

# Info Capsule

## **SUPREME COURT OF INDIA'S JUDGEMENT ON AADHAR PAN LINKAGE <sup>1</sup>**

Following are the major highlights of the Hon'ble Supreme Court of India's Judgement on Aadhar PAN Linkage:

1. The Hon'ble Supreme Court of India in its Landmark Judgement has upheld Section 139AA of the Income Tax Act, 1961 as constitutionally valid which required quoting of the Aadhaar number in applying for PAN as well as for filing of income tax returns.
2. The Hon'ble Court also held that the "Parliament was fully competent to enact Section 139AA of the Act and its authority to make this law was not diluted by the orders of this Court." Therefore, no violation of the earlier Supreme Court orders were found in enacting the provision.
3. The Hon'ble Court has also held that Section 139AA of the Act is not discriminatory nor it offends equality clause enshrined in Article 14 of the Constitution.
4. Section 139AA is also not violative of Article 19(1)(g) of the Constitution in so far as it mandates giving of Aadhaar number for applying PAN and in the income tax returns and linking PAN with Aadhaar number.
5. Section 139AA(1) of the Income Tax Act, 1961 as introduced by the Finance Act, 2017 provides for mandatory quoting of Aadhaar/Enrolment ID of Aadhaar application form, for filing of return of income and for making an application for allotment of PAN with effect from 1st July, 2017.
6. Section 139AA(2) of the Income Tax Act, 1961 provides that every person who has been allotted PAN as on the 1st day of July, 2017, and who is eligible to obtain Aadhaar, shall intimate his Aadhaar on or before a date to be notified by the Central Government. The proviso to section 139AA (2) provides that in case of non-intimation of Aadhaar, the PAN allotted to the person shall be deemed to be invalid from a date to be notified by the Central Government.
7. The Hon'ble Supreme Court has upheld Section 139AA(1) which mandatorily requires quoting of Aadhaar for new PAN applications as well as for filing of returns.
8. The Hon'ble Supreme Court has also upheld Section 139AA(2) which requires that the Aadhaar number must be intimated to the prescribed authority for the purpose of linking with PAN.

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<sup>1</sup> Available at: Source: <http://pib.nic.in/newsite/erelease.aspx?relid=0>

9. It is only the proviso to Section 139AA(2) where the Supreme Court has granted a partial stay for the time being pending resolution of the other cases before the larger bench of the Supreme Court. The Hon'ble Supreme Court has unequivocally stated as follows:

“125. Having said so, it becomes clear from the aforesaid discussion that those who are not PAN holders, while applying for PAN, they are required to give Aadhaar number. This is the stipulation of sub-section (1) of Section 139AA, which we have already upheld. At the same time, as far as existing PAN holders are concerned, since the impugned provisions are yet to be considered on the touchstone of Article 21 of the Constitution, including on the debate around Right to Privacy and human dignity, etc. as limbs of Article 21, we are of the opinion that till the aforesaid aspect of Article 21 is decided by the Constitution Bench a partial stay of the aforesaid proviso is necessary. Those who have already enrolled themselves under Aadhaar scheme would comply with the requirement of sub-section (2) of Section 139AA of the Act. Those who still want to enrol are free to do so. However, those assesseees who are not Aadhaar card holders and do not comply with the provision of Section 139(2), their PAN cards be not treated as invalid for the time being. It is only to facilitate other transactions which are mentioned in Rule 114B of the Rules. We are adopting this course of action for more than one reason. We are saying so because of very severe consequences that entail in not adhering to the requirement of sub-section (2) of Section 139AA of the Act. A person who is holder of PAN and if his PAN is invalidated, he is bound to suffer immensely in his day to day dealings, which situation should be avoided till the Constitution Bench authoritatively determines the argument of Article 21 of the Constitution. Since we are adopting this course of action, in the interregnum, it would be permissible for the Parliament to consider as to whether there is a need to tone down the effect of the said proviso by limiting the consequences.”

10. Finally the effect of the judgement is as following

- (i) From July 1, 2017 onwards, every person eligible to obtain Aadhaar must quote their Aadhaar number or their Aadhaar Enrolment ID number for filing of Income Tax Returns as well as for applications for PAN;
- (ii) Everyone who has been allotted permanent account number as on the 1st day of July, 2017, and who has Aadhaar number or is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to income tax authorities for the purpose of linking PAN with Aadhaar;
- (iii) However, for non-compliance of the above point No.(ii), only a partial relief by the Court has been given to those who do not have Aadhaar and who do not wish to obtain Aadhaar for the time being, that their PAN will not be cancelled so that other consequences under the Income Tax Act for failing to quote PAN may not arise.

