guess is as good as mine.

Over the years, we have found for ourselves ways of understanding judgments of courts. Sometimes, the judgment reflects the court's perception of its power to do what it believes must be done. Sometimes, it is based on a discernible principle. Or, it may be based on pragmatism, where they may seem to be saying, "the state needs it. Times have changed. We must allow (for instance) land acquisition in these cases and so, we'll negotiate a little bit here and there, but we'll allow the state to continue doing what it needs to do".

Or, it may be prejudice, often based on what they think they know of the other. The majority judgment, in the UID case, waived the right to privacy on behalf of the poor. The court said that social and economic rights are more important for the dignity of the person than privacy. They made a choice for the people. They didn't ask what the privacy right meant to those needing state support. They said, "we are making this choice because we know". Maybe they do, maybe they don't.

There are certain phenomena related to poverty that I have recognized in the 30 to 40 years that I've been studying this field. One is the idea of *dispensability*. We have seen that in development projects such as dams, industries, mining. Some people, we often hear, have to

make sacrifices so that the country can progress. In the beginning, it seems that some people would be marginalized, but, over time, we have seen that the few have grown to masses and "mass displacement" and project affected people and communities are part of the lexicon of the development project. Traces of this phenomenon are seen in the UID project.

The other phenomenon is *invisibility*, actually *invisibilizing* – that is, being rendered invisible. It is striking how data can be used to make people and problems disappear as easily as it can make them visible. During Covid-19, for instance, Parliament has been informed that there is no data on how many migrants died on their way home, no data on how many people died due to lack of oxygen. No data on how many ways that the UID has been misused, nor in how many ways the UID has made it difficult for people to access what is their due. Not just invisible, but invisibilized.

In the meantime, workers are required, by law, to be visible, to enrol themselves onto a database for informal workers – which, in India, is over 90% of the working population – along with their UID, mobile phone and bank account numbers and keep the state updated about where they are and what they are doing. In return, the state may have an insurance scheme that it may extend to them; and if it is decided to provide any assistance in times of distress, then only those on the database will receive state support. Now that the workers have started enrolling in this database, we are told that the "formal economy" has grown. So, what is this formal economy? Informal workers on databases, people using digital transactions because of the difficulties in using cash, as happened in 2016 because of "demonetization", and more recently where it is "pandemic-induced", a "goods and services tax" regime where those who are unable to manoeuvre the digital world fall off the map.

And the third is *redundancy*. Even today, you'll find that they'll say, "artificial intelligence, once that comes, 80% of people will have no jobs. It can't be helped". This is not the first time in history that technology has made jobs disappear, but the scale now is something else. Systemic change must work to reduce the problems of poverty and powerlessness, not make them worse.

Anyway, if you read the judgments of the Supreme Court in the UID case, you will find a dissenting judgment, which acknowledges almost everything that had been raised as an issue by the petitioners. When the arguments in the case began, it seemed to be that the dissenting judge did not immediately see why there was such opposition to the project; but, I think it was when he found that the government actually had no answers to the questions that were being raised, which happened some time in April of 2018, that he began to see the project was very different from what they had been led to believe it was.

The majority judgment strained the language of the law and used the device of interpretation to give legality to a law that was widely recognized as unconstitutional. That's one aspect. The other aspect was about privacy.

We have a principle here, a constitutional principle, that nobody can waive their fundamental rights. I can't say, "I don't want my right to privacy, and I am relinquishing that right." You don't want it? That's okay. You may never exercise the right. But you have it anyway. It is inalienable. That's what the privacy judgment, given by the Supreme Court in August 2017, also said. It said privacy is a fundamental right that cannot be waived, nor can it be taken away by the state.

The majority judgment in the UID case goes against the privacy judgment.

Privacy reached centre stage when, in July 2015, the Attorney General told the court that was hearing the UID case that the people of this country have no right to privacy. Not just no fundamental right to privacy; they said they have no right to privacy. The state can, by law, give and take away the right to privacy. In support of this position, he brought up two cases, decided in 1954 and 1962, which referred to the right to privacy in the context of surveillance.

