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# Aadhaar Is Not Mandatory For Section 139AA, Taxation And Other Financial Regulations In India

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After a complicated and unexpected judgment by the Constitution Bench of Supreme Court, there has been lots of doubts about need of Aadhaar for PAN and Tax Return purposes. We at [\*Perry4Law Organisation \(P4LO\)\*](http://Perry4Law Organisation (P4LO)) are giving a brief write up on this aspect as **Part I of the series** as a press release or statement from Income Tax Department or Finance Ministry is still awaited. This article is subject to the following **two caveats**:

**(1) We are not giving all the legal reasons and Constitutional position regarding Constitutionality of section 139AA at this stage and would come up with the same at a latter stage after getting official response of Indian Government.**

**(2) We are also not discussing the *Per Incuriam* aspect of the majority judgment of Supreme Court that we would discuss at appropriate stage.**

Further, if you are facing any legal issues due to demand of Aadhaar either under Section 139AA of Income Tax Act or under the Aadhaar Act, 2016, you can **use our Online Dispute Resolution (ODR) Platform** available at <http://odrindia.in/odr/> for fighting against such demands and for enforcing your Statutory and Fundamental Rights.

The short version of Section 139AA is discussed here. Section 139AA(1) is claimed to propose citing of Aadhaar number mandatory for filing tax returns and for issuance of new PAN card after 01-07-2017. Proviso to Section 139AA (2) provides the penal consequences of not giving Aadhaar number within the stipulated time by an existing PAN holder if asked by a notified agency. Proviso to Section 139AA (2) is also the only penal provision for failure to comply with the requirements of Section 139AA (1) and Section 139AA (2).

This penal provision was [required to be tested](#) on the touchstone of Article 21 and other Fundamental Rights as well. However, the Constitution Bench of Supreme Court failed to do so and it restricted its analysis to violation of privacy right alone. Even on this limited and restricted analysis, the majority judgment failed to apply the correct ratio of the **Puttaswamy judgment**. In other words, applicability of majority judgement regarding Section 139AA is full of irregularities and still not constitutionally tested.

As a result, no government department or private company or individual can ask for Aadhaar for PAN, Tax Return or any other taxation and financial issue. If asked, people are free to reject that demand. They can meet any procedural or legal requirement with alternative government documents like driving license, passport, voter ID, etc as Aadhaar is absolutely optional even on 30-09-2018.

But for the sake of further clarity, let us discuss few more things. If we read Section 139AA carefully, it is clear that Section 139AA at large is not making Aadhaar mandatory for filing of return or obtaining a PAN card. An interesting issue has also missed the attention of almost all people. Supreme Court has given a strong protection to “Existing PAN Cards” under Section 139AA (2). All PAN cards are existing PAN cards if they have been issued before 01-07-2017.

There is another curious angle of Section 139AA and its legality. Section 139AA is a standalone provision that is in active violation of Aadhaar Act, 2016. Supreme Court tried to harmoniously construe this inconsistency by saying that Aadhaar Act, 2016 and Section 139AA operate in different fields. However, this makes Section 139AA very “ambiguous and unreliable”. A provision with no clarity and background is asking for submission of Aadhaar number for filing of returns and making an application for PAN card after 01-07-2017. If we analyse Section 139AA on its own, clearly it has no legs to stand on. So we have to interpret Section 139AA by just referring to Section 139AA alone and not the Aadhaar Act, 2016. Let us interpret Section 139AA in this background.

But first let us reproduce Section 139AA here. Section 139AA reads thus:

“Quoting of Aadhaar number.- (1) Every person who is “eligible” to obtain Aadhaar number shall, on or after the 1st day of July, 2017, quote Aadhaar number-

- (i) in the application form for allotment of permanent account number;
- (ii) in the return of income:

Provided that where the person does not possess the Aadhaar Number, the Enrolment ID of Aadhaar application form issued to him at the time of enrolment shall be quoted in the application for permanent account number or, as the case may be, in the return of income furnished by him.

