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Ambivalences of 'Creep'

Citizenship, Personhood and the Second Digital Turn

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As autonomous 'citizens' capable of acting on the responsibilities that go with Constitutional rights have been technologically replaced by populations to be 'managed', what we see is the populist abstraction of the 'people' being used against actual people.

On 10 April 2020, 28-year old Safoora Zargar, an MPhil student at Delhi's Jamia Millia Islamia University, was arrested by the Delhi Police, accused of having participated in a protest that had taken place on 22 February at East Delhi's Jaffrabad metro station.

The incidents leading up to her arrest are well known. The anti-CAA agitations in Delhi since December 2019 had been generally peaceful. Although protesters, many of them women, had been repeatedly threatened, nobody was quite prepared for the debacle that followed Jaffrabad, or the riots that engulfed North East Delhi in the last week of February, or the police crackdown that we have seen take place since April. On the 26 February two justices of the Delhi High Court heard an emergency plea, described their 'anguish', chastised the police for their evident inaction, and were immediately replaced. The following day, another bench accepted with alacrity the government's claim that the high passions made the time not 'conducive' for any action against the riot instigators.

1. 'The time is not right': Personhood and the sovereign body

This essay does not deal with the specific legal situation that Safoora Zargar and her several co-accused faced, save to express outrage at the patent injustice, even as the true perpetrators of the violence remain untouched. I shall attempt instead to bring together several of the key issues in which she found herself implicated to make a rather larger argument: around a history of *personhood* in digital times, a history that has been in the making for some time, that would now come together even as we witnessed the extraordinary events of the past few months.

When Zargar was taken to the Tihar jail, she was charged with non-bailable offences under the draconian Unlawful Activities Prevention Act (UAPA). This Act, in its original 1967 avatar, had been devised to target 'unlawful associations (trying to) bring about… the cessation of a part of the territory of India from the Union (or) disrupt… the sovereignty and territorial integrity of India'. In 2004 it was significantly expanded to include a 'person': any individuals 'affected by inclusion of his name in the Fourth Schedule as a terrorist'. The year 2004 also saw the 1955 Citizenship Act modified with several new clauses reversing basic Constitutional norms that had returned the emphasis from residence to ancestry, *descent*, rather than *birth*, directly thus targeting 'illegal' migrants. The previous year, the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules had been framed, and both had come together to now define the dreaded National Population Register, a 'Register of usual residents of the country'. Read together - as they were during the December and January protests - these Acts produced a new kind of person: a body to be feared and contained, an identikit image as though in a video game, of society's composite Other, fusing migrants, terrorists, displaced peasantry and political dissidents.

Such a person was the mirror opposite of another kind of digital entity created around the same time, the 'natural person' - to use language from the 2011 Information Technology Rules - who was named by his/her *right over their data*: to own and control what the IT Rules name Sensitive Personal Data (SPD). The difference, in the end, was that one sort of person had the right to privacy, the other didn't. As the UAPA became the bludgeon of choice to attack all dissidence, its 'person', typically possessing a religion, an ideology, and distinct visual signifiers, would be defined primarily through the lens of surveillance, as physical confinement went hand in hand with lack of control over the data s/he produced. The UAPA began using an increasing diversity of 'elastic procedures', wrote Gautam Navlakha in a public letter shortly before his arrest, that are primarily sculpted around the imagined veracity of 'electronic' evidence, even as the 'process itself (became the) punishment'.

Zargar was arrested three weeks into the nationwide Covid-19 pandemic lockdown. The lockdown itself had been declared under an unusual emergency measure, a time-bound order invoking the 2005 National Disaster Management Act (NDMA). Under this Act, the Ministry of Home Affairs, 'satisfied that the country is threatened', called for 'effective measures', whatever these might be. 'It can be tempting in these circumstances to argue that the executive's powers are limitless', warned legal theorist Gautam Bhatia, 'that, if the

government so chooses, fundamental rights can be suspended at will… any temporary measures they impose have a disturbing habit of entrenching themselves into the landscape… well after the crisis has passed'. Zargar's phone was taken away, passwords extracted under duress, and when she, along with the other students who had been arrested, expressed apprehension that fake evidence may be planted, the magistrate at the Patiala House Court refused to monitor the cases. Once again the 'time was not right'. Now it was the 'circumstances ensuing in the nation due to pandemic' that made it 'not feasible to call for weekly reports and to monitor them in such times'.

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Personhood would be on particular display because of an additional circumstance: at the time of her arrest Zargar was several months pregnant, and the personhood of her unborn child, and its own legal status, had become thus a central part of the argument. The police invoked, on their side, a combination of technology and medical science to prove, on Twitter, that they had done their job 'sincerely and impartially'. The arrests themselves had been 'based on analysis of scientific and forensic evidence, including video footages, technical & other footprints'. As for her health, she was declared to be safely under solitary confinement, now renamed-to use the word of the moment-as quarantine.

An astonishing month, and indeed a person, thus condensed- as though in speed-motion- a complex 20 years of regulation. It was not always evident over these years that it would come to this: that the National Population Register (NPR) against which Zargar's protest began, the surveillance history of the 'video footages, technical & other footprints' that the police claimed to have as the basis for her arrest, the modified UAPA, and the Emergency powers of the NDMA that allowed the police to say that she is in quarantine *in her own best interest* - that all this would add up into a major state arsenal being aimed at a particular individual in this way. What we have seen in real time, these recent weeks and months, is a Constitutional techno-normative manoeuvre implicating law, medicine and a digital universe. It has unfurled a technological unilateralism: an operation fundamentally reinterpreting both sovereignty and citizenship, and it has been - I hope to show below - in the making since roughly 2006. Since then, India's state apparatus, as though a *parens patriae* gone rogue, has been exploring ways to deploy digital technology to arrogate for itself the absolute, imperial, right to *own its people*. Such an absolute right, graphically represented by the bodily control of subjects, is directly validated by the *data* that the State possesses on those subjects. As the data - crucially alongside the right to interpret its meaning - becomes state property, so has its unique authority to define the social good become weaponized.

