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IND106095.E

23 May 2018

India: Requirements and procedures to obtain the Aadhaar number; use of the Aadhaar, including in accessing housing, employment and private and public services; whether authorities use Aadhaar registration to track individuals across the country (2017-April 2018)

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1. Overview

The Aadhaar number is a 12-digit number issued by the Unique Identification Authority of India (UIDAI) to residents of India (India n.d.a). Media sources report in 2017 that more than 99 percent of the Indian population above 18 has an Aadhaar number, and that 91.7 percent of the total population has it (The Times of India 28 Jan. 2017; The Hindu 27 Jan. 2017).

The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits
and Services) Act, 2016 [Aadhaar Act] provides that a "resident" is an individual who has resided in India for a period or periods amounting in all to one hundred and eighty-two days or more in the twelve months immediately preceding the date of application for enrolment. (India 2016, subsection 2(1))

Subsection 1(2) of the Aadhaar Act provides that [the Act] shall extend to the whole of India except the State of Jammu and Kashmir and save as otherwise provided in this Act, it shall also apply to any offence or contravention thereunder committed outside India by any person. (India 2016, subsection 1(2))

2. Enrollment Procedures

The information in the following paragraphs was provided on UIDAI's Frequently Asked Questions (FAQs) webpage:

India's residents must visit an enrolment centre in person to obtain an Aadhaar number, fill an application form available at the enrolment centre and provide original supporting documents, such as a proof of identity (PoI) and a proof of address (PoA). There is no age limit for obtaining an Aadhaar number; "even a new born baby can also get [e]nroled for Aadhaar". The Aadhaar number is issued up to 90 days from the date of application. A letter, the "Aadhaar letter," is generated in both a physical format and in an electronic format called an "e-Aadhaar."

Residents who do not have the supporting documents proving identity and address can still obtain an Aadhaar number, provided that their names are listed in a "family entitlement document". The resident's "head of family" must first be enrolled, with valid proofs of address and of identity, and the resident can then obtain the Aadhaar number based on either the enrolment number or the Aadhaar number of the head of the family; "UIDAI accepts 8 document types as Proof of Relationship (PoR)" (India n.d.b). UIDAI lists nine documents as acceptable PoR documents (India n.d.c).

A document found on UIDAI's website which provides lists of documents that are suitable proofs of identity, address and of relationship is attached to this Response.
The UIDAI's FAQs also provide the following information:

Two types of data are captured during enrolment for the Aadhaar number, namely demographic data, such as name, gender, date of birth, address, cell phone number and email, and biometric data, such as 10 fingerprints, both irises and a photograph of the applicant. Providing cell phone numbers and emails is optional, but it is "always recommended so that you get updates regarding your Aadhaar application status." Irises and fingerprints are not required of applicants that lack them.

It is not possible to obtain an Aadhaar number online, or by sending documents through the post, as applicants have to visit an Aadhaar enrolment centre in person to have their biometric information captured. There are no fees incurred by applying for an Aadhaar number, and applicants "need not pay anything at the enrolment centre" (India n.d.b).

Subsection 3(2) of the second chapter of the Aadhaar Act, on enrolment, provides the following:

The enrolling agency shall, at the time of enrolment, inform the individual undergoing enrolment of the following details in such manner as may be specified by regulations, namely:--

a. the manner in which the information shall be used;
b. the nature of recipients with whom the information is intended to be shared during authentication; and
c. the existence of a right to access information, the procedure for making requests for such access, and details of the person or department in-charge to whom such requests can be made. (India 2016, subsection 3(2))

3. Use of the Aadhaar Number

Section 7 of the Aadhaar Act provides the following:

The Central Government or, as the case may be, the State Government may, for the purpose of establishing identity of an individual as a condition for receipt of a subsidy, benefit or service for which the expenditure is incurred from, or the receipt therefrom forms part of, the Consolidated Fund of India, require that such individual
undergo authentication, or furnish proof of possession of Aadhaar number or in the case of an individual to whom no Aadhaar number has been assigned, such individual makes an application for enrolment:

Provided that if an Aadhaar number is not assigned to an individual, the individual shall be offered alternate and viable means of identification for delivery of the subsidy, benefit or service. (India 2016, section 7)

The UIDAI's FAQs indicates that the Aadhaar number "can be used in any system which needs to establish the identity of a resident and/or provide secure access for the resident to services/benefits offered by the system," and specifies that Aadhaar can be used for the following:

