

Jammu and Kashmir Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2018

JAMMU & KASHMIR

India

Jammu and Kashmir Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2018

Act 34 of 2018

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Jammu and Kashmir Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2018(Act No. 34 of 2018)[Dated 3rd December, 2018.]Enacted by the Governor in the Sixty-ninth Year of the Republic of India.An Act to provide for, as a good governance, the efficient, transparent, and targeted delivery of subsidies, benefits, services, the expenditure of which is incurred from the Consolidated Fund, to individuals residing in the State of Jammu and Kashmir, through assigning of unique identity numbers to such individuals and for other matters connected therewith or incidental thereto.In exercise of the powers vested under proclamation No. P-1/18 of 2018 dated 20th June, 2018, the Governor is pleased to enact as follows :-

Chapter I

Preliminary

1. Short title and commencement.

(1)This Act may be called the Jammu and Kashmir Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2018.(2)It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint ; and different dates may, be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a)"Aadhaar number" means an identification number issued to an individual under sub-section (3) of section 3 ;(b)"Aadhaar number holder" means an individual who has been issued an Aadhaar number under this Act ;(c)"Authentication" means the process by which the Aadhaar number along with demographic information or biometric information of an individual is submitted to the Central Identities Data Repository, for its verification and such Repository verifies the correctness or the lack thereof, on the basis of information available with it ;(d)"Authentication record" means the record of the time of authentication and identity of the requesting entity and the response provided by the Authority thereto ;(e)"Authority" means the Unique Identification Authority of India established under sub-section (1) of section 11 of the Central Act ;(f)"Benefit" means any advantage, gift, reward, relief, or payment, in cash or kind, provided to an individual or a group of individuals and includes such other benefits as may be notified by the Central Government or State Government from time to time ;(g)"Biometric information" means photograph, finger print, iris scan, or such other biological attributes of an individual as may be specified by regulations ;(h)"Central Act" means the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (Central Act No. 18 of 2016) ;(i)"Central Identities Data Repository" means a centralized database in one or more locations containing all Aadhaar numbers issued to Aadhaar number holders along with the corresponding demographic information and biometric information of such individuals and other information related thereto ;(j)"Chairperson" means the Chairperson of the Authority appointed under section 12 of the Central Act ;(k)"Consolidated Fund" means consolidated fund of Government of India or the Government of Jammu and Kashmir as the case may be ;(l)"Core biometric information" means finger print, iris scan, or such other biological attribute of an individual as may be specified by regulations ;(m)"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 ;(n)"Enrolling agency" means an agency appointed by the Authority or a Registrar, as the case may be, for collecting demographic and biometric information of individuals under this Act ;(o)"Enrolment" means the process, as may be specified by regulations, to collect demographic and biometric information from individuals by the enrolling agencies for the purpose of issuing Aadhaar numbers to such individuals under this Act ;(p)"Government" means the Government of Jammu and Kashmir ;(q)"Identity information" in respect of an individual, includes the individual's Aadhaar number, biometric information and demographic information ;(r)"Member" includes the Chairperson and Member of the Authority appointed under section 12 of the Central Act ;(s)"Notification" means a notification published in the Government Gazette and the expression "notified" with its cognate meanings and grammatical variations shall be construed accordingly ;(t)"Person residing in the State" means :-(i) a permanent resident of the State of Jammu and Kashmir as defined in section 6 of the Constitution of Jammu and Kashmir ; or(ii) any other person or class of persons as may be notified by the Government from time to time :Provided that such persons or class of persons as notified under this sub-clause for the purpose of this Act shall not be entitled to any status, benefits, rights or privileges exclusively meant for permanent residents of the State ;(u)"Prescribed" means prescribed by rules made by the Central Government or Government