The central argument of my essay is this: as conscious and autonomous 'citizens' capable of acting on the responsibilities that go with key Constitutional rights have been technologically replaced by abstract populations to be 'managed', as their concrete manifestations are found in individuated bodies, identifiable and incarcerable, as their ethical right to their self-interest gets replaced by an arsenal of scientific and forensic evidence apparently more able to decide that interest, what we see is the populist abstraction of the 'people' being used against actual people. This period, which has seen a new populist authoritarianism rise in India, as in many countries elsewhere, has been extensively described: its connections to both social media well known. Contrary to its many dystopian characterisations, I shall however suggest below that in India this manoeuvre has a longer political history in India that return us to basic Constitutional principles; to their neoliberal morphing under the UPA regime; and thence to their present iteration under the NDA government. It is the way the contradictory possibilities of digital governance get framed within *that* history that define the political as well as technological consequences of the manoeuvre.

A week into the pandemic lockdown, the central government announced the launch of a smart phone app named Arogya Setu as a single-point solution for contact tracing. This app has four parts to its operating system. The first three concern demographics, an automated health-check and periodic generic updates on the pandemic. It is the fourth, in all probability the key section for future use, that may be the real source of worry: a digital 'e-pass' that would work like a health data aggregator, certify that you are 'green'.

As the app rolled out, its safeguards were stressed by the lawyer Rahul Matthan, representing the Government of India on matters of technology and privacy law and tasked with putting together its legal framework. The bottom line was that the app only existed for the limited purpose of fighting the pandemic. Most importantly, said Matthan, its implementation was voluntary. If you didn't want it you didn't have to have it, and even if you did have it, you could switch off the Bluetooth and the GPS anytime and were also free to uninstall the app.

Many of these claims unravelled almost immediately. No effort is even made any longer to pretend that the app installation is voluntary , or will be pulled down anytime soon, if indeed ever. As new uses are being found for it, including the ' Health Stack', envisaged by ISpirt as a further variant of its India Stack, there is little clarity about what supervisory legal authority will look after the data being collected once the NDMA is withdrawn, as it must one day, nor how it might conflict with either the Privacy and Data Protection Bills currently at various stages of drafting. The likely true uses of this app may itself be an evolving story, and may in the end require it to serve purposes - such as a kind of health surveillance mechanism that would eventually substitute as a test for the virus - that would be ever-further removed from its founding intentions.

Despite its overtly stated purpose, and despite its existence as explicitly a temporary emergency-measure, on the 10 April a wing of the Information & Broadcasting Ministry put out a tender for a 'Covid-19 Tracking Tool' along with a hand-held thermal imager and an optical fever-sensing system. The tracking tool, envisaged as a wrist lock to 'pair with Arogya Setu', is unambiguously defined using surveillance language. It will be an 'intelligence investigation platform and tracking tool' to 'detect, prevent and investigate threats to national security'. It would have the capability to monitor a suspect, 'track his/her behaviour, see what he or she does on specific days of the week, where does he or she order food from, where does the suspect go for regular walks, where does he/she work during the day, where does he/she sleep at night', identify 'close contacts, frequent contacts as well as occasional contacts', 'trace where this person has been', 'where the suspect has spent most of his/her time and who all he or she has met', and to 'identify common friends'.

A day after Arogya Setu was announced, on April 3, a memo by the Cabinet Secretariat , noted that 'technology experts, academicians and private companies' had offered a wide range of 'technology products and applications' with which to fight this pandemic. The memo announced the decision 'to create an enabling mechanism through a public-private partnership model to develop and implement a 'Citizen App technology platform, on-boarding all citizens in combating Covid-19'.

You only need to call it what this Cabinet Secretariat memo calls it, namely a *Citizen* App, and other possibilities emerge. They also take us back to where the story originally began for Safoora Zargar: back also to the National Population Register.

Citizenship Thick and Thin

I will try to outline a foundational transformation in the embodied national subject that went alongside the technological assimilation, in the 2000s, of a longer history of an *ambivalence*, inherent to the concept of citizenship in India.

Part of the problem around the ambivalence of citizenship is well known: an intrinsic separation in governance between a modern citizen-subject who qualifies for a unique individuated subjectivity, and an undifferentiated subject, literally a *body to be enumerated*, to be fed, housed, incarcerated, quarantined. Sometime around 2012, legal scholar Kalyani Ramnath began an inquiry that started with the famous first three words of the Constitution. Although written in the name of the 'People', she traced across the Constitution the strange disappearance of its main protagonists. The problem was that from the chrysalis of the abstract 'people' has emerged a second and very much more concrete subset, that of 'citizens'. *Not all people can be citizens*: people, centrally evoked in Directive Principles, exist mainly as entities to whom the State has a *duty*: a moral force, an abstraction. Citizens, she suggests in contrast, are concretized as those who *did things for the* State in return for the rights they received, productive people', *workers* whose role is 'imperative to building a modern nation-state'. Although 'education, public assistance and creation of just and humane conditions of work' are things the State owes the *people*, adequate means of livelihood and free legal aid are only promised to *citizens*. In defining who was productive and who not, the State could choose, within the terms of a re-envisaged Constitution, to 'ignore non-productive lives while embarking on different aspects of its social revolution… choose to exclude many others in its grand march towards a transformed social situation, for example, by branding the undocumented as 'illegal' or treating the poor as dispensable'.

> Paradoxically, then, for all its claims to rational neutrality, technology *enhanced* the ambivalences intrinsic to citizenship.

