

The Election Laws (Amendment) Bill, 2021:

The Viability of Linking Aadhaar to the voter IDs

03
22

| Ameya Sharma



TABLE OF CONTENTS

1. Abstract	03
2. Introduction: Reforms under the Bill	04
3. Aadhaar Link to Voter ids: A Privacy Issue?	05
4. Is Linking Aadhaar to Voter ids the only Solution?	06
5. Conclusion	07
6. Bibliography	08

If you have any suggestions, or would like to contribute, please write to us at contact@sprf.in

© Social and Political Research Foundation™

March 2021

ISSUE BRIEF

The Election Laws (Amendment) Bill, 2021:

The Viability of Linking Aadhar to the voter IDs

| Ameya Sharma

ABSTRACT

The Election Laws Amendment Bill, passed by the Union Cabinet in 2021, ruled in favour of linking Aadhar IDs to the electoral rolls. This step aimed to curb the menace of fraudulent voting, among other reforms. However, the Bill has been a point of contention. Various opposition leaders and activists voice their concerns over voters' privacy. Consequently, this Issue Brief delves into the question of confidentiality regarding the Aadhaar linkage and the subsequent public disenfranchisement. It sheds light on instances related to data leaks and also explores alternative answers to curtail double voting.

Keywords: Election Laws Amendment Bill, Election Commission of India, Aadhaar Card, Voting, Privacy

INTRODUCTION: REFORMS UNDER THE BILL

On 21 December 2021, the Rajya Sabha passed the Election Laws Amendment Bill (2021) through a voice vote following a brief discussion of it in Lok Sabha's the day prior (Bhardwaj, 2021). Despite the Legislature's swift greenlighting, the President's nod is still pending on the matter owing to the strong opposition the bill faced. Recommended by the Election Commission of India [ECI], this bill focuses on multiple electoral reforms, including linking Aadhaar IDs with the Electoral Rolls, among others (Vanamalli, 2022). Issued by the Unique Identification Authority of India [UIDAI], in the name of the Government of India, Aadhaar is a 12-digit personal identification number. It is proof of a citizen's identity and address, valid throughout the country (Unique Identification Authority of India n.d.). This suggestion of linking Aadhaar to Voter IDs comes right before state assembly elections in Punjab, Gujarat, Uttar Pradesh, Manipur, and Uttarakhand. As per the Union cabinet, linking is essential to avoid multiple enrollments by the same citizen at various locations (Sapra, 2021). Kiren Rijju, the Union Minister of Law and Justice, was quoted as saying that in consultation with the ECI, the government tried to resolve shortcomings of the current legal provisions. The Union cabinet feels it is a necessary step towards free and fair elections, which are an integral part of participatory democracy (ibid.). In light of this argument, this Issue Brief examines the relevance of the Election Laws Amendment Bill. It discusses the concerns and important perspectives around the validity of linking the Aadhaar with the Voter ID.

The Election Laws Amendment Bill (2021) brings several provisions under its umbrella. It has revised section 23 of the Representation of People's Act 1950¹ and authorised the linking of electoral rolls with the Aadhaar ecosystem. The idea behind this reform was to keep in check the duplication of voter IDs in different regions other than the registered state. This coupling is expected to curb "bogus" votes (Bhardwaj, 2021). To further aid this cause, the ECI has put EROnet in place, which identifies double registration of names in the electoral roll. However, EROnet identifies duplication only within the state and not throughout the country. This becomes significant in light of a 2018 case from Kerala where a group of 11 students had their names registered in the Mangaluru state assembly, despite having their names enrolled in Kerala's voter list as well. This was only one of the 32 cases of voter duplicity filed that year (Raghava, 2019).

Previously, the Election Commission attempted to curb fraudulent voting by identifying demographically similar entries before the elections, along with the list of Absent, Shifted, and Dead voters [ASD], and reporting them to the officer in charge. The Election Commission records ASD voters through photographs at the booth, digitising their entries and not allowing them to leave until the ink dries. These steps were taken to prevent regular voters from casting votes under the disguise of one of the ASD voters. However, despite these efforts, the problem persists (Haneef 2021).

The amendment also introduces various qualifying dates for citizens turning 18 to apply for voter IDs (Election Laws Amendment Bill, 2021). As per the rules, the first of January was usually considered the qualifying date for enrolling in the system. Anyone born after the date did not qualify to cast a vote and had to wait until the next term. To rectify this hassle, three more qualifying dates were included, namely the first day of January, April, July, and October (Sapra, 2021). Apart from the aforemen

¹ Section 23 of the Representation of People's Act 1950 reflects on the right of an individual to approach the electoral officer incharge to apply for the registration of their name in the electoral roll of their respective constituency. This is followed on the basis of the manner prescribed.

tioned reforms, the Bill also initiates gender neutrality through a change in terminology for the service voters. Service voters include citizens in the defence forces, police forces, and other government employees serving within or outside India. Formerly, the partners of service voters had to enrol as the 'wife of service voters' during the registration procedure for voter IDs. The terminology has now been substituted with 'spouse of service voters' (Mohanty, 2021). This is a welcome move since it promotes inclusivity in terms of gender roles.

AADHAAR LINK TO VOTER IDS: A PRIVACY ISSUE?

Ever since the bill was introduced in the parliament, there have been some contentions about integrating voter rolls with the Aadhaar ecosystem. Under the National Electoral Roll Purification and Authentication Programme initiated by the ECI in March 2015, it was proposed to merge the electoral rolls with the Aadhaar to avoid any duplicity in votes cast. The Election Commission clarified with the Chief Electoral Officers of the states and the UTs that this step was not mandatory. The Supreme Court in August 2015 had stayed the applicability of this procedure owing to privacy concerns related to the accessibility of one's personal data post the Aadhaar linkage with voter IDs until further notice. The court passed an interim order while hearing the constitutionality of linking Aadhaar with voter ID. It stated, "We will also make it clear that the Aadhaar card scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other" (Justice K.S. Puttaswamy (retd.) and another v. Union Of India and Others, 2012). According to the order, Aadhaar could only be linked for public distribution scheme channels such as LPG. But during that period of 3 months, around 30 crore voter IDs were already linked to Aadhaar. Its effects were witnessed three years later in the 2018 Telangana State Assembly elections when approximately 30 lakh voters, or 10% of the voter base, had vanished from the electoral roll (Poddar 2021). Various leaders, especially from the opposition, voiced their concerns. Assaduddin Owaisi, a Member of Parliament from All India Majlis-E-Ittehadul Muslimeen, commented that this electoral reform exists outside the purview of both the