as the case may be ;(v)"Records of entitlement" means records of benefits, subsidies or services provided to, or availed by, any individual under any programme ;(w)"Registrar" means any entity authorized or recognized by the Authority for the purpose of enrolling individuals under this Act ;(x)"Regulations" means the regulations made by the Authority or Government as the case may be ;(y)"Requesting entity" means an agency or person that submits the Aadhaar number, and demographic information or biometric information, of an individual to the Central Identities Data Repository for authentication ;(z)"Service" means any provision, facility, utility or any other assistance provided in any form to an individual or a group of individuals and includes such other services as may be notified by the Central or State Government ;(aa)"Subsidy" means any form of aid, support, grant, subvention, or appropriation, in cash or kind, to an individual or a group of individuals and includes such other subsidies as may be notified by the Government of India or Government of Jammu and Kashmir.

Chapter II

Enrolment

3. Aadhaar number.

(1)Every Person residing in the State shall be entitled to obtain an Aadhaar number by submitting his demographic information and biometric information by undergoing the process of enrolment :Provided that the Government may, from time to time, notify such other category of individuals who may be entitled to obtain an Aadhaar number.(2)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 incharge to whom such requests can be made.(3)On receipt of the demographic information and biometric information under sub-section (1), the Authority shall, after verifying the information, in such manner as may be specified by regulations, issue an Aadhaar number to such individual.

4. Properties of Aadhaar number.

(1)An Aadhaar number, issued to an individual shall not be re-assigned to any other individual.(2)An Aadhaar number shall be a random number and bear no relation to the attributes or identity of the Aadhaar number holder.(3)An Aadhaar number, in physical or electronic form subject to authentication and other conditions, as may be specified by regulations, may be accepted as proof of identity of the Aadhaar number holder for any purpose.Explanation : - For the purposes of this sub-section, the expression "electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (Central Act No. 21 of 2000).

5. Special measures for issuance of Aadhaar number to certain category of persons.

- The Authority shall take special measures to issue Aadhaar number to women, children, senior citizens, persons with disability, unskilled and unorganized workers, nomadic tribes or to such other persons who do not have any permanent dwelling house and such other categories of individuals as may be specified by regulations.

6. Update of certain information.

- The Authority may require Aadhaar number holders to update their demographic information and biometric information, from time to time, in such manner as may be specified by regulations, so as to ensure continued accuracy of their information in the Central Identities Data Repository.

Chapter III

Authentication

7. Proof of Aadhaar number necessary for receipt of certain subsidies, benefits and services, etc.

- The 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 or Consolidated Fund of State, require that such individual shall 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.

8. Authentication of Aadhaar number.

(1)The Authority shall perform authentication of the Aadhaar number of an Aadhaar number holder submitted by any requesting entity, in relation to his biometric information or demographic information, subject to such conditions and on payment of such fees and in such manner as may be specified by regulations.(2)A requesting entity shall,-(a)unless otherwise provided in this Act, obtain the consent of an individual before collecting his identity information for the purposes of authentication in such manner as may be specified by regulations ; and(b)ensure that the identity information of an individual is only used for submission to the Central Identities Data Repository for authentication.(3)A requesting entity shall inform, in such manner as may be specified by regulations, the individual submitting his identity information for authentication, the following details with respect to authentication, namely :-(a)the nature of information that may be shared upon authentication ;(b)the uses to which the information received during authentication may be

put by the requesting entity ; and(c)alternatives to submission of identity information to the requesting entity.(4)The Authority shall respond to an authentication query with a positive, negative or any other appropriate response sharing such identity information excluding any core biometric information.

9. Aadhaar number not evidence of citizenship or domicile, or being a permanent resident of the State etc.

- The Aadhaar number or the authentication thereof shall not, by itself, confer any right of, or be proof of, citizenship or domicile or permanent resident of the State in respect of an Aadhaar number holder.

10. Central Identities Data Repository.

(1)The Authority may engage one or more entities to establish and maintain the Central Identities Data Repository, and to perform any other functions as may be specified by regulations.

