# The Ambivalence of ‘Creep’: A Biopolitical History of Citizenship in Digital Times

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## Introductory Note

This essay was written in April and June 2020, during India’s first COVID-19 lockdown, and bears the marks of that astonishing moment. The lockdown, as is well known, was announced on March 24, 2000 under the Disaster Management Act, 2005 by the sudden appearance of India’s prime minister on national television giving four-hour notice before effectively shutting the country. All access to the physical public domain was declared illegal and all travel suspended, leaving millions of Indians not only in a space of considerable legal jeopardy, as they could not prove their identity, their address or their need to travel, but also in a physically precarious space that threatened their very survival.

It did seem, that April and May, that several things had come to a head. It also seemed that an unusual clarity had somehow descended upon us all – not only a clarity about what was being attempted by the government, but also where it was coming from. Eight months earlier, in August 2019, similar restrictions on public movement had been enhanced by the longest and most severe internet shutdown the world has seen, in the state of Kashmir. And a scant four months earlier, nationwide protests had taken place against the 2019 amendment to the Citizenship Act, 1955, whose incendiary Section 2 (1)(b) was widely construed as directly targeting Muslim migrants. The protests clubbed together four disparate initiatives by the state: the Citizenship (Amendment) Act, 2019 (CAA) together with a revised Unlawful Activities (Prevention) Act, 1967 (UAPA) that could now designate individuals as terrorists, the National Register of Citizenship (NRC), and the technology that was believed to have been the one that enabled it all, India’s much-discussed Aadhaar or biometric authentication system.

That April, as the jailed students (under UAPA) of the Jamia Millia Islamia University came together with the parallel images of millions upon millions of India’s displaced migrants walking across the length of the subcontinent, or taking whatever means of transport they could to escape the stranglehold of quarantine, something appeared to click together. Even as images of the laborers incessantly evoked the Partition of India, the last time such a scale of subcontinental upheaval had taken place, it became clear that questions of identity – and the regulatory mechanisms defining it – needed, historically, conceptually, and politically, to take on a similar span. You could not account for the Disaster Management Act or the several technologies of ‘contact tracing’ it brought in (most notably the Arogya Setu health app) without at the same time looking at the history of legislation that went back to the Information Technology Act, 2000 (IT Act), and to several other acts, bills and rules redefining citizenship that went hand-in-hand with new digital technologies ‘targeting’ India’s populace as recipients of state benefit.

This essay retells what is to some a familiar story – or at least a recent and well-known moment in history – from that particular, if temporary, vantage point. There is wide acceptance that India, like several other nation-states in different parts of the world, is seeing a totalitarian turn in its governance. This is not new. India has previously seen, in 1975, the formal suspension of civil rights, and has also seen in several regions within the nation – from Kashmir to Chhattisgarh and across the Northeast – military action under special powers that looks a lot like the Emergency, with significant curbs on public movement, the imposition of censorship, and the incarceration of political dissidents.

What may well be new, however, was the political weaponization of the massive digital infrastructure assembled since the 90s. This infrastructure, which initially saw the famous information technology revolution in the early 2000s, followed by the targeted delivery of state benefit to consumers, beneficiaries, and citizens (label depending on the nature of the benefit), also undergirded a massive neoliberal state apparatus whose consequences may only now be apparent.

For all its immediacy, the story may well go back a long way. The fragmentation of ‘the people’ – the ‘we’ who wrote the Constitution of India – into multiple rights and duties also dispersed ‘the people’ into numerous new categories. These include, among others, the ‘natural person’ and ‘digital principal’ of the draft Personal Data Protection Bill, 2019, the ‘terrorist’ of the UAPA, and the ‘hacker’ of the IT Act. Negotiating one’s digital existence includes new questions basic to the idea of identity, ranging from bodily incarceration and what one major Supreme Court judgment called ‘civil death’ to an increasingly invisible ‘virtuality’.

This story is told here in bold strokes, over five parts that foreground the conception of ‘creep’ or the phenomenon of how tools, devices, structures, or modes develop a purpose far removed from their initial conception. The first part, addressing the embodied sovereign subject, opens vexed questions of citizenship going back to India’s Independence and beyond. The second more specifically addresses Aadhaar, the promise and the revision, suggesting a tactical maneuver – of two Aadhaars, one small and nimble, the other a larger data guzzler acting at the behest of the state – and an element of ‘creep’ literally built into the system. The third addresses Justice D.Y. Chandrachud’s much-celebrated dissenting judgment on the 2018 Aadhaar case in the Supreme Court, locating his view within a tradition of social science addressing the question of identity in the Indian subcontinent. The fourth looks at the basic transformation in the conceptions of ‘people’ and ‘citizen’ as India moves into a new, many argue, more draconian regime of digital management of civil society. The fifth part primarily addresses the Kashmir internet shutdown and looks at the link between freedom of speech and the right to free movement in the public domain – a right directly threatened by the 2020 lockdown.

## I

## ‘The Time is not Right’: The Sovereign Body

On April 10, 2020, three weeks into the first COVID-19 lockdown, Safoora Zargar, an MPhil student at Delhi’s Jamia Millia Islamia University, was arrested by Delhi Police. She was a member of a student body that had been active in the agitations that had convulsed the nation since early December 2019, ever since Parliament passed the CAA.[[1]](#footnote-1) Now she was accused of organizing a protest at East Delhi’s Jaffrabad metro station in support of a planned nationwide strike.

The agitations over December and January had been generally peaceful, often led by women, their most visible manifestation the very public occupation of Shaheen Bagh in deep eastern Delhi.[[2]](#footnote-2) Although right-wing pro-Hindutva hotheads had repeatedly threatened retaliation, nobody was quite prepared for what now followed Jaffrabad or what Zargar’s protest would be accused of having started.

A day after the Jaffrabad metro sit-in, a man named Kapil Mishra, member of the right-wing Bharatiya Janata Party (BJP), proclaimed that the protesters in Delhi had three days to wind up their movement, a period of grace determined by American President Donald Trump’s visit to India at the time. That grace period never materialized: violence broke out that very night and over the next five days, even as Trump was being feted by the president of India, 53 people were killed and thousands lost their homes, many forever.

It is widely accepted that Delhi police did nothing to stop these riots. On February 26, 2020, the Delhi High Court heard an emergency plea to urgently step in and ensure both accountability and immediate police action. A two-judge bench chastised the police for their failure in bringing to book the pro-BJP leadership whose inflammatory speeches as well as active role in the riots had been widely recorded. That night, the bench was replaced and one of the justices, S. Muralidhar, transferred. The following day, another bench accepted with alacrity the solicitor general’s claim that the abnormality of the situation, with passions inflamed everywhere, made it not ‘conducive’ for any action against the riot instigators. The authorities were given six weeks to comfortably rethink their strategy.

Even as tensions remained high and thousands of people who had lost their homes continued to seek temporary shelter and basic help, the COVID-19 pandemic came upon us. In late March, a nationwide lockdown was declared, initially for three weeks but extended four times thereafter, leaving millions of migrant laborers stranded in conditions of extreme hunger and penury. This lockdown was authorized by an unusual emergency measure: a time-bound Order issued on March 24, 2020invoking the Disaster Management Act, 2005. The Ministry of Home Affairs decided that it was ‘satisfied that the country is threatened’ and that ‘effective measures’ were needed.[[3]](#footnote-3) Every extension thereafter became an excuse to add ever-greater authority to the home ministry. ‘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. The pandemic […] is an existential threat and the paramount need to save lives takes precedence over all other interests.’ However, ‘any temporary measures they impose have a disturbing habit of entrenching themselves into the landscape […] well after the crisis has passed.’[[4]](#footnote-4)

Zargar, meanwhile, was taken to Tihar Jail and charged with non-bailable offences under the draconian UAPA. This Act itself has seen significant modifications since it was first introduced in 1967 mainly as an anti-terrorist measure. In 1967, it had mainly targeted organizations, or ‘unlawful associations’, usually either Maoist or Muslim, trying to ‘bring about […] the secession of a part of the territory of India from the Union, or […] disrupt the sovereignty and territorial integrity of India’.[[5]](#footnote-5) A major shift, of some relevance to the argument that now follows, was the 2004 amendment that began recognizing ‘persons’ as also potential terrorists, making it possible to give such organizations an identifiable name and a face, thereby also making the UAPA the instrument of choice for suppressing political dissent.

This was the Act under which Zargar was arrested, followed by arrests the next day of human rights activists Gautam Navlakha and Anand Teltumbde for their involvement in the aftermath of the Bhima-Koregaon crackdown in 2018.[[6]](#footnote-6) In a public letter he wrote shortly before surrendering, Navlakha pointed to how the amendments to the UAPA had advocated ‘stringent punishment’ without any checks and balances, such as ‘stricter procedures regarding evidence, especially electronic’. As ‘[legal] procedures, which otherwise provide tighter rules regarding evidence’ become ‘elastic’, jail ‘becomes the norm, and bail an exception […] [the] process itself becomes punishment’.[[7]](#footnote-7)

When Zargar and her fellow students were taken to Tihar, their phones were taken away, their passwords extracted under duress, and when they expressed apprehension that fake evidence may be planted, the magistrate at the Patiala House Court refused to monitor the cases for once again, as the Delhi High Court too had said, the ‘time was not right’. This time the reason was the ‘circumstances ensuing in the nation due to pandemic’ that made it ‘not feasible to call for weekly reports and to monitor them’.[[8]](#footnote-8) Zargar, who was several months pregnant when she was arrested, had been at the time of writing placed in solitary confinement, in her own interest according to the police, who officially renamed it as quarantine.[[9]](#footnote-9)

Ten days after her arrest, Delhi Police, clearly on the defensive, asserted on Twitter that they had done their job ‘sincerely and impartially’ and would not be ‘deterred by the false propaganda and rumors floated by some vested elements’. The arrests, they said, had been made ‘based on analysis of scientific and forensic evidence, including video footages, technical & other footprints’.[[10]](#footnote-10)

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This essay does not deal with the specific legal situation that Safoora Zargar and her colleagues face. Nor does it deal with the condition of migrant labor during the pandemic, trapped as they were in a major crisis of identity, somewhere between work and home. I shall attempt instead to address what seems to be a techno-normative maneuver that brings together several of the key issues in which both the arrested students and the stranded laborers find themselves implicated. The National Population Register or NPR, the ‘video footages, technical & other footprints’ that the police claim to have as the basis for Zargar’s arrest, the modified UAPA, and the astonishing Emergency powers that the pandemic vested in the hands of the state at the time of writing all come together to allow the authorities to say that both Zargar and the migrant laborers were quarantined, jailed or stranded *in their own best interests*. The authorities were to decide as much ‘with sincerity’ as from the arsenal of scientific and forensic evidence they claim to possess what that interest should be.

I suggest that we are seeing something of a state-created technological unilateralism that fundamentally reinterprets the concepts of both sovereignty and citizenship. At the time of writing, India’s state apparatus, as though a *parens patriae* gone rogue, had started deploying digital technology to create a combination of legal, administrative, and technological conditions for arrogating for itself the absolute, imperial right to *own the people*.

Such an absolute right, although most graphically represented by carceral control of subjects, springs primarily from the data that the state now possesses on those subjects. As data (together with the sole right to interpret it) becomes state property, so does its unique authority to define the social good get weaponized. A populist abstraction of the ‘people’ has increasingly been turned against actual people, who no longer have any say in what is being done in their name and apparently for their own good. Citizens as conscious and autonomous subjects, capable of comprehending the responsibilities that go with key constitutional rights, are replaced by populations to be ‘managed’ and symbolized by individuated bodies, identifiable and incarcerable.

India has had a historical ambivalence around citizenship. The modern citizen-subject, a thinking person who could qualify for a unique individuated subjectivity, has historically been separated from another kind of undifferentiated subject, literally a *body to be enumerated*, to be fed, housed, incarcerated, quarantined. As a result, citizenship has a component part that is viewed as an entitlement, requiring qualifiers, impossible to make available for all. Niraja Gopal Jayal, in a complex argument which will appear many times in this essay, identifies a differentiated citizenship, of status (or ‘thin’ citizenship) as against practice (‘thick’ citizenship).[[11]](#footnote-11) Within reform language, the first is meant to lead to the second in the assumption that, in the fullness of time, status would eventually translate into practice. Both race and class defined many of its subjective qualifications when India became independent, even though the Constitution of India explicitly defined *residence* (or *jus soli*) as the overriding qualification for citizenship. Over decades, however, residence has been replaced by *jus sanguinis* (blood-based descent), specifically so in the 2004 amendments to the Citizenship Act, 1955.[[12]](#footnote-12)

At the same time, there has remained the enduring recognition of people who are either not, not-yet, or not-quite citizens, who nevertheless have to receive basic welfare, even if not necessarily any other entitlements. Colonial India – in which an articulate nationalist elite campaigned for the citizenship rights of subaltern Indians in the British Dominions even as they ‘accepted without question their own privileged class position within India’ – saw a definitional shift take place, early on, in the concept away from civil and political rights to social and economic rights, says Jayal.[[13]](#footnote-13) It also led to an especially troubled career for what Jayal calls social citizenship.[[14]](#footnote-14) A universal and ‘difference-blind’ citizenship was replaced by a group-differentiated constitutional identification of various special ‘backward’ categories, primarily of caste but also gender and other social categories. While such a recognition of backwardness went far toward acknowledging diverse forms of historical discrimination, the flip side has been that delivery of *economic* benefit did not necessarily extend to *social* rights.[[15]](#footnote-15)  Indeed, special care was taken to ensure that this did not happen. It was necessary that the right to food and shelter, to education and to vote, should not automatically translate into the associational privileges of citizenship. ‘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’, says Jayal.[[16]](#footnote-16) Politics would thus produce some of its most elaborate contours in India as a fight for social justice.

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Digital platforms arrived in the 2000s with the intention of delivering state welfare with a utopian promise. They were to accurately identify intended recipients and make sure those recipients got their benefits in a direct and unmediated mode. ‘Leakages’, it was claimed, both of misdirected benefit and corrupt middlemen, would be eliminated.

The experience has been rather different, even as digital governance enhanced the Indian state’s enumerative capability to historically inconceivable levels. As populations turned into targeted beneficiaries identified by whatever category of ‘backwardness’ or lack of that qualified them for benefit, many entered the digital gateway on terms that would freeze their status on the poverty line, their qualification for property, and their creditworthiness. Somewhere along the way, a divide between entitlement and welfare also got frozen. The potential redrawing of the blurry and porous character of the ‘last mile problem’ often enhanced social divides as it recast them into a new form of socio-technological rigidity. New questions of source codes and encryption arose even as a new battle over coercion and aspiration came to define, since 2000, the primary location for social rights in India.

Divides between aspirational rather than received identity would sharpen after 2004 when the arrival of social media – whose associational rights as defined by Apple and Facebook appeared to be beyond the control of and perhaps were even antagonistic to the enumerative apparatus of the state – represented far friendlier digital possibilities for much of the same demographic that digital governance was also fashioning as its target. A technological battle for control now ensued in India, between coercive measures to regulate what came to be known in the Personal Data Protection Bill, 2018 as ‘data fiduciaries’[[17]](#footnote-17) and conciliatory ones such as Aadhaar’s various attempts to dress itself as cool and media friendly.[[18]](#footnote-18) Various social media platforms struggled to make their peace with the IT Act’s many amendments, Facebook going the furthest in proposing nothing less than the abolition of net neutrality, the holy grail of internet freedom, in return for partnership with the Indian state.[[19]](#footnote-19)

There was a larger history at play here when a week into the first pandemic lockdown the central government announced the launch of a smart phone app named Aarogya Setu or ‘Health Bridge’ as a single-point solution for contact tracing, believed to be an essential part of fighting the pandemic. Would *health* now be added to multiple existing criteria for social exclusion? At the time of writing, the app revealed four parts to its operating system. The first recorded some basic demographics: name, age, gender, and travel history. The second, a kind of automated health check, gave a diagnosis for any symptoms you wished to list out: temperature, oxygen saturation levels, and so on. The third gave periodic updates on the pandemic. The fourth, in all probability intended to be the key section for future use, was a digital ‘e-pass’ that worked like a kind of health data aggregator to certify that you are ‘green’ and thus healthy enough to access public utilities. The e-pass, clearly templated on China’s Alipay Health Code,[[20]](#footnote-20) was designed to continuously record your geographic location, while your Bluetooth (which is required to be permanently open) range recorded all other Aarogya Setu apps that might come within 6 feet of you, thus enabling contact tracing if anybody in your chain of access ever tests positive, while recording your whereabouts in relation to designated containment zones. Everybody who installs this app gets a static digital ID; so far it appears that some 90 million have done so.