The thing is our reading of the Constitution changed between 1950, when it was promulgated, and 1969. Before 1969, the Supreme Court had read the fundamental rights rather conservatively. Anyone claiming a fundamental right would have to show where in the Constitution the right was set out. The rest was vested in the state. This changed in 1969, when the understanding of rights was expanded and the power of the state was limited by the rights of the people. Rights were no longer seen as islands, and ones that may not be named in the Constitution could still be found in the penumbra of rights. Such a right was privacy.

Returning to the recent past, by 2011, the state was not only beginning to create a database of the entire population; it was also looking to pass a law providing for a human DNA database. Not everyone in government was sanguine about these projects, and the minister in charge of science and technology was worried enough to set up a committee, headed by Justice AP Shah and of which I was a member, to report on the privacy implications of these projects. As we worked on the report, we found that privacy was then still a weak right, in the sense that it had meandered its way through the decades, case by case, and hadn't acquired a strong foundation in jurisprudence yet. And the words "right to privacy" are not found in our Constitution. It did seem a relatively weak right, but it was still an important right, one that had been evolving over four decades and that was not hard to establish. The report identified nine principles to be adopted if the privacy right is to be respected – which, in terms of data, had to do also with what you collect, how you keep it, how you transfer it, how accurate it needs to be and when you destroy it.

There had been a few previous attempts at making a law on privacy. In 2005, for instance, a privacy bill was sighted and then, a while later, it was nowhere to be seen. So, when in 2015, the Attorney General said to the court that there is no right to privacy, the battle for rights had to be fought hard, without the support of legislated

law. The longer it took to decide the question of the right to privacy, the longer the case challenging the UID project would remain unresolved. Because the 1954 judgment which the Attorney General cited as denying the right to privacy had been decided by a bench of 8 judges, for a fresh appraisal of the privacy question, at least 9 judges would need to hear and decide the case. Pendency of cases is endemic – just to give you an idea of the scale: the current figure of pendency in the Supreme Court is close to 70,000; and there was no saying how long it would be before 9 judges could be relieved from other cases for a spell to hear this matter.

In July 2017, a hearing on the UID case was going on in the Chief Justice's court, and it was being argued for the state, again, that the case would have to wait for the privacy question to be resolved before the challenge to the UID project could be taken up. One more attempt to leave the challenge up in the air. Quite unexpectedly, the Chief Justice said, "okay, then, I will constitute a 9-judge bench tomorrow and let the privacy case be heard".

So, the bench was constituted. That hearing happened over six days, and the lawyers dived into it without pause. That week, I was hopping from lawyer's office to lawyer's office for all the briefings, and it was amazing. The seniors, their juniors, all the others who were working with them in their offices day and night; I don't think they noticed when night fell or when the sun rose the next day. And they did all this work not just for free: they did it spending their resources. It cost a pretty packet to prepare for the case, and the lawyers billed it to themselves. There were no other resources. And the time. Lawyers turned down work that would have paid them handsomely to stay continuously engaged with the court. "Why", I asked one of them, "are you doing this?" "If we lose this case", he said, "there will be no Constitution".

Sur • How do you see the connection between privacy and data protection in Indian society?

UR • I engage in the discussion of data protection as a framework, but I do it cautiously because, for me, data protection is not going to protect people. Data protection is a battle we have to fight, but I don't see it as a bulwark against this invasion of privacy. This is a part where I am in a slightly different position from others.

In the context of technology, two axioms have been conjured up by those who want to push projects that are invasive. One, that "privacy is dead". Once you say privacy is dead, you don't have to worry about respecting or protecting it. Second, that "consent is broken". You know, they will say that Google asks you to sign on to permit their collecting and using the data you generate on their search engine; do you even know what you're signing on to? When the Guardian asks, "is it OK if we use cookies?", do you really make a considered choice? This is what consent has become, and we can do without this. There is a third tack, in which it is claimed that rules stifle innovation. So, let innovation happen and rules can follow – around the innovation. The aspiration is to have the freedom of a Facebook or an Amazon, and we now know what distortions that has caused!