Niraja Gopal Jayal too identifies a differentiated citizenship through status ('thin' citizenship) as against practice ('thick' citizenship). When universal and 'difference-blind' citizenship was constitutionally replaced by a group-differentiated identification of 'backward' categories, primarily of caste but also gender and other social categories, the flip side of the acknowledgment of diverse forms of historical discrimination was that delivery of *economic* benefit (thin) did not always extend to *social* rights (thick). 'To become a citizen required being marked, but paradoxically the very act of getting marked meant the entrenchment of one's exclusion from substantive citizenship'.

While some of the political debates are familiar, less discussed has been the impact on the concept of citizenship in the late 2000s when digital technology first made its utopian promise to identify and to *segregate* India's population with a hitherto unimaginable precision into different grades of beneficiary. Intended recipients of benefit would be *targeted*: and direct access to them would not only define their entitlements, but also make sure that they actually got their benefit. 'Leakages' would be eliminated, as India's enumerative capability found itself enhanced to historically inconceivable levels.

Paradoxically, then, for all its claims to rational neutrality, technology *enhanced* the ambivalences intrinsic to citizenship. While the virtues of direct and unmediated access were plain, especially in the area of Direct Cash Transfers (DCT), a more complex problem arose. Targeted beneficiaries, identified by their 'backwardness' or their specific lack, entered the digital gateway on terms that potentially froze their status on the poverty line, their qualification for property, and their creditworthiness. Even as actual human beings found themselves becoming discrete and diversely labelled sub-sets of an abstracted 'people', several universal privileges of citizenship got selectively and diversely distributed to actual people. The divide between entitlement and welfare would be frozen, rendered sharper than ever.

The Body Corporeal

It is of some consequence, then to recall February 2009, when the UID (as it was called then, the term 'Aadhar' was yet to enter common usage) announced its arrival, with much fanfare and some radical departures in how to frame governance. It is worth capturing both the excitement of the moment - notwithstanding several dark prognoses of what it might portend - especially around the question of personhood.

Shorn of all excess, the UID's claim was basically twofold. One, to issue a unique, randomized, dumb number to all Indian residents (as against citizens, an important distinction). And two, assemble an easy verification mechanism in which that demographic identifier would connect to biometrics - to prove that I am who I say I am, even if I have no other document to prove this. My identity would now and forever be my culturally unmarked body. In an intervention of civilizational proportions, what was envisaged was a set of levelled-out biological properties *entirely autonomous from the cultural credentials of citizenship* to which numerous Indian residents had no access. This concept of a pared-down corporeality, approximating to a near-Agambenian conception of *bare life*, is worth hanging on to, as the rest of this argument proceeds, as an indelible biopolitical marker for a history that had gone before and would now follow. Demographic data would, as the 2016 Aadhar Bill later reasserted, explicitly exclude 'race, religion, caste, tribe, ethnicity, language, records of entitlement, income or medical history of an individual'.

The previous year, Nandan Nilekani had published *Imagining India: Ideas for the New Century* (2008). When read together with the 2009 Working Paper that the UID put out in its first year, *Creating a Unique Identity for Every Resident in India*, we get the synergy of a virtual manifesto of tech solutionism: of what was wrong with the country, what needed doing, where the hope lay. Among its founding principles: this was *not* a citizenship record, it would be available to anyone who *resided* in this nation. It was *not*, repeat *not* , an identity card, rather, a means of 'identification of beneficiaries for transfer of benefits, subsidies, services and other purposes'.

> If Aadhar was a populational database, the National *Population* Register, contrary to its name, was explicitly a register of *citizenship*, born of the 2004 amendment to the Citizenship Act.

Through 2009-10, Nilekani's upbeat optimism emerged mainly in contrast to a far grimmer initiative also underway at that very moment: the National Population Register (NPR), preparing itself in this very time for implementation as a key part of the decennial Census. Unlike Aadhar, which to date presents its voluntary status like some act of faith, the NPR flaunted its compulsory nature. Unlike the Census of India, which worked on the premise of anonymised data, the NPR's Register would be public: causing a problem when the single-point Registrar General of the NPR was also the Census Commissioner. Aadhar was pivoted on the *individual* as the basic social unit. The NPR's basic social unit was instead the *family*, represented by its head who became legally liable for every member of his family. NPR brought in 15 data sets, including marital status, educational qualifications and occupation. While family, marriage, occupation and education sent out their own normative alarm bells, the most worrisome was the category of, not resident but '*usual* resident'. You had to have physically lived in the space you named your address for a minimum of six months. You had to be *socially known* there, and to pass a 'social audit'. Such an audit would happen in the following way: Your biographical data along with your photograph and your Aadhar number would be publicly 'displayed in the local area for inviting claims and objections', to be 'scrutinized by local officials' and 'placed in Gram Sabhas and Ward Committees'. This process of social audit, said the NPR, was necessary to 'bring in transparency and equity'. Aadhar's POA (Proof of Address), in accepting a wide range of documents and in its

introducer mechanism, was in sharp contrast far more relaxed.

The conflict, although technology-driven, arrived under social science terminologies more familiar to students of Foucault and Partha Chatterjee: of *citizenship* versus *population*. If Aadhar was a populational database, the National *Population* Register, contrary to its name, was explicitly a register of *citizenship*, born of the 2004 amendment to the Citizenship Act. The NPR made no secret of what it wanted to do: it was one of a series of actions piloted by Home Minister P. Chidambaram, including '21 sets of databases... to achieve quick seamless and secure access to desired information for intelligence and enforcement agencies', including a DNA data bank, the NATGRID, and a series of others such as the Crime and Criminals Tracking Network and Systems (CCTNS) and a National Counter Terrorism Centre, all of which were intended to work together to make a devastating and unimaginable impact on surveillance. There were, as technologist R. Swaminathan wrote, 'genuine divergences in the objectives of NPR and UIDAI. Their world views are from different eras. While one is rooted in a mindset of exclusion and security, the other is inclusive and participative'.