As it has rolled out, Aarogya Setu’s safeguards have been stressed by Rahul Matthan, a lawyer representing the Government of India on matters of technology and privacy law and tasked with putting together the legal framework for the app. The data would, he asserted, remain inside your phone; it would be extracted only if you came into actual contact with anyone who tested positive for Covid-19, unless, that is, it was needed for research or other such use.[[21]](#footnote-21) Your digital ID, tagged onto your name and your data, would be anonymized unless you came under any threat of exposure. This data would be deleted from your phone every 30 days and, if at all it was pulled into any cloud, would be deleted from there within 45 or 60 days. 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; even if you did have it, you could switch off the Bluetooth and the GPS anytime or simply uninstall the app.[[22]](#footnote-22)

Many of these claims have unraveled, some quite spectacularly. On April 12, 2020, a middle-aged woman sitting down to dinner with her husband and daughter in an apartment in the Mumbai suburb of Kalina suddenly encountered the proverbial knock on the door: a team of officials of the Brihanmumbai Municipal Corporation (BMC), two policemen, and an ambulance outside, responding to a ‘complaint from the PMO office’ that she had tested positive for COVID-19.[[23]](#footnote-23) The woman protested and her neighbors confirmed that she hadn’t gone anywhere, that she had rigorously observed the lockdown, that no stranger could have possibly come within 6 feet of her. Her protestations came to nought and she was taken away to be hospitalized and tested. She had apparently installed the Aarogya Setu app earlier that day, leaving many to puzzle out just where the bug lay, and not least why she had been treated like a criminal. Two days later, when a pizza delivery boy in Delhi working for the food delivery service Zomato tested positive, Zomato and several other local delivery services began using ‘Arogya Setu compliance certificates’ issued by a commercial entity named ‘Suraksha Store’, in partnership with the Department of Consumer Affairs, for a fee and in return for a host of further data.[[24]](#footnote-24) While initially termed voluntary, no effort was being made any longer to even pretend that the app installation was voluntary.[[25]](#footnote-25) The Ministry of Personnel, Public Grievances and Pensions issued an office memorandum that ‘all officers, staff (including outsourced staff) working in Central Government should download ‘Aarogyasetu’ app on their mobile phones, immediately’. All these employees, ‘before starting for office’ should ‘review their status on Aarogyasetu and commute only when the app shows ‘safe’ and ‘low risk’ status’.[[26]](#footnote-26) On April 29, 2020, an Order extending the lockdown under the Disaster Management Act required private corporations to ensure their employees had the app as a condition for reopening. In 2020, reports were coming in that the app might be required to be compulsorily preinstalled on all new smartphones, and may well be uninstallable.[[27]](#footnote-27)

By late May 2020, all of the above was still happening under the Disaster Management Act, 2005. There was no clarity on when and if the technology would be pulled down, what kind of dedicated legislation would be put in place to run this in the longer term, especially once the Act was withdrawn, how such legislation would handle any conflicts with the Personal Data Protection Bill or who would oversee its use. Meanwhile the ‘e-pass’, the fourth and possibly deadliest part of Arogya Setu’s OS, was recommended as a travel requirement on all journeys by land or air and on the Delhi Metro whenever these services reopened.[[28]](#footnote-28)

Much of this is because the likely true uses of the Aarogya Setu app, like of all digital governance, are an evolving story, and if precedent is anything to go by, the story will be one of creep. Already, on April 10, 2020, a wing of the Information & Broadcasting Ministry put out a tender for a ‘Covid-19 Patient Tracking Tool’ along with a handheld thermal imager and an optical fever-sensing system. The tracking tool, probably something like a wristband, was meant to ‘pair with Arogya Setu’ to identify what it now quite unambiguously names a ‘suspect’, to ‘identify a suspects 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’; ‘collect information like where the suspect has spent most of his/her time and who all he or she has met’; and ‘identify common friends’. Basically, the tracking tool was meant to be an ‘intelligence investigation platform & tactical tool to detect, prevent and investigate threats to national security using CDR, IPDR, Tower, Mobile Phone Forensics Data.’[[29]](#footnote-29)

This is unambiguously surveillance language. The tool’s purposes as a kind of health surveillance mechanism are independent of its founding intentions. Aarogya Setu’s contact-tracing capability, at this moment its primary reason to exist, has been questioned by many, for example, by Professor Subhashis Banerjee of the Indian Institute of Technology Delhi in a remarkable presentation for the Internet Freedom Foundation.[[30]](#footnote-30) The scientific-technical questions about whether the tool works or not need not detain this argument since all it takes is to shift focus and figure out a different, and perhaps infinitely more effective potential purpose for this mechanism.

A day after the app was announced, on April 3, 2020, a memo from the Cabinet Secretariat, Rashtrapati Bhavan, 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’.[[31]](#footnote-31)

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 to the National Population Register and the original reason for the Shaheen Bagh protests.

## The Body Corporeal: Revisiting an Old Project

The argument I present below is a revisionist account of the past two decades. It seeks to produce a hindsight account of a transformation in the embodied national subject, enabled by the *technological appropriation* of what I’m calling an ‘ambivalence’ that is inherent to the concept of citizenship in India.

The ambivalence has been, in brief, this. As thin and thick citizenship straddles two increasingly separate spheres – in shorthand, those of *entitlement* and *right* – it has also allowed a further ambivalence, as actual human beings, concretized into various manifestations, become discrete subsets of the abstracted ‘people’. Such ambivalence opens a two-level operation of citizenship, an increasingly segregationist approach when the constitutional privileges of citizenship get selectively and diversely distributed to actual people. While normative segregation is historically part of what Sudipta Kaviraj (quoted later in this essay) famously called the ‘enumerated’ community, what may not have been adequately discussed is the ways by which it has been further enabled by digital technology in terms of controls over data gathering, aggregation, and analytics, but also in terms of *whose* data was being gathered and the rights of both access and control it promises to that person in the process of converting her into a data subject.

Just a little over a decade ago, my coauthors in this volume, Nishant Shah and Nafis Hasan, the lawyer Sruti Chaganti and I led a large team on a major project to research the grassroots social impact of the Aadhaar project, or the ‘Unique Identity for Every Indian Resident’, that had been announced with much fanfare by the Government of India in February 2009. This paper is not about those findings, but it nevertheless emerges from that experience to make a larger argument set in April 2020, the time of writing this essay, even as we see Aarogya Setu reprise the old Aadhaar playbook in startling detail. My revisionist account then, the one I provide here, was not available to us in the period 2009–2011, even though a hindsight reading of several of the findings of the Identity Project do provide initial signs of how things might pan out in the decade that followed.

In February 2009, when the Unique Identification Number (UID) (as we still called it then, the term ‘Aadhaar’ was yet to enter common usage) was announced, there were admittedly reasons to worry. But there was also palpable excitement. The IT revolution still retained the last gasps of its 90s fervor and much of its history was still being written. Although many friends and colleagues perhaps more in tune with the times than us brought up grisly specters of Big Brother, we decided we weren’t going to jump the gun, we wouldn’t predetermine what would happen, for there were two, perhaps three, essential reasons for why we believed this might yet be a political and technology game changer. For one, it promised a technological flattening of hierarchies that had been historically inbuilt into citizen-based identity, and we felt this entire enterprise was very likely going to have unpredictable consequences that we wanted to study in real time. Secondly, it appeared, at least initially, that this flattening would not happen from above, but rather in a way that did not delegitimize the market – it would adopt market-consonant approaches to bridge what we believed was the one ambivalence that needed the deepest possible study: the proverbial ‘last mile’.

Thirdly, and most importantly, and shorn of all excess claim, we understood the UID’s claims to be twofold. One, to issue a unique, randomized, dumb number. Such a number would have no intelligence attached to it and it would be issued to all Indian residents (as against citizens, an importantdistinction).[[32]](#footnote-32) And, two, to 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 be my scientific, culturally unmarked, body. My identity thus would lie solely in my bodily existence. It would not be dependent on another’s endorsement.

Such a biopolitical definition of the citizen would be autonomous from the cultural credentials of citizenship – such as status, family, education, or employment – to which numerous Indian residents had no access. The demographic data would be name, date and place of birth, gender, parents’ names and UID numbers (optional for adult residents) and address (permanent and present). This 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’.[[33]](#footnote-33)

In 2008, Nandan Nilekani published *Imagining India: Ideas for the New Century*, one of the more useful books in the ‘ten easy ways to reboot India overnight’ genre obligatory for tech tycoons. Many also saw it as a book-length job application for the post of head of the UID authority. The following February, the Unique Identification Authority of India (UIDAI) was set up and it published a working paper, *Creating a Unique Identity for Every Resident in India*. Read together, Nilekani’s book and the working paper have the synergy of a virtual manifesto of tech solutionism – of what was wrong with the country, what needed doing, where the hope lay, and what the UID would now do to realize that hope.

Among its founding principles, the UID was above all *not* going to provide a citizenship record; it would be available to *anyone who* *resided* *in this nation*. It was not – repeat *not*, repeat *ad infinitum* not – an identity card. It would only be a‘mechanism that uniquely identifies a person, and ensures instant identity verification’. Its purpose, once such a unique identification took place, was to ‘transform the delivery of social welfare programs by making them more inclusive of communities’ and also ‘enable the government to shift from indirect to direct benefits, and help verify whether the intended beneficiaries actually receive funds/subsidies’.[[34]](#footnote-34) It would thus eliminate ‘gatekeepers’ and link ‘investors, farmers and citizens directly to both information and resources, and [provide] rapidly democratizing access’, since ‘unprecedented access to information and resources’ was the only thing that would transform ‘both political and economic power structures’.[[35]](#footnote-35)

As Partha Chatterjee has argued in multiple contexts, independent India had found ways to expand key developmental systems of welfare beyond its normative citizens by creating parallel forms of classification and enumeration that divided society into elementary units of *population.*[[36]](#footnote-36) Unlike the citizen, he said, a population is descriptive and empirical, not normative. In 2009, it appeared at least possible that such a concept of nonnormative identity could pitch the bodily self as tagged identifier into a flatter, more equitable digital ecosystem of both governance and social acceptance. That identification had purposes other than merely those of surveillance. That, as a result, 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.

It all seemed to come down to a particular interpretation of what, to use prevalent terminology, was widely known as the last mile problem. Such a problem was typically referenced by the so-called Rajiv Gandhi 15-paise formula, namely that only 15 paise of every rupee meant for a poor beneficiary actually reached that person. ‘Across our creaky subsidy distribution systems’, writes Nilekani, ‘leakages average 50 per cent and more. The inefficiency of these state schemes has gotten even worse over the last two decades’.[[37]](#footnote-37) Benefit does not reach beneficiaries because of leakages either due to theft or corruption. This is tolerated in India mainly because, said Nilekani, the benefit was seen as *subsidy* (i.e. an entitlement) and not *benefit*.

The last mile problem was not new to the Indian political system, but what was perhaps new was its translation into a communication paradigm. In its classical form, the ‘last mile’ is a communications term defining the final stage of providing connectivity from a communications provider to a recipient.[[38]](#footnote-38) The last mile *problem* referred to situations in which intended beneficiaries do not receive the communicated signal due to either a break or distortion in the system at the receiver’s end. The term has been widened to include problems that affect schemes of public policy, from disaster relief to housing and food subsidies, where benefits go astray and do not percolate to those for whom they are intended. The UID would now, declared its book-working-paper manifesto, eliminate this problem once and for all. It now promised both accurate identification of and targeted delivery to intended recipients.

New questions arose in our project and new data needed to be studied. What of flaws, not in the methodology but in the very theory of ‘targeting’? When creating new group-differentiated (as against universal) definitions of public distribution to recognize special ‘backward’ categories deserving of special benefit, would the shortcuts to which Chatterjee points – the workarounds of normative protocols – not create potentially more problems than they solved? Could the mere redefinition of politics and democracy into a communications model be a sufficient solution for the shadowy, secondarized, and often covert domain of negotiated state operation that now arose? Was it not inevitable that techno-managerial solutions would paper over what might become foundational cracks between the theory and practice of democracy?

What happens, Amartya Sen famously asks, when large forms of public good are not divisible into targeted individual use?[[39]](#footnote-39) Does not delivery of something like ‘shirts and apples’ always trump the delivery of, say, a ‘malaria-free environment’? What happens then when, as the marketplace enters this targeting mechanism, individuated developmental goals start getting available only for a fee? What happens when uncomfortable tracking mechanisms begin being built into the delivery that reveal not the beneficiary’s need, but her ability to pay for them?

The problem was further enhanced by another view. A slight shift in the kaleidoscope showed the last mile being routinely bridged by diverse local actors and low-end economies: rather like a boatman who plied you across a river when the bridge had collapsed, or a tout who walked you through an incomprehensible bureaucratic maze.

As a communication model the flaw could be somewhat precisely identified. The model worked only when the receiver was seen to also be a *sender* of a kind, and this sender could only become one if she was given some agency. ‘The art of ‘targeting’’, says Sen, ‘is far less simple than some advocates of means-testing tend to assume […] since the potential beneficiaries are also *agents of action*’ (emphasis mine).[[40]](#footnote-40) Such agency of action was possible only if assignation of identity went along with the capacity to *talk back* – to act on juridical citizenship rights, such as being able to vote or litigate – and it worked even better when peer-to-peer structures enabled recipient-senders on the periphery to communicate without having to go through any apparatus of centralized gatekeeping.

How, in delivering state benefit using communications language, does one view the recipient as also a sender? A sender of what? Who is qualified to receive what the senders were sending? How might senders exercise some control over the data being generated in their name, and ostensibly with their knowledge? How to enable two-way and peer-to-peer structures? Back in the late 60s, the scientist Vikram Sarabhai had proposed terrestrial television as a single-point solution to what he said were the two key problems of last mile delivery in India: *linguistic diversity* and *geographical distance*.[[41]](#footnote-41) Considered the classic example of India’s fascination with technological leapfrogging, or the use of the latest available technology to jump intermediate steps within the developmental curve to ‘catch up’ with the developed world,[[42]](#footnote-42) the Sarabhai model would inaugurate a developmental fascination with communications media in its innate capacity to link *connectivity*to the key tenets of democratic citizenship. This paradigm, first deployed with radio, has provided the major rationale for successive technological developments: the wave of portable transistors in the 60s, the terrestrial transponders of the first televisual revolution in the early 80s, the capacity of satellite since the SITE and INSAT series, and the arrival of wired networks (LANs, cable, fiber optics) followed by wireless technology (WLAN, WiMAX, W-CDMA) from the 90s, all of which seemed to have battled this two-way and peer-to-peer problem and found many provisional solutions one way or another.

Nilekani’s use of the term ‘electronification’ appeared to consciously evoke this history – he himself has welcomed a popular science historiography casting him in the tradition of Visveswaraiah and Sarabhai[[43]](#footnote-43) – and his upbeat assumption that ‘entrepreneurial energy’ would ‘work its way through infrastructure barriers and connect markets, thus building innovative, interlinked networks from scratch’,[[44]](#footnote-44) appeared at least worth hearing out for its possibility of defining bodily identity in a way that did not entirely rip it from its survival conditions.

It is perhaps worth remembering that the arrival of a new ecosystem – combining mobile networks, satellite communications, offline enrolment and verification – did offer promise. There were the inevitable glitches, but it appeared, at least initially, that the UID, for the first time, was bringing to the table a mix of agencies to improve direct benefit service delivery and direct cash transfers to poor beneficiaries.[[45]](#footnote-45) How effectively it would do this was yet to be seen, but the proposition was at least before us.

Despite this long history of development communication, two-way and peer-to-peer structures have been incommensurable with the hierarchical self-image of the Indian state. One consequence, as a bureaucrat pointed out during our Identity Project interviews, was that ‘everywhere the state usually steps in when markets fail; in India, markets step in when the state fails’. Access to various kinds of community-market mechanisms that were often hidden, rendered covert and even illegal (the criminalization of bribery, for example) appeared through our field studies a far more trusted lifeline to survival for much of the population than often discredited state benefit, not least because, even at the time, all such state benefit came inevitably with the threat of surveillance, even in, and perhaps especially during, times of crisis. Again, to quote Amartya Sen, the role that markets play ‘depend[s] […] not only on what they can do but also on what they are allowed to do’. While the interests of some people are served by the smooth functioning of markets, there are ‘groups whose established interests may be hurt by such functioning’. Confronting such influences has to occur ‘not merely through resisting – and perhaps even ‘exposing’ – the seekers of profit from captive markets, but also […] taking on their intellectual arguments *as proper subjects of scrutiny*’.[[46]](#footnote-46)

## Little Aadhaar, Big Aadhaar – ‘The Poisoned Well’ and the Origins of Creep

The idealism with regard to Aadhaar as a revolutionary technology didn’t last long. Perhaps, barring our project, the optimism over Aadhaar was never really recorded, and so it is worth noting, momentarily, the excitement of the brief period when the UID (not yet Aadhaar) presented itself as at least potentially a radical break from unidirectional hyper-centralization. Nilekani’s contention, in *Imagining India*, that information technology, ‘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’[[47]](#footnote-47) was part of the giddy romance of the internet. It was also the moment from where the story would begin to unravel.

Early warnings were less to do with the enrolment procedure itself and more about the UID being a populist mechanism upon which central and state governments were mounting their own diverse schemes with diverse ideological purposes. Many revealed a gargantuan KYR-plus desire for gathering ever-expanding and infinitely more intrusive data about all those it enrolled, well beyond what Aadhaar itself asked.[[48]](#footnote-48) We were, it appeared at times, seeing an optical double image: of two Aadhaars, a lithe lean-and-mean Aadhaar, up front and visible, and a massively data-guzzling Big Aadhaar lurking in the shadows. This ghost-image effect would be key to the creep that now followed.

The UID itself was no more than 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.[[49]](#footnote-49) As the only cog that sought to define the wheel itself, the UID now became something of an in-house ideologue for Digital India as a whole (and so gradually became indistinguishable from it), taking it upon itself to explain how all manner of programs would work, from health care 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 Aadhaar’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 Aadhaar’s own delivery mechanism claimed, increasingly ineffectually, to be neutral.

Was it, to take only one contradiction, mandatory or was it not? Aadhaar itself repeatedly asserted (as Aarogya Setu 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 Drèze would say, ‘like selling bottled water in a village after poisoning the well, and claiming that people are buying water voluntarily’.[[50]](#footnote-50) Drèze was one of the early critics of the program, fearing the damage it would cause to the National Rural Employment Guarantee Act (NREGA), especially its insistence on being the sole payments gateway for cash transfers. Drèze and Reetika Khera spoke of a ‘potent recipe for chaos’ if workers of the Mahatma Gandhi Rural Employment Guarantee Scheme (MGNREGS) were deprived of their bank passbooks, inserted into a system where there was no internet connectivity, and required single bank operating procedures.[[51]](#footnote-51) Drèze also noted with some apprehension a proposal in 2010 by the Planning Commission that the National Food Security Act should impose the ‘mandatory use of UID numbers which are expected to become operational by the end of 2010’. ‘No UID’, says Drèze, ‘no food’.[[52]](#footnote-52) So much then for the UID’s much-touted voluntary nature.

While some differences between Aadhaar and the government schemes on which it was mounted were foundational, like the vexed ‘mandatory’ question, other differences (mostly procedural issues) appeared like a dispute internal to the joint family that was the NeGP, to be resolved within. The real battle emerged when a hairy outsider moved into the neighborhood scarcely a year after the UIDAI was set up, clearly with hostile intent: the National Population Register or NPR.

Between 2010 and 2012, Aadhaar would fight a bitter, occasionally personal, and clearly ideological battle with the NPR that saw its very existence threatened more than once. Eventually it was – or so it appeared at the time – the price Aadhaar paid for its survival that proved pivotal to the turn digital governance took, a *longue durée* origin of the issues framing the 2019 protests against CAA.

Unlike Aadhaar, 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 anonymized 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. Aadhaar 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 alarm bells, the most worrisome was the category of ‘*usual* resident’ (not resident). You had to have physically lived in the space you gave as your address for a minimum of six months. You had to be *socially known* there, and had to pass a ‘social audit’. Such an audit would happen in the following way: Your biographical data along with your photograph and your Aadhaar 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’. [[53]](#footnote-53) Aadhaar’s Proof of Address (POA), in accepting a wide range of documents and in its introducer mechanism, was in sharp contrast far more relaxed.