Despite the report of the Justice AP Shah committee in 2012, the resistance to a data protection law kept it off the table till the privacy case made it difficult to ignore. In 2017, when the 9-judge bench of the Supreme Court began hearing the privacy case, it soon became evident that they would be upholding the privacy right. That is when the Attorney General told the court that the government was setting up a committee, headed by Justice Srikrishna, a retired judge of the Supreme Court who is widely respected, to work on a data protection law. So, they said to leave it to the expert determination of the Srikrishna committee, plainly asking that the court not pronounce itself on the privacy question. Fortunately, the court just recorded the setting up of the committee and went on to deliver its verdict!

As it happened, the committee was composed of those who had expressed their support for the UID project, including those who had gone to court and argued to defend the UIDAI and deny the right to privacy. The judgment on the right to privacy stood in their way, and they could not wish it away. So, they attempted an inversion of the idea of privacy. The importance of the right, they said, is not in what it means for the rights holder, but because that right is actually a public good which society as a whole enjoys.

It is not, then, to be wondered that the title of the report is "A free and fair digital economy"; "protecting privacy" appears later in the title after an invisible colon.

It has been a battle. Digitization was just the first step in this kind of tech ambition. Then, it was an ID which would uniquely identify each person across databases; then, the coercive power of the state was used to make it ubiquitous, pushing every person to enrol. The data about people this could produce made data the next resource on which the economy and profits and control could be built. Surprisingly, though, the UID has spawned a whole host of other IDs, all prefixed with "unique" – Unique Health ID, Farmer's ID, Land ID and on and on, including even unique IDs for cows!

Privacy is repeatedly being assassinated. A straw man is set up so that privacy is not an absolute right. That is then used to ignore the right, or deny it, in situation after situation.

A data protection law has been in the making for some years now. There is little doubt that there must be a law, except I am not sure at all that it will protect the rights of the individual. As it is, the draft law exempts the state from the law. Then, the UIDAI is also pushing to be given the same exception. There is a push to include what is called "non-personal data" – personal information that has been anonymized or which is in the public domain – and to make way for business using personal data. Technology companies are using the state to coerce people onto multiple databases. In return, the technology providers for projects such as the UID create tools for the state to surveil the people. The data protection law in no way stops any of this. What then is the point of this law-making exercise?

The other common motif when the state claims a state of exception is "national security" about which we'll talk in a little while.

Sur • What is the role of global institutions such as the World Bank in this process of implementing digital ID programmes?

UR • The World Bank, especially with Estonia and India as the two great experiments, set up the ID4D. Then, Microsoft, the Rockefeller Foundation, Accenture and Gavi, The Vaccine Alliance – and therein lies a message - set up ID2020 to build a global digital ID.

Nandan Nilekani is a technology tsar who was the first head of the UIDAI. In an interview in 2018, when asked about how he felt about the system he had set in place having caused the death of a 11-year-old (in September 2017), this is how the conversation went: Interviewer: "The odd dead child, the odd stolen data is okay?" Nilekani: "No, I think, finally, you know, in any system we have to minimize anything which is not the right thing to do and then see overall if it provides benefits. On that, the answer is an unequivocal yes." He is part of ID4D.

ID4D gathered its people but didn't begin functioning till Bill Gates gave them the money, and therein, too, hangs a tale.

There have been so many indications of the ambitions this project has fostered. So, in a meeting that was held in the World Bank in 2013, Nilekani talked about the UID project, when Jim Yong Kim was the head of World Bank. As Nilekani explained the project, Jim Yong Kim asked, in much excitement, and I paraphrase, "so you're telling me that if there is somebody in Nairobi who is at an ATM, I can be here in Washington, and I may not know what she is doing at that ATM – I don't know if she's withdrawing or depositing money or whatever – but I will know she is at that place at that time?" Nilekani: "yes".