Chapter IV

Unique Identification Authority of India

11. Establishment of Authority.

(1)The Unique Identification Authority of India constituted under section 11 of the Central Act shall be authority under this Act, to be responsible for the processes of enrollment and authentication and perform such other functions assigned to it under the Central Act.(2)The regulations notified by the Authority under section 54 of the Central Act shall be applicable to the State as much as is consistent with this Act.

Chapter V

Powers of the Government to make Rules

12. Powers of the Government to make rules.

- In particular and without prejudice with the generality of the foregoing paras, the Government may by notification, make rules for all or any of the following matters, namely :-(1)the process of collecting demographic information and biometric information from the individuals by enrolling agencies under clause (o) under section 2 ;(2)the conditions for accepting an Aadhaar number as proof of identity of the Aadhaar number holder under sub-section (3) of section 4 ;(3)the other categories of individuals under section 5 for whom the Authority shall take special measures for allotment of Aadhaar number ;(4)specifying the form and manner of use of Aadhaar numbers for the purposes of providing or availing of various subsidies, benefits, services and other purposes for

which Aadhaar numbers may be used ;(5)the manner of sharing information of Aadhaar number holder ;(6)policies and practices to be followed by the Registrars, enrolling agencies, or other service providers working in the State of Jammu and Kashmir for the purpose of enrollment ;(7)any other matter which is required to be, or may be, specified or in respect of which provision is to be or may be made by rules or regulations.

Chapter VI

Protection of Information

13. Security and Confidentiality of Information.

(1)The Authority shall ensure the security of identity information and authentication records of individuals.(2)Subject to the provisions of this Act and the Central Act, the Authority shall ensure confidentiality of identity information and authentication records of individuals.(3)The Authority shall take all necessary measures to ensure that the information in the possession or control of the Authority, including information stored in the Central Identities Data Repository, is secured and protected against access, use or disclosure not permitted under this Act or regulations made thereunder, and against accidental or intentional destruction, loss or damage.(4)Without prejudice to sub-sections (1) and (2), the Authority shall :-(a)adopt and implement appropriate technical and organizational security measures ;(b)ensure that the agencies, consultants, advisors or other persons appointed or engaged for performing any function of the Authority, have in place appropriate technical and organizational security measures for the information ; and(c)ensure that the agreements or arrangements entered into with such agencies, consultants, advisors or other persons, impose obligations equivalent to those imposed on the Authority under this Act, and require such agencies, consultants, advisors and other persons to act only on instructions from the Authority.(5)Notwithstanding anything contained in any other law for the time being in force, and save as otherwise provided in this Act, the Authority or any of its officers or other employees or any agency that maintains the Central Identities Data Repository shall not, whether during his service or thereafter, reveal any information stored in the Central Identities Data Repository or authentication record to anyone :Provided that an Aadhaar number holder may request the Authority to provide access to his identity information excluding his core biometric information in such manner as may be specified by regulations.(6)The Government shall, after the commencement of this Act, take such measures as are necessary to ensure the security and confidentiality of information as provided in section 28 of the Central Act.

14. Restriction on Sharing Information.

(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.

15. Bio-metric Information deemed to be Sensitive Personal Information.

- The biometric information collected and stored in electronic form, in accordance with this Act and regulations made thereunder, shall be deemed to be "electronic record" and "sensitive personal data or information", and the provisions contained in the Information Technology Act, 2000 and the rules made thereunder shall apply to such information, in addition to, and to the extent not in derogation of the provisions of this Act.Explanation : - For the purposes of this section, the expressions-(a)"electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 ;(b)"electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 ;(c)"Sensitive personal data or information" shall have the same meaning as assigned to it in clause (iii) of the Explanation to section 43A of the Information Technology Act, 2000.