The war spilled out in the open when the NPR announced that it too would be gathering biometric data. What initially began as a relatively minor spat over quality of data and the usefulness of iris scans became a turf issue, sought to be resolved (in January 2012) by dividing up the country into two halves, giving the NPR control over one half and Aadhaar the other.[[54]](#footnote-54) When that didn’t work, a compromise was reached in which NPR data would be sent to Aadhaar for deduplication, but if the two data sets didn’t match, NPR’s data would prevail. Other capitulations rapidly followed: the NPR, it was decided in 2010, would include, alongside demographic data and biometric data, the Aadhaar number. The final nail perhaps was this: India’s Identity Card, whenever it is issued to all of India’s ‘usual residents’ over 18 years, would have the Aadhaar number on it. In a full turn of the wheel, Aadhaar finally *de facto* became the one thing that it has always specifically said it is not.

Despite this capitulation there were, as technologist R. Swaminathan wrote, ‘genuine divergences in the objectives of NPR and UIDAI. Their worldviews are from different eras. While one is rooted in a mindset of exclusion and security, the other is inclusive and participative.’[[55]](#footnote-55) The NPR made no secret of what its chief proponent, former Home Minister P. Chidambaram, was trying to set up: ‘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.[[56]](#footnote-56)

## II

## ‘Algorithms of Connectedness’: Theorizing Creep

Function creep: the gradual widening of the use of a technology or system beyond the purpose for which it was originally intended, esp when this leads to potential invasion of privacy – Collins Dictionary

The epic conflict between Aadhaar and NPR, and the eventual capitulation of the former, appeared to have been enabled by a relentless creep of some sort. It was as though the traditional ambivalences inherent to the definition of citizenship had led to a shadowy, sinister, sleight of hand movement in which one thing was being claimed and another attempted.

The conflict itself was largely technology-driven, but the problem itself – and its terminology – appeared to arrive in arcane language, of *citizenship* versus *population*, whose import would perhaps be more familiar to students of Foucault and Partha Chatterjee than either technologists or political activists. If Aadhaar was, in Chatterjee’s sense, a populational database, the National *Population* Register, contrary to its name, was explicitly a register of *citizenship*. Indeed, the NPR was born under the 2004 amendment of the Citizenship Act, 1955, with several new clauses reversing basic constitutional norms that had returned the emphasis on ancestry, directly targeting ‘illegal’ migrants. Although the terminology was itself a minor matter, it nevertheless pressed an alarm button. Was this purely creep? Could this terminological confusion be illuminated by another rather more complex *theoretical* social-scientific explanation, with a rather longer time span, that might say something about the Indian state itself as it mutated in the early years of the new millennium?

These fine distinctions didn’t seem so arcane in 2013 when Bezwada Wilson of the Safai Karmachari Andolan (a movement for the elimination of manual scavenging in India) and S.G. Vombatkere impleaded themselves in the ongoing Supreme Court Writ Petition challenging the Aadhaar program. Wilson, along with a few other co-petitioners such as transgender and sexual minorities, brought in specific concerns, namely identities thrust upon them that would *add to* citizen discrimination, not take away from it.

In a long conversation with *Frontline*, Wilson outlines his issues with Aadhaar. The central purpose of identity has to above all enable its *repudiation*. This was because ‘identities of Dalits and Adivasis should never be permanent; they should be able to transcend them’. Dalits are ‘segregated in such a way very clearly, demarcated in villages’. The problem manual scavengers face is how to ‘come out of the identity and destroy it forever […] any marginalised community, any manual scavenging or vulnerable community wants to destroy its existing identity; that is our whole struggle’.

My basic problem is that [Aadhar facilitates] keeping identity forever. This is against my principle. Because it is a caste-ridden society and we already have identities. You don’t need any Aadhar; [people are] already branded so we don’t need any fingerprints or iris recognition […] So you are 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?[[57]](#footnote-57)

The ghostly illusions of two separate Aadhaars, one small, nimble and upfront, and one large and shadowy in the background, were now intense. On the face of it, Aadhaar’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* (a cleaner/someone engaged in manual scavenging) his occupation. On the other hand, the NPR *did* list occupation, as did identification surveys such as the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 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’.[[58]](#footnote-58)

The issue wasn’t creep alone. It was creep stalking a more fundamental slippage. We seemed to be looking at a designed ideological ambivalence in the interoperability system. In a curious twist of fate, Aadhaar not only capitulated to the NPR, it became the NPR’s public face. Chameleon-like, even as it adopted the colors of whatever initiative it came in under, it would end up becoming that initiative. 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 Aadhaar’s culturally sensitive ‘third gender’ category produced mismatches with PAN Cards (presently being cross-linked with Aadhaar) that had built no such category.[[59]](#footnote-59) Little Aadhaar increasingly became like an invitation to the parlor of an elite Big Aadhaar citizenship club that professed nondiscrimination and entry to all, only to reveal covert hierarchies and fine print designed to reinforce segregation.

In 2017, the Supreme Court gave its much awaited omnibus judgment on Aadhaar and privacy law. Although the five-bench judgment cleared Aadhaar by a 4:1 majority, what caught attention was Justice D.Y. Chandrachud’s extraordinary dissenting opinion.[[60]](#footnote-60) 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’.[[61]](#footnote-61) Among numerous sharp observations, Chandrachud caught and dissected the creep with clinical precision. It is true, he noted, that Aadhaar itself ‘excludes storage of individual information related to race, religion, caste, tribe, ethnicity, language, income or medical history’.[[62]](#footnote-62) However, when ‘Aadhaar is seeded into every database, it becomes a bridge across discrete data silos, which allows anyone with access to this information to re-construct a profile of an individual’s life’ and so ‘the mandatory linking of Aadhaar with various schemes allows the same result in effect’.[[63]](#footnote-63) Section 7 of that Act has become an ever-expanding single window ‘for the government to route more benefits, subsidies and services […] and expand the scope of Aadhaar’. This section listed benefits that ranged from

schemes for children […] [to] meals under the Mid-day meal scheme, painting and essay competitions […] [to] scholarships on merit, [from] schemes relating to rehabilitation of bonded labour and human trafficking […] to access to tuberculosis care, pensions, schemes relating to labour and employment, skill development, personnel and training, agriculture and farmers’ welfare, primary and higher education, social justice, benefits for persons with disabilities, women and child development, rural development, food distribution, healthcare, panchayati raj, chemicals & fertilizers, water resources, petroleum and natural gas, science and technology, sanitation, textiles, urban development, minority affairs, road transport, culture, tourism, urban housing, tribal affairs and stipends for internship for students.[[64]](#footnote-64)

So that ‘from delivery to deliverance, almost every aspect of the cycle of life would be governed by the logic of Aadhaar’. A legal and administrative creep was riding on the technology that, you wonder, could *surely* not have been entirely unintentional.

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. The stigma of being a manual scavenger gets permanently fixed to her/his identity. 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.[[65]](#footnote-65)

If Aadhaar and its linking process are the only visible part of an iceberg, the insight is sharp enough to clue us into how this double act fits into our larger project, of rewriting our digital past over two decades as precisely a history of the management of an ambivalence*.* It will, if we do it right, provide a new genealogy to where we found ourselves in 2020, to internet shutdowns, and to Aarogya Setu. And perhaps, with it, an even longer ancestry to the anti-CAA/NPR movements that the pandemic momentarily sought to suppress. We may even know at last what we are really up against.

## ‘Tommy Singh’ and the Indifferent Network

In 2015, in a remarkable essay that Justice D.Y. Chandrachud would in fact quote in his dissenting judgment, Nishant Shah produced a technologically informed understanding of the slippage. At the very center of the self-definition of the Aadhaar project, he pointed out a ‘curious conflation […] between the notions of iden*tity* and iden*tification*’, both terms ‘constantly used interchangeably’. ‘The UIDAI authority, both in its name, and in its documents framing the technological infrastructure that would serve as the scaffolding for effective e-governance in India, centrally talked of identification.’[[66]](#footnote-66)

Such a conflation of two opposing concepts of identity – one based on individual choice, the second explicitly without choice – would open a ‘new understanding of the individual’.[[67]](#footnote-67) The person whose data was being recorded was increasingly less you and me as we presumably understood ourselves – as people 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’. It was part of the design, said Shah, that you and I found ourselves in a digital ecosystem, caught in between two paradoxical imaginations of the individual. On the one side we were a ‘data subject’ and on the other a ‘quantified self’. The data subject was offered a specific capability: of being imagined in such a way that she was ‘no longer confined to the biological discreteness of […] existence’. Such a person became available to the world ‘through an extended relationality enabled by digital traffic flows of ideas, ideologies, and interactions’ – became thereby a *blurred entity*, in turn blurring the lines between public and private. On the other hand, a ‘quantified self’ posited a very different sort of individual: as ‘atomic’, as no longer an actor but ‘produced through a series of actions, understood as a networked entity that can be mined for data and information, ranging from genetic blue-prints to socio-cultural profiles’.

This conflation triggered multiple anxieties. These were in part ‘about the fallibility of historical precedent’, but mostly about ‘the unimaginability of the post-human futures that the individual embodies’. They would sometimes manifest themselves as a ‘fear for the loss of individual and human control and growing power of digital networks’. At other times they would ‘call for accepting the emergent digital networks of life and love’ in order to enable us to build entirely new and perhaps ‘more transparent and accountable systems of governance and regulation’.[[68]](#footnote-68)

Shah’s ‘data subject’, blurring the lines between public and private, was (to return to the terminologies used at the top of this section) our *citizen*. Such a subject was defined primarily through the capacity for *choice*: to choose how to best reflect her identity or, as Wilson’s Dalit and Adivasi example requires, to repudiate it. Faced up to this kind of citizen-subject was another ‘quantified self’ that possessed none of these freedoms of either choice or repudiation. Here your identity was handed down by a machine, an identifi*cation* produced by a complex algorithmic arrangement that collated all the data produced by you and about you and decided something about you – whether you were above or below the poverty line, if poor what your bodily needs were, if rich what your net worth was and what luxuries might be advertised to you. This was a *populational* procedure, where you were viewed as just a number to whom a certain benefit had to be delivered or a luxury sold, not a thinking and feeling human being.

Even as anxiety levels about privacy skyrocketed, the popularly held view came to be that a right to privacy could only be realized when my private self was walled off and made technologically entirely separate from the data-gathering mechanism. A more complex view was its opposite, to see how my two selves – the blurred choice-based self in which inhere my citizenship entitlements and the hypervisible, enumerative identification apparatus of the population that produced another self of me – could be *better synced*, so that the right of choice was not entirely lost when the process of enumeration kicked in. There was a third view that would directly confront us with the fear of state governance: where the second identity might entirely replace the first, freezing us all into faceless beneficiaries.

Shah proposes on his side the concept of an ‘indifferent network’. He suggests that in its very indifference lay its potential, and outlines his argument with the metaphor of the dog on the Aadhaar card. This was a famous episode that had caused much hilarity on the internet, when a bona fide Aadhaar ID was made in Bhind, Madhya Pradesh, for a dog named Tommy Singh, son of Sheru Singh, born on November 26, 2009.[[69]](#footnote-69) The incident, says Shah, led to several expected responses, most of them variations on the fond hope that ‘these networked phenomena [might build] an implicit relationship with the exterior and with the human subject’. This hope was itself never unpacked or questioned. Inevitably, when questions are posed about the relationship between networks and reality, ‘instead of looking at how networks fail to represent and map the exterior, the problem is posed as the exterior not measuring up to the parameters and models that the network produces’.[[70]](#footnote-70)

Shah saw Tommy Singh rather differently. The famous Aadhaar dog 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 Aadhaar in the last census’.[[71]](#footnote-71) Such data has no exteriority; it exists inside a self-referential network that develops its content only in the way it travels.

From here Shah made two prescient and radical propositions. Firstly, a blanket statement that the *individual*, whether human or canine, ‘has no space in the computational logic that informs our new structures of governance’.[[72]](#footnote-72) The dog in Aadhaar’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’.[[73]](#footnote-73) It can become such an actor only if we recognized that we were looking at an ‘indifferent network’. Such a claim of indifference clashed directly with the PR claims made by the 2009 UID working paper which spoke of the caring nature of a data network ‘committed to mapping the individual in all its difference through the constantly expanding databases of quantified measurement’. The facts, to Shah, were rather different: networks were the very opposite of caring, indifferent to ‘the individual and its expressions’. Under the black-and-white ambivalence-free conditions of digital governance, the fiction of the ‘reasonable man’, which has been at the heart of legal regulation and justice, has been absolutely replaced by another set of tools for producing reason and rationality. These tools of reason are self-learning and iterative algorithms that make connections at speeds unfathomable to human faculties. As networks propelled by such tools grow, they ‘reinforce this inherent paradox of the individual as unique – having a unique identifier – but also the individual as […] an actor that can be mined for data, queried, and stored in mobile data sets’.[[74]](#footnote-74)

Herein, says Shah in his second proposition, lies the hope. Identity, which had in its analogue construction included the right *not* to be identified, 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’.[[75]](#footnote-75) At the same time, when a networked governance database system ‘does not treat the appearance of the dog as a glitch, but just another data set which helps make new correlations and predictions possible’, then, linguistically speaking, ‘*the network is actually closer to the etymological understanding of identity* than how we recognise it in common utterance’.[[76]](#footnote-76)

The possibilities of analogue blurriness morph into those of network indifference. 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 become an enumerable entity. A new techno-social framework has to be imagined if we are to account for ‘the machine function of identification’ that can offer new ‘inroads into looking at what happens when our identities are mediated, mitigated, facilitated, and contained by the ways in which networked technologies of authentication and verification operate’.[[77]](#footnote-77)

As we worry about how such mediated identities may once more be ‘wedded to the human expression of identity’, Tommy Singh suggests a new possibility. It is one of ‘reconceptualising the individual as a networked subject, constituted by processes of mediation between older categories of being and new logics of digital computation’. Instead of being seen as contradictory and perennially at war, these two logics could instead be reintegrated ‘towards a more robust framework for governance’.[[78]](#footnote-78)

## ‘Who is a person?’: Identity Collapse, Psychological Numbing, and the Citizen-Killer

So where does identity lie? Partha Chatterjee asks this very question in the context of a major identity crisis that occurred at a crucial historical moment in late colonial India that shaped several principles of governmentality in times to come.[[79]](#footnote-79) This was a famous dispute, much retold in popular fiction and cinema, of a dissolute *zamindar* (landowner) in rural Bengal who died of syphilis and was ritually cremated. Years later, when a *sannyasi* (a Hindu mendicant ascetic) appeared in Dhaka claiming to be the dead man, the British establishment was ranged, in its determination to prove the reincarnated figure an impostor, against an Indian side that included most (though not all) of his family that was equally committed to proving that he was indeed the erstwhile landlord returned to life. A fierce legal battle would begin in Calcutta[[80]](#footnote-80) and go all the way to the Privy Council in London, taking us to the very gist of both the possibilities and limitations of identity as posing a very real crisis of state.

The British administrative answer clearly saw identity, as Aadhaar does, as bodily property. As such it was something unique, decipherable, and entirely unshakeable. Bodies were entitled to only one identity, and there could be no choice in the matter. The full powers of the colonial apparatus were therefore applied to reveal (unsuccessfully in the end) that the *sannyasi* had to be a fraud. Reading in the possibility of the second covert self the ‘secret history of Indian nationalism’, Chatterjee offers a political interpretation for where the colonial fault lines lay in this extraordinary dispute over who the *sannyasi* said he was. A founding principle, upon which the entire apparatus of sovereignty stood, was in its control over naming a person as a man and a citizen, and in ensuring that *all* human beings possessed a technically and socially verifiable identity. The apparatus of governance would pivot over a ‘narrow (assumption) that insists on physical and psychological continuity based on normal causes and verified by scientific method’.[[81]](#footnote-81)

Arun Mohan Sukumar speaks of another trajectory of colonial anxiety, of what happens if this founding principle of governance fails, in projects that took place as recently as the 90s. In his history of technology in independent India, Sukumar says that the failure of India’s vaccine and genome projects were in large part due to ‘the subcontinent’s long and dismal history of using biological attributes of Indians to serve in the British Raj’. From the mid-19th century, Sukumar shows how fingerprinting had been explicitly linked to criminal tracking, and the Indian Evidence Act of 1899 was the world’s first legislation recognizing this technology. And so it was that when India first piloted automated fingerprint detection in 1992, it was the ‘historical provenance of techniques and technologies that involved harvesting information from the human body [that] made them unpalatable to Indians young and old’. [[82]](#footnote-82)

‘Partition took place when human rights movements were more or less unknown, in a world just getting accustomed to genocide and ethnic cleansing’, writes Ashis Nandy, in an extraordinary series of texts that reveal the crisis of selfhood that that episode in our history caused to the question of identity. Nandy has been interested in the social history of elusive ‘multiple selves’, a fundamental challenge to the question of who a person is, and in one such example he links this multiplicity to a situation of ‘psychological numbing’, when normal human beings took part in genocide as a condition of normalcy. In an intriguingly titled essay (‘Coming Home: Religion, Mass Violence and the Exiled and Secret Selves of a Citizen-Killer’),[[83]](#footnote-83) Nandy discusses a man named Madanlal Pahwa. He was a participant in the plot to assassinate Gandhi, for which he was convicted and did 17 years in jail. A largely forgotten man in his 80s, he lived in Bombay, disconnected from contemporary politics when Nandy and Rajni Bakshi met him. Over many conversations, Pahwa defended his extreme views but called himself a humanist, claimed to be a *kattar* Hindu (hardcore Hindu) when growing up but remembered the *qawwali*s (a style of Sufi devotional music) at the *mazar* (Muslim shrine) of Baba Farid Shakarganj during his childhood, admitted to numerous acts of violence and killing in many cities, but said he felt no hatred for either Muslims or for Gandhi. Pahwa saw no internal contradiction between these multiple selves, saying mostly that what he did was a consequence of the times.