- Employment – Mahatma Gandhi National Rural Employment Guarantee Scheme, Swarnajayanti Gram Swarozgar Yojana, Indira Awaaz Yojana, Prime Minister's Employment Guarantee Program
- Education – Sarva Shikshya Abhiyan, Right to Education
- Inclusion & Social Security – Janani Suraksha Yojana, Development of Primitive Tribe Groups, Indira Gandhi National Old Age Pension Scheme
- Healthcare – Rashtriya Swasthya Bima Yojana, Janashri Bima Yojana, Aam Aadmi Bima Yojana
- Other miscellaneous purposes including Property Transactions, VoterID, PAN Card[,] etc. (India n.d.d)

3.1 Voluntary Use of Aadhaar

The Hindu Business Line, an Indian daily newspaper, reports that in October 2015, a "[c]onstitution [b]ench" stated that the use of Aadhaar was "purely voluntary and not mandatory" and that

[t]he purely voluntary nature of the use of Aadhaar card to access public service will continue till the court takes a final decision on whether the Aadhaar scheme is an invasion on the right to privacy of a citizen. (The Hindu Business Line 27 Mar. 2017)

Sources indicate that a 27 March 2017 Supreme Court ruling states that Aadhaar cannot be made mandatory for welfare schemes (The Indian Express 27 Mar. 2017; The Hindu Business Line 27 Mar. 2017) or for government schemes (FirstPost 27 Mar. 2017). However, sources state that, according to the Supreme Court, the government cannot be stopped from using Aadhaar for non-welfare schemes (The
Indian Express 27 Mar. 2017; FirstPost 27 Mar. 2017) or non-governmentally related schemes (FirstPost 27 Mar. 2017), such as opening a bank account, filing of tax returns, verification of new and existing cell phone numbers and user credentials (The Indian Express 27 Mar. 2017).

3.2 Mandatory Use of Aadhaar

According to the UIDAI's FAQs, an Aadhaar number is mandatory for the filing of income tax return, and it must be linked with the Permanent Account Number (PAN) (India n.d.e).

Sources indicate that, on 13 March 2018, the Supreme Court of India extended the deadline for mandatory linking of Aadhaar for various services and welfare schemes until the Court's constitution bench delivers its verdict on the validity of Aadhaar and of its enacting law (Business Standard 14 Mar. 2018; NDTV 14 Mar. 2018). The interim order of the Supreme Court of India provides that, as of 14 March 2018, "the benefits, subsidies and services covered under Section 7 of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 should remain undisturbed" (India 2018, 10).

According to the Business Standard, an Indian daily newspaper, the previous deadline had been set for 31 March 2018 by an interim order from the Supreme Court on 15 December 2017 (Business Standard 14 Mar. 2018). The 14 March 2018 interim order provides that:

The directions issued in the [December 2017] interim order shall apply as stated in paragraphs 11 to 13 in the said order. For the sake of clarity, we reproduce the said paragraphs which read as under:-

"11. In terms of (iii) above [concerning new bank accounts], subject to the submission of the details in regard to the filing of an application for an Aadhaar card and the furnishing of the application number to the account opening bank, we likewise extend the last date for the completion of the process of Aadhaar linking of new bank accounts to 31 March 2018."
12. In terms of (iv) above [concerning the electronic "Know Your Customer" (E-KYC) process; where the identity and address of subscriber is verified electronically through Aadhaar (IndiaStack n.d.)] we extend the date for the completion of the E-KYC process in respect of mobile phone subscribers until 31 March 2018.

13. Consistent with the above directions, we also direct that the extension of the last date for Aadhaar linkage to 31 March 2018 shall apply, besides the schemes of the Ministries/Departments of the Union government to all state governments in similar terms. As a consequence of the extension of the deadline to 31 March 2018, it is ordered accordingly."

It is also directed that the same shall also control and govern the Passports (1st Amendment) Rules, 2018. (India 2018, 10-11)

The article from the Business Standard further explains that the UIDAI said that the Aadhaar number is required to open new bank accounts or for applying for passports through the Tatkal application scheme, "while the deadline for linking [the Aadhaar] to existing bank accounts and [Permanent Account Numbers] has been extended by the Supreme Court" (Business Standard 14 Mar. 2018). For further information on the Tatkal application scheme, see Response to Information Request IND106024 of 6 December 2017.

