

Aadhaar-PAN linkage meant to plug tax leaks, says SC

We as citizens are like that... we don't want to pay taxes, shame on us: Justice Sikri

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Slamming a tendency in the country to evade taxes, the Supreme Court referred to the mandatory linking of Aadhaar to the Permanent Account Number (PAN) and Income Tax returns as an instance of the government's efforts to bring "new and new laws to stop leakages."

"When tax evasions are there, the government will try to bring new and new laws to stop leakages. We as citizens are like that... we don't want to pay taxes, shame on us. This conduct and character is seen for example at the time of matrimonial alliance. Then the groom has the best income. The moment the estranged wife files a maintenance application, the same boy is a pauper," Justice A.K. Sikri, leading a Bench comprising also of Justice Ashok Bhushan, observed orally on Wednesday.

The court was hearing petitions filed by Ramon Mag-saysay award winner Bezwada Wilson, former Kerala Minister Binoy Viswam and ex-Army officer S.G. Vombatkere, represented by senior advocates Arvind Datar, Shyam Divan, Sriram Prakkat and Vishnu Sankar, challenging the constitutionality of Section 139AA inserted in the In-

come Tax Act by the Finance Act, 2017.

The provision makes Aadhaar mandatory for getting a PAN. Possession of an Aadhaar card is necessary for the continuing validity of an existing PAN and for filing returns under the income tax law.

AG cites fake PANs

Attorney-General Mukul Rohatgi said there were "five to 10 lakh fake PAN cards generated every year." "What are you propagating here in the name of public interest, fake PANs," he asked the petitioners.

To prove that Aadhaar was not foolproof, Mr. Datar

responded that 132% of the population of Delhi is shown to have taken Aadhaar cards and 104% all over the country.

'Agencies blacklisted'

At least 34,000 agencies which dealt with collecting data for Aadhaar were blacklisted.

But the court said these statistics did not necessarily mean that bogus Aadhaars were in circulation. Mr. Rohatgi said the biometric technology used in Aadhaar left no chance for duplication.

Mr. Divan argued that Section 139AA was an instance of how the relationship between the state and cit-

izen was shaping up.

"The state is seeding Aadhaar everywhere, in your bank accounts and in income tax returns. In no time, the state will know what your persuasions and beliefs are without you even having to tell it," he submitted.

The Bench responded that Section 139AA was a product of the legislative mandate of Parliament. The Bench observed that Parliament cannot be held accountable for any "solemn undertakings" given by the government to the Supreme Court.

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Voluntary versus mandatory

The question whether the government can insist on citizens having an Aadhaar number has been hanging fire since 2013, with the Supreme Court passing a series of interim orders

SEPT 23, 2013 SC says, "No person should suffer for not getting Aadhaar card in spite of the fact that some authority issued a circular making it mandatory..."

MARCH 24, 2014 "No person shall be deprived of any service for want of Aadhaar number in case he/she is otherwise eligible/ entitled"

OCTOBER 15, 2015 SC adds Jan Dhan, MGNREGS, EPF and social assistance pension to schemes for which Aadhaar is permitted

AUGUST 11, 2015 SC asks Centre to give wide publicity that it is not mandatory for a citizen to get Aadhaar card; allows its use in PDS and LPG distribution scheme

MARCH 28, 2017 SC Bench says government is free to press for Aadhaar for 'non-welfare' transactions, such as filing tax returns and opening bank accounts



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JUSTICE A.K. SIKRI



Aadhaar-PAN linkage to plug tax leaks: SC

The court had passed orders in September 2013, March 2014, August 2015 and September 2016 on the basis of the government's assurances that the requirement of Aadhaar for welfare schemes would continue to be voluntary.

"Today we are dealing with a statutory provision [Section 139AA] and not administrative actions of the government for which the undertakings were given. Can you say Parliament should be precluded from performing its duty of making laws because undertakings were given to this court?" Justice Bhushan asked Mr. Datar.

Legality of Sec 139AA

Both Mr. Datar and Mr. Divan had, at the very beginning of the hearing, told the court that their challenge was focused on the legality of Section 139AA and not about the Aadhaar scheme as a violation of the citizen's right to privacy.

"So, if you are not chal-

lenging the privacy aspect of Aadhaar, dispute over Section 139AA boils down to the replacement of one system [PAN] with another [Aadhaar]... It is not for this court to question the wisdom of Parliament and say PAN is better than Aadhaar. We cannot question Parliament's law unless there is a violation of fundamental rights like Articles 14, 19," Justice Sikri observed.

Mr. Datar argued that Section 139AA only pertained to individuals and did not extend to companies and firms.

"How will it help their avowed objective to stop black money and make cash transactions transparent, if Section 139AA is limited to just individuals," Mr. Datar asked. He said this was plain discrimination in violation of Article 14 of the Constitution.

"But Mr. Datar, Aadhaar is only meant for individuals and not companies. How can you call this discrimination?" Justice Sikri asked.