Chatterjee connects the two eras, and two selves, thus. ‘Just as the anti-absolutist desire for individual liberty produced the dictum in the reformed criminal law that one must be presumed innocent until proven guilty’, so we find a ‘corresponding desire for the welfare of populations’. This latter desire – very familiar to today’s urban migrants seeking to find some way by which they may return home – is reflected in the further dictum that ‘*one must be presumed to be an impostor until proven otherwise*’. The two maxims, presumed innocent till proven guilty and presumed impostor by default, are ‘not contradictory, but entirely consistent within the domain of modern governance’.[[84]](#footnote-84)

Justice Chandrachud apparently saw no such possibilities in modern governance in his expansive dissenting judgment. Although his conclusions were different, framed largely along classic constitutional lines, he nevertheless recognized the key category that was now in serious danger, in a way no legal or policy document of the time seemed to have done – namely the pared down networked subject surviving on a tenuous identity lifeline.

One of the central contentions of the petitioners in that 2017 Supreme Court Writ Petition was that ‘at its core, Aadhaar alters the relationship between the citizen and the State’, that it ‘diminishes the status of the citizens’ in the way it sets them up in some kind of trade-off, a *bartering process*.

Rights freely exercised, liberties freely enjoyed, entitlements granted by the Constitution and laws are all made conditional, on a compulsory barter. The barter compels the citizens to give up their biometrics ‘voluntarily’, allows her biometrics and demographic information to be stored by the State and private operators and then used for a process termed ‘authentication’.[[85]](#footnote-85)

The petitioners did not see any of the negotiations that were enabled between different data sets swirling within Shah’s indifferent networks. To them, the bartering away of choice-based citizenship had only one inevitable result: the subordination, and eventual stamping out, of basic citizenship rights by the enumerated self. And if for any reason such devastation did not occur, the state possessed one final nuclear option: the ability to – in the Court’s chilling phrase – cause ‘civil death’ by simply switching off any person’s Aadhaar connection. Deletion, blocking or rendering inaccessible an Aadhaar identity was potentially equivalent to extermination.

Chandrachud’s dissent, effectively agreeing with the petitioners, quoted Shah’s essay at some length, adopting experience of tension internal to identity – pulling people apart as it reintegrates them into technologically-enabled data subjects. While accepting the argument that the ‘quantified self’ is produced through data as it gets distributed across various systems and this ‘curates […] a comprehensive profile of an individual’, he reads a rather darker, grimmer consequence into this than Shah himself may have intended. To Chandrachud, such quantification poses an unambiguous danger to citizenship rights, for he reads the ‘flipping’ of the right as undermining your ability to be identified *at all*, as it becomes, slowly and stealthily, *the only form of identity* you have available to you under database governance. This, he ruled, violated freedoms and liberties guaranteed by Part III of the Constitution premised on choice in the means of identification for proving identity. ‘Requiring an individual to prove identity on the basis of one mode alone will […] violate the right of self-determination and free choice’.[[86]](#footnote-86)

For all the technological novelty of digitization, for Chandrachud the issue was still one of freedom classically framed. It bore similarity then to Safoora Zargar’s solitary confinement claimed as quarantine, where she is currently fighting 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 is the claim that this is being done for both her own good and that of society. It is the way technology defines sovereignty, integrating the ‘social good’ into the production of her identity as a terrorist and a candidate for UAPA treatment, that we need to analyze next.

In many ways, control over the bodily subject remains the defining center of the modern state’s existence. It is, as Giorgio Agamben says, the founding principle of its sovereignty. There is some similarity between the decultured and pared down bodily identity (a blank-slate *tabula rasa* that, we felt in 2009, may have had some salience to the UID’s basic system of creating unique identities) and Agamben’s well-known conception of ‘bare life’.[[87]](#footnote-87) If the basic paradigm of state control over bare life originates in the concentration camp, the origins of sovereignty too lie in various ‘States of Exception’.

Such States of Exception lie in zones needing surveillance, benefit, or other special attention. They may be spaces controlled by the Armed Forces Special Powers Act, 1958. They may be spaces of drought, or natural or man-made disaster. (Or they may be the ‘containment zones’ of the present pandemic when all humans are defined only as either COVID-positive or asymptomatic). The main point is that such States of Exception gradually morph and expand, so that gradually ‘exclusion and inclusion, outside and inside, *bios* and *zoē*, right and fact’ all come together to become a ‘zone of irreducible indistinction’, and the concentration camp becomes an increasingly normalized everyday condition.

Such an everyday normalization of extreme control appears relevant to Justice Chandrachud’s anxieties over how the state deals with the sovereign body: and what might happen if the survival of such a body, controlled by the state, came to be leashed to its Aadhaar alter ego almost like a kind of RFID tag. It defines the further possibility that pulling the Aadhaar plug on any person might ensure a body-endangering ‘civil death’.

In 2020, such a sovereign body dominating the Indian political horizon was that of India’s migrant workers, who – ever since the invocation of the Disaster Management Act and the lockdown – literally started walking, in their millions, across the length of the country, going home, often asserting their determination never to return. The pandemic was used to block their departure in every way possible: through closed borders, suspension of transport, and multiple other means, of which one is especially relevant to our argument.

The full 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 20th century, will of course be told some day. Meanwhile, at least *some* of the reasons for this blocking are blatantly obvious. These people provide the labor that keeps the urban economy going, from manufacturing to services; their departure threatens its collapse. The point here is that Aadhaar, as a portable identity, was surely *designed* for just such a cataclysmic event: especially when both the central and several state governments, realizing 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 to bona fide 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 mostly never arrived. Numerous laborers, who had been living in spaces provided by labor 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 Aadhaar card, and so couldn’t prove that their destination was their 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 ‘benefit’. Most would have been without proof of address (POA) and would have used ‘introducers’ – an innovative feature of Aadhaar 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[[88]](#footnote-88) – and most would have had to give their temporary workplace as their address. Aadhaar, by refusing to believe where they came from, was now *preventing* them from proving who they were.[[89]](#footnote-89) 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 laborer 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. The multiple tensions – layered with the historical memories of famine, disease and both natural and human catastrophe – into which the human body was now inserted revealed several of Justice Chandrachud’s explicit fears about the state’s near-totalitarian capacity to shut off the identity lifeline.

Inevitably, the images of men, women and children, old and young, in bullock carts, on trains, in trucks, on bicycle and overwhelmingly on foot, trudging down streets and railway tracks to cross the nation, evoked the migrations that followed the Partition. This was not just image recall, although there was something relentless about the similarity between what we saw now and what we had seen in the mid-40s.

There was an additional reason. Then as now, amid the baffling determination of vast numbers of people to go ‘home’, in the astonishing incapability of both the central and state administrations to deliver benefit, whether as food, money, shelter or transport, lay a basic *collapse of identity*. I mean identity collapse in two ways: one, a globally familiar economic paradigm of invisibilizing the poor; and, two, a paradigm that may be closer to the subcontinent, in which who you are depends foundationally on your ability to name a *home*, such as (if not only) a nation. Who could these people be, if not citizens of *some*where?

As in Saadat 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.[[90]](#footnote-90)

## III

## Careers of Corporeality

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. The institutions of its (political, sexual, subjective) containment define the repressions of the modern public sphere. Control over such a body is thus a crucial signifying site for state sovereignty. When an identity is lashed to that body, it is a key aspect of that control for its putative elusiveness can be a source of anxiety as much for the sovereignty of the state as for its subjects.

Such elusiveness of identity can occur both when a body loses its identity and when identity exists independently of any bodily anchor. Both phenomena trace back at least to colonial times and may well precede it by several centuries in other social-religious traditions. Here we look at more recent history to track, post-2000, the political, legal, and administrative morphing of bodily signification.

Sometime around 2012, legal scholar Kalyani Ramnath, still a student at the National Law School in Bangalore and participant-blogger on the CSCS Identity Project site, was developing an interesting take on India’s historical ambivalence around citizenship. Like many legal scholars, she too took the problem back to founding documents, but instead of going to the Citizenship Act, 1955 she went instead to the Constitution’s well-known Directive Principles of State Policy (DPSP).

These Principles have been, it is well known, controversial. Viewed as Ambedkar’s explicit intervention bringing a moral and ideological edge to the document, they have also been critiqued as relegating social and economic rights to a section of the Constitution ‘that was explicitly and intendedly noncognizable in a court of law’, says Niraja Gopal Jayal.[[91]](#footnote-91) The launch of neoliberalism, more or less since the onset of globalization, however, saw these Principles returned to curious prominence.

Since the 80s, an ‘expansive interpretation of Article 21’ saw the Supreme Court read a variety of unenumerated rights into the Constitution, says Jayal.[[92]](#footnote-92) These included the right to shelter, to pollution-free environments, to privacy and medical aid, and to elimination of bonded labor. This trend only accelerated with globalization. ‘Curiously’, says Jayal, ‘neoliberal ascendance has also been a period in which many social and economic rights have come to be legislated, and the air is thick with many more such rights signalled in activist slogans as well as judicial pronouncements’.[[93]](#footnote-93) 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 Drèze, speaking of the Right to Food campaign launched in Rajasthan and mounted on Article 21,[[94]](#footnote-94) was deeply concerned that this right not be reduced to a purely justiciable aspect. The complex reasons for this right needed, more than ever, a return to an Ambedkarian ‘revolutionary conception of democracy’ that existed in the umbrella protections of the Directive Principles.

Kalyani Ramnath’s inquiry, written in this time and context began (in a short and provocative essay she wrote in 2012) with the famous first three words of the Constitution. Although the entire document is as though written in the name of ‘We the People’, as it unfolds, there is a strange disappearance of ‘the people’ as active agents. As she tries to puzzle out this disappearance, she encounters another slippage that would be of some relevance in the early 2000s. From the larger and more abstract category of the ‘people’ emerges a second and very much more concrete subset, that of ‘citizens’. Not all people can be citizens.

The Constitution of India is not drafted in the name of citizens, although in practice, many of the Fundamental Rights (to speech, assembly or religion) may be claimed only by them. As with many other constitutions, it is drafted in the name of ‘We the People’, a phrase prominently placed in the Preamble, never again to appear in any of the other provisions.[[95]](#footnote-95)

The ‘people’ reappear in force in the Directive Principles, for it is of course in their name that the social revolution is being envisaged. What ends up getting outlined, however, sounds to her like a rather ‘random assortment of principles, presenting a confused, fragmented ‘moral’ vision for a social revolution’ – such as ‘improvements in agriculture, health, education and legal aid services’, *panchayati raj* to attempt to put in place a uniform civil code, and to ban cow slaughter – in all of which the ‘people’ exist only as a moral force to whom the state has a duty.[[96]](#footnote-96)

In contrast to such ‘people’ and their abstract moral authority, citizens emerge far more concretely as those who *did things for the State* in return for the rights they received. Even as the Directive Principles reveal an imagination of ‘the people’ to whom duties are owed, they also ‘simultaneously reveal the state’s expectations from them’, says Ramnath, thus creating from the people a subset of citizens who are ‘productive people’, workers, ‘imperative to building a modern nation-state’.

The slippages in the constitutional text […] offer insights into the nature of ‘the people’. Education, public assistance and creation of just and humane conditions of work for everyone and a just social order are what the state owes to its people. Adequate means of livelihood and free legal aid are only promised to ‘citizens’. The same was the case with the proposed uniform civil code. Finally, a living wage and participation in the management of industry are promised only to workers, reflecting an emphasis on providing equal opportunities for productive labour.[[97]](#footnote-97)

In a way, the Directive Principles speak ‘to a multitude’ for they are addressed to all people – including ‘citizens, workers, women and men in differing degrees’. This multitude is expected to be empowered and productive. But what if some of them are and some not?

**The social consequences of living in a nation-state are, then, firmly tied not only to official recognition of a political identity, but are also rooted in the ability of ‘the people’, in all the varied understandings of that phrase, to contribute to the building of the nation-state. The state may well choose 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.[[98]](#footnote-98)**

Building on Ramnath’s argument, I want to outline a particular techno-normative maneuver that took place in the dichotomy she discovers between ‘people’ and ‘citizens’. The ‘people’, already a conceptual abstraction, an anonymous mass, were now also *technologically* anonymized in specific ways. As recipients of state benefit, they did nothing but receive – they could, as Jayal says, only consume. What they *could* produce was *data*. And in a sharp departure from the practices of anonymization by the Census, this data had an unprecedented capability to be tagged to its bodily producers.

Meanwhile, ‘citizens’ who had the capability to self-define as *productive people* were further qualified to become (to use language from the Information Technology (Electronic Service Delivery) Rules, 2011) *persons*, more precisely *natural persons.*[[99]](#footnote-99) A key qualifier of such personhood was their *right over data*: specifically the right to own what the IT Rules name Sensitive Personal Data (SPD) – 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.

From the early 2000s, privacy law dominated the debate on digitization. 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.*[[100]](#footnote-100) These were legatees of our citizen-subjects capable of individual subjective choice, the small populational percentage of ‘natural subjects’ who actually qualified for privacy. Although the Committee did cast a wide net around data, with significant sections on identifiability, anonymization, community data and nonconsensual 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’. Srikrishna worries about what else should be included in SPD – he considers, for example, adding trade union membership – and is inevitably bothered by the special conditions under which consent is suspended in the name of ‘larger public interest’. There is 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 the Srikrishna Committee report. It appears only in two contexts: as the entity requiring anonymization, or as the entity submitting to involuntary consent.

As social rights for a new category of meritocratic ‘productive citizen’ came to be inverted into a segregation logic for *elite* privileges, these rights also inverted several of the beneficiaries of the group-differentiated ‘backward’ categories of the Constitution. Although antipoverty programs were confined to target populations and meant for the poor, Jayal points to a ‘curious bifurcation’ that occurs as elites find themselves in a position to cherry-pick which services they should appropriate and which they had no need for. Some services, such as water and electricity, although subsidized in the name of the poor, become ‘effectively available only to the nonpoor and are sometimes almost exclusively appropriated by the well-off’, whereas others, such as public education and health, for which the elites have no desire, are allowed to decline, since ‘the classes that have political voice do not have any stake in their improvement, while the classes that are entirely dependent on these services lack the voice to effect such change’.[[101]](#footnote-101)

In contrast to the ‘Data Principals’ defined by the draft Personal Data Protection Bill, 2019, another category of biopolitical ‘person’ came to be parallelly created in this time: for example, by the 2019 amendment of the UAPA which introduced an amendment allowing for a ‘person affected by inclusion of his name in the Fourth Schedule as a terrorist’.[[102]](#footnote-102) Although these were also named physical manifestations of abstract corporeality, they were bodies to be feared and contained. They had no control over the data that they produced, as the overt purpose of such data increasingly became surveillance. As the need to demonstrate sovereign control became a growing political concern, the legislation of the time typically visibilized these bodies, I hope to show below, into those of the *peasant*, the *illegal migrant*, the *terrorist*, and the *dissident*.

The ‘propensity of formal citizenship to *legitimize and entrench inequality* is reinvented every day in social and political practice’ writes Jayal.[[103]](#footnote-103) And it happens ‘not least through such a severance of welfare entitlements from the status of citizenship’. ‘Not being universal, social and economic provisioning […] did not attach to citizenship in the way in which civil and political rights were integrally linked to it’, and so benefit came commonly to be described using the ‘language of relief, charity, and alleviation’.

As I track the genealogy of identity in the many judgments, Rules, White Papers and Acts that took place – roughly between 2000, when the first Information Technology Act was passed, and 2019, when the CAA and UAPA were both amended – I shall try and show how targeting – or the ‘determination of eligibility’ – became what Jayal calls a ‘defining marker of the normative aspiration contained in the idea of citizenship’. While the ever-growing number of rights being extended to an abstracted mass of beneficiaries ‘cultivate the impression of improved access to substantive citizenship for disadvantaged groups’, what they did was in fact something else. The ‘severance of particular sets of rights from the civic status entrenched already existing hierarchies of citizenship, through a *paradoxical inversion* that placesthose who need or get social rights far below those who do not’.[[104]](#footnote-104)

## Degrees of Connectedness

The identity question that arose to prominence between 2004 and 2008, the key years of the first term of the UPA government,[[105]](#footnote-105) was almost entirely framed within the emerging managerial logic of delivery of services and benefits. By 2007, one account shows that 151 Centrally Sponsored Schemes existed for delivery of benefit, entailing annual expenditures of about INR 72,000 crore, of which 30 key schemes alone accounted for INR 64,000 crore.[[106]](#footnote-106) To give a flavor of both the opportunity and worry characterizing the time, I summarize a sample case made by three influential theorists, Devesh Kapur, Partha Mukhopadhyay and Arvind Subramanian, on what they wanted India to do.[[107]](#footnote-107)

Kapur et al. begin – as did Nilekani in *Imagining India* – with leakage, and the Rajiv Gandhi ‘15 paise for every rupee’ model. To solve this, they propose a complex segregation of beneficiaries. The core argument is disarmingly direct: if 27.5 percent of India’s roughly 1.13 billion people are below the poverty line, and if they form approximately 70 million households, then what needs to be done is simply to transfer INR 2,140 each month in cash to these households, enabling them to ‘buy the entire monthly PDS entitlement of 35 kilograms of rice or wheat in the open market, even at relatively high current market prices’.

It was breathtakingly simple, but there was one problem. It was how to *identify*. Given the scale and importance of what was being envisaged, it was ‘vital to realise that *establishing an individual’s identity is more important than establishing her eligibility*’.[[108]](#footnote-108)

Partha Chatterjee wrote, coincidentally, another essay in the same journal in the week after Kapur et al.’s sweeping single-point solution for all of India’s economic troubles. It focused on the key weak point in their argument, as he addressed the same transformation taking place in India, but read rather different things in it – things that, although not apparently connected with his book *A Princely Impostor?* discussed earlier, may still allow us to extend the argument he made there.[[109]](#footnote-109) If in *A Princely Impostor?* Chatterjee was speaking of identity in colonial India, here he was speaking about the identity of another elusive category, namely India’s *peasantry*.

Chatterjee too notes, with Kapur et al., the spread of technologies distributing ‘education, health services, food, roadways, water, electricity, agricultural technology, emergency relief and dozens of other welfare services’ that have ‘penetrated deep into the interior of everyday peasant life’.[[110]](#footnote-110) To him, however, it leads to a rather different crisis of identity than it does Kapur et al. The entire slew of government policies are devised to ‘*reverse* the effects of primitive accumulation’. There is a loss of an *economic* identity as ‘more and more primary producers, i.e., peasants, artisans and petty manufacturers […] lose their means of production’, but these victims of primitive accumulation find themselves unlikely to be absorbed in the new growth sectors of the economy. As a new economy takes over, we find a ‘degree of connectedness between peasant cultivation, trade and credit networks in agricultural commodities, transport networks, petty manufacturing and services in rural markets and small towns, etc, that makes it necessary for us to categorise all of them as part of a single, but stratified, complex’.