16. Alteration of Demographic Information or Bio-metric Information.

(1)In case any demographic information of an Aadhaar number holder is found incorrect or changes subsequently, the Aadhaar number holder shall request the Authority to alter such demographic information in his record in the Central Identities Data Repository in such manner as may be specified by regulations.(2)In case any biometric information of Aadhaar number holder is lost or changes subsequently for any reason, the Aadhaar number holder shall request the Authority to make necessary alteration in his record in the Central Identities Data Repository in such manner as may be specified by regulations.(3)On receipt of any request under sub-section (1) or sub-section (2), the Authority may, if it is satisfied, make such alteration as may be required in the record relating to such Aadhaar number holder and intimate such alteration to the concerned Aadhaar number holder.(4)No identity information in the Central Identities Data Repository shall be altered except in the manner provided in this Act or regulations made in this behalf.

17. Access to Own Information and Records of Requests for Authentication.

(1)The Authority shall maintain authentication records in such manner and for such period as may be specified by regulations.(2)Every Aadhaar number holder shall be entitled to obtain his authentication record in such manner as may be specified by regulations.(3)The Authority shall not, either by itself or through any entity under its control, collect, keep or maintain any information about the purpose of authentication.

18. Disclosure of Information in certain cases.

(1) Nothing contained in sub-section (2) or sub-section (5) of section 13 or sub-section (2) of section 14 of this Act shall apply in respect of any disclosure of information, including identity information or authentication records, made pursuant to an order of a court not inferior to that of a District Judge : Provided that no order by the court under this sub-section shall be made without giving an opportunity of hearing to the Authority and also to the individual whose information is sought. (2) Nothing contained in sub-section (2) or sub-section (5) of section 13 and clause (b) of sub-section (1), sub-section (2) or sub-section (3) of section 14 of this Act shall apply in respect of any disclosure of information, including identity information or authentication records, made in the interest of national security as prescribed under the Central Act.

Chapter VII

Offences and Penalties

19. Penalty for impersonation at time of enrolment.

- Whoever impersonates or attempts to impersonate another person, whether dead or alive, real or imaginary, by providing any false demographic information or biometric information, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or with both.

20. Penalty for impersonation of Aadhaar number holder by changing demographic information or biometric information.

- Whoever, with the intention of causing harm or mischief to an Aadhaar number holder, or with the intention of appropriating the identity of an Aadhaar number holder changes or attempts to change any demographic information or biometric information of an Aadhaar number holder by impersonating or attempting to impersonate another person, dead or alive, real or imaginary, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to ten thousand rupees.

21. Penalty for impersonation.

- Whoever, not being authorized to collect identity information under the provisions of this Act, by words, conduct or demeanour pretends that he is authorized to do so, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

22. Penalty for disclosing identity information.

- Whoever, intentionally discloses, transmits, copies or otherwise disseminates any identity information collected in the course of enrolment or authentication to any person not authorized under this Act or regulations made thereunder or in contravention of any agreement or arrangement entered into pursuant to the provisions of this Act, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

23. Penalty for unauthorized access to the Central Identities Data Repository.

- Whoever, not being authorized by the Authority, intentionally, - (a) accesses or secures access to the Central Identities Data Repository ; (b) downloads, copies or extracts any data from the Central Identities Data Repository or stored in any removable storage medium ; (c) introduces or causes to be introduced any virus or other computer contaminant in the Central Identities Data Repository ; (d) damages or causes to be damaged the data in the Central Identities Data Repository ; (e) disrupts or causes disruption of the access to the Central Identities Data Repository ; (f) denies or causes a denial of access to any person who is authorized to access the Central Identities Data Repository ; (g) reveals any information in contravention of sub-section (5) of section 28 of the Central Act, or shares, uses or displays information in contravention of section 29 of the Central Act or assists any person in any of the aforementioned acts ; (h) destroys, deletes or alters any information stored in any removable storage media or in the Central Identities Data Repository or diminishes its value or utility or affects it injuriously by any means ; or (i) steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used by the Authority with an intention to cause damage, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which shall not be less than ten lakh rupees. Explanation : - For the purposes of this section, the expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them in the Explanation to section 43 of the Information Technology Act, 2000, (Central Act No. 21 of 2000) and the expression "computer source code" shall have the meaning assigned to it in the explanation to section 65 of the said Act.

