



---

## INDIA - GENERAL POLICY ALERT

---

### Supreme Court of India upholds the validity of the Aadhaar (UID) Card



In a far reaching and much awaited verdict, the Supreme Court of India on the 26th of September 2018 has upheld the Aadhaar scheme as constitutionally valid. However, the apex court's five-judge constitution bench also struck down several provisions in the Aadhaar Act which were contentious and under dispute for some time.

The Supreme Court upheld the validity of Aadhaar saying that sufficient security measures are already in place to protect data and it is difficult to launch surveillance on citizens on the basis of Aadhaar. A five-judge bench led by CJI Dipak Misra asked the government to provide additional security measures as well as reduce the period of storage of data and pass a robust law for data protection at the earliest.

More importantly, the Supreme court made it clear that the Aadhaar cannot be made mandatory for openings of bank accounts and for securing mobile phone connections. This had been a big issue for all citizens of India and more importantly the Expatriate Community as they would then have had to secure an Aadhaar number for themselves first before applying for a Bank Account and a Mobile connection, hence increasing their administrative efforts and settling in time.



One other important relief is that the Aadhaar will not be compulsory for school admission and the administration cannot make it mandatory.

However the Supreme Court has made the linking of Aadhaar and PAN mandatory. The apex court also made Aadhaar mandatory for filing of Income Tax Returns (ITR) of all Citizens of India, unless exempt. An Individual who is not a citizen of India had already been exempted from this requirement through a Gazette notification issued by Government of India dated 11th May 2017.

Similarly the Court clarified that no private company or citizen could demand or seek a copy of the Aadhaar and that there was a fundamental difference between Aadhaar and Identity and hence the Biometric information is stored and must remain in the system. The Supreme Court said there is a fundamental difference between Aadhaar and other identity proof as Aadhaar cannot be duplicated and it is a unique identification. It added that Aadhaar is to empower the marginalised sections of the society. The apex court hence also struck down the provision in Aadhaar law allowing sharing of data on the ground of national security.

For any further queries on Aadhaar / UID Card, please feel free to direct your queries to [vinod@ikan.com](mailto:vinod@ikan.com) or [immigration@ikan.com](mailto:immigration@ikan.com)