Their role in this new economy is rendered ‘marginalised and […] useless as far as the sectors dominated by corporate capital are concerned’. On the other hand, leaving them to ‘the passive revolution under conditions of electoral democracy’ would be to ‘leave these marginalised populations without the means of labour to simply fend for themselves’.[[111]](#footnote-111)

It also carried the major risk of ‘turning them into the ‘dangerous classes’’. In another instance of the dependence on tagging, these peasants find themselves entirely dependent on state agencies for their benefit and end up focusing their skills on ‘manipulating and pressurising these agencies to deliver these benefits’. Chatterjee would perhaps agree that the migrant laborers left stranded in the lockdown in March, April and May of 2020 were precisely this ‘dangerous class’ of his dispossessed peasantry, left stranded physically as well as in the way they fell through the cracks between the sudden withdrawal of state welfare and the inability of the new economy to define their existence.

Diverse forms of dangerousness and diverse victims have been in the air since late 2019 when (as we well know!) the Citizenship Act, 1955 was amended for the second time in two decades. The agitations that convulsed the nation led to sustained legal scrutiny of not only the amended CAA itself (and of its incendiary Section 2 (1)(b) that ‘any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 […] shall not be treated as illegal migrant’)[[112]](#footnote-112) but also to the link between this CAA, its earlier 2004 amendment, and the NPR. We return, inexorably, to 2000, when the Information Technology Act was first passed, and to 2003, when the Rules on Registration of Citizens and Issue of National Identity Cards was approved. The 2003 Rules were the first time when a ‘Local Register of Indian Citizens’ was defined, when ‘individuals whose Citizenship is doubtful’ would be weeded out.[[113]](#footnote-113)

It was also the first time that the question of *illegal migrants or foreigners* would begin to receive visibility as the defining feature of citizenship. The very theory of identity now meant, first and foremost, isolating these people, when in 2004 the Citizenship (Amendment) Act declared *descent*, rather than *birth*, as providing the right of citizenship. That same year, 2004, the UAPA was also amended, and would over the next two decades find several famous targets in some of the country’s best known political dissidents: Binayak Sen, a doctor and vice president of the People’s Union for Civil Liberties (PUCL); Maoist leader Kobad Ghandy; all the lawyers, academics, and social scientists arrested after the Bhima-Koregaon agitation; Assamese peasant activist Akhil Gogoi; Telugu poet and activist Varavara Rao and many others, before coming in 2020 to Safoora Zargar and other students from Jamia Millia and Jawaharlal Nehru University (JNU). The two Amendments were separate, but need to be read together for the new ‘dangerous class’ – fusing migrants, terrorists, displaced peasantry, and political dissidents – to emerge.

## The Data Fiduciary Arrives

On March 3, 2006, the Department of Information Technology (at the time still inside the Ministry of Communication 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*’.There are rumors that this document was written by Wipro, briefly hired by the Planning Commission as a consultant for the design phase and program management of the pilot, and which had already submitted a document titled ‘Does India Need a Unique Identity Number?’[[114]](#footnote-114)

Through 2006, these documents and discussions 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’ to ensure ‘interoperability of information related to individuals collected by various Govt./non Gov. organizations’, to ‘ensure data integrity and smooth horizontal and vertical data exchange related to the individuals across the domain applications’.[[115]](#footnote-115) The data being sought would be elaborate: name, gender, marital status, language, religion, occupation, education, and a few other categories. There would be different recipient agencies for the date being generated. 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, Education data to the Department of Higher Education, and relationship (to head of family) data, interestingly, to the Indian Council of Social Science Research (ICSSR) and the Anthropological Survey of India (ASI).

That December, the penny dropped. An Empowered Group of Ministers (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’.[[116]](#footnote-116) *Our hairy outsider muscling into the neighborhood turned out to be a separated-at-birth twin.*

So how were we taken in, in 2009? I still believe that there was good reason why, when we conceived our project and then did fieldwork in seven states in 2010–2011, we located our ‘ambivalence’ in the internecine row between Aadhaar and the NPR. I’ve talked about it earlier in this essay, so shall only add that this almighty row confused not only us, but also many bureaucrats at state and district levels who often assumed that the NPR was simply one of the numerous registrars empaneled by the UIDAI. Indeed, in the solitary reference the UIDAI’s 2009 working paper makes to the NPR, at the bottom of a section titled ‘Enrolment Strategy in Rural and Urban India’, this is just how it represents their connection. Reiterating Aadhaar’s ‘pro-rural/pro-poor’ approach to enrolment, the paper names rural registrars – like NREGA, RSBY and PDS – as ‘government agencies with large rural networks and significant bases among the poor’, which in the cities would be ‘LIC and Passports’. To this, in an oh-by-the-way line, it adds that ‘in addition to these enrollers, the UIDAI will also partner with the Registrar General of India (RGI) – who will prepare the National Population Register through the Census 2011 – to reach as many residents as possible and enroll them into the UID database’, pointing out snootily that this may ‘require incorporating some additional procedures into the RGI data collection mechanism, in order to make it UID-ready’.[[117]](#footnote-117)

*Mission creep is revealed as not creep at all, but as integral to the design*. It becomes a fascinating, if at times chilling, exercise of historical revisionism to see Aadhaar 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, and the other to work over the same data to create a visibility apparatus for citizenship that would also weed out the illegal migrants.

The fifth meeting of the EgoM on April 27, 2007 linked the proposed UID with the Household Survey of Rural Development and the individual state PDS databases. On June 15, the Planning Commission was asked to set up the Authority by an executive order. The IT Department was further asked to ‘work out modalities for linkage with [the] Election Commission’, in addition to firming up the rural development and PDS linkages. 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 (such as the Election Commission’s Voter List)’, and on the parallel need to ‘create an institutional mechanism that would ‘own’ the database’ and be responsible for its maintenance and updating. The next meeting (for which there is no date mentioned) 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’.[[118]](#footnote-118)

The die was thus cast. On January 28, 2009, the UIDAI was formed under the Planning Commission by an executive order. The creep that ensued was, one may now speculate in hindsight, the main reason for the crisis of legitimacy that Aadhaar faced: arguably as a direct result of this design ambivalence, in problems in the ‘collation’ that went beyond issues of methodology or implementation technique, which 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 2017 with the epic Supreme Court judgment.

None of this apparently 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 Drèze’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.[[119]](#footnote-119)

## IV

## We, the Narrative Community: Possibilities of Diffuse Speech

There is, inevitably, another – perhaps somewhat more subversive – way of telling this story, of what *else* happened in this very time. I too begin with Ramnath’s point of departure, but I shall focus on a slightly different aspect of the ‘We the People’ phrase that has received comparatively little legal attention, namely the ‘we’ in the *plural*. Conventionally, it is of course the ‘productive individual’ – or its opposite, the incarcerated identity-tagged individual – who remains the *par excellence* citizen, both as exemplary contributor to nation-building and the abstracted carrier of human rights. Ambedkar, for example, explicitly argued for why the entire object of fundamental rights and the very purpose of prescribing the economic structure of society was, says Jayal, to ‘protect the liberty of the individual from invasion by other individuals’.[[120]](#footnote-120)

What I want to focus on are other less-discussed modes in which individuated citizenship also occurred. It was produced, if rather surprisingly, in the *we*-ness of the people – and in the way elements of the multitude, such as *groups*, *communities* and *collectives,* could come together to claim citizenship-like rights through *simulating several of the characteristics of the individual citizen*.

This capacity of collectives to behave like a multi-bodied individual, extensively discussed in theories of group psychology and politically by several strands of the Frankfurt School, has triggered, since colonial times, a major struggle over the meanings that could be attached to political subjecthood. The tension between the ‘citizen’ and the ‘people’ came through modernity to be manifested as a tug-of-war between isolatable and identifiable individuation on one side, and diverse amorphous collectives on the other. A longer historical tension over where the nation’s imagination lay – whether in discrete individual subjects capable of incarnating and acting on their rights under Articles 19 and 21 (and who thus possessed complete control over their SPD) or in fuzzy social groups and communities – would create in the early 2000s a brand new digital iteration of a hoary problem of colonial vintage.[[121]](#footnote-121) Over the past two decades, this battle over the dis/embodied subject has also substantially defined the *extent* to which social rights such as defined by the Directive Principles – including and especially those of the right to fuzzy or blurred self-description – were seen as having been enabled (or disabled) by the link of biometric to basic demographic data.

The question Who is a legal person? has vexed courts in India. We know that, although a ‘person’ is always an individual, various entities can have ‘juridical personality’ – including, at different points, animals, rivers, corporations and even, as recently seen, deities. Such legal persons are attributed the characteristics of conscious individuals: if they have a name and a reasonable capacity to say ‘I’, they can be ‘clothed with legal personality’.[[122]](#footnote-122) One might presume therefore that collectives with individual-like characteristics seeking legal visibility would have to ‘incorporate’ themselves and become ‘artificial, juristic or fictitious’ persons. If one did, one would presume incorrectly. And thus emerges another political story because, for all their newness, the categories Nishant Shah proposes earlier in this essay – between a ‘data subject’ produced as a blurred entity and a ‘quantified self’ who can be ‘mined for data and information, ranging from genetic blue-prints to socio-cultural profiles’ – reveal a considerably longer genesis in the social sciences in India. The pendular movement between *blurred* and *quantified* individuality is critically dependent on the degree to which individuation is able to access, speak for, and mediate communities – as Sudipta Kaviraj shows in his famous outlining of fuzzy and enumerated communities in his celebrated 1992 text, ‘The Imaginary Institution of India’.

The arrival of the modern national state, writes Kaviraj, led to the ‘relentless project of enumeration – the endless counting of its citizens, territories, resources, majorities, minorities, institutions, activities, import, export, incomes, projects, births, deaths, diseases […] every conceivable quantifiable thing’.[[123]](#footnote-123) Although Europe may have managed to make a connection between a rationalist view of society and a ‘world that is wholly, unsurpassably, classified, enumerated – a world securely distributed into tables’, India had a slightly different problem when it encountered rampant enumeration.

On the other hand, although independent India did see the rise of a ‘deeply individualistic language which speaks of atomistic individuals who enter into relations with each other on the basis of a purely rational calculation of advantages’, it also saw something else – the possibility of an ‘easy, intuitive transfer of a language of *possession* from individuals to the more problematic individuality of the nation’. It was the individuality of the nation that in turn disbursed such individuality to diverse entities, and while some of them were actual, enumerated, human beings, at other times they were also primordial (unenumerated, fuzzy) communities.

These communities now produced a form of speech that had marked differences from those of the individual. It was a part of a narrative mode that ‘does not [...] aspire to be a universal form of dis­course (but) draws lines, distributes people, unlike rational theoretical discourse which attempts to unite them in an abstract universe of ideal consensus’.[[124]](#footnote-124) ‘Narratives’, he concludes, ‘are not for all to hear, for all to participate in to an equal degree’. It is, in short, a very different form of narrative, violating the founding purpose of conventional narratives, which is to open meaning out to the world, comprehensible to all. Narratives aspire, in their very nature, to be universal. Kaviraj’s narratives are none of those. Just as his ‘fuzzy’ community remains elusive to enumeration, creating significant challenges to their legal ‘personhood’, so it appears that the narratives of such a community – ‘not for all to hear’ – create significant challenges to the concept of speech as defined by the doctrine of free speech.

I want here to introduce a concept I shall name *diffuse speech* – speech that does not have an identifiable speaker and an identifiable listener, but works with a kind of amalgam of the two – that works in conditions rather different from those imagined in Article 19(1)(a). Diffuse speech, I propose, is often unable to (or more commonly refuses to) produce the two conditions that appear essential for 19(1): a person who could say (i) ‘Yes, I said this, I take responsibility’ and (ii) ‘I understand the consequences’. Diffuse speech is neither: it is speech without an identifiable speaking source whose sole purpose is to define a fuzzy community.[[125]](#footnote-125)

If diffuse speech does not have an ‘I-said-this’ speaker, it also does not have a conventional speech recipient whose main purpose is to merely receive. Recipients of free speech are, within the doctrinal limitations of the right, primarily those who possess the right to information, a necessary condition to make informed choices or to participate intelligently in the democratic process. A well-known legal dissertation on free speech argues that speech-recipients and audiences are the *primary object* of free speech concern. Their right to information is the primary right, from which derives the right of speakers to speak.[[126]](#footnote-126) Neither category plays such a role in Kaviraj’s narrative. However, his fuzzy narrative communities bring in numerous actors (interpreters, decoders, or carriers, for example), who are – in a form well known to Indian storytelling traditions – neither purely speakers nor pure listeners but an amalgam of both: where the generation of speech becomes indistinguishable from its endorsement and perpetuation.

Kaviraj’s conception of community was of course a ‘primordial’ one, his context that of national communities. Narrative, for him, had only a provisional and temporary use since narratives of the nation had a strictly curtailed function, for there were things they could do and things they couldn’t. He therefore outlined their purpose carefully: narratives were a mode by which to enable communities to reproduce themselves by telling stories about themselves. They were above all ‘practical things’, ‘interpretations of the world and its history which issue in a call to change it’; a *transaction*, a *contract* between a self and an audience.[[127]](#footnote-127) They were able to speak with eloquence about freedom, sacrifice and glory, but were typically ‘vague about the more concrete and contestable questions of distribution, equality, power, the actual unequal ordering of the past society or of the future one’. For all its self-avowed boundaries, Kaviraj’s narrative contract may well have directly anticipated peer-to-peer networks. As we turn to these, we may also take forward his primary focus, of how specific communities become a variation, a subset, mirroring the national community (literally the ‘we’ of the ‘people’) as we now focus on the birth of virtual communities from the late 90s on.

## ‘Liking’, Personhood, Terrorism

The person*hood* of the legal person was a key concern when the Information Technology Act was passed in October 2000. New challenges emerged over how the conscious-individual-citizen paradigm could be virtually reproduced, and much debate occurred about the legal acceptability of digital signatures and born-digital documents such as emails. Inevitably, the problem of virtual identities came up in what was still quaintly described as ‘cyberspace’, especially blurry alter egos commonly described as ‘cyborgs’ (ambiguously human and ambiguously gendered mutant figures on the edges of legality). Internet porn and cyber deaths dominated debate, Julian Dibbell’s 1993 text ‘A Rape in Cyberspace, or How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database into a Society’[[128]](#footnote-128) was still compulsory reading, and the classic cyber controversy of the time was the notorious 2004 Delhi Public School MMS scandal when students circulated a video clip that was put up on auction on the then-popular site Bazee.com.[[129]](#footnote-129) Inevitably, the IT Act also individuated its chosen bad guy against whom it was mobilizing the might of the state. It was the faceless ‘cyber-hacker’ who was declared the Enemy of the People, and the target of Section 66 of the IT Act was anyone who caused ‘wrongful loss or damage to the public’ or altered information in a computer that might ‘diminish its value or utility’.[[130]](#footnote-130)

A lot of this changed in 2006 when an entirely new, far more complex and elusive, category of public actor emerged with the birth of social media: Orkut’s multilingual Indian iteration, on August 31, literally the day after the seventh of many furious meetings taking place among the EgoM. Orkut launched a revolution that, by 2010, had jumped to 83 million internet users overall, 60 percent of whom were on social media.[[131]](#footnote-131) Although Orkut led the way it would have a short shelf life, being replaced within two years on the frontlines by Facebook.

Three major and foundational events in the epochal month of February 2009 would shape the decade to come. There is little that brings the three together other than their simultaneity, and the fact that they were all defined by the emerging threat posed by the shadowy individual-as-amorphous-public. The first we have discussed: it was the ceremonial unveiling of the UIDAI’s heavy artillery in the battle over bodily individuation. A very different kind of event, at a very different register, occurred as one of the earliest effective uses of Facebook for subversive community action. In a high-visibility and stunningly successful campaign against a Hindu right-wing organization’s targeting of young people celebrating Valentine’s Day, a ‘Consortium of Pub-Going, Loose and Forward Women’ put out a call to send gifts of pink knickers to that organization, as a satirical send-up of the khaki shorts that was the uniform of the Rashtriya Swayamsevak Sangh (RSS).[[132]](#footnote-132) The event was in itself relatively small, but it did indicate the growing threat of online community action, and does therefore contextualize the signing off by the President of India, also that February, of a draconian amendment to the IT Act. That amendment, numbered 66A, took direct aim at social media when it threatened 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, images, audio, video and any other electronic record’.[[133]](#footnote-133)

Two years later, in November 2012 following the death of Bal Thackeray, supreme leader of the right-wing Shiv Sena party of Bombay, when the Sena organized its ritual *bandh* (a popular/general strike), a young woman from the town of Palghar named Shaheen Dhadha wrote a Facebook post. In that post, she wondered whether it was right to close down the city like this, and whether Thackeray was a martyr of the stature of Bhagat Singh and Sukhdev. Later that day, another young woman also from Palghar, Rinu Srinivasan, clicked ‘like’ on Shaheen’s Facebook post. Shaheen was of course expressing her personal opinion, and was thus squarely within the ambit of Article 19(1)(a) that is precisely meant to protect such speech. Rinu on the other hand wasn’t expressing any opinion other than to endorse Shaheen’s view. The following day, however, Mumbai Police made no distinction between the two: they arrested both Shaheen and Rinu under the Section 66A.

Some months earlier, a chemistry professor from Calcutta’s well-known Jadavpur University named Ambikesh Mahapatra had been arrested for forwarding to friends, and for uploading to his Facebook account, some cartoons of Bengal’s Chief Minister Mamata Banerjee that had apparently referenced Satyajit Ray’s film, *Sonar Kella*. [[134]](#footnote-134) In his case the charge wasn’t clear, and he was quickly released and awarded compensation by the West Bengal Human Rights Commission. The problem was once again the source of the speech – they weren’t his cartoons, he was simply forwarding them, he said.

A somewhat more serious and more significant incident occurred in December 2014, when another man was arrested, also under 66A. This man, only known by his Twitter handle Shami Witness, was arrested because he apparently had pro-ISIS views but – and this was his main crime – also because he had 17,000 followers to whom he was ‘aggregating information’, in the words of Karnataka’s Director General of Police.[[135]](#footnote-135) The police came to know of this man only when Britain’s Channel 4 interviewed him, and although they withheld his identity and blurred his voice and image, they revealed that he lived in Bangalore, had the first name of Mehdi and worked in a leading IT company. He could hardly have done a better job of giving himself away. The next morning, Shami Witness tweeted that he expected to be arrested any moment, and when the police finally arrived, he apparently asked them why they took so long.