In a meeting at the Center for Global Development, around the same time, someone from the audience asked Nilekani, "Do you think there is any potential for having a global system by the year 2030?" He answered, "There's nothing technologically limiting to having the whole population of the world" on the grid.

As for the World Bank, working on matters of law and poverty, it has been plain for some time now that the Bank's preoccupation is with reducing monies spent on subsidies. The images of those needing state support syphoning off more than is their due has propelled projects such as the UID, making exclusion a hallmark of the project. That the leaking of subsidy happens somewhere else is not their concern. The UID project has been sent out into the developing world, with ID projects being made a necessary condition before the World Bank will agree to loan money to countries.

Why is the World Bank so keen on databases with whole populations? What is the interest Bill Gates has when he gives ID4D funds? Why is a project that is so deeply flawed in our country being pushed everywhere? The creation of databases is becoming a product that

is up for sale. It is not just the UID; the CoWIN app, with vaccination data is another, and this time, it is aligned with vaccine passports, another push to database the entire population of the world. How is one not to see these as projects of surveillance and control? In India, a recent article explained that the World Bank has been funding, and "providing technical assistance" – what a euphemism! – to create systems that will provide a 360° view of every person in real time, so they know who you are, where you are, what you are doing, who you live with – everything.

There are now GPS-tagged houses, with data on how many people live there, their work, education, marital status, state support, … the only thing missing is the menu. And once you have the IoT-enabled refrigerator, they will know what you eat, how much milk and water you drink. There is a document, adopted by the UK and German defence establishment, where they are actually talking about "human augmentation". Human augmentation. This is an agenda that is beyond the state agenda. The global agenda is to augment human beings. Have you seen that report? It is stunning. They say, "we can't plan for augmentation unless we know more about people". For instance, not enough is known about how much and how well we sleep, how much and what we drink, what and how much and how often and where we eat. They need to get the physiology and biochemistry and psychology right. That's the kind of detail in which we must be known. Human augmentation is to enhance capability, and to be the "binding agent between people and machines". It is like history never happened.

Sur • How would you describe the risks of "the age of technology"?

UR • Maybe I will begin with saying this, that technology has ambitions. Technology believes that the age of industrial manufacturing is past, that the age of oil is over, and now, it is the age of technology. Technology should be allowed to develop without restraint – no rules, no laws. Rules, and rights, stifle innovation. A price has to be paid for convenience, and that price may be a basic right. Strangely, at the beginning of this century, technology was creating artefacts that generated a lot of excitement. There was the mobile phone, the computer, the laptop. There was Facebook, Twitter and a host of other platforms that seemed to connect us to the millions. Communication took on new meaning. The internet was incredible. Technology helped during the Arab Spring, and people came together, organized resistance...

I think the Arab Spring was the one time that technology did something which didn't carry regret. Since then, the mobile phone has become two things besides being a means of staying in touch: one, a tool of surveillance; and second, every police investigation starts with seizing the mobile phone and digging into thought and deed. As Mr Nilekani said when questioned about the UID, the mobile phone is even more pernicious!

Social media and existence in a bubble. Then the hate; such an escalation of hate. The freedom of speech and expression is so important. How complicated this freedom has become!

So, what has this done to us? With remarkable speed, quickly, these technological ambitions have driven excitement into the ground, making us anxious about technology. That is what I see around me now. The UID was, for us, one starting point in this decline.

This is a new phase that we've entered, and it is technology that's brought us here. Nothing else could've made this happen. Now, you can peer into everybody's lives. In a minute, your bank account could be frozen. Your quota of food could disappear. You could be denied health care because your biometrics do not match what is on the database. These are not hypothetical; they have all already happened.

I think a question that needs to be asked of the state and to the technologists is: "is this the imagination you want to foist on the world?"