An article published on FirstPost, an Indian news website (FirstPost n.d.), also explains that, in order to receive subsidies listed in section 7 of the Aadhaar Act, residents will have to acquire an Aadhaar card before 31 March 2018 despite the extension of the deadline for other uses by the Supreme Court (FirstPost 14 Mar. 2018). The same source notes that the "result is that for a large and very vulnerable section of society, Aadhaar has been made mandatory" (FirstPost 14 Mar. 2018). The subsidies covered by Section 7 of the Aadhaar Act include "the mid-day meals for school children, pensions for the old, food subsidies for the poor, stipends for teachers, scholarships for Adivasis, and so on" (FirstPost 14 Mar. 2018).

However, a 15 January 2018 FAQ issued by the UIDAI states the following:

It is clearly mentioned in Section 7 [of the Aadhaar Act] that until a person is assigned an Aadhaar number, he/she cannot be denied ration or pension or such other entitlements for want of Aadhaar and the concerned department should verify the identity of the person using alternate means of identification as per the relevant notification. (India 15 Jan. 2018)
3.3 Other Uses of Aadhaar

A 2016 article published in *The Hindu*, an English-language daily newspaper, indicates that the Zilla Panchayat [District Council] of Shivamogga [Shimoga] District in Karnataka State introduced an Aadhaar-enabled biometric attendance system in all of the 16 "government high schools" across the district for teaching and non-teaching staff (*The Hindu* 14 June 2016). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources indicate that the Aadhaar number is used or can be used for the following:

- Members of the Employees' Provident Fund Organisation (EPFO) [Employees' Provident Fund (EPF) (*The Economic Times* 12 Jan. 2018)] can link their Universal Account Number (UAN) with Aadhaar (*The Economic Times* 12 Jan. 2018; News18 25 Jan. 2018), so that they can check their "provident fund" balance, submit claims and withdraw funds online (News18 25 Jan. 2018);
- Liquefied petroleum gas (LPG) subsidies are paid directly into beneficiaries' bank accounts, and the Central Government has linked beneficiaries' bank accounts with their LPG connection through Aadhaar (*Business Standard* 14 Mar. 2018; News18.com 25 Jan. 2018);
- Digital payment: the Unified Payment Interface and the Bharat Interface for Money (BHIM) application support Aadhaar-based money transfer, and the IDFC Bank introduced Aadhaar Pay, where clients can pay using their fingerprint (*Business Standard* 14 Mar. 2018);
- Direct Benefit Transfer (DBT) uses Aadhaar to transfer subsidy and welfare payments directly into beneficiaries' bank accounts (*Business Standard* 14 Mar. 2018). The *Business Standard* states that "[a]s of today 92 centrally-sponsored schemes from 19 Ministries are implemented through DBT," with the LPG scheme, among others, being "prominent among them" (*Business Standard* 14 Mar. 2018);
- Ration cards are linked to beneficiaries' Aadhaar numbers (*The Times of India* 1 Mar. 2018; News18 25 Jan. 2018);
- Farmers who wish to purchase subsidized chemical and fertilizer from retailers registered with the district agriculture office (DAO) of their district must use Aadhaar, as "no other identification certificate will be valid" (*The Times of India* 3 Jan. 2018).

3.4 Access to Housing and Employment
Information on the use of Aadhaar for housing and employment was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

Press Trust of India (PTI), an Indian news agency, reports, on 19 December 2017, that, according to the Minister of State for Housing and Urban Affairs of India, "[a]t present, there is no proposal to make Aadhaar linkage mandatory in property transactions" (PTI 19 Dec. 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Times of India, an Indian English-language daily published in Mumbai, Delhi and Ahmadabad, reports, on 17 October 2017, that some employers are beginning to use Aadhaar to verify the identity and address of potential employees (The Times of India 17 Oct. 2017). The same source indicates that the contract staffing firm Quess, one of India’s "largest private sector employers," had hired more than 30,000 employees using Aadhaar verification over the previous 4 months (The Times of India 17 Oct. 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Tracking of Individuals

The Economic Times, an Indian daily newspaper, reports that, on 1 August 2017, the UIDAI told the Supreme Court of India that it is "technically impossible" for the government to track "or spy on" citizens using the data collected by Aadhaar (The Economic Times 2 Aug. 2017). Similarly, an article from Newsclick, an Indian news website (Newsclick n.d.), reports that, on 1 August 2017, an advocate representing UIDAI stated that it was "impossible" to track and "spy on" people using Aadhaar, because of provisions in the Aadhaar Act (Newsclick 10 Aug. 2017). Section 29 of the Aadhaar Act provides the following:

1. No core biometric information, collected or created under this Act, shall be--
   a. shared with anyone for any reason whatsoever; or
   b. used for any purpose other than generation of Aadhaar numbers and authentication under this Act.
2. The identity information, other than core biometric information, collected or created under this Act may be shared only in accordance with the provisions of this Act and in such manner as may be specified by regulations.