As Partha Chatterjee has argued in multiple contexts, several key developmental systems of welfare found ways to expand beyond normative citizenship by creating parallel forms of non-normative classification and enumeration that divided society into elementary units of population. With Aadhar it had appeared at least *possible* that such a concept of non-normative identity could pitch the bodily self of its tagged identifier into a flatter, more equitable digital ecosystem of both governance and social acceptance: that identification could conceivably have purposes other than merely those of surveillance. The rose-tinted digital future just might, if not fight then at least *bypass*, the hierarchies of social exclusion that analogue citizenship had seemingly written in stone. But was the terminological confusion merely that, or did it portend a grimmer future?

The Poisoned Well

In 2013, Bezwada Wilson of the Safai Karmachari Andolan and S.G. Vombatkere impleaded themselves in the ongoing Supreme Court Writ Petition challenging the Aadhar programme. Wilson had a specific problem: not one of how to acquire an identity, but how to *repudiate* it. 'My basic problem', he said in an interview 'is that [Aadhar facilitates] keeping identity forever'. To him this was a form of branding: 'even if I come out of this and get liberation also, but in your Aadhaar, my occupation, where I come from, everything will be there. Once you get the data, you can segregate in any way by means of technology. See, you never used identity to support us, never purposely did a proper survey to identify and rehabilitate us. Now you want to give us an identity?'

Wilson's demand for identity repudiation only enhanced the ghostly illusion that there seemingly existed two separate Aadhars. One was small, nimble and upfront, and the other, large and shadowy. On the face of it, Aadhar's explicit mandate was to facilitate the entry, to identify the biological body shorn of cultural markers: it was *designed* so that it didn't have to ask the *safai karmachari* his occupation. On the other hand, the NPR *did* list occupation, as did identification surveys such as the 2013 Prohibition of Employment as Manual Scavengers and their Rehabilitation Act that Wilson excoriates when he points out that *safai karmachari*s are 'immediately identified' and 'asked why are you here for a job when there is 100 per cent reservation for your community'.

If this was, even if momentarily, a genuine historical crossroads for Indian democracy, the terminological confusion did allow for another and rather more complex *theoretical* social-scientific explanation for it, with a rather longer time-span, that speaks to how the Indian state mutated in the early years of the new millennium. In 2015, Nishant Shah produced a sharp argument for where the problem lay, and what it might say to the emerging area of a digital personhood. In an essay that would be quoted at length by Justice Chandrachud's 2018 dissenting judgment on Aadhar in the Supreme Court, Shah notes a fundamental slippage in Aadhar's self-definition: a 'curious conflation… between the notions of iden*tity* and iden*tification*'. This conflation was not accidental, but lay in the very design. One part was based on individual choice, the other was explicitly denied choice. The way the two came together opened a 'new understanding of the individual'.

> What actually happens then, when citizenship transits, with all its ambivalences, into a data network?

Shah saw these as two faces of personhood inhered in the same human being: we were both 'data subjects' and 'quantified selves'. The person whose data was being recorded was increasingly less you and me as we presumably understood ourselves - as capable of individual subjective choice - and more a you-me looking in a distorting mirror and seeing an image of ourselves created out of 'predictive and self-correcting algorithms that develop correlations, curations and connections between disparate individuated transactions'. Shah outlines his argument with the metaphor of the dog on the Aadhaar card, a famous episode that had caused much hilarity on the internet when a bonafide Aadhar ID was made in Bhind, Madhya Pradesh, for a dog named Tommy Singh, son of Sheru Singh, born on November 26, 2009. To Shah, Tommy Singh was not a failed stand-in for a person but as a 'stand-in for the

data scattered across databases which, because of their correlation now identify this dog as a resident of India, and probably even feed it into the National Population Register which was linked with Aadhar in the last census'. Such data has no exteriority; it develops its content only in the way it travels, is parsed for meaning, made the subject of analytics.

This then is where we are: the *individual*, whether human or canine, 'has no space in the computational logic that informs our new structures of governance'. The dog in Aadhar's imagination is in the end 'as much an actor or an individual or the bearer of an identifier/identity as any other human being enrolled into the system'. In contrast to the PR claims by, say, the 2009 UID Working Paper of the caring nature of the data network, *networks are the very opposite of caring*: and in this, strangely enough, lay the hope. Under the ambivalence-free conditions of digital governance, the fiction of the 'reasonable man' - a fiction that is at the heart of legal regulation and justice - has been absolutely replaced by another set of tools for producing reason and rationality. Identity has been 'flipped so that identification through identifiers, and the data that accrues… becomes the only form of identity in the time of database governance'. When a networked governance database system 'does not treat the appearance of the dog as a glitch, but yet another data set which helps make new correlations and predictions possible', linguistically speaking, '*the network is actually closer to the etymological understanding of identity* than how we recognise it in common utterance'. If in analogue conditions the Dalit and the Adivasi claim the right to change or repudiate their historical identity, in the time of digital indifference a dog too can be a person, or a person a dog: both bonafide residents of India.

What actually happens then, when citizenship transits, with all its ambivalences, into a data network? Is it even possible for two, seemingly conflicted, aspects of the data subject - one permitting freedom of choice, the other an attribution that made you a blip on a network - to actually inhere in the same person? Could the idea of the *people* be translated into data subjects in ways that retained their moral authority as defined by the Directive Principles?, or would these subjects be overwhelmed by the processes of quantification, become data producers without any control over how their data in turn produced *them*?

