

DECODING SUPREME COURT JUDGEMENT ON AADHAAR AND IMPACT ON YOUR BUSINESS

OCTOBER 2018

On September 26, 2018, a 5 judge bench of Supreme Court upheld the validity of Aadhaar, however impose certain restriction and struck down Section 57 of the Aadhaar Act which allowed private entities to use the 12 digit number to validate the identities of customers.

The Unique Identification Authority of India (UIDAI) is created in 2009 to issue unique identification numbers. Nandan Nilekani appointed the first chairman

In December 2010, the National Identification Authority of India (NAI) Bill 2010 is introduced in Parliament. But a year later, the standing committee on finance rejects the Bill in its initial form; recommends requirement of privacy legislation and data protection law before the scheme is continued.

In March 2006, Aadhaar is Born

K S Puttaswamy, a retired judge of the Karnataka High Court, mounts the first legal challenge to Aadhaar in 2012, says it violates fundamental rights of equality and privacy.

On September 26, 2018, a 5 judge Supreme Court bench upholds constitutional validity of Aadhaar but strikes down certain provisions including its linking with bank accounts, mobile phones and school admissions.



Journey so far...

On Jan. 17, 2018, a 5 judge Supreme Court bench begins hearing 30 petitions challenging Aadhaar's validity. And extend the deadline of linking Aadhaar till it gives its order.

In beginning of 2017, various ministries make Aadhaar mandatory for welfare, pension and employment schemes. Aadhaar made mandatory for filing of income tax returns.

In August 2015, 3 judge SC Bench limits Aadhaar use to certain welfare schemes, orders that no one should be denied benefits for lack of an Aadhaar card.

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9 Questions that 5 judge bench Supreme Court Considered

1 *Whether Aadhar creates or has tendency to create surveillance state and is thus unconstitutional?*

No. Court rules the argument that Aadhar could create an architecture for surveillance wasn't well founded, and it struck down any provisions of the Act that could give rise to such fears.

2 *Whether the Aadhar Act violates the right to privacy and is unconstitutional?*

No. Court rules nothing in the Aadhaar Act violates right to privacy of an individual-which is a fundamental right under- Right to Privacy and that most of the data collected could be considered "in public domain".

3 *Whether children, benefits to them & school admissions can be brought within Aadhaar Act?*

No. Article 21A of the Constitution guarantees right to education as a fundamental and insisting on an Aadhaar card would infringe this right as well as on a child's right to privacy. Consent of the parent or guardian is essential to enroll a child. On attaining majority, the child can choose to exit from Aadhaar.

4 *Whether certain provisions of the Aadhaar Act relating to enrolment, updates, residency, involving private agencies in an enrolment, etc. are unconstitutional?*

The Court did not find a basis for some of the apprehensions as it felt encryptions and security of data is satisfactory and reasonable safeguards are in place, but made some suggestions regarding amendments and changes.

5 *Whether the Aadhaar Act defines the concept of limited government, good governance and constitutional trust?*

The Court observes, "...it is difficult to agree with the sweeping propositions advanced by the petitioners that the Aadhaar project is destructive of limited government and constitutional trust," adding, it has struck down, read down or tweaked "some provisions which we found offending."

9 Questions that 5 judge bench Supreme Court Considered contd...

⑥ *Whether the Act would be passed as a “Money Bill” within the meaning of Article 110 of the Constitution?*

Yes. Four of the judges saw no problem in the Act going through as Money Bill.

⑦ *Whether Section 139 AA of the Income Tax Act, 1961 relating to linking of Aadhaar and PAN violates the right to privacy and is unconstitutional?*

No.

⑧ *Whether Rule 9 (a) (17) and notification of Prevention of Money Laundering Rules, 2005 which mandate linking of Aadhaar with bank accounts are unconstitutional?*

Yes. The Court rules it does not meet the test of proportionality and is also violative of Right to Privacy of a person to banking details.

⑨ *Whether telecom dept.’s circular dated march 23, 2017 mandating linking of mobile number with Aadhaar is illegal and unconstitutional?*

Yes. Court rules it was disproportionate and unreasonable state compulsion. Court finds this impinged on voluntary nature of Aadhaar.

SUPREME COURT'S VERDICT ON AADHAAR



Aadhaar has to be linked with PAN and ITR



Aadhaar is still mandatory to avail Welfare Scheme benefits



Aadhaar is not mandatory for opening a bank account



You don't have to provide Aadhaar for a mobile connection



eKYC using Aadhaar is not mandatory for mobile wallets

Aadhaar is not mandatory for school admissions



Aadhaar details cannot be disclosed in the name of national security



Individuals can also file a case under the Aadhaar Act



Aadhaar is not mandatory for examinations conducted by CBSE, UGC & NET



Children cannot be denied benefits for the lack of Aadhaar Card



Our Observations & Challenges Ahead for Corporates: -

- 1. The Supreme Court ruling discontinuing the mandatory use of Aadhaar may force the corporates to going back to old ways for customer verification and may impact on the financial viability of the business models especially for startups in financial & technology services;*
- 2. The financial technology startups that have built business models around Aadhaar now have to include additional documents for customer verifications;*
- 3. Digital lending platforms that use Aadhaar to decide on the credit worthiness of borrowers will be affected and restriction storage of Aadhaar data to six months from five years earlier would lead to increase in cost to the services;*
- 4. New small finance and payment banks used Aadhaar to complete the mandatory know your customer (KYC) process in a quick and cost- efficient ways. Now, they need to find out a way to sustain and to restructure their business models w.r.t. KYC for survival;*
- 5. With enrollment via Aadhaar, a customer onboarding company for verification of customer generally took 30 minutes to get a customer on board and now one will have to wait for 5-6 days for physical verification as to go to the address and verify the details;*
- 6. Earlier cost of enrolling a customer with Aadhaar is about ₹ 30, now with physical verification as the old ways would cost around ₹ 250-300 per new customer/subscriber and the additional cost would be pass on the subscribers/customers.*

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7. Most of the Fintech companies including mobile wallet companies are mandated to do KYC by the Reserve Bank of India (RBI) are waiting for further clarification from RBI to see if they still use e-KYC as method of customer verification;
8. At present, private players cannot insist on Aadhaar for their services, they may be able to conduct e-KYC authentication with the customer's prior consent. However, they need to find a new way to do a KYC for customers refusing to share Aadhaar and need to offer other options for KYC. And, the new options for KYC need to be structured now, as for any new customer or any existing customer who revoke his/her consent, Aadhaar cannot be use any further. Till the time, the new options are been availed, it would impact the business and could dampen the profit margin as well;
9. At present, private players cannot offer Aadhaar based authentication services unless regulations are changed. The onus lies on the Government to create a balance between judgment given by Supreme Court and financial viability to ensure **Ease of Doing Business** continues in India.

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