3. No identity information available with a requesting entity shall be--
   a. used for any purpose, other than that specified to the individual at the time of submitting any identity information for authentication; or
   b. disclosed further, except with the prior consent of the individual to whom such information relates.

4. No Aadhaar number or core biometric information collected or created under this Act in respect of an Aadhaar number holder shall be published, displayed or posted publicly, except for the purposes as may be specified by regulations. (India 2016, Sec. 29)

32(3)). Section 2 of the Aadhaar Act also provides the following:

(k) "demographic information" includes information relating to the name, date of birth, address and other relevant information of an individual, as may be specified by regulations for the purpose of issuing an Aadhaar number, but shall not include race, religion, caste, tribe, ethnicity, language, records of entitlement, income or medical history[.]" (India 2016, Sec. 2 (k))

The Economic Times article quotes the Additional Solicitor General appearing for UIDAI as stating, on 1 August 2017, to the Supreme Court's nine-judge bench that "'[t]he claim of surveillance, tracking does not stand'," as it is impossible for technical reasons, "even if the government wants to" (The Economic Times 2 Aug. 2017). The Newsclick article quotes a Delhi-based lawyer, who "appeared for or assisted some of the petitioners in the Aadhaar case before the Supreme Court," as stating that the Aadhaar Act's provisions offering protection to residents are "'meaningless'" (Newsclick 10 Aug. 2017). The same source quotes the same lawyer as stating the following:

"It is easy to tell the religion and caste of people by their very surnames, and all the other information is enough for profiling, including religious profiling. As for not storing the purpose, all that matters is that a transaction took place and where. Why the transaction took place is not important to track one's movements. Suppose you do an authentication transaction at a toll booth, it is enough information for tracking." (Newsclick 10 Aug. 2017)
The 15 January 2018 UIDAI FAQs state that "Aadhaar is an identifier, not a profiling tool" and explains that the UIDAI has no information about residents' "bank accounts, shares, mutual funds, financial and property details, health records, family, caste, religion, education, etc." and will never have this information in its database (India 15 Jan. 2018). The same source further explains that when someone gives one's Aadhaar number to a service provider, only the individual's Aadhaar number, biometrics and name is sent to UIDAI in a request for verification of identity, to which UIDAI replies by either a "[y]es" or a "[n]o" and by sending, on some occasions, the individual's "name, address, picture, etc." available with UIDAI back to the service provider (India 15 Jan. 2018).

The *Economic Times* article indicates that the government of India had previously stated in court, while defending the use of Aadhaar, that citizens "had no fundamental right to privacy" and "insisted that privacy was a 'valuable,' 'common law' right, but not a fundamental right" (*The Economic Times* 2 Aug. 2017). Sources indicate, however, that, in August 2017, the Supreme Court of India stated "unanimously" that the right of privacy is a fundamental right under the Indian Constitution (*The Wire* 24 Aug. 2017; Bhatia 24 Sept. 2017).

The *Times of India* reports that, on 30 January 2018, India's Supreme Court stated that the apprehensions of "profiling of citizens" under Aadhaar is a "serious issue that needs examination" (*The Times of India* 31 Jan. 2018). The same source quotes a member of the five-judge constitution bench as stating that "[p]rofiling is a very serious issue and we have to engage our mind on that aspect. But equally important is that the government has been able to provide benefits to communities under the [Aadhaar] scheme. It allows doorstep delivery of services and benefits to people." (*The Times of India* 31 Jan. 2018)

According to the same source, the Supreme Court stated, in deciding the constitutional validity of Aadhaar, that the court could not neglect its advantages, but that it had concerns about private entities being allowed to use Aadhaar and about the "misuse of data for profiling individuals, an issue on which, it said, the Centre had to satisfy the court" (*The Times of India* 31 Jan. 2018).
This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

**References**


India. 15 January 2018. Unique Identification Authority of India (UIDAI). "__ Aadhaar:

India. 2018. Supreme Court of India. _Write Petition (Civil) no. 494/2012_. Section PIL-W. Item no. 501. [Accessed 16 Apr. 2018]


Additional Sources Consulted

Internet sites, including: Centre for Internet & Society; ecri.net; Factiva; Freedom House; Human Rights Watch; UN – Refworld; US –Department of State.

Attachment