This was a pivotal moment for democracy in India. It is one that has not really been recorded, not least because the idealism of the moment didn't last very long, and so it is worth noting, momentarily, the excitement of the brief period when information technology, in the words of Nilekani, 'untouched as it were by the legacies of the sarkar raj, could be a powerful leverage for better public services… could play a bigger and more powerful role in the economy than anyone had guessed or attempted before', and was still part of the giddy romance of the internet. It was also the moment from where the story would unravel.

Early warnings were, our project soon showed, less to do with Aadhar's enrolment procedure itself, and more about something else: a mechanism upon which central and state governments were mounting their own diverse schemes with diverse kinds of populist purpose. Many revealed a gargantuan KYR-plus desire for gathering ever-expanding and infinitely more intrusive data about all those it enrolled, well beyond what Aadhar itself asked. What we were seeing was the ever-strengthening optical double image of two Aadhars, one lithe, lean-and-mean, up front and visible, and a massively data-guzzling Big Aadhar lurking in the shadows. This ghost-image effect would be key to the creep that now followed: it would also split people into categories that could claim the entitlements of privacy and those, the Identikit of Society's surveilled Other, who were disqualified from these entitlements.

The UID itself was, as is well known, only one, albeit crucial, cog in a very large wheel that was the National E-Governance Plan (NeGP) announced in 2006 by the then-Department of Electronics and Information Technology to promote e-governance through a series of mission-mode projects to deliver various services online. As the only cog that sought to define the wheel itself, the UID had creep built into its very existence, as it became something of an in-house ideologue for (and so gradually became indistinguishable from) Digital India as a whole, taking it upon itself to explain how all manner of programmes would work, from healthcare to microfinance, to mediate their populist differences, all the while 'pitching' the usefulness of its key central feature - direct cash transfers under the overall umbrella concept of financial inclusion. *Interoperability*, and Aadhar's unique ability to offer it, was going to be the key to the success of the NeGP. Inevitably this proved complex, not least because of turf wars, but more significantly because of seeming ideological differences between different populisms to which Aadhar's own delivery mechanism claimed, increasingly less persuasively, to be neutral.

Was it, to take only one contradiction, mandatory or was it not? Aadhar itself repeatedly asserted (as Arogya Setu too is currently doing) that it was not, but that meant little when government schemes that *were* mandatory mounted an 'interoperable' arrangement upon it: it rapidly became, as Jean Dreze would say, 'like selling bottled water in a village after poisoning the well' . Dreze was one of the early critics of the programme, fearing the damage it would cause to the NREGA, especially its insistence on being the sole payments gateway for cash transfers. Dreze and Reetika Khera spoke of a 'potent recipe for chaos' if MGNREGS workers were deprived of their bank passbooks, or inserted into a system where there was no internet connectivity, and requiring single bank

operating procedures. Dreze also noted with some apprehension a proposal in 2010 by the Planning Commission that the National Food Security Act should impose 'mandatory use of UID numbers which are expected to become operational by the end of 2010'. 'No UID', says Dreze, 'no food'.

Bodily Identities and Civil Death

The issue wasn't creep alone. It appeared increasingly to be *creep stalking a more fundamental slippage*: or at least creep designed to handle ideological ambivalence in the interoperability system. In a curious twist of fate, Aadhar not only capitulated to the NPR, it became the NPR's public face. As further mismatches emerged, such slippages became routine: of Aadhar promising something only to have its interoperable partner take it away - just one of numerous instances being when Aadhar's 'third gender' category produced mismatches with PAN Cards (presently being cross-linked with Aadhar) that had no such category. Little Aadhar increasingly became like an invitation to the parlour of an elite Big Aadhar citizenship club that professed non-discrimination and entry to all, only to reveal covert hierarchies and fine print designed to reinforce segregation.

In 2018, the Supreme Court gave its much awaited omnibus judgment on Aadhar and privacy law. Although the five-bench judgment cleared Aadhar by a 4:1 majority, what caught attention was Justice D.Y. Chandrachud's extraordinary dissenting opinion. At a thousand pages, nearly twice as long as the main judgment itself, it was, says legal commentator Gautam Bhatia, a 'dissent for the ages'. Justice Chandrachud now dissected the creep with clinical precision. '*What the Aadhaar Act seeks to exclude specifically is done in effect by the mandatory linking of Aadhaar numbers with different databases, under cover of the delivery of benefits and services*', it said, at one point. 'When an individual from a particular caste engaged in manual scavenging is rescued and in order to take benefit of rehabilitation schemes, she/he has to link the Aadhaar number with the scheme, *the effect is that a profile as that of a person engaged in manual scavenging is created in the scheme database*'.

> For all the technological novelty of digitization, Justice Chandrachud maintains the issue as freedom classically framed.

Justice Chandrachud's dissent adopted Shah's basic tension internal to the formulation of identity, pulling actual human beings apart and reintegrating them into a new technologically-enabled data subjects. However, Justice Chandrachud differs from Shah in one essential aspect. The judgment accepts the argument about the 'quantified self' but reads a rather darker, grimmer consequence to that self than Shah himself may have intended. This quantified self is not only split from the freedom-enabled data subject, but effectively *replaces* such a subject. There is a clear and present danger here to citizenship rights, for the 'flipping' of the right undermines your ability to be identified *at all*. Your existence as a blip on a network becomes, slowly and stealthily, *the only form of identity* you have available to you under database governance. Your very survival is as though leashed to its Aadhar alter-ego almost like a kind of RFID tag, making it possible for the state to pull the metaphorical plug at will and thus to cause what the judgment named a body-endangering 'civil death'.

For all the technological novelty of digitization, Justice Chandrachud maintains the issue as freedom classically framed. It bore similarity then to Safoora Zargar's solitary confinement claimed as quarantine that, for all the scientific arsenal the police say they have, fought for the right to be spoken of in the basic terms of liberty and self-determination. Central to both was the *control by the State of the bodily subject* emanating from the invasive 'curation' of that body into an identity-tag. Perhaps the most dangerous aspect of Zargar's incarceration was the claim that this was being done for both her own good and that of society. It incarnated the way technology has come to define sovereignty, to integrate the 'social good' into the production of her identity as a terrorist and a candidate for UAPA treatment.

