Aadhaar and SC

Why in news?

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SC was requested to speedily hear the validity of the unique identification scheme, implemented through the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 or the Aadhaar Act.

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What is the issue?

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- The SC in its past judgement made it clear that Aadhaar ought not to be made mandatory for welfare schemes.
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- The Lok Sabha recently had passed amendments to the Finance Bill making Aadhaar mandatory for securing a permanent account number (PAN), and consequently for filing income tax returns.
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- It is now entirely likely that by the time the court starts hearing fresh pleas on Aadhaar; the government will render Aadhaar a fait accompli.
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- This fault lies on successive CJI's who failed to constitute a bench to hear the petitions.
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- This lapse also highlights a deeper malaise in our judicial structure, where one person, the CJI, as the sole master of the Supreme Court's roster, decides the composition of benches.
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- And, as a result, wields enormous administrative power over which cases get heard and which cases get placed for later dates.
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- For close to 19 months, the petitions challenging Aadhaar have been stuck in an administrative logjam.
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- In August 2015, at the bidding of the Union of India, a three-judge bench

ruled was constituted to hear the case.
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- The bench ruled that there was substantial confusion on whether the Constitution guaranteed citizens a right to privacy.
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- And also said that the case had to be placed before a larger bench, of an appropriate strength to be determined by the CJI.
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- The bench also added that it would be desirable to have the case finally heard at the earliest, having regard to its importance.
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- But all these months later, we are no closer to having a bench constituted to decide the legal challenge to the scheme.
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What are the consequences?

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- In a few months' time, millions more would have enrolled with the Unique Identification Authority of India, submitting their biometric data.
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- And by the time SC lists out a seven member bench, Aadhaar would be become the identity of every single individual and government would have said it's impossible to undo Aadhaar.
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- Thus India would have taken an irredeemable step towards becoming a surveillance state.
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- This failure of the Supreme Court wouldn't be unique to the Aadhaar challenge as the same happened with demonetisation also.
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- Delays in constitutional judgment, as K.M. Munshi, a member of the Constituent Assembly, had pointed out can have deep and perilous consequences on fundamental rights.
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- He also said, it is of the highest importance that the question whether a law is valid or not must be decided at the earliest moment.
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- Most constitutional courts around the world are acutely aware of these dangers.
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- Even recently, the U.K. Supreme Court heard in December 2016 and ruled in January this year that British Prime Minister must get Parliament's approval before formally triggering Britain's exit from the European Union.
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- Also, last month, a South African High Court ruled that the decision by President to withdraw from the International Criminal Court was not only premature but was also procedurally flawed.
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- In both these cases, a failure to decide expeditiously would have had irreversible consequences.
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What is the way forward?

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- It may well be pointed out that the Chief Justice has established three Constitution Benches that are scheduled to function during the court's summer vacation.
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- But unless cases are prioritised for hearing in a transparent and logical manner, this act is a futile exercise.
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- Thus far, the issues that appear to be accorded precedence over Aadhaar include the validity of triple talaq and polygamy, and the legality of WhatsApp's privacy policy.
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- These cases don't encompass disputes that pit the individual directly against the state, thus the consequences that they are likely to have is far more less than what Aadhaar can do.
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Source: The Hindu

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