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APPLICATION OF AADHAAR UNDER SOCIAL SECURITY CODE

A. Introduction

The Ministry of Labour & Employment (“**Ministry**”) has notified that Section 142 of the Code on Social Security, 2020 (“**CoSS**”)¹ shall come into effect from 3rd May 2021. The Notification was published in the official *Gazette of India* on 30th April 2021.²

B. Section 142 of the CoSS:

Under Section 142 of the CoSS, any employee, unorganized worker, or any other person shall establish their identity or the identity of their family members or dependents through Aadhaar number for:

- Registering as member or beneficiary
- Seeking social security benefits
- Availing services of career centre
- Seeking benefits of insured person

The Draft Code on Social Security (Central) Rules, 2020 (“**CoSS Rules**”) proposes Aadhaar linkage by employees, building and other construction workers, unorganised workers, gig or platform workers on the Shram Suvidha portal.³

C. Implication of the Notification:

The notification will enable the labour department and social security organisations to collect details of employees’ Aadhaar for the database of beneficiaries required under various social security schemes. The Central Government has announced the development of National Data Base for Unorganised Workers (“**NDUW**”). This is aimed at collecting data for unorganised and migrant workers for providing benefits of the various government benefits schemes.

¹ https://labour.gov.in/sites/default/files/SS_Code_Gazette.pdf

² <https://www.egazette.nic.in/WriteReadData/2021/226829.pdf>

³ Refer Rules 19, 47, 50 and 60 of the draft CoSS Rules.

D. Section 142 and the Aadhaar Judgement:

The Union Minister of Labour clarified that Section 142 of CoSS is notified only for collection of data of workers including migrant workers. However, no benefit will be denied to workers for want of Aadhaar.⁴

The clarification is in consonance with the judgement of the Supreme Court in the case of *Justice K.S. Puttaswamy (Retd.) and Ors. vs. Union of India (UOI) and Ors.*⁵ where it upheld the constitutional validity of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (“**Aadhaar Act**”) and held that:

- The Aadhaar authentication or establishing the identity of an individual for receipt of a subsidy, benefit or service given by the Central or State Government funded from the Consolidated Fund of India.
- Any benefit earned by an individual cannot be denied if the individual fails to provide their Aadhaar under Section 7 of the Aadhaar Act since it is the right of the individual to receive such benefits.⁶

Conclusion

Even though it is clarified that no benefit will be denied, from the language of the section it appears that the requirement under the CoSS is mandatory. Any actions to deny benefits to employees and workers on account of non-registration of Aadhaar will not be in compliance with the *Puttaswamy* case.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For legal advice, please contact us at: info@counselence.com.

⁴[https://pib.gov.in/PressReleasePage.aspx?PRID=1716239#:~:text=Union%20Minister%20of%20State%20\(I,workers%20for%20want%20of%20Aadhaar](https://pib.gov.in/PressReleasePage.aspx?PRID=1716239#:~:text=Union%20Minister%20of%20State%20(I,workers%20for%20want%20of%20Aadhaar).

⁵ *Justice K.S. Puttaswamy (Retd.) and Ors. vs. Union of India (UOI) and Ors.* (26.09.2018 - SC) : MANU/SC/1054/2018. Text of the judgment also at: https://uidai.gov.in/images/news/Judgement_26-Sep-2018.pdf.

⁶ Refer to Paragraph 322 of the Aadhaar Judgement.