By mid-April 2020, the body incarcerated had been joined by another condition of sovereignty. Migrant workers had begun walking, in their millions, across the length of the country, often asserting their determination never to return. The story of the largest physical migration the subcontinent may have ever seen, determinedly returning from city to country reversing the foundational move that had defined the twentieth century, will of course be told some day. The point however was that Aadhar, as a self-avowedly portable identity, was surely *designed* for just such a cataclysmic event: especially when both the central and several state governments, realising that they may have created a problem far larger than the pandemic, began making various kinds of delivery of benefit, of food and shelter, and in limited cases of transportation, available only to who they considered to bonafide returnees.

What happened next allows us to open an entirely new inquiry into the genealogy of key instruments of governance in independent India, including those over which Justice Chandrachud had agonized. The promised aid in most cases never arrived. Numerous

labourers, who had been living in spaces provided by labour contractors with no money and no food, found themselves disqualified from taking the trains being provided because they didn't have their village address on their Aadhar card, and so couldn't prove that where they wanted to go was home. Most of these people had gotten these cards only when they had come to the city, as a mandatory requirement to open a bank account and thus to receive their wages and other 'benefits'. Most would have been without POAs and would have used 'introducers'. This was an innovative feature of Aadhar in which undocumented people could get their identity if 'introduced' along a certain procedure, and which had in fact signed an MOU in July 2010 with a national coalition of several organizations specifically to design a strategy for migrant workers where most would have had to give their temporary workplace as their address. Aadhar, by refusing to believe where they came from, was now *preventing* them from proving who they were. It is hard to describe their condition - without aid, unable to go back home because they couldn't prove that it was home, unable to cross state boundaries - as anything but a form of civil death.

By now a pattern has surely emerged in the inevitable creep. Instead of tracking the delivery of benefit, the system had inverted itself into tracking the beneficiary. The onus lay on the migrant labourer to prove *her* identity against the overwhelming *default assumption that she was not who she said she was*. As several states too began closing their borders to returnees for fear of virus contamination, loss of identity began alarmingly to resemble political statelessness. Who could these people be, if not citizens of *some*where?

As in Sadat Hasan Manto's legendary short story of the Partition, the location of the village of Toba Tek Singh is the only identity of the lunatic Bishan Singh, who - utterly confused by the political division taking place - finally finds himself 'after fifteen years on his feet' 'face down on the ground' with India on one side and Pakistan on the other, and his village of Toba Tek Singh 'in the middle, on a piece of land that had no name' - so too these migrants found themselves in an identity abyss and told to quarantine themselves in it.

2. The Sovereign Body

The body corporeal - the body incarcerated - is a classic empty signifier. It thus possesses a potential for meaning that can appear both terrifying and uncontrolled, across religious and political ideologies. Earlier I had proposed a parallel between the decultured and pared-down bodily identity (a blank-slate *tabula rasa* that, we had felt in 2009, may have had some salience to the UID's basic system of creating unique identities) and Giorgio Agamben's well known conception of 'bare life'. It is worth remembering here Agamben's main argument that *control over such a body remains the defining centre of the modern State's existence, the founding principle of its sovereignty*. The institutions of its (political, sexual, subjective) containment define the repressions of the modern public sphere. Such control over bare life, Agamben says, has its legacy in the concentration camp. And the theory of sovereignty, initially linked to various 'States of Exception' - a proliferation of spaces needing surveillance or other special attention (like the 'containment zones' of the present pandemic) - gradually morphs into an ever-expanding political realm: where all of society becomes a gigantic containment zone. Tying that body to an identity is a crucial aspect of that control; its putative elusiveness - either through the loss of identity or through its unrestrained proliferation into multiple selves - can be a source of anxiety as much for the sovereignty of State as for its subjects.

Such a frame - the everyday normalization of the concentration camp - also appeared relevant to Justice Chandrachud's anxieties over how the State deals with the sovereign body. The ambivalences of abstract citizenship, digitally mediated, would return to now oversee the claims personhood could make upon the corporeal body. I believe that the history of such claims, in their potential contradictions, define twenty years of regulation around digitization in India: regulation bookended by the first Information Technology Act of 2000, and the second amendment to the CAA in 2019.

From the 1990s, and coinciding with the ascendance of neoliberalism in India, we saw the Supreme Court read - in an 'expansive interpretation of Article 21' - a slew of unenumerated rights into the Constitution, says Neerja Jayal: including, among others, rights to shelter, to pollution-free environments and to medical aid. While this major acceleration of social and economic rights was hailed by many, Jayal saw a curious inversion of the group-differentiated 'backward' categories of the Constitution: a new breed of meritocratic 'productive citizens' claiming rights as a part of *elite* privileges, alongside the cherry-picking of services to appropriate. Some services, such as water and electricity, although subsidized in the name of the poor, became 'effectively available only to the nonpoor and (were)… almost exclusively appropriated by the well-off', whereas others, such as public education and health, which the elites have no desire for, were allowed to decline. By the 2000s, the overuse of the language of rights - and early signs that they were serving a purpose that might be precisely the opposite of what was intended - had set up multiple alerts. In 2004 Jean Dreze, speaking of the Right to Food campaign launched in Rajasthan and mounted on Article 21, was for instance deeply concerned that this right not be reduced to its purely justiciable aspect, but that it retain the Ambedkarian 'revolutionary conception of democracy' that existed in the umbrella protections of the Directive Principles.