I wasn’t able to figure out whether he has been released or not, but it was widely accepted that there was no real legal case against him. There were nevertheless two curious facts about his situation. One, his spectacular voluntary ‘coming out’. And, two, an argument that applies as much to Rinu’s ‘Like’ as to Mahapatra’s forward: whatever his personal views, Shami Witness had not expressed any of them on Twitter, but had only confined himself to aggregating and retweeting information that was already on the internet and thus already in the public domain. In the Channel 4 interview, Shami Witness vehemently asserted his position: ‘I haven’t harmed anybody. I haven’t broken any law...I haven’t raised any war or any violence against the public of India. I haven’t waged war against any allies of India’.[[136]](#footnote-136)

In 2012, directly inspired by the outrageous arrest of the two women in Palghar, 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. Three years later in March 2015 and shortly after the Shami Witness episode, the Supreme Court acceded to Singhal’s petition and struck down Section 66A.[[137]](#footnote-137)

As we look at forwards, memes, and other forms of post-authorial diffuse speech, we also go into the somewhat wilder zone of power that was also part of 66A but elusive to the free speech doctrine. Shami Witness’ main point – and indeed the key allegation of Karnataka Police – was that he was an aggregator (he had, said the police charge sheet, 35,000 pages and 122,000 tweets on his account). His defense allows us to reopen the online equivalent of the transactional-contractual apparatus that was a key part of Kaviraj’s narrative community, namely an amalgamation of speaker and recipient into a narrative whose primary purpose, re-quoting Kaviraj, was to ‘draw lines, distribute people’. Justice Rohinton Nariman’s judgment on the 2015 Supreme Court case reveals some awareness of this problem, suggesting that Section 66A raises questions that may be additional to those of the black-letter interpretation of Article 19(1)(a). In the narrow sense, Nariman has no hesitation in agreeing with the petitioners, since the ‘reasonable restrictions’ doctrine of Article 19(2) outlines eight precise categories that might be evoked and no more, and Section 66A falls outside of those.[[138]](#footnote-138)

But there was more to this. 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 a commonly held view of the police that the mere existence of information is sufficient to read meaning into it and to charge someone with a crime. This happened in the legal trials of S.A.R. Geelani some years ago as Shuddhabrata Sengupta has shown us,[[139]](#footnote-139) and clearly happened again in the Safoora Zargar instance.

There are further consequences. Content is bred through circulation: *something becomes so because sufficient numbers of people believe that it is so*. Ganeshas thus drink milk because enough numbers of people believe it, and there is (to quote another Supreme Court judgment in a rather different case) ‘*no dispute before this Court […] that the birth of Lord Ram is ascribed to have taken place at Ayodhya*, as described in Valmiki’s Ramayan. (The only thing) being disputed is whether the […] site below the central dome of the Babri Masjid is the place of birth of Lord Ram’.[[140]](#footnote-140)

But there would be another way to tell even this story, as the 2000s went on. The further possibility of nonuniversal narratives generating communities through purely horizontal circulation – that there is no content prior to, or following, the disseminative act – would enable Shami Witness, along with numerous other models of communication, from pornography to fan address, to state his case. It would also enable an entirely new career for ‘the people’ generating new kinds of nonuniversal narrative communities. Such communities may well need a reinvoking of the Directive Principles as they take the meaning of citizenship to its liminal extremes.

## V

## Zones of Occupation

On August 4, 2019 (less than a year before the time of writing and four months before Shaheen Bagh, when Article 370 of the Constitution was abrogated by the Parliament of India, a total internet shutdown was imposed on the state of Kashmir as a ‘preventive measure’. Between January 2012 and March 2020, India recorded 385 internet shutdowns, the largest number imposed by any country. Of these, 237 were preventive, imposed in anticipation of law-and-order problems. Kashmir was the longest, lasting over 213 days, and also the most lethal.

By 2019, India also led the world in the number of official takedown requests made to Facebook, Twitter, Google, Microsoft and Wikimedia, nearly all of them directed at Facebook alone (70,815 out of the total of 77,620 requests).[[141]](#footnote-141) There are of course similarities between takedown requests and shutdowns in that both deny access rights, but there are some crucial differences. In the instance of takedown requests, it has been easier to apply the freedom of speech doctrine and to apply Article 19(1)(a), as has been asserted in at least four judgments so far.[[142]](#footnote-142) Shutdowns, on the other hand, *include* but also *exceed* the free speech doctrine with an additional spatialization aspect, when regions, districts or at times entire states, and not just specific individuals, are informationally blanked out. One consequence is a spillover of the right to speech into the right to *access space*, to peacefully assemble in it, or to travel through it, as Article 19(1)(a) now comes alongside Section 144 of the Code of Criminal Procedure (CrPC). Shutdowns thus appear to force diffuse speech into diffuse space. Analogue in the time of curfew forces a return also to the underground and subterranean, to movement through alleys and by-lanes rather than known highways, alongside longer histories of occupation.

In September 2015, wireless internet and voice services shut down for a week without public notification in the district of Churachandpur in Manipur, following protests by Kuki groups opposing the introduction of Inner Line Permits. The protests led to arson and violent clashes, apparently in part as a result of the shutdowns, and nine people died in police firing. In an astonishing display of physical occupation, for an entire year the bodies of the nine dead were kept on public display in mauve coffins under a shamiana, in front of which daily speeches occurred under a sign that said ‘Hills & Valley as separate entities: the new normal, learn to live with it’. Apparently, a poster pinned on the wall of Churachandpur police station outside which three of the nine were killed still remains there.[[143]](#footnote-143)

Physical occupation took a new turn in the months that followed August 2019, when the official curfew shaded into a people’s *hartal*.[[144]](#footnote-144) It was more than a ban in Kashmir: it was, says journalist Anuradha Bhasin, editor of the newspaper *Kashmir Times*, a ‘communication blockade’ that even in Kashmir was without precedent. The government did not make the shutdown orders public, leaving people in the dark not only as to what was happening but under which legal statute. ‘Kashmiris are not new to curfews’, says Bhasin in an interview with *Frontline*,[[145]](#footnote-145) but the scale of the shutdown was such that ‘a kind of civil disobedience’ has set in, as ‘people have dug their heels in’.

When *Kashmir Times* found itself unable to publish its Srinagar edition after August 6, Bhasin moved court. At that time this was a straightforward freedom of speech issue. All she wanted was to publish her paper. This however couldn’t happen unless there was ‘free and safe movement of reporters and journalists and other media personnel […] to report and publish news’, which also included the right to unfettered movement. Which meant that when the Supreme Court finally came up with its judgment on *Anuradha Bhasin* v *Union of India* in January 2020, the legal aspects of internet shutdowns proved rather messier.

The judgment moved around between Articles 19(1)(a) and (g), the Temporary Suspension of Telecom Services Rules of 2017 (TSTS) (adapting the Indian Telegraph Act, 1885), and Section 144 of the CrPC prohibiting public assembly. Solicitor General Tushar Mehta ‘vehemently opposed selective access to internet services’ claiming that the government didn’t have the technology, for which he was rapped on the knuckle by the Court, saying that ‘if such a contention is accepted, the Government would have a free pass to put a complete internet blockage every time’.[[146]](#footnote-146) Perhaps the most far-out instance of technological unilateralism was the Solicitor General’s argument that, since orders for Section 144 had never been published, they ‘could not be accorded the force of law’.[[147]](#footnote-147) He was once more chastised and informed that ‘the necessity of publication of law is a part of the rule of natural justice’. Then came the question of freedom of speech, and things got even more bizarre. The judgment pointed out that since ‘none of the counsels have argued for declaring the right to access the internet as a fundamental right’, it was deliberately ‘not expressing any view on the same’, but confining itself to ‘declaring that the right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under 19(1)(g) […] is constitutionally protected’. When it specifically underlined the right to a free press under this doctrine – which was Anuradha Bhasin’s primary reason to go to court – Mehta argued this time that ‘the jurisprudence on free speech relating to newspapers cannot be applied to the internet’ since ‘newspapers only allowed one-­way communication’ whereas ‘the internet makes two-­way communication’.[[148]](#footnote-148)

Expressing frustration at the moving goalposts, the judgment noted that ‘law and technology seldom mix like oil and water […] there is a consistent criticism that the development of technology is not met by equivalent movement in the law’.[[149]](#footnote-149) In this case the problem was that ‘morning to night we are encapsulated within the cyberspace and our most basic activities are enabled by the use of internet’. In trying to bring down the scale and extent of the legal sledgehammer on display into something justiciable, the court ruled: (1) ‘freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection’;[[150]](#footnote-150) (2) on the TSTS Rules, that any order ‘suspending internet services indefinitely is impermissible’;[[151]](#footnote-151) and (3) on Section 144, that the ‘power under Section 144 […] cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights’.[[152]](#footnote-152) As a result of the judgment, some kind of spotty internet was made available to the troubled state. Medianama lists out what was achieved: only 2G connectivity and only in selected districts; 400 kiosks; wired broadband only to companies providing software services and only after Mac-binding. All social media websites, peer-to-peer apps and VPNs were explicitly prohibited.[[153]](#footnote-153)

And then, in a brief aside that nobody seems to have quite discussed, the judgment brought up what may well have been the true purpose of the plethora of unpublished Rules and Acts the government was bringing to bear. Its purpose, said the Court, was to produce a ‘chilling effect’, a category that had not yet been adequately explored in Indian law.[[154]](#footnote-154) The basic principle of a chilling effect was to restrict a person from exercising his protected right ‘due to the ambiguous nature of an overbroad statute’. Even though the state may perform a constitutional action, if the ‘panopticon concerns’ and the ‘comparative harm’ potentially caused by ‘impugned restrictions due to their broad­-based nature’ was not tempered judicially, its eventual effect would become a ‘self­-proclaiming instrument’ causing a ‘great burden on free speech’.

‘What will happen when the lid is off?’, wonders Anuradha Bhasin. In an astonishing counterresponse to the shutdown, she says, the people had apparently decided to ‘refuse to allow the Indian government to show ‘normalcy’’. Protesting against government claims that there was ‘no curfew or restrictions in Kashmir’, says a PUCL report, people ‘convert(ed) the state-initiated curfew to lock down the valley (into) a people’s *hartal* as a spontaneous act to register their protest and resistance’.[[155]](#footnote-155)

Diffuse speech now becomes an amalgam of speech with assembly. This long history of a connection has often been lost to the excessive *individuation* of the free-speaking ‘person’, but its reintroduction of public space – a direct, if unintended, consequence of shutdowns – also apparently recalled longer histories, as they returned people to the very origins of the theory of the public sphere.

Manuel Castells points out how an amorphous iteration of the old public sphere worked when he discusses the first-ever internet shutdown the world had seen: the week-long 2011 blackout across Cairo amid the Tahrir Square protests. A new kind of ‘networked’ public space amalgamated the internet, the mobile phone, ‘pre-existing social networks, street demonstrations, occupations of public squares and Friday gatherings around the mosques’.[[156]](#footnote-156) Its primary purpose was to ‘*create community* to overcome fear’:[[157]](#footnote-157) fear here generated primarily by network failure. One direct consequence was the resolute return to analogue spaces, to physical contact, and to the many ancestors of networked communication, including ‘rumours, sermons, pamphlets, and manifestos, spread from person to person, from the pulpit, from the press, or by whatever means of communication were available’.[[158]](#footnote-158)

Moving from Tahrir Square to the *Indignados* in Spain,[[159]](#footnote-159) Castells points to another feature of the rebirth of networked communities: their assertion of leaderlessness. ‘There was no formal decision, but everybody agreed in practice […] there would be no leaders, either locally or nationally. Not even spokespersons were recognized’.

The source of this ancient, anarchist principle, usually betrayed in history, was not ideological in the case of this movement, although it became a fundamental principle, enforced by the large majority of the movement’s actors. It was present in the experience of Internet networks in which horizontality is the norm, and there is little need for leadership because the coordination functions can be exercised by the network itself through interaction between its nodes.[[160]](#footnote-160)

From roughly 2014, India saw numerous protest movements following the principle known worldwide now as *horizontalism* (or *horizontalidad*, the term coined in Argentina in 2001). The principle’s emphasis is on leaderlessness – the primary condition of diffuse speech – and on occupation, both *analogue* and *offline*. All of these movements can directly and straightforwardly be viewed as a protest against digital identity. They are at once protests against the technological unilateralism of the state, a reappropriation of the physical manifestation of the abstracted ‘people’ as well as a popular re-concretization of the body that – like the corpses on public display for a year in Churachandpur – collectively add up to become also a bid to retake popular sovereignty.

## Zones of Mediatized Control

Between 2014 and 2019, these movements took place most prominently on university campuses, where an actual, physical, analogue space existed that literally stood for freedom, as JNU’s now-famous Freedom Square epitomized. In 2019, they spilled out into the streets and into the several occupy initiatives often led by women. Although these were not, or not only, Kaviraj’s primordial communities, they included several features of his fuzzy and nonuniversal narratives, *possessing its one key feature, namely their antagonism to individuated identity*.

Several of their strategies of returning to analogue, both as identity and as space, occur in the context of extreme mediatization, and with it of extreme identification and surveillance practices. G. Arunima, who teaches at JNU, names ‘at least three kinds of camera forms that proliferate in universities […] CCTVs, photos and videos taken by security personnel or the administration, those taken by students, and finally a proposal that classrooms could have cameras to facilitate MOOC (Massive Open Online Course) courses’.[[161]](#footnote-161) In addition to these, campuses are ‘awash with cameras and users… Needless to say, the proliferation of cameras and users has democratised photography in the last decade in a manner that may have been unthinkable earlier’.

What it has also led to, says Arunima, is the production of students’ visual counter-archive as part of what she calls ‘resistance aesthetics’. Such an aesthetics is ‘enmeshed within cultural modes and histories of protests and prior histories of opposing institutional authority’, and is often resolutely analogue.

[It] would bring together protests, speeches, marches, fasts, dharnas (sit-ins), and other forms of visual resistance, such as cartoons and posters, all of which are designed to counter administrative authority. Since now many campus protests, following administrative orders, are routinely videographed by security staff, the archive of resistance is also an attempt by student protestors to maintain their own visual record of the events. This counter-archive, I would suggest, should be read more like […] an ethical mode of witnessing, rather than as connected only to the ‘objectivity’ of the mechanical eye.[[162]](#footnote-162)

## Revisiting Technological Unilateralism in the Era of Aarogya Setu

‘Today identity is embedded with vertical solutions and often conflated with entitlement.’

– Pramod K. Verma, technology developer and former Chief Technology Officer, Aadhaar[[163]](#footnote-163)

By the middle of 2020, as the first wave of pandemic lockdowns came to an end, the ‘chilling effect’ of various techno-legal initiatives had become very much a reality. Even as COVID-19 positive cases escalated – even as Mumbai alone exceeded all of China in the number of cases – the regulatory impulses of the state grew. In Karnataka, the Seva Sindhu portal sought to integrate all of the state’s Common Service Centres, and made registration compulsory to enter the state. It was not alone: by this time, most states had their equivalent border controls. Aarogya Setu itself, originally set up specifically to fight COVID-19, grew in the time it took to write this essay into a platform that would integrate telemedicine video consultations, an essential building block for India’s National Health Stack. This Health Stack on its side proposed to build on the legacy of India Stack – a series of API-based collaborations permitting Aadhaar verification platforms, an E-KYC mechanism, Unified Payments Interface, a Digilocker, and much else.

It was astonishing to see the Aadhaar template being reprised. Aadhaar was a Planning Commission project, Aarogya Setu a Niti Aayog initiative. The first was a lean-and-mean identity provider and authenticator, the second merely a COVID-19 contact-tracing app. Both were voluntary except you could do practically nothing without either. Both became effectively gateways into a complex network of services: Aadhaar into the Unified Payments area and Aarogya Setu into the health economy.

What did perhaps change was the absence of any sense of optimism beneath the high-pressure sales talk flooding iSPIRT’s many websites. In their presentation on the further integration of the National Health Stack with Aarogya Setu, the two project leaders, Arnab Kumar, Program Director of Frontier Technologies at NITI Aayog, Jay Dutta, Senior Vice President at MakeMyTrip.com, and a private volunteer who developed the app[[164]](#footnote-164) spoke of this as an opportunity that they had ‘stumbled upon’, a possible initial building block that could – ‘if people are interested’ – survive beyond COVID-19. As with Aadhaar, here too there appeared to be little regulation available, given that the Personal Data Protection Bill, 2019 was yet to be passed into law.[[165]](#footnote-165)

The chill then really lies in the unknown, as we anticipate the possible future of what this essay has tried to track: namely the sovereign body in its troubled interaction with the changing historical definitions of citizenship. As the ‘people’ become state property, as ownership becomes a direct manifestation of the data it controls, the right to access their data has become considerably more complicated than simply a right to free speech extending to the internet: it extends into the right to life, and the right to analogue spaces.

Contrary to the assertive, aspirational ‘coming out’ that is central to Digital India’s self-image, much recent politics is defined by its very opposite: of making identifiable speaking voices elusive, making spaces ephemeral, defining a fuzzy leaderlessness to political self-assertion. Such elusiveness in turn contextualizes the overly visible incarceration process with which the state has shown off the example of Safoora Zargar and the several young people arrested under the UAPA. Together with the heavy-handed assertion that identity is only what the state provides, such overt displays of control in pandemic times only open up the long colonial ancestry in the assertion, central to sovereign states, that a body has only one identity with no choice in the matter.