24. Penalty for tampering with data in Central Identities Data Repository.

- Whoever, not being authorized by the Authority, uses or tampers with the data in the Central Identities Data Repository or in any removable storage medium with the intent of modifying information relating to Aadhaar number holder or discovering any information thereof, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to ten thousand rupees.

25. Penalty for unauthorized use of requesting entity.

- Whoever, being a requesting entity, uses the identity information of an individual in contravention of sub-section (3) of section 8, of this Act shall be punishable with imprisonment which may extend

to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

26. Penalty for non-compliance with intimation requirements.

- Whoever, being an enrolling agency or a requesting entity, fails to comply with the requirements of sub-section (2) of section 3 or sub-section (3) of section 8, of this Act shall be punishable with imprisonment which may extend to one year or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

27. General penalty.

- Whoever commits an offence under this Act or any rules or regulations made thereunder for which no specific penalty is provided elsewhere than this section, shall be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to twenty-five thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees, or with both.

28. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly : Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Explanation : - For the purposes of this section - (a) "company" means anybody corporate and includes a firm or other association of individuals ; and (b) "director" in relation to a firm, means a partner in the firm.

29. Act to apply for offence or contravention committed outside India.

(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person, irrespective of his nationality. (2) For the purposes of sub-section (1), the provisions of this Act shall apply to any offence or contravention committed outside India by any person, if the Act or conduct constituting the offence or contravention involves any data in the Central identities data repository.

30. Power to investigate offences.

- Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, a police officer not below the rank of Inspector of Police shall investigate any offence under this Act.

31. Penalties not to interfere with other punishments.

- No penalty imposed under this Act shall prevent the imposition of any other penalty or punishment under any other law for the time being in force.

32. Cognizance of offences.

(1) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Authority or any officer or person authorized by it or by an individual who has reason to believe that his right has been violated. (2) No court inferior to that of a Chief Judicial Magistrate shall try any offence punishable under this Act.

Chapter VIII

Miscellaneous

33. Members, officers, etc. to be public servants.

- The Chairperson, Members, officers and other employees of the Authority shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Ranbir Penal Code, Samvat 1989.

34. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall lie against the Government or the Authority or the Chairperson or any Member or any officer, or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rule or regulation made thereunder.

35. Application of other laws not barred.

- The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force applicable to the State of Jammu and Kashmir.

36. Act not to prevent use of Aadhaar Number for other purposes under law.

- Nothing contained in this Act shall prevent the use of Aadhaar number for establishing the identity of an individual for any purpose by the State, pursuant to any law, for the time being in force

:Provided that the use of Aadhaar number under this section shall be subject to the procedure and obligations under section 8 and Chapter VI.

37. List of Schemes, Subsidies etc.

- The Government shall, after the commencement of this Act, by notification in the Government Gazette, from time to time, specify the list of Government schemes, subsidies, benefits, services of the Government for which such authentication or proof shall be required :Provided that any notification issued by the Central Government in this behalf, shall be deemed to be a notification issued under this section.

38. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, published in the Government Gazette, make such provisions not inconsistent with this Act as may appear to be necessary for removing the difficulty :Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.(2)Every order made under sub-section (1) shall be laid, as soon as may be after it is made before each House of State Legislature.

39. Savings.

- Anything done or any action taken by the Central Government or Government under the resolution of the Government of India, Planning Commission bearing notification number A-43011/02/2009-Adm. I dated the 28th January, 2009, or by the Department of Electronics and Information Technology under the Cabinet Secretariat Notification bearing notification number S.O. 2492(E), dated the 12th September, 2015 as the case may be, shall be deemed to have been validly done or taken under this Act.