

Supreme Court upholds *Aadhaar Act*, strikes down some provisions



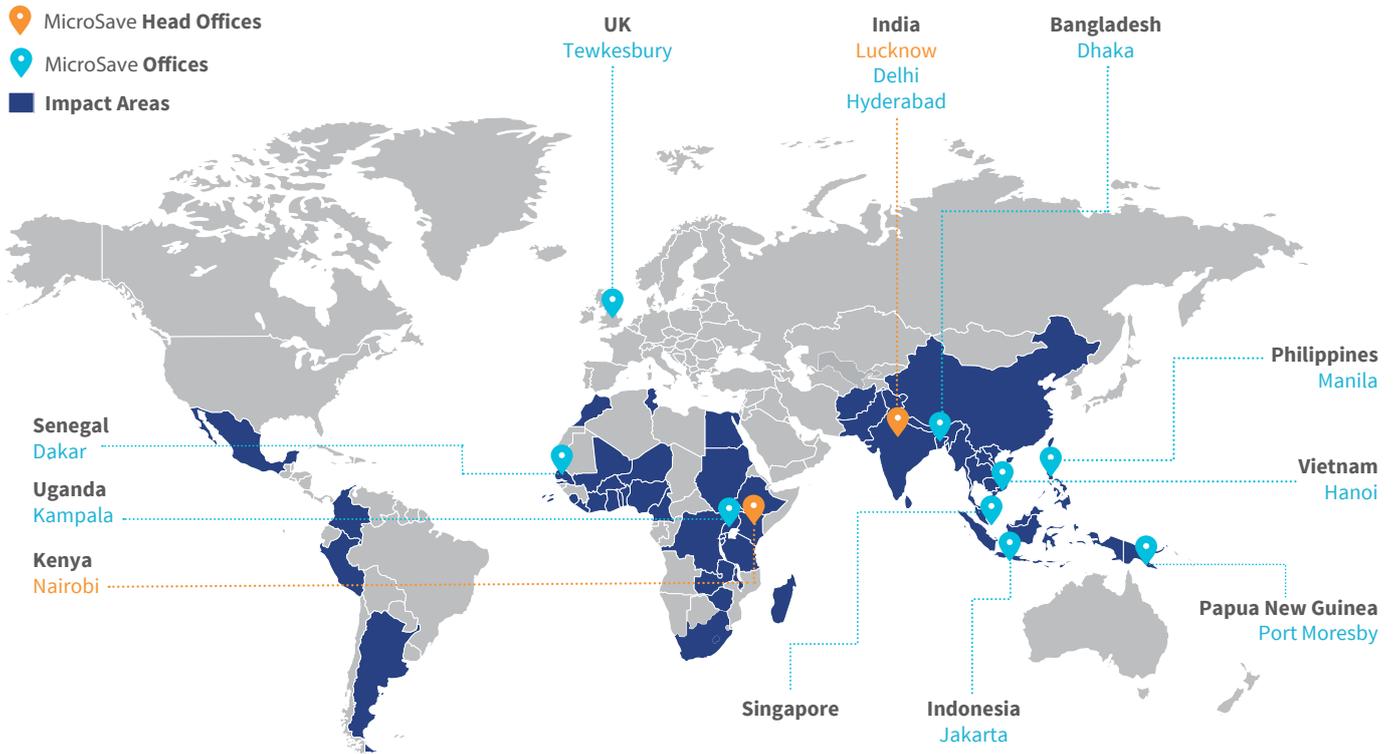
The Supreme Court on Wednesday i.e. 26th September 2018, upheld the constitutional validity of *Aadhaar* Act while expressing concerns around a few areas. Here are the top highlights and notes from the ruling:

“It is better to be unique than the best. Because, being the best makes you the number one, but being unique makes you the only one.”

- The SC upheld the validity of *Aadhaar*, saying sufficient security measures are in place to protect data. The court further added that it is difficult to launch surveillance on citizens based on *Aadhaar*, since:
 - » *Aadhaar* eliminates duplication
 - » Enrolment is fool-proof
 - » Minimal data collected for establishing identity
 - » Uniqueness the fundamental difference between *Aadhaar* and other ID proofs
- The SC noted that “minimal demographic and biometric data of citizens are collected by the UIDAI for *Aadhaar* enrolment. [The] *Aadhaar* number given to a person is unique and cannot go to any other person. *Aadhaar* identification is unparalleled.”
- The top court added that there is a very legitimate goal and requirement to have *Aadhaar* law.
- The SC observed that “there is no possibility of obtaining [a] duplicate *Aadhaar* card.”
- The judgment also dealt with the proportionality doctrine, compelling state interest and strict scrutiny test.
- The SC struck down Section 57, which relates to the use of the *Aadhaar* number to establish the identity of an individual for any purpose, whether by the state or a corporate or person. It means that mobile network providers or private banks cannot compel people to link *Aadhaar* for their services.
- The SC ruled that school admissions are not a benefit under Section 7. Hence *Aadhaar* cannot be mandated for it. The court added that CBSE, NEET, and UGC cannot make *Aadhaar* mandatory and it is not compulsory for school admissions. The apex court also said it is not mandatory to link *Aadhaar* either to open bank accounts or to avail mobile connections. However, the court made *Aadhaar* mandatory to file IT returns and for the allotment of Permanent Account Number.
- The judges read down Section 33(1), which allows the disclosure of sensitive biometric and demographic data upon the order of a District Judge. This would enable the opportunity of hearing for the owner of the data.
- The judgement also struck down the disclosure of information in the interest of national security under section 33(2) as unconstitutional.
- The Supreme Court ruled that the *Aadhaar* Act can be passed as a Money Bill. Majority Judges turned down the challenge on the ground that it could not have been classified as a Money Bill.

- Section 47 must empower individual complainants to set the law into motion in case of a violation, the judges added.
- The court ruled that authentication records cannot be retained beyond a period of six months. The Act, as far as it provides for retention of data for a period of five years, is illegal, the court noted.
- *Aadhaar* can no longer be mandated for the opening of bank accounts.
- However, the judges upheld Section 139AA, which mandates the linkage of *Aadhaar* with PAN.
- The Supreme Court directed the government to ensure that illegal migrants are not issued *Aadhaar* to avail benefits of social welfare schemes.
- **The Supreme Court asked the centre to bring in a robust law for data protection as soon as possible.**
- The court was satisfied that there exists sufficient defence mechanism for authentication. However, it struck down some provisions relating to authentication, including Section 33(2) of the *Aadhaar* Act.
- The court observed that Sections 7 and 8 of the *Aadhaar* Act do not violate Right to Privacy. The court noted that the data obtained is minimal, the benefits – especially to the marginalised – are large. The court observed that benefits and services under Section 7 should be of the nature of welfare schemes targeted at a particular deprived community.
- The Supreme Court turned down the argument on exclusion. Many people who will benefit due to inclusion cannot be denied due to the exclusion of a few. “Can’t throw [the] baby out with the bathwater,” the Supreme Court noted.





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