> Although the Srikrishna Committee did cast a wide net around data…it was firm in its core commitment that 'the primary value that any data protection framework serves must be that of privacy'

Among the many new rights in the fray was privacy. From the early 2000s, privacy dominates the debate on digitization in India. And dominating the privacy debate were the *entitlements* of what the B.N. Srikrishna Committee, set up in 2018 to outline a Data Protection law, named *Data Principals.* These were legatees of our citizen-subjects capable of individual subjective choice, 'citizens' who, in their capability to self-define as *productive people*, also forged a distinct relationship to the data that they produced: they further qualified themselves to become (to use language from the 2011 Information Technology Rules) *persons*, more precisely *natural persons*. A key qualifier of such personhood was their *right over their data*: to own and control what the IT Rules name Sensitive Personal Data (SPD). SPD was listed there as passwords, financial information (such as bank account or credit card or debit card or other payment instrument details), physical, physiological and mental health conditions, sexual orientation, medical records and history, and biometric information.

Although the Srikrishna Committee did cast a wide net around data, with significant sections on identifiability, anonymisation, community data and non-consensual data-gathering processes, it was firm in its core commitment that 'the primary value that any data protection framework serves must be that of privacy'. Justice Srikrishna worried a lot about what else should be included in Sensitive Personal Data - he considers, for example, adding trade union membership - and he was inevitably bothered by the special conditions under which Consent was suspended in the name of 'larger public interest'. There was however little evidence here of Justice Chandrachud's many concerns about the conditions under which the corporeal gets coercively identified by data over which the person has no control, or tagged by technologies, or the possibility of switching off tagging to cause 'civil death'. Such a body goes simply missing in Srikrishna: it is present, if at all, either as one possible version of anonymization, or otherwise as a possible context for involuntary Consent.

Arguably the first identikit of the dreaded Other, the enemy of the good and the true, was produced by the first Information Technology Act of 2000. The Act struggled to reproduce the conscious-individual-citizen paradigm in virtual space, with much debate taking place over digital signatures and born-digital documents such as emails. 'Cyberspace', to use a quaint term from then, saw blurry alter-egos commonly described as 'cyborgs'; internet porn and cyber-deaths dominated debate; and the classic cyber-controversy of the time was the notorious 2004 Delhi Public School MMS Scandal. Joining these ghostly figures was the chosen bad-guy, the faceless 'cyber-hacker' and the target of the original Section 66 of the IT Act: anyone who caused 'wrongful loss or damage to the public' or altered information in a computer that might 'diminish its value or utility'.

The crucial years were between 2004 and 2008, the first term of the UPA government, and it is possible - with the detailed survey of the meetings and discussions occurring in this time that have been reconstructed in the text of the Supreme Court's Aadhar judgment - to also reconstruct the pull and push, the tensions they reveal, and also the speed of the capitulation.

Enter NPR

Although the identity question is in this time almost entirely framed within the emerging managerial logic of delivery of services and benefits, the question of how to define the beneficiary is, at least in early discussions, an open question.

On 3 March 2006, the Department of Information Technology (at the time still inside the Ministry of Communications and Information Technology) was tasked with setting up a 'Unique Identification for BPL Families'. Over the next 18 months, several Ministries would go into overdrive to create a mechanism for what a key Strategic Vision document published that August called a 'Unique Identification of *Residents*'. Through 2006, discussions were pivoted on residents: that is, on *everybody* - and not only citizens. A 2008 Expert Committee on Metadata and Data Standards defined the purpose of its Personal identification Codification Standards to 'identify *each and every person uniquely* at the national level'. The data sought would be elaborate: name, gender, marital status, language, religion, occupation, education, and a few other categories. Equally elaborate would be the many state agencies thirsting for this data. Language and religion data would be sent to the Registrar General of India for the NPR. Occupation data would go to the Ministry of Statistics and Programming Implementation', and Education data to the Dept of Higher Education. Relationship (to head of family) data would go, interestingly, to the ICSSR and the Anthropological Survey of India.

> It becomes a fascinating exercise of historical revisionism to see Aadhar and the NPR as - far from being opposed - indeed *planned in unison*, as two halves of the same picture…

That December, the penny dropped. An EGoM was set up to 'collate the *National Population Register* under the Citizenship Act, 1955, and the *Unique Identification Number project* of the Department of IT'.

Our hairy outsider muscling into the neighbourhood was a separated-at-birth twin. It becomes a fascinating exercise of historical revisionism to see Aadhar and the NPR as - far from being opposed - indeed *planned in unison*, as two halves of the same picture: one, to do with residents, as a populational anonymization, the other to work over the same data to create a visibility apparatus for Citizenship that would also weed out the illegal migrants.

Things moved rapidly thereafter: on April 27, 2007, the proposed UID was linked to the Household Survey of Rural Development and the individual State PDS databases. The IT Dept was asked to 'work out modalities for linkage with Election Commission'. That November, the EGoM agreed on the urgent need to create an 'identity related resident database, regardless of whether the database is created on a *de novo* collection of data or is based on an already existing data', and on the parallel need to 'create an institutional mechanism that would 'own' the database'. The next meeting (for which I have no date) clearly set up the separated-at-birth twins: to consider topics relating to collating the National Population Register (NPR) and UID schemes, *including methodology, effective implementation techniques, identification of the institutional mechanism stated above, and the time schedule* for putting the scheme into operation.

The die was thus cast. The creep that ensued was, one may now speculate in hindsight, the main reason for the crisis of legitimacy that Aadhar faced: arguably as a direct result of this design ambivalence, in problems in the 'collation' that went beyond issues of methodology or implementation technique, and began to affect legitimacy. A 2010 bill to set up a National Identification Authority of India bit the dust in Parliament, nixed by the Yashwant Sinha-led Standing Committee on Finance. A second bill failed in 2016 when it was sought to be smuggled into Parliament as a money bill, and it squeaked into legality only in 2018 with the epic Supreme Court judgment.