(2) Every person who has been allotted permanent account number as on the 1st day of July, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to such authority in such form and manner as may be prescribed, on or before a date to be notified by the Central Government in the Official Gazette:

Provided that in case of failure to “intimate” the Aadhaar number, the permanent account number allotted to the person shall be deemed to be invalid and the other provisions of this Act shall apply, as if the person had not applied for allotment of permanent account number.

(3) The provisions of this Section shall not apply to such person or class or classes of persons or any State or part of any State, as may be notified by the Central Government in this behalf, in the Official Gazette.

Explanation. – For the purposes of this section, the expressions –

(i) “Aadhaar number”, “Enrolment” and “resident” shall have the same meanings respectively assigned to them in Clauses (a), (m) and (v) of Section 2 of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 (18 of 2016);

(ii) “Enrolment ID” means a 28 digit Enrolment Identification Number issued to a resident at the time of enrolment.”

Legally speaking, Section 139AA has neither defined nor capable of defining what is “Aadhaar number”, “Enrolment” and “Resident” as majority judgment in Aadhaar case has excluded applicability of Aadhaar Act 2016

for interpretation of Section 139AA of Income Tax Act. So we have to analyse Section 139AA on its own and without any support of Aadhaar Act, 2016.

A cursory look at Section 139AA(1) would reveal that it is simply asking a person “eligible” to get Aadhaar to get the same before a “stipulated date” i.e. on or after the 1st day of July, 2017 for different purposes. So till both elements of “eligibility and stipulated date” are not merged, Section 139AA (1) cannot apply. In other words, Section 139AA(1) has “no retrospective applicability”.

Another important point about Section 139AA(1) is that it is not carrying any sort of penal or adverse consequences for not quoting Aadhaar number for making an application for new PAN number after 01-07-2017 or quoting the same for tax return purposes. People are free not to quote or quote acceptable numbers in the tax return filing system and Aadhaar is not mandatory. There would not be any penal or adverse action that can be taken against people for such conduct as per Section 139AA(1).

Also eligibility of something is a “positive concept” whereas forced Aadhaar is a “negative one”. So the choice and option is inherent for all who are eligible to get Aadhaar and they may enroll for Aadhaar or they may not. Government cannot force any individual to get Aadhaar compulsorily for Section 139AA.

Let us give two examples in this regard. A person of 18 years of age is eligible to vote. Similarly, a person of 21 years of age is eligible to marry. Does it mean he/she has to compulsorily vote and marry? So eligibility is a right and enabling provision and interpreting it as an obligation that violates Fundamental Rights is incorrect and unacceptable. The majority judgment of Constitution Bench Of Supreme Court has also created exceptions against mandatory use of Aadhaar for even welfare services under Aadhaar Act, 2016. So interpreting voluntary nature of Aadhaar under section 139AA as mandatory is not only unconstitutional but can also be rightly rejected by Indians.

So going by the very language of Section 139AA (1), but without endorsing or accepting its constitutional validity, it is clear that only person eligible to get Aadhaar are required to comply with Section 139AA and those who are ineligible, whether due to choice (Fundamental Rights), operation of law (i.e. illegal migrants), physical conditions (lacks biometric), technological errors, etc are not required to enroll for and furnish the Aadhaar. This is natural as well as a person who is neither interested nor entitled to get Aadhaar cannot quote the same. So the word eligible in Section 139AA (1) cannot be construed as compulsory and it is for the people to decide whether they wish to apply for Aadhaar or not for Section 139AA purposes.

So section 139AA (1) is not applicable to those who have decided not to enroll for Aadhaar as they have no Aadhaar number to be quoted while furnishing a tax return or while applying for a PAN card.

But what about those who have already enrolled for Aadhaar? The good news is that even they are not required to comply with the requirements of Section 139AA (1) due to the constitutional position mandating that Aadhaar is optional for section 139AA.