## TELE-LAW THROUGH CSCS TO MAINSTREAM LEGAL AID IN RURAL INDIA<sup>2</sup>

- The pilot to be rolled out across 1000 Common Service Centres (CSC) in Uttar Pradesh & Bihar;
- This initiative will also serve as an opportunity to build capacity of 1000 women Para Legal Volunteers (PLV);
- Training of VLEs across 1000 Common Service Centres (CSC) able to effectively operationalize the tele-law services.

In its effort to make legal aid easily accessible to the marginalized communities and citizens living in rural areas, the Government of India has launched the 'Tele-Law'. The Ministry of Law and Justice partnered with the Ministry of Electronics and Information Technology (MeitY), which anchors the Digital India programme, to provide legal aid services through its Common Service Centres (CSC) at the panchayat level, spread across the country. In the first phase, the 'Tele-Law' scheme will be tested as a pilot across 500 Common service Centres (CSC) in Uttar Pradesh and Bihar to understand the challenges and make necessary corrections to the scheme before it is scaled up and rolled out across the country in a phased manner.

Under the scheme, a portal called 'Tele-Law' will be launched, which will be available across the Common Service Centre (CSC) network. This will connect the citizens to legal service providers with the help of technology enabled platforms. 'Tele-Law' will enable people to seek legal advice from lawyers through video conferencing available at the Common Service Centres (CSC). Additionally, law school clinics, District Legal Service Authorities, voluntary service providers and Non-Government Organisations working on legal aid and empowerment can also be connected through the CSCs anywhere and anytime, in order to strengthen access to justice for the marginalized communities. The National Legal Services Authority (NALSA) will provide a panel of lawyers from State capitals, who will be available through video conferencing to provide legal advice and counselling to the applicants, across the 1000 Common Service Centres (CSC). A robust monitoring and evaluation system is also being designed which will help in assessing the quality of legal advice provided and the ensuing benefit to those accessing it.

Announcing the launch of Tele-Law, Hon'ble Minister for Electronics, IT, Law and Justice, Shri. Ravi Shankar Prasad said, "I am extremely happy to have launched the Tele Law, the legal aid to poor through which will be made available through the Common Services Centers. Tele-Law will fulfill our commitment to ensure access to justice & empowerment of the poor. The Common Services Centers and Para Legal Volunteers will offer easy legal advice to litigants in rural India making them digitally and financially inclusive."

In addition to this, under this scheme, every Common Service Centre (CSC) will engage a Para Legal Volunteer (PLV), who will be the first point of contact for the rural citizens and will help them in understanding the legal issues, explain the advice given by lawyers and assist in further action required in cases as per the advice of the lawyer. Women PLVs will be encouraged and trained under the Scheme. One thousand women PLVs will work for mainstreaming legal aid services through the CSCs. The aim is to promote women entrepreneurship and empowerment and ensure women participation. The selected PLVs will also be provided with relevant training to fulfil their responsibilities effectively.

A trained PLV will be available in a CSC for ten days in a month under the Scheme. These PLVs will help the applicant connect with a lawyer through the video conferencing facility at the CSC and will keep a track of the progress of the applicants' cases and grievances and maintain a record. They will also submit the records maintained to the District Legal Service Authority every week. The National Legal Service Authority (NALSA) will provide a panel of lawyers who will be sitting in the

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State capitals and will be available through video conferencing to provide legal advice/counselling to the applicant at the CSCs.

This scheme comes as a continuation to the Access to Justice Project for Marginalized Persons which is being implemented by Department of Justice and United Nation Development Programme (UNDP). The Access to Justice Project partnered with CSC-E-governance Services India Limited to mainstream legal literacy through common service centres in Jharkhand (10 CSCs in 3 districts) and then through 500 CSCs across 11 districts in Rajasthan. Under the program, 500 VLEs in Rajasthan were trained on social justice legislations such as fundamental rights, the right to information, citizen rights vis-à-vis policing, gender laws, child rights and labour laws.

### **Team ICSI**

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