None of these setbacks stopped the project from hoovering up, between 2006 and 2012, a growing mountain of big data by an astonishingly diverse set of both government and private agencies: with the UIDAI very much its public face. By mid-2013, around the time our Identity Project came to an end, there was enough evidence of the extent of poison that had entered Dreze's metaphorical well. Notwithstanding the UIDAI's own strenuous assertion that it has always kept its data confidential - a requirement that would be enshrined in 2016 under Article 29(1) of the Aadhaar Act, that 'no core biometric information, collected or created under this Act, shall be shared with anyone for any reason whatsoever; or used for any purpose other than generation of Aadhaar numbers and authentication' - news has consistently circulated about the uses to which its data was being leaked. In February 2013, the Deputy Director-General of the UIDAI, Ashok Dalwai, said that data could be shared with security agencies particularly for cases relating to national security on the basis of court orders.

3. The Medium and the message: Data and the identikit

It's the end of July as I sign off on this text, the pandemic is nowhere near the end, and the arrests are getting ever-closer to home: I doubt if any of the readers of *The India Forum* would be separated by more than a degree from the increasing numbers of students, activists and the academics being accused of waging war against the Indian state. Since the early 2000s, India has seen an ever-growing expansion in the data the police and other security agencies claim to have: all in the name of maintaining the nation's 'security and integrity'. UAPA's recent history undergirded by surveillance data however acquired that is never in the public domain, never available for public scrutiny.

In an early instance of such showcasing of abstract data, Shuddhabrata Sengupta has argued that the trial of S.A.R. Geelani, charged for alleged involvement in the 2001 attack on Parliament, saw the police claim to possess data that was itself legally inadmissible. Nevertheless, in the very claim of its existence - and its shadowy and secretive nature, amalgamating police procedure with crime reconstructions of low-brow reality-TV - can sufficiently impress courts and popular media alike, both with its characterisations of motive and of the *dramatis personae* involved.

Through February 2009, the month that saw the ceremonial unveiling of the UIDAI's heavy artillery in the battle over bodily individuation, also occurred two other events of some import. One, a small but high-visibility campaign against a Hindu right-wing organization's targeting of young people celebrating Valentine's Day by a 'Consortium of Pub-Going, Loose and Forward Women'. The 'Consortium' called for people to send gifts of pink knickers to that organization as a satirical send-up of the khaki shorts that were the uniform of the RSS. The movement was primarily on Facebook and was among many that signalled the growing possibilities of civil

dissent on social media. Facebook was also thus the unnamed target of a major amendment to the IT act that also occurred that same epochal month of February, when the President signed into law the dreaded Section 66A, taking direct aim at social media, threatening imprisonment to anyone sending 'information that is grossly offensive' or 'causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will' via 'a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record'.

In 2012, three years after it was first passed - and mainly in response to targets such as two young women in Maharashtra arrested for putting up a Facebook post and for 'liking' that post, and a man named Shami Witness in Bangalore who retweeted posts that the police considered inflammatory - a 24-year-old second-year student at the Delhi University's Faculty of Law named Shreya Singhal challenged the validity of Section 66A in the Supreme Court. The petitioner's argument was simple enough: 66A violated the right of freedom of speech. Lawyers everywhere had found it hard to believe that the police action of arresting the two young women was sustainable: as legal scholar Pranesh Prakash wrote it would 'take a highly clever lawyer and a highly credulous judge to make 'liking' of a Facebook status update an act capable of being charged with electronically "sending … any information that is grossly offensive or has menacing character" or "causing annoyance or inconvenience". Most lawyers also were agreed that, as Prakash said, "liking' is protected speech under Article 19(1)(a)'. .

On this particular count, the Supreme Court had no hesitation in agreeing with Singhal, since, as Rohinton Nariman's judgment says, the 'reasonable restrictions' doctrine of Article 19(2) outlines eight precise categories that might be evoked and no more, and 66A falls outside of those. That was the easy part. The judgment however went further. It made a major shift in the operation of Article 19(1)(a) from its traditional obsession with *who* is speaking and tried to get at the *content* of what 66A said it was trying to control. In doing so, it unearthed two startling facts. One, that across the dimensions of 66A, *information was only described by its medium*: as 'data, message, text, images, sound, voice, codes, computer programmes, software and databases or microfilm or computer generated micro fiche'. Such a definition had the on the face of it the basic problem that it was overly inclusive, as the judgment pointed out. But its inclusiveness arose from a strange position, which created for Nariman a second and more serious problem, namely, that *at no time did the Act even try to view the information it claimed to have as possessing any content*. The judgment said:

> … the definition does not refer to what the content of information can be. In fact, it refers only to the medium through which such information is disseminated… Information of all kinds is roped in - such information may have scientific, literary or artistic value, it may refer to current events, it may be obscene or seditious… no distinction is made between mere discussion or advocacy of a particular point of view which may be annoying or inconvenient or grossly offensive to some and incitement by which such words lead to an imminent causal connection with public disorder, security of State etc.

The astonishing idea that *information is indifferent to content* but only defined by the *medium* of storage makes sense to many who aren't only students of Marshall McLuhan. Such a concept of information is, for example, the source of the growing view of the police that the *mere existence of information was sufficient to read meaning into it*. This was what happened with S.A.R. Geelani, and clearly happened again in instances of Safoora Zargar and the many arrests we have seen in Delhi and elsewhere.

There might be, in time to come, another way to tell the story of personhood in the 2000s. The further possibility of deliberately non-universal narratives generating communities through purely horizontal circulation - possessing no content either prior to or following the disseminative act - may enable not only Shami Witness, along with numerous other models of communication from pornography to fan address, to state their case. It may also enable an entirely new career for 'the people' to return to the fore, re-invoking the Directive Principles as they take the concept to citizenship to its liminal extremes.

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