Now let us analyse Section 139AA (2). The Constitutional position is as follows:

(a) Section 139AA (2) is not applicable to those who have decided not to enroll for Aadhaar as they have no Aadhaar number to be “intimated” to concerned authority.

(b) As the proviso is penal in nature it would be unconstitutional if a deeming fiction is made applicable without giving the concerned person a chance of being heard and to explain his view point. In such hearing, whether oral, written or digital, the concerned person can declare that he has no Aadhaar and he has no intention to enroll for the same as well.

(c) Once a person has replied back or responded back to the information demand of concerned authority, the requirements of Section 139AA (2) would be satisfied and there cannot be any adverse order against such person by Government or Income Tax Authorities. This would be sufficient compliance with the requirements of Section 139AA(2) for taxation, PAN and other purposes.

(d) An existing PAN number may be cancelled in rarest of the rare case where there are clear evidence of forgery, fraud, duplication, etc. Even in such cases an opportunity of being heard must be given to the PAN holder and he must be allowed to use alternative methods or identities to justify legality of his PAN number.

So what is the legal position of Section 139AA (2) for those who have already enrolled for Aadhaar? Again even they are not required to comply with the requirements of Section 139AA (2) due to the constitutional position mandating that Aadhaar is optional and they can establish their identity and legality of PAN with alternative methods, identities and technologies, etc. In addition, even their “existing PAN” cannot be cancelled by Government due to position as explained by Perry4Law Organisation (P4LO) above.

Let us now sum up the position after considering the recent judgment of Constitution Bench of Supreme Court on Aadhaar and Aadhaar Act. The same is as follows:

(1) Aadhaar is absolutely optional for Section 139AA purposes, i.e. PAN, tax return, response to concerned authority under section 139AA(2), etc.

(2) Neither Section 139AA nor the judgment of Supreme Court empowers Government to make Aadhaar mandatory for filing of return, making an application for PAN or any other tax issue.

(3) Those not having Aadhaar can safely ignore Section 139AA and its implications in totality. But if the concerned authority issues a notice to you under Section 139AA(2) demanding information about Aadhaar, you have to reply back and inform that you do not have or do not wish to have an Aadhaar.

(4) Those having Aadhaar have absolute option to comply with requirements of Section 139AA as discussed above. For Section 139AA(2) purposes they can say that their Privacy right would be violated due to such disclosure and hence they are not disclosing the same.

(5) The majority judgment of Constitution Bench of Supreme Court has nowhere said that Aadhaar is mandatory for Section 139AA purposes. Government is unnecessarily and unconstitutionally rereading the same into the judgment just like it did for Mobile Reverification purposes.

(6) Neither the judgment of Division Bench of Supreme Court nor the majority judgment of Constitution Bench considered violation of Articles 14, 19, 21 and other Fundamental Rights/Constitutional Rights by Section 139AA. They can be agitated again for Section 139AA purposes even now. Even for the limited challenge based on Privacy, the decision of Puttaswamy has not been followed properly by the majority judgment for Section 139AA and Aadhaar Act, 2016 purposes.

(7) No penal action can be taken against any person, whether he has Aadhaar or not, for not giving his/her Aadhaar number while filing a tax return, making an application for new PAN or for any other taxation or non taxation matter without giving him a chance of being heard. Also the penal action of cancelling a PAN number can be taken only in rarest of the rare case and that too for reasons beyond Aadhaar as discussed by Perry4Law Organisation (P4LO) above.

(8) A tax return filed without an Aadhaar number cannot be rejected or otherwise mishandled by Government and Income Tax Department. If any such rejection or mishandling is done, people can sue the Government and

Income Tax Department for that at Online Dispute Resolution (ODR) Platform of PTLB available at <http://odrindia.in/odr/>.

**In short, Aadhaar is absolutely optional for Section 139AA and other tax and financial regulations purposes and people have a choice to refuse to enroll and use (if already enrolled) Aadhaar for these purpose.**

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