



Among the many concerns that are being discussed in the Aadhaar cases before the Supreme Court is the whole question of 'Function Creep'. The expression Function Creep is used when a technology or system is being used beyond the purpose for which it was originally intended, especially when this leads to potential invasion of privacy. This expression is now being used by Aadhaar critics to indicate how the compulsory Aadhaar card began as a way to check the siphoning of welfare monies to ghost beneficiaries, but is now becoming a basis for denial of hospital admission and a potential tool for prosecution, or, rather, persecution. One wonders whether it is a function that ended up creeping or was already meant to creep in the first place.

I was reminded of an ex-parte order I once came across, which a trial court judge in Goa passed in a then-ongoing case (without even hearing the other party). The father had applied for custody of his two fifteen year old children and after a hearing, the Court heard an application and went to the extent of passing an order permitting the father to install CCTV cameras even in the bedroom where his wife and teenage daughters slept, in the interests of their safety! A 'safety' that he or God knows who would monitor from God knows where! The desire to monitor and control the movements of his wife and children led the father to move the application and the purpose was clearly not safety but surveillance. A clear case of intended Function Creep!

This misutilisation of legislation to empower the state is not unknown. The National Security Act (NSA) has been invoked in Goa, during the language agitation or even on the pretext of addressing a case of murder in broad daylight at Miramar, in both cases, not to maintain law and order but to keep political dissidents in check. As a matter of fact, it is on record that this very law was used for the first time in India to arrest and detain trade union workers. This kind of insidious function creep happens with a lot of the legislation that is supposedly meant to address terrorism, after creating a hype about it, but creeps into becoming a tool to clamp down on political opponents.

authored by Paul Bernal, notes that this function creep has been particularly evident in recent years in relation to data gathered for anti-terrorism purposes. He cites as an example an UK law, the Regulation of Investigatory Powers Act, 2000, as an example of a legislation which was presented as a means to tackle terrorism and other serious crimes, but was in effect used to deal with – among other issues – dog fouling and to spy on a couple to determine whether they were using a false address to get their child into school. But the author goes on to warn that “function creep may come into play for commercial reasons and in commercial contexts even more often than it does for security or law-enforcement purposes, and is a risk whenever data is held, so the more data is being held, the greater the risk”.

Sex offender registries and how they have shaped up over time are another example of Function Creep. Where they initially started out as a medium for people to be aware of a sex offender who may potentially repeat the offence, being in their neighbourhood, and preyed on people’s legitimate anger against sex offenders, it soon crept into performing other functions. The sex offender registry is now a tool to enter names of people who are even cautioned by the police without any conviction. A very potent weapon in the hands of any person, more so in this day and age, to simply tarnish the image of anyone, without going through due process of law.

Besides being disproportionate to the goal sought to be achieved, sometimes the proposed schemes or legislation are either not necessary or not precise enough to enable the proposed objectives or to prevent arbitrary misuse. Here are some more recent examples of the last one year.

The Indira Gandhi Matritva Sahyog Yojana (IGMSY) is a scheme that purports to ensure support for women during maternity. Under this scheme, women were disbursed 6,000 rupees in instalments on complying with conditions such as registering their pregnancy, attending pre-natal care sessions, immunising their child, and breastfeeding for at least six months. Came May 2017, and the maternity benefits were extended to the whole country, but it came with a fine print – that women would only enjoy these benefits in so far as their first-born was concerned. Clearly, the function of the scheme stealthily crept into the family planning area.



The controversial Triple Talaq Bill criminalizing triple talaq is yet another terrain in which the function of the law to uphold women's rights, is being made a smokescreen as the proposed law is intended to creep into blacklisting or pigeonholing Muslims as a community, and in effect even takes away Muslim women's possibilities of getting maintenance by tapping the Protection of Women from Domestic Violence Act, 2005, where given the inclusive definition of the law, it is possible for women to put a plea that if instant triple talaq was uttered, it amounts to verbal emotional abuse under the law. So it both creeps and detaches in fact!

Jeremy Hunsinger, faculty at Wilfred Laurier University's Communication Studies Department, and a founder of the Centre for Digital Discourse and Culture, has said something very pertinent in the context of a 2007 Report of a Washington school case, but which could be extrapolated to all these instances of what is called 'function creep':

When surveillance is used to enforce stereotypical norms, to fix genders, to make people be other than they wish to be, it becomes something beyond surveillance, beyond mere invasion of privacy, it becomes the will of the state, the will of the community enforced upon the individuals or groups it wishes to repress, suppress, or otherwise control. When surveillance moves toward social and political control, and away from mere safety, we have truly given up our freedoms.

It is not just function creep but the will of the state.

(First published in *O Herald*, dt: 22 February, 2018)



Share this...



Facebook



Whatsapp



They Call it Function Creep!