The Pegasus episode raises so many questions. A private company comes up with ways of infiltrating the phone and sells it to governments around the world because it says that governments need tools to deal with terrorism. Since 2019, Citizen's Lab, later joined by Amnesty International, found that phones of persons across many countries had been infected by Pegasus spyware; some of them were from India. In 2021, a massive investigative effort found that over 50,000 people across continents had had their phones compromised, and this included journalists, activists, even judges. This is when some people took the case to the Supreme Court. The court was very frugal in what it asked of the government. It is being said that the government is not treating the matter seriously, the court said. Given that NSO claims that it sells its programmes only to vetted governments, some foreign governments could be using it to surveil people in India, or it could be being used in contravention of the law. All that the judges asked was for the government to explain its stand. Nothing that would affect national security; just address the apprehensions raised. Basically, the question was: is the government acknowledging what had happened, and were they doing anything about it? Not what; just whether. The government would not answer: "anything we say could compromise national security", they said. Fortunately, the court has not accepted this blanket refusal and these caverns of secrecy that the government was claiming for itself, and set up a committee to investigate the allegations. This could be significant, if the court develops the law of judicial review in matters of surveillance. These uses of technology and these debates are a sign of our times.

Over the decades, first the colonial state, and then independent states, have asserted dominion over all resources – land, water, minerals, forests. Now it seems that it is the turn of data, personal data including fingerprints, iris scans, facial information, DNA. The veneer of "public interest" and "public purpose" has been stripped off. And when the government says the resource has to be handed over, it simply must be done, no arguments, no autonomy.

Our main argument in the Supreme Court in the challenge to the UID project was about the nature of the relationship between a state and the people. The constitution, we argued, is not about the power of the state over the people. It is about the limits of the power of the

state over the people. State power must be understood in ways that recognize these limits. Technology has been breaching all norms and transgressing all boundaries.

Take, for instance, digital transactions. Every sinew is strained so it is "no cash, only digital transactions". That will generate digital footprints, which, like the wolf that growled in Little Red Riding Hood, is "the better to see you with". If you fight shy of revealing yourself, then you will become ineligible for credit. For why should anyone trust you if they don't know you and know that you will not be a defaulter, or that you are not a spendthrift, or, heaven forbid, you are not a terrorist? It is the politics of control through the politics of suspicion.

It's very interesting: the government demonetized 86% of the currency in 2016, and this was an utter disaster. People had to deposit all the cash they had in banks, and the government would say how much they could take back, bit by bit, because it was meant to surprise everyone – including even the ministers in the cabinet – and so they had not yet printed enough currency to replace what was being deposited. It was like they got excited smelling the opportunity. Everybody, including Nilekani, who were giving interviews said, "this is the time that cashless, paperless and presence-less will become the next big thing". They have been very interested in the idea of presence-less. Not the physical person; just their virtual presence and the data that that generates. Data without people, what a dream!

The thing is I am not asking corporates to be good guys. But when they partake of state power, then we're talking a very different story.

Sur • Which are the main movements resisting this process?

UR • In India, a lot of the awareness about what this kind of technology is doing to people's lives came with the government making the UID mandatory for various services. It started with cooking fuel, then rations, the rural employment guarantee scheme, scholarships for education, pensions... It kept expanding. It was the right to food movement and those working on the rural employment guarantee that first got a hang of the very real possibility of exclusion. The pushback from these groups has been persistent and vocal.

The movement for the right to information (RTI) has been unequivocally opposed to the UID project. There is little doubt that the demand for a transparent state has been inverted by this project: instead of the state being transparent to the people, the UID project works to make the people transparent to the state – and to corporate interest. There is a certain incongruity that people like me see when RTI activists ask for ration and employment guarantee databases to be uploaded so they can be monitored to make sure the system is delivering – it is too close to the majority judgment in the UID case which said that those who are welfare recipients can do without the right to privacy. This is a discussion that is currently going on.

Once the Attorney General said to the court, in 2015, that privacy is not a right of the people in India, there was a surge of privacy activism. That was a stunning moment.