1. The Citizenship (Amendment) Act, 2019 or CAA was passed on December 11, 2019, amending the Citizenship Act, 1955 with a focus on religious ‘minorities’ from India’s neighboring states, explicitly excluding Muslims. Although there have been several earlier amendments to the original Act (in 1992, 2003, 2005, and 2015), this was the first time that religion was specifically mentioned as a criterion for citizenship. The earlier December 2003 amendment had introduced the concept of illegal immigrants, thereby also reversing a basic principle of citizenship, namely the right to the soil as against inheritance and descent. The 2003 amendment also introduced the controversial National Register of Citizens (NRC), implemented in practice only in Assam. [↑](#footnote-ref-1)
2. Shaheen Bagh is best known among a series of protests that broke out after the 2019 amendment to the Citizenship Act, 1955. It was a peaceful sit-in organized primarily by women in northeast Delhi between December 15, 2019 and March 24, 2020 when, after the COVID-19 lockdown was announced on March 23, police had dispersed the gathering. [↑](#footnote-ref-2)
3. On March 20, 2020, even before the National Disaster Management Authority (NDMA) emergency Order was declared, the Ministry of Electronics & Information Technology (MEITY) had issued its own ‘advisory’: to ‘curb false news/misinformation on corona virus’ it would invoke the Information Technology (Intermediary Guidelines) Rules 2011 to initiate ‘awareness […] of authentic information’ along with ‘immediate action to disable/remove such content’ hosted on social media platforms. See Advisory to Curb False News / Misinformation on Corona Virus issued to ‘All Social Media Platforms’ by MEITY, dated March 20, 2020. [↑](#footnote-ref-3)
4. Suhrith Parthasarthy, Gautam Bhatia, and Apar Gupta, ‘Privacy Concerns During a Pandemic’, *The Hindu*, 29 April 2020, https://www.thehindu.com/opinion/op-ed/privacy-concerns-during-a-pandemic/article31456602.ece. [↑](#footnote-ref-4)
5. See Sections 2(i) and 2(ii), https://www.indiacode.nic.in/bitstream/123456789/1470/1/a1967-37.pdf. The Unlawful Activities (Prevention) Act was originally passed in 1967 and repeatedly amended, mainly defining terrorism, who terrorists are, and what the ‘security and integrity of India’ is. It was replaced by the Prevention of Terrorism Act (POTA) in 2002, but in 2004 it incorporated most of POTA’s language. The July 2019 amendment was to enable the state to impose draconian preventive detention measures to enable people to be jailed without trial, and also to designate individuals, as against groups, as ‘terrorist’. [↑](#footnote-ref-5)
6. Bhima-Koregaon refers to an event in colonial India when, on January 1, 1818, a Mahar regiment of the East India Company defeated the Peshwa Bajirao II. The event is commemorated annually by Maharashtra’s Dalit community since Dr. B.R. Ambedkar led a commemoration ceremony in 1927. In late December 2017, a political event was organized in Pune’s Shaniwar Wada mainly by Dalit Bahujan groups. On January 1, 2018, the 200th anniversary of the original event, Dalits were attacked by some local right-wing groups protesting the celebration and they retaliated with roadblocks and a call for a statewide *bandh* (general strike). Over several months thereafter, many prominent lawyers, activists, and academics have been targeted by the police under the UAPA and jailed without trial. [↑](#footnote-ref-6)
7. Gautam Navlakha, ‘‘My Hope Rests on a Speedy and Fair Trial': Gautam Navlakha Before His Surrender’, *The Wire*, 14 April 2020, https://thewire.in/rights/gautam-navlakha-bhima-koregaon-nia-surrender. [↑](#footnote-ref-7)
8. Sruthisagar Yamunan and Shoaib Daniyal, ‘As Delhi Police Crack Down on Student Leaders, Courts Cite Lockdown to Justify Lack of Scrutiny’, *Scroll*, 29 April 2020, <https://scroll.in/article/960591/as-delhi-police-crack-down-on-student-leaders-court-cites-lockdown-to-justify-lack-of-scrutiny>. [↑](#footnote-ref-8)
9. Safoora Zargar was eventually granted bail on June 24, 2020, after spending four months in jail. [↑](#footnote-ref-9)
10. @DelhiPolice, ‘Important Information’, Twitter post, 20 April 2020, 10:38 AM, https://twitter.com/DelhiPolice/status/1252101893628796933. [↑](#footnote-ref-10)
11. Niraja Gopal Jayal, Citizenship and its Discontents: An Indian History, Cambridge, MA: Harvard University Press, 2013, pp. 84–85. [↑](#footnote-ref-11)
12. The crucial amendments were the introduction of the ‘illegal migrant’ in section 2(i)(b) and the new requirement in Section 3(i)(c) that ‘both […] parents are citizens of India’ or ‘one […] parent is a citizen and the other is not an illegal migrant’. See https://www.indiacode.nic.in/bitstream/123456789/4210/1/Citizenship\_Act\_1955.pdf. [↑](#footnote-ref-12)
13. Jayal, Citizenship and its Discontents, p. 14. [↑](#footnote-ref-13)
14. Jayal writes, ‘Social and economic rights everywhere—including in India—remain poor cousins of civil and political rights. This hierarchy of rights—civil and political on top, social and economic below—appears invincible, though it continues to be frequently attacked. However, the very fact that the grammar of rights is being constantly reinvented through struggle is in itself a testimony to the power of an idea of citizenship in which the core mainstream rights—civil and political—are simultaneously the weapons of achieving the rights on the margins and of the marginal populations, as well as the object or that which is sought to be undermined’. See Jayal, Citizenship and its Discontents, p. 162. [↑](#footnote-ref-14)
15. Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (henceforth Aadhaar Act), Section 2f, defines benefit ‘as any advantage, gift, reward, relief, or payment. in cash or kind, provided to an individual or a group of individuals and includes such other benefits as may be notified by the Central Government’. For details, see https://uidai.gov.in/images/targeted\_delivery\_of\_financial\_and\_other\_subsidies\_benefits\_and\_services\_13072016.pdf [↑](#footnote-ref-15)
16. Jayal, Citizenship and its Discontents, p. 19. [↑](#footnote-ref-16)
17. See Committee of Experts under the Chairmanship of Justice B.N. Srikrishna, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians, Ministry of Electronics and Information Technology, Government of India, 2018, Chapter 1, Section C. [↑](#footnote-ref-17)
18. An early pitch by Aadhaar was to use the UID number as a Facebook identity. [↑](#footnote-ref-18)
19. Nishant Shah’s essay in this volume discusses Free Basics in some detail. [↑](#footnote-ref-19)
20. China’s Health Code was introduced in February 2020 as an e-passport reporting real-time health conditions in which applicants, after providing information such as travel history, residence, and medical records, receive a QR code that identifies their risk level as red, yellow, or green. Alipay and WeChat are among other agencies of the provincial government that receive personal data and issue health codes. [↑](#footnote-ref-20)
21. ‘Notification of the Aarogya Setu Data Access and Knowledge Sharing Protocol, 2020 in Light of the COVID-19 Pandemic’, Ministry of Electronics and Information Technology, Government of India, 11 May 2020, Section 8 (‘Principles for sharing of response data for research purposes’), https://www.meity.gov.in/writereaddata/files/Aarogya\_Setu\_data\_access\_knowledge\_Protocol.pdf. [↑](#footnote-ref-21)
22. Rahul Matthan, ‘The Privacy Features That Are Built into Arogya Setu’, *The Mint*, 8 April 2020, <https://epaper.livemint.com/Home/ShareArticle?OrgId=b5a81ef7>. [↑](#footnote-ref-22)
23. Hemal Ashar, ‘Woman With No Travel History, No Symptoms, Whisked Away by BMC’, *Mid-day*, 18 April 2020, https://www.mid-day.com/articles/coronavirus-outbreak-woman-with-no-travel-history-no-symptoms-whisked-away-by-bmc/22737204. [↑](#footnote-ref-23)
24. Suraksha Store, https://www.surakshastore.com/. [↑](#footnote-ref-24)
25. An Aarogya Setu Tracker, set up by the Internet Democracy Project, has listed some 45 agencies who made this app mandatory or required people who have it to behave in a certain way (for example, curfew violators being forced to download the app or Resident Welfare Associations refusing entry without the app and a ‘health certificate’). See Tanisha Ranjit, ‘When and Where is Aarogya Setu Mandatory? We’re Keeping Track’, Internet Democracy Project, 8 May 2020, https://internetdemocracy.in/2020/05/aarogya-setu-tracker/. [↑](#footnote-ref-25)
26. Office memorandum issued by Ministry of Personnel, Public Grievances and Pensions, 29 April 2020, https://www.scconline.com/blog/post/2020/04/29/central-government-employees-asked-to-download-aarogyasetu-app-on-their-mobile-phones-immediately/. [↑](#footnote-ref-26)
27. Prasid Banerjee and Shreya Nandy, ‘Govt’s Arogya Setu App to be Installed on Smartphones by Default Soon’, *The Mint*, 29 April 2020, https://www.livemint.com/technology/apps/govt-s-aarogya-setu-app-to-be-installed-on-smartphones-by-default-soon-11588170539557.html. [↑](#footnote-ref-27)
28. ‘After Delhi Metro Opens, You May be Denied Ride Without Mask’, Arogya Setu Pass’, *The Mint*, 23 April 2020, https://www.livemint.com/news/india/after-delhi-metro-opens-you-may-be-denied-ride-without-mask-aarogya-setu-pass-11587649373682.html. [↑](#footnote-ref-28)
29. # Ivan Mehta, ‘India Wants to Build an Ultra-intrusive ‘Wristband’ to Track Coronavirus Patients’ Every Move’, *TNW News*, 22 April 2020,

    https://thenextweb.com/in/2020/04/22/india-wants-to-build-an-ultra-intrusive-wristband-to-track-coronavirus-patients-every-move/. [↑](#footnote-ref-29)
30. Subhashis Banerjee, ‘Covid Surveillance and Privacy in India’, Internet Freedom Foundation, 1 May 2020, https://forum.internetfreedom.in/t/webinar-covid-surveillance-and-privacy-in-india-may-01-2020-5-50-pm/440. [↑](#footnote-ref-30)
31. Memo issued by Rashtrapati Bhavan for the ‘Constitution of Committee for Developing and Implementing a Citizen App Technology Platform for Combating Covid-19’, dated 3 April 2020. [↑](#footnote-ref-31)
32. As per the Aadhaar Act, Section 2(v), an Aadhaar number can be issued to a resident who has been residing in India for at least 182 days in the 12 months immediately preceding the date of application for enrolment. [↑](#footnote-ref-32)
33. Section 2(k) of the Aadhaar Act. [↑](#footnote-ref-33)
34. UIDAI, *UIDAI Strategy Overview:* *Creating a Unique Identity Number for Every Resident in India*, Planning Commission/UIDAI, Government of India, April 2010. [↑](#footnote-ref-34)
35. Nandan Nilekani, *Imagining India: Ideas for the New Century*, New Delhi: Penguin, 2008, p. 122. [↑](#footnote-ref-35)
36. Partha Chatterjee, ‘Beyond the Nation? Or Within?’, *Social Text* 56 (1998): 57–69. [↑](#footnote-ref-36)
37. Nilekani, *Imagining India*, p. 373. [↑](#footnote-ref-37)
38. The Last Mile Problem is used in supply chain management as the hardest, most expensive, and time-consuming part of the supply chain process, amounting up to 53 percent of the total cost of shipping. It has however taken on an entirely new set of local inflections, involving battles between the state and the market on who can bridge this last mile better, or what it means. See Ashish Rajadhyaksha, *The Last Cultural Mile: An Inquiry into Technology and Governance in India*, Bangalore: Centre for Internet & Society/Researchers@Work, 2011. [↑](#footnote-ref-38)
39. Amartya Sen, ‘Markets, State and Social Opportunity’, in Amartya Sen, *Development as Freedom*, New York: Alfred A. Knopf, 2000, pp. 126–128. [↑](#footnote-ref-39)
40. Sen, ‘Markets’, p. 135. [↑](#footnote-ref-40)
41. NAMEDIA, *A Vision for Indian Television*, New Delhi: Media Foundation of the Non-aligned, 1986. [↑](#footnote-ref-41)
42. A.S. Bhalla, ‘Can High Technology Help Third World ‘Take-Off’?’, *Economic & Political Weekly* 22.27 (1987): 1082–1086. [↑](#footnote-ref-42)
43. For example, by Arun Mohan Sukumar in his much-discussed book *Midnight’s Machines: A Political History of Technology in India*, New Delhi: Penguin Viking, 2019. [↑](#footnote-ref-43)
44. Nilekani, *Imagining India*, p. 274. [↑](#footnote-ref-44)
45. The agencies included government ministries with development schemes for the poor, such as the Ministry of Rural Development’s Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), the Ministry of Labour and Employment’s Rashtriya Swasthya Bima Yojana (RSBY), the Department of Food and Public Distribution’s Targeted Public Distribution System (TPDS);Life Insurance Corporation of India and Ministry of Petroleum and Natural Gas; banks and other financial institutions offering outreach through banking correspondents; and service-oriented agencies such as mobile phone companies. [↑](#footnote-ref-45)
46. Sen, ‘Markets’, p. 120. [↑](#footnote-ref-46)
47. Nilekani, *Imagining India*, p. 365. [↑](#footnote-ref-47)
48. All Aadhaar registrars were permitted to ask for additional information for their own purposes – also known as KYR+. To take one instance, that of Andhra Pradesh (AP), KYR+ included information regarding caste membership, NREGS job card no., SHG no., pension card no., bank account details, LPG connections, etc. Typically, KYR+ forms contained some mandatory fields and some non-mandatory fields. However, from what The Identity Project witnessed at the enrollment centers, residents did not seem to distinguish between the two, nor were they appropriately advised at the Enrollment Centre. So, while UIDAI-mandated Enrollment Forms asked residents to volunteer their bank details, in the AP KYR+, residents were asked to furnish their bank account details without any discernible distinction between it being a mandatory or a voluntary field. [↑](#footnote-ref-48)
49. The NeGP, launched in May 2006, was a ‘mission mode’ plan to bring into a single system all government services available to the citizens of India via electronic media. It initially comprised 27 ‘Mission Mode Projects’ (MMPs). It was a long-term ancestor to the present Digital India and UMANG (Unified Mobile Application for New-age Governance) initiatives. [↑](#footnote-ref-49)
50. Jean Drèze, ‘Unique Facility, or Recipe for Trouble?’, *The Hindu*, 25 November 2010, <https://www.thehindu.com/opinion/op-ed/Unique-facility-or-recipe-for-trouble/article15714630.ece>. [↑](#footnote-ref-50)
51. Bharat Bhatti, Jean Drèze, and Reetika Khera, ‘Experiments with Aadhar’, *The Hindu*, 27 June 2012,https://www.thehindu.com/opinion/lead/Experiments-with-Aadhaar/article12916184.ece. [↑](#footnote-ref-51)
52. Drèze, ‘Unique Facility’. [↑](#footnote-ref-52)
53. All references to the NPR taken from the Census of India’s FAQs: https://censusindia.gov.in/2011-common/faqs.html. This particular FAQ, outlining the social audit, is no longer on the Census website. [↑](#footnote-ref-53)
54. See ‘Nandan Nilekani, Home Ministry End UIDAI Tiff, to Divide Data Collection’, *The Economic Times*, 28 January 2012, https://economictimes.indiatimes.com/news/politics-and-nation/nandan-nilekani-home-ministry-end-uidai-tiff-to-divide-data-collection/articleshow/11655516.cms?utm\_source=contentofinterest&utm\_medium=text&utm\_campaign=cppst [↑](#footnote-ref-54)
55. # R. Swaminathan, ‘UIDAI-NPR Row: Identity Politics of a Different Kind’, Observer Research Foundation, 7 April 2012,

    https://www.orfonline.org/research/uidai-npr-row-identity-politics-of-a-different-kind/. [↑](#footnote-ref-55)
56. The plan, according to newspaper reports, was that from May 2011, the National Intelligence Grid (NATGRID) would integrate 21 existing databases with central and state government agencies and other organizations in the public and private sector such as banks, insurance companies, stock exchanges, airlines, railways, telecom service providers, chemical vendors, etc. Eleven government agencies (including, among others, the Research and Analysis Wing or RAW, Intelligence Bureau, Directorate of Revenue Intelligence, and Income Tax Department) would be able to access sensitive personal information of any individual, such as bank accounts, insurance policies, property owned or rented, travel, income tax returns, driving records, automobiles owned or leased, credit card transactions, stock market trades, phone calls, emails and SMSes, websites visited, etc. A National Population Registry would be established by the 2011 Census, during which fingerprints and iris scans would be taken along with GPS records of each household. According to the home ministry, the central intelligence agencies and state police have plenty of information that is not shared or because there is no umbrella organization to collate all the information, which any or all the agencies can share to generate real-time intelligence. The NATGRID enables quick extraction of information, data mining, pattern recognition and flagging ‘tripwires’ of suspicious or unusual activities (Brijesh Pandey, ‘Natgrid Will Kick in from May 2011. Is the Big Brother Threat for Real?’, *Tehelka*, 13 November 2010). Also see, Usha Ramanathan, ‘A State of Surveillance’, International Environmental Law Research Centre, 2010, http://www.ielrc.org/content/w1002.pdf. [↑](#footnote-ref-56)
57. Akshay Deshmane, ‘The Dalit Identity Dilemma’, *Frontline*, 28 April 2017,

    <https://frontline.thehindu.com/cover-story/the-dalit-identity-dilemma/article9629313.ece>. [↑](#footnote-ref-57)
58. Deshmane, ‘The Dalit Identity’. [↑](#footnote-ref-58)
59. Pankul Sharma, ‘Only Male or Female Can Get PAN Card, Transgenders Told’, *Times of India*, 15 March 2018,  
    http://timesofindia.indiatimes.com/articleshow/63321785.cms?utm\_source=contentofinterest&utm\_medium=text&utm\_campaign=cppst. [↑](#footnote-ref-59)
60. Supreme Court of India, *Justice K.S. Puttaswamy (retd) and Another* v *Union of India and Others*, WP (C) 494/2012 (2018). For details see https://main.sci.gov.in/supremecourt/2012/35071/35071\_2012\_Judgement\_26-Sep-2018.pdf. [↑](#footnote-ref-60)
61. Gautam Bhatia, ‘The Aadhaar Judgment: A Dissent for the Ages’, *Indian Constitutional Law and Philosophy*, 27 September 2018, https://indconlawphil.wordpress.com/2018/09/27/the-aadhaar-judgment-a-dissent-for-the-ages/. [↑](#footnote-ref-61)
62. *Puttaswamy* v *UOI*, Dissenting judgment. Part H, Proportionality: 247. [↑](#footnote-ref-62)
63. *Puttaswamy* v *UOI*, Dissenting judgment. Part L, Conclusion: 14m. [↑](#footnote-ref-63)
64. *Puttaswamy* v *UOI*, 2018. Dissenting judgment. Part H, Proportionality: 246. [↑](#footnote-ref-64)
65. *Puttaswamy* v *UOI*, 2018. Dissenting judgment. Part H, Proportionality: 247. Emphasis is mine. [↑](#footnote-ref-65)
66. Nishant Shah, ‘Identity and Identification: The Individual in the Time of Networked Governance’, Socio-Legal Review 11.12 (2015): p. 28. [↑](#footnote-ref-66)
67. Shah, ‘Identity and Identification', p. 24. [↑](#footnote-ref-67)
68. Shah, ‘Identity and Identification', p. 26. [↑](#footnote-ref-68)
69. Subash Jain, ‘Man Arrested for Getting Aadhaar Card for Dog’, *Hindustan Times*, 3 July 2015, https://www.hindustantimes.com/india/man-arrested-for-getting-aadhaar-card-for-dog/story-MVtobqWtsrLXm01OkCBSvK.html. [↑](#footnote-ref-69)
70. Shah, ‘Identity and Identification', p. 36. [↑](#footnote-ref-70)
71. Shah, ‘Identity and Identification', pp. 33–34. [↑](#footnote-ref-71)
72. Shah, ‘Identity and Identification', p. 27. [↑](#footnote-ref-72)
73. Shah, ‘Identity and Identification', p. 38. [↑](#footnote-ref-73)
74. Shah, ‘Identity and Identification', p. 38. [↑](#footnote-ref-74)
75. Shah, ‘Identity and Identification', p. 31. [↑](#footnote-ref-75)
76. Shah, ‘Identity and Identification', p. 38. [↑](#footnote-ref-76)
77. Shah, ‘Identity and Identification', p. 30. [↑](#footnote-ref-77)
78. Shah, ‘Identity and Identification', p. 27. [↑](#footnote-ref-78)
79. Partha Chatterjee, *A Princely Impostor?: The Kumar of Bhawal and the Secret History of Indian Nationalism*, Princeton, N.J.: Princeton University Press, 2002. [↑](#footnote-ref-79)
80. In 2001, the government of West Bengal officially changed the name of the city to Kolkata. [↑](#footnote-ref-80)
81. Chatterjee, *A Princely Impostor?*, p. 126. [↑](#footnote-ref-81)
82. Sukumar, *Midnight’s Machines*, pp. 114–115. [↑](#footnote-ref-82)
83. # Ashis Nandy, ‘Coming Home: Religion, Mass Violence and the Exiled and Secret Selves of a Citizen-Killer’, in Ashis Nandy, *Regimes of Narcissism, Regimes of Despair*, New Delhi: Oxford University Press, 2013, p. 65.

