

Electoral Rolls and Aadhaar

By linking Aadhaar with electoral roll data, the constitutional essence of universal adult franchise is vitiating.

Anupama Roy writes:

Parliament passed the Election Laws (Amendment) Bill (ELB), 2021 with a voice vote amidst opposition from a substantial section of its members. The bill amended the Representation of the People Act, 1950 and 1951 by providing for four qualifying dates for enrolment in the electoral roll, changing the meaning of “person” in the definition of “ordinarily resident” to make it gender-neutral and linking the electoral data with Aadhaar to authenticate the electoral roll. Linking of the electoral roll with Aadhaar has generated concerns around privacy of personal data and its impact on electoral integrity. To establish the identity of a person applying for inclusion in the electoral roll, an electoral registration officer may require them to “furnish the Aadhaar number.” Those whose names are already in the roll must also “intimate” their Aadhaar numbers “in such form and manner” before a deadline which would be notified by the central government.

Normatively, conjoining the electoral roll with Aadhaar raises the problem of conflicting logics that undergird the two “identification regimes.” The voter ID card is for citizens. The electoral roll based on “universal” adult franchise, when prepared after independence, represented the unfettering of popular sovereignty from which the future Parliament would draw its legitimacy. Aadhaar is not a proof of citizenship. An identification document fortified by biometric information, it came with the promise of plugging leakages in the state’s welfare schemes. In the Puttaswamy case, the Supreme Court directed Parliament to install a robust data protection regime to ensure the “privacy” of persons and stem the indiscriminate use of Aadhaar, except for the purpose of identifying beneficiaries for specified welfare schemes. Despite the Court’s caution, Aadhaar has become “ubiquitous” as an “identity card.”

The bleeding of the Aadhaar into a regime of universal enfranchisement has two serious ramifications for constitutional democracy: it undermines the Election Commission of India’s (ECI) constitutional mandate of regulating the “superintendence, direction, and control of the preparation of electoral rolls;” and changes the idea of “the vote” from a right driven by the sovereign power of the people to bring about regime change, into a “subsidy,” “benefit,” and “service” delivered to a “targeted” population under Aadhaar. This is a far cry from the objective of universal franchise in a parliamentary democracy which ensures accountability and “democratic disposition” in the government and citizens.

The power of Parliament to make laws with respect to elections (Article 327) is subject to constitutional provision (Article 324), which gives the ECI pre-eminent powers to conduct elections. The power of the ECI to prepare the electoral rolls read with the constitutional right to vote is an affirmative power to make franchise “universal” so that no eligible voter is excluded. The ELB comes with a tendency to “constrain” franchise by making it dependent on another document. The bill presents the linking of the electoral roll data with the “Aadhaar ecosystem” as *necessary* for curbing “the menace of multiple enrolment.” It describes the process as “voluntary,” stating that no person will be compelled to “furnish” Aadhaar. Yet, the “inability” to furnish will be subject to scrutiny of “sufficient

cause” and the requirement of other “alternate documents” that may be “prescribed.” The “devil” will be in the “details”—the “rules” determining what explanations for inability will be considered sufficient and what other documents will be construed as adequate.

The prescriptions for eligibility in the ELB indicate a nationwide exercise of verification of the electoral roll coinciding and perhaps in tandem with the preparation of the National Population Register—another mass enumeration regime that has been “seeded” with Aadhaar. In a context where a personal data protection regime is not in place and is likely to be predisposed to regime protection under the garb of national security, experts have argued that the “opening up” of the electoral roll to the Aadhaar “ecosystem” will make citizens vulnerable to manipulation by the regime.

In 2015, the ECI had launched the National Electoral Roll Purification and Authentication Programme linking the Electoral Photo Identity Card (EPIC) with Aadhaar numbers. The programme was paused when the Supreme Court put Aadhaar on hold. Reports suggested that by “rapidly linking” millions of EPICs to Aadhaar numbers, the programme “skirted the boundary between responsible data sharing practices and outright violation of privacy and user consent,” allowing third parties to access non-biometric identity data stored by the Unique Identification Authority of India. Investigations by journalists revealed that in Andhra Pradesh and Telangana, states that were to serve as the template for electoral roll purification and authentication “software could have played a role in the elimination of 2.2 million voters from Telangana’s electoral rolls.”

One may ask the question, why the fidelity of the electoral roll, made robust through digitalisation and the EPICs, cannot be reinforced without the documentary regime of Aadhaar—a regime that raises concerns of privacy of information and preferences of the voter. What makes it imperative to enact a law to “reform” the preparation of electoral rolls, when it is electoral malpractices during elections and in the intervening period that vitiate the electoral process? The role of money and crime in elections is publicly acknowledged but not addressed. The Supreme Court judgment gave the voter the right to know, reading the casting of the vote into the fundamental right to freedom of expression. The ECI, rather than itself taking radical steps to eliminate the influence of money and crime, appears to be relying on the voter to exercise an “informed” choice. Anonymous electoral bonds have skewed electoral competition in favour of the “ruling” party. The overbearing power exercised by the executive through the parliamentary majority has deferred deliberative spaces in Parliament. The Prime Minister’s Office has become pre-eminent to the extent that it can summon the chief election commissioner and elections commissioners to join a meeting convened by it. The ecosystem within which reforms in the electoral process are being envisaged represent a configuration of tendencies that is affecting procedures in a way which would impact electoral outcomes.

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