Then, in 2017, the government tried to make it mandatory to link the UID number with bank accounts, mobile phones and tax records. And, with that, it reached the middle classes, who had so far felt it was about those needing state support for food and work and so, considered it had little for them. I think, with that, naivete vanished. It stopped being just some innocent ID; but the threat of losing their phone connection or having their bank accounts frozen, or being on the wrong side of the law in filing tax returns had people complying helplessly. That tactic worked. The idea of disobedience, which Gandhi taught us when we can see a public policy or law go horribly wrong, is not a lesson learnt. We are a very compliant population, which is why there has been no anarchy at all.

In recent years, two major movements have engaged in the art of civil disobedience: the protest against the citizenship amendment, where they were trying to segregate just Muslims as people who would not be entitled to citizenship, and the farmers' movement. The citizenship amendment raised the spectre of exclusion through identity and cast its shadow on the UID project. During the farmers' yearlong protest against three laws that had been rushed through parliament with no debate or consultation, the government released a document about how technology would be introduced in the agriculture sector, called AgriStack. According to this, farmers would be given a unique farmers' ID, every piece of land would have a unique ID and databases would be created using these, which provoked a reaction.

The thing is that what they have done with technology in this project spills over to other spaces and has given rise to a lot of insecurity. If you ask, "where is the pushback coming from?", it is coming from these movements, and it is also coming from a set of young people who have been in the battle for privacy and expended loads of time and energy in the court case. When Facebook attempted to introduce Free Basics in India, these youngsters fought for a free internet. When they flagged issues about the UID, they were trolled by the IndiaStack

people, a set of entrepreneurs mentored by Nilekani who saw their task as making the UID work for them and who are often found in the corridors of power. This was education that the IndiaStack crowd imparted to the youngsters, a lesson they have not forgotten!

In a conclave organized by the UIDAI between November 23 and 25, 2021 to set themselves an agenda for the next phase, two founding members of the UIDAI – the erstwhile Mission Director and his colleague – along with the head of a government think tank were heard complaining that the project was never intended (made) for the government. Question of "anything to boost the digital economy won't happen if it is a captive of the government". Their words.

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Interview conducted by Rafael Zanatta and Juana Kweitel in November 2021.
Original in English. Translated by Naiade Rufino.

NOTES

1 • Usha Ramanathan, "A constitutional value for privacy." The Hindu, July 30, 2011, accessed December 9, 2021, https://www.thehindu.com/opinion/op-ed/a-constitutional-value-for-privacy/article2306023.ece.

2 • As stated in the Unique Identification Authority of India's official website, the Aadhaar number "is a 12-digit random number issued by the UIDAI to the residents of India after satisfying the verification process laid down by the Authority. Any individual, irrespective of age and gender, who is a resident of India, may voluntarily enrol to obtain an Aadhaar number. Person willing to enrol has to provide minimal demographic and biometric information during the enrolment process which is totally free of cost. An individual needs to enrol for Aadhaar only once and after de-duplication only one Aadhaar shall be generated, as the uniqueness is achieved through the process of demographic and biometric de-duplication." The biometric data collected consists of ten fingerprints, two iris scans and a facial photograph, while the demographic information includes Name, Date of Birth (verified) or Age (declared), Gender, Address, Mobile Number (optional) and Email ID (optional); in case of Introducer-based enrolment- Introducer name and Introducer's Aadhaar number; in case of Head of Family based enrolment - Name of Head of Family, Relationship and Head of Family's Aadhaar number; in case of enrolment of child-Enrolment ID or Aadhaar number of any one parent, Proof of Relationship (PoR) document. According to the website, it is "[...] a strategic policy tool for social and financial inclusion,

public sector delivery reforms, managing fiscal budgets, increasing convenience and promoting hassle-free people-centric governance", which facilitates the inclusion of the underprivileged and weaker sections of the society, being a tool of distributive justice and equality. It is one of the key pillars of 'Digital India' and it has "[...] already achieved several milestones and is by far the largest biometrics-based identification system in the world."

3 · The conversation lasted an hour and thirty minutes.