    [↑](#footnote-ref-83)
84. Chatterjee, *A Princely Impostor?*, p. 366. [↑](#footnote-ref-84)
85. *Puttaswamy* v *UOI*. Dissenting judgment. No. 45. Emphasis is mine. [↑](#footnote-ref-85)
86. *Puttaswamy* v *UOI*. Dissenting judgment. Part G3: Identity and Identification, No. 185. [↑](#footnote-ref-86)
87. Giorgio Agamben, Homo Sacer: *Sovereign Power and Bare Life*, Stanford: Stanford University Press, 1998. [↑](#footnote-ref-87)
88. See Memorandum of Understanding between the UIDAI and the National Coalition of Organisations for Security of Migrant Workers (represented by Aajeevika Bureau), executed on 29 July 2010, to avert crises precisely such as this one. For details, see https://uidai.gov.in/images/mou/partners/Coalition\_of\_Migrant\_Workers\_NGOs.pdf. [↑](#footnote-ref-88)
89. # See Jawhar Sircar, ‘A Long Look at Exactly Why and How India Failed its Migrant Workers’, *The Wire*, 29 May 2020, <https://thewire.in/labour/lockdown-migrant-workers-policy-analysis>.

    [↑](#footnote-ref-89)
90. Saadat Hasan Manto’s classic 1955 short story ‘Toba Tek Singh’, in which the newly formed governments of India and Pakistan exchange some Muslim, Sikh and Hindu lunatics, revolves around Bishan Singh, a Sikh inmate of an asylum in Lahore, sent under police escort to India, who eventually finds himself in the no man's land between two barbed wire fences. [↑](#footnote-ref-90)
91. Jayal, Citizenship and its Discontents, p. 151. [↑](#footnote-ref-91)
92. Jayal, Citizenship and its Discontents, p. 166. [↑](#footnote-ref-92)
93. Jayal, Citizenship and its Discontents, p. 174. [↑](#footnote-ref-93)
94. The prevalence of ‘hunger amidst plenty’ in India took a new turn in mid 2001, as the country's food stocks reached unprecedented levels while hunger intensified in drought-affected areas and elsewhere. This situation prompted the People’s Union for Civil Liberties (Rajasthan) to approach the Supreme Court with a writ petition on the ‘right to food’. Initially, the case was brought against the Government of India, the Food Corporation of India (FCI), and six state governments, in the specific context of inadequate drought relief. Subsequently, the case was extended to the larger issue of chronic hunger, with all states and union territories as respondents.  
    The legal basis of the petition is simple. Article 21 of the Constitution is a guarantee of the right to life, and imposes upon the state the duty to protect it. This right is fundamental. The Supreme Court has held in previous cases that the right to life includes the right to live with dignity and all that goes along with it, including the right to food. The petition argues, in essence, that the response to the drought situation by central and state governments, in terms of both policy and implementation, constitutes a clear violation of this right. The bulk of the petition attempts to establish this using (government and field-based) data from Rajasthan.  
    The petition points out two aspects of the state's negligence in providing food security. The first is the breakdown of the public distribution system (PDS). The failures of the PDS arise at various levels: its availability has been restricted to families living below the poverty line (BPL), yet the monthly quota per family cannot meet the nutritional standards set by the Indian Council of Medical Research (ICMR). Even this is implemented erratically: a survey in Rajasthan indicated that only one-third of the sample villages had regular distribution in the preceding three months, with no distribution at all in one-sixth of them. The identification of BPL households is also highly unreliable. All in all, the assistance provided to BPL households through the PDS amounted to less than INR 5 per person per month. [↑](#footnote-ref-94)
95. Kalyani Ramnath, ‘‘We the People’: Seamless Webs and Social Revolution in India’s Constituent Assembly Debates’, South Asia Research 32.1 (2012): 58. [↑](#footnote-ref-95)
96. Ramnath, ‘‘We the People’’, p. 59. [↑](#footnote-ref-96)
97. Ramnath, ‘‘We the People’’, p. 61. [↑](#footnote-ref-97)
98. Ramnath, ‘‘We the People’’, pp. 61, 66. [↑](#footnote-ref-98)
99. Ministry of Communications and Information Technology, Notification on changes to the Information Technology Act, 2000, issued on 11 April 2011, https://www.meity.gov.in/writereaddata/files/GSR3\_10511%281%29.pdf. [↑](#footnote-ref-99)
100. Committee of Experts under the Chairmanship of Justice B.N. Srikrishna, A Free and Fair Digital Economy, Chapter 1-C. [↑](#footnote-ref-100)
101. Jayal, Citizenship and its Discontents, p. 194. [↑](#footnote-ref-101)
102. Unlawful Activities (Prevention) Amendment Bill, 2019, Section 6-iii-c, https://egazette.nic.in/WriteReadData/2019/210355.pdf. [↑](#footnote-ref-102)
103. Jayal, Citizenship and its Discontents, p. 170. [↑](#footnote-ref-103)
104. Jayal, Citizenship and its Discontents, p. 194. [↑](#footnote-ref-104)
105. The United Progressive Alliance or UPA is a coalition of parties formed soon after the 2004 general election. [↑](#footnote-ref-105)
106. Devesh Kapur, Partha Mukhopadhyay and Arvind Subramanian, ‘The Case for Direct Cash Transfers to the Poor’, *Economic & Political Weekly* 43.15 (2008): 37–43. [↑](#footnote-ref-106)
107. Kapur et al., ‘The Case for Direct Cash Transfers’, p. 38. [↑](#footnote-ref-107)
108. Kapur et al., ‘The Case for Direct Cash Transfers’, p. 39. Emphasis is mine. [↑](#footnote-ref-108)
109. Partha Chatterjee, ‘Democracy and Economic Transformation in India’, *Economic & Political Weekly* 43.16 (2008): 53–62. [↑](#footnote-ref-109)
110. Chatterjee, ‘Democracy and Economic Transformation in India’, p. 2. [↑](#footnote-ref-110)
111. Chatterjee, ‘Democracy and Economic Transformation in India’, pp. 57, 62. [↑](#footnote-ref-111)
112. Citizenship (Amendment) Act, 2019. For details, see https://egazette.nic.in/WriteReadData/2019/214646.pdf. [↑](#footnote-ref-112)
113. Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, https://censusindia.gov.in/2011-Act&Rules/notifications/citizenship\_rules2003.pdf. [↑](#footnote-ref-113)
114. See Gopal Krishna, ‘Where is WIPRO’s ‘Strategic Vision on the UIDAI Project’ Document?’, *Countercurrents*, 7 August 2011, https://www.countercurrents.org/krishna070811.htm. [↑](#footnote-ref-114)
115. Expert Committee on Metadata and Data Standards, ‘Personal Identification Codification’, Draft version 8, August 2008. [↑](#footnote-ref-115)
116. *Puttaswamy* v *UOI*, Section 7. [↑](#footnote-ref-116)
117. UIDAI, *UIDAI Strategy Overview*, Section 3.2. [↑](#footnote-ref-117)
118. *Puttaswamy* v *UOI*, Section 9 (ii). [↑](#footnote-ref-118)
119. ‘UIDAI to Share Data with Police for Investigations’, *The Hindu*, 6 February 2013, https://www.thehindu.com/news/national/karnataka/uidai-to-share-data-with-police-for-investigations/article4383068.ece. [↑](#footnote-ref-119)
120. For Ambedkar, she says, the four premises of political democracy were: first, that the individual is an end in himself; second, that the individual has inalienable rights guaranteed by the Constitution; third, that the individual should not have to relinquish any of these rights as a condition of receiving a privilege; and, fourth, that the state should not delegate its powers to private persons to govern others. See Jayal, Citizenship and its Discontents, p. 148. [↑](#footnote-ref-120)
121. Jayal writes: ‘This accounts for the preoccupation, in the political discourse of late colonial India, with specifying exactly how, on what terms, and to what extent the relationship of the citizen to the state may be mediated by community. The idea that communities possessed political agency found articulation in their negotiations with the colonial state for a greater institutional presence, with political and legislative representation being viewed as the preeminent form that citizenship could take’. See Jayal, Citizenship and its Discontents, pp. 199–200. [↑](#footnote-ref-121)
122. See the legal services advice being offered here: http://www.legalservicesindia.com/article/2316/Meaning-and-Kind-of-Person.html. [↑](#footnote-ref-122)
123. Sudipta Kaviraj, ‘The Imaginary Institution of India’, in Sudipta Kaviraj, *The Imaginary Institution of India: Politics and Ideas*, New York: Columbia University Press, 2010, p. 199. [↑](#footnote-ref-123)
124. Kaviraj, ‘The Imaginary Institution of India’, p. 201. [↑](#footnote-ref-124)
125. Although certain kinds of unsourced speech have been legally recognized (e.g., rumor or fake news) – and dealt with by holding the carriers of such speech responsible (e.g., newspapers or after the Information Technology Rules, 2011 that defined digital ‘intermediaries’, email, hosting, and blogging services) – as well as certain modes of sourced but not conscious or responsible speech (e.g. in 2010 when the Supreme Court banned Deception Detection Tests like polygraph, narcoanalysis, and brain-mapping), these did not exhaust the problems posed by diffuse speech. [↑](#footnote-ref-125)
126. Eric Barendt, *Freedom of Speech*, Oxford: Clarendon Press, 1985, pp. 26–27. [↑](#footnote-ref-126)
127. Kaviraj, ‘The Imaginary Institution of India’, p. 200. [↑](#footnote-ref-127)
128. https://smg.media.mit.edu/library/dibbell1993.html [↑](#footnote-ref-128)
129. Also discussed in more detail by Nishant Shah in his essay in this volume. [↑](#footnote-ref-129)
130. Section 66 of the IT Act (‘Hacking with computer system’): ‘Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hack’. For details, see https://www.meity.gov.in/content/offences. [↑](#footnote-ref-130)
131. Open Source Center Media Aid, *Overview of Leading Indian Social Media*, 21 December 2010, https://fas.org/irp/dni/osc/india-social.pdf. [↑](#footnote-ref-131)
132. Wikipedia, https://en.wikipedia.org/wiki/Pink\_Chaddi\_Campaign. [↑](#footnote-ref-132)
133. https://cis-india.org/internet-governance/resources/section-66A-information-technology-act. [↑](#footnote-ref-133)
134. # Mayank Jain, ‘Mamata is Suppressing all Dissent, Claims Jadavpur Professor Arrested for Sharing a Cartoon’, *Scroll*, 12 March 2015, https://scroll.in/article/712933/mamata-is-suppressing-all-dissent-claims-jadavpur-professor-arrested-for-sharing-a-cartoon.

     [↑](#footnote-ref-134)
135. See ‘Youth has Confessed to Operating Pro-IS Twitter Account: Karnataka DGP’, *Free Press Journal*, 1 June 2019, https://www.freepressjournal.in/india/youth-has-confessed-to-operating-pro-is-twitter-account-karnataka-dgp. [↑](#footnote-ref-135)
136. # ‘ISIS Propagandist Shami Witness: Man Charged in India, Channel 4, 1 June 2015, https://www.channel4.com/news/isis-shami-witness-medhi-masroor-biswas-charged.

     [↑](#footnote-ref-136)
137. *Shreya Singhal* v *UOI*, WP (Criminal) No. 167 of 2012, (24 March 2015), https://indiankanoon.org/doc/110813550/. [↑](#footnote-ref-137)
138. These are: (1) the sovereignty and integrity of India, (2) the security of the State, (3) friendly relations with foreign States, (4) public order, (5) decency (6) morality or in relation to contempt of court, (7) defamation (8) incitement to an offence. See https://indiankanoon.org/doc/493243/. [↑](#footnote-ref-138)
139. Shuddhabrata Sengupta, ‘Media Trials and Courtroom Tribulations: The Battle of Images, Words and Shadows in the 13 December Case’, in 13 December, A Reader: The Strange Case of the Attack on the Indian Parliament, New Delhi: Penguin Books, 2006. [↑](#footnote-ref-139)
140. *M Siddiq (D) Thr Lrs* v *Mahant Suresh Das & Ors*, Civil Appeals Nos 10866-10867 of 2010 (2019), https://www.sci.gov.in/pdf/JUD\_2.pdf. [↑](#footnote-ref-140)
141. Paul Bischoff, ‘Which Government Censors the Tech Giants the Most?’, 19 October 2021, https://www.comparitech.com/blog/vpn-privacy/tech-giant-censorship/. [↑](#footnote-ref-141)
142. *Faheema Shirin R.K.* v *State of Kerala*, WP (C) 19716/2019-L (19 September 2019), https://indiankanoon.org/doc/188439981/; *Banashree Gogoi* v *Union of India and 7 Ors*, GAHC010310492019, Case No. : PIL 78/2019 (19 December 2019), https://indiankanoon.org/doc/175955438/; *Anuradha Bhasin* v *Union of India*, Writ Petition (Civil) No. 1031 of 2019 (10 January 2020), https://indiankanoon.org/doc/82461587/; *Foundation for Media Professionals* v *Union Territory of Jammu and Kashmir*, Writ Petition (Civil) of 2020 (D. No. 10817 of 2020) (11 May 2020), (https://indiankanoon.org/doc/123992151/. [↑](#footnote-ref-142)
143. Esha Roy, ‘As Nine Bodies Await Burial, Manipur Trenched in Politics of Dead and Living’, *Indian Express*, 29 August 2016,

     https://indianexpress.com/article/india/india-news-india/manipur-violence-protests-in-churachandpur-manipur-deaths-2999507/. [↑](#footnote-ref-143)
144. In South Asia, the term *hartal* refers to the closure of shops and offices as a protest or mark of sorrow. [↑](#footnote-ref-144)
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147. *Bhasin* v *UOI*, No. 8B: Contentions. [↑](#footnote-ref-147)
148. *Bhasin* v *UOI*, No. 8B: Contentions. [↑](#footnote-ref-148)
149. *Bhasin* v *UOI*, No. 24. [↑](#footnote-ref-149)
150. *Bhasin* v *UOI*, No. 152: Conclusion. [↑](#footnote-ref-150)
151. *Bhasin* v *UOI*, No. 152: Conclusion. [↑](#footnote-ref-151)
152. *Bhasin* v *UOI*, No. 140. [↑](#footnote-ref-152)
153. Soumyarendra Barik, ‘2G Internet on Postpaid, Broadband Partially Restored in J&K for Accessing Only ‘White-Listed’ Websites’, Medianama, 15 January 2020,

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154. *Bhasin* v *UOI*, Nos 146, 147, 148. [↑](#footnote-ref-154)
155. People’s Union of Civil Liberties, *Imprisoned Resistance - 5th August and its Aftermath*, 2019, https://www.pucl.org/reports/imprisoned-resistance-5th-august-and-its-aftermath. [↑](#footnote-ref-155)
156. Manuel Castells, *Networks of Outrage and Hope: Social Movements in the Internet Age*, Cambridge, UK: Polity Press, 2015, p. 57. [↑](#footnote-ref-156)
157. Castells, *Networks of Outrage and Hope*, p. 10. [↑](#footnote-ref-157)
158. Castells, *Networks of Outrage and Hope*, p. 15. [↑](#footnote-ref-158)
159. A 2011 movement in Spain, of major protests, demonstrations, and occupations against austerity policies, which began around local and regional elections. While the issue was local, it pioneered (and lent its name to) a new and increasingly global mode of networked protest. [↑](#footnote-ref-159)
160. Castells, *Networks of Outrage and Hope*, p. 132. [↑](#footnote-ref-160)
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162. Arunima, ‘Cameras, Campuses and the Future of Politics', pp. 17–18. [↑](#footnote-ref-162)
163. # Pramod K. Verma, Architecting Platforms for Innovation

     <https://www.slideshare.net/indiastack/architecting-platforms-for-innovation> [↑](#footnote-ref-163)
164. Aditi Agrawal, ‘Aarogya Setu Will Include Telemedicine, Greater Personalisation; May Act as Building Block for India Health Stack’, Medianama, 22 April 2020, https://www.medianama.com/2020/04/223-aarogya-setu-upcoming-features/. [↑](#footnote-ref-164)
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