

WHY THE ELECTORAL REFORMS BILL IS A PROBLEM

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

The Government has [rushed the passage of the Election Laws \(Amendment\) Bill, 2021 in Parliament](#), also amending the [Representation of the People Act, 1950](#) by facilitating the linking of a person's Aadhaar number with electoral roll data.

The amendment provides that an electoral registration officer may “require” an individual to furnish their Aadhaar number in order to establish their identity. Even persons already enrolled “may” be “required” by the officer to furnish their Aadhaar numbers in order to authenticate their entries in the electoral roll. Registered voters have the option of providing their Aadhaar number to Government authorities. The amendment states that no one shall be denied inclusion in the electoral roll, nor shall their names be deleted from the electoral roll due to their inability to furnish the Aadhaar number “due to such sufficient cause as may be prescribed”. Such individuals may be allowed to furnish alternate documents, as prescribed by the Central government.

‘Congress had asked for Aadhaar-voter ID link’

There are various substantive and procedural concerns with the amendments passed. First, although the Government has termed these measures as voluntary, the provisions of the amendment belie this. The electoral officer clearly has uncanalised discretion — since the law does not prescribe any guiding principles — to decide when an Aadhaar number may be “required”. Moreover, the Central government has the final say in prescribing the conditions (“sufficient cause”) under which an individual will be permitted to enter or remain on the electoral rolls, in case of her “inability” to furnish their Aadhaar.

This means that the Central government will decide what reasons are considered acceptable for a voter to remain on the electoral roll. Interestingly, the law does not even consider a situation where an individual may be opposed to linking her Aadhaar number to the electoral database — further undermining the voluntary premise of the amendments.

In this manner, the burden of proof has been reversed. Instead of the Government proactively ensuring registration on the electoral rolls (such as through house-to-house verification) to achieve universal adult franchise, the burden now shifts to individuals who may be unable/unwilling to link their Aadhaar to justify their retention on the rolls. In fact, deletion from the voter rolls will happen without any procedural safeguards since at the moment, the law does not provide for a right to a hearing before such deletion.

Editorial | [Thinking before linking: On linking electoral rolls with Aadhaar](#)

Such a step has real world consequences. In 2015, media reports highlighted how lakhs of voters in Andhra Pradesh and Telangana were reportedly excluded from the electoral process due to the practice of linking Aadhaar numbers with electoral ID. Right to Information replies indicated that such deletion was carried out without any door-to-door verification of the identity of individuals. The Supreme Court of India had to finally intervene to stop the linking process since the constitutionality of the Aadhaar Act was under challenge then.

Second, there are concerns that the amendment will result in political profiling. By linking electoral IDs with Aadhaar numbers, it is much easier for the Government to track which voter

has accessed welfare subsidies and benefits using their Aadhaar. This can be used by political parties to selectively target their messages to specific voters, using information that is not publicly available.

Political profiling using Aadhaar data is not unheard of. In April 2021, the Madras High Court asked the Unique Identification Authority of India (UIDAI) to ascertain how confidential information held by it may have been leaked in light of “credible allegations” that only mobile phones linked to Aadhaar cards received bulk SMS messages to join WhatsApp groups of a particular political party during election campaigning in Puducherry. Given these concerns, it is worrying that the amendment is conspicuously silent in reiterating the secret nature of such data or prohibiting the Election Commission of India or any other agency from sharing such information.

Linking Aadhaar with voter ID will solve multiple enrolment problem: Government sources

There are also procedural concerns that relate to the manner in which the amendment was passed. The Government introduced the Bill on December 20 and passed it on the same day in the Lok Sabha, while pushing it through the Rajya Sabha on the next date (December 21). Members of Parliament were not given time to understand or debate the implications of the amendments. Despite calls for division of vote in both Houses, the law was passed on the basis of a voice vote. This undermines the fundamental premise of a parliamentary democracy — to allow elected representatives the opportunity to voice the concerns of their constituents over laws that affect them.

This is especially important since the Government has failed to provide any empirical data that demonstrates either the extent of the problem of bogus voters in the electoral roll (justifying this extraordinary measure) or the success of Aadhaar in de-duplication. It is now well known that the Aadhaar database is beset with errors and exclusions. This is partly because there is no verification of the authenticity of the demographic information on the Aadhaar database, i.e. the UIDAI does not independently authenticate the information provided by an applicant at the time of enrolment.

In fact, both the Calcutta High Court and the Allahabad High Court have refused to rely on the authenticity of Aadhaar data, noting, “There is definitely something amiss with the Aadhaar enrolment process if important demographic information such as the name of the applicant’s father, as in the case in hand, can be falsified and even go undetected.”

Finally, it is worth questioning how the Aadhaar project is once again being used for purposes far beyond the stated “welfare” purpose that was upheld by the Supreme Court of India in the Aadhaar judgment as the basis for the introduction of the Aadhaar Act as a Money Bill in Parliament.

It is likely that some of these issues will be litigated before the Supreme Court. One can only hope that unlike other issues such as electoral bonds that have been pending for years, this challenge will be decided expeditiously. The success of our democracy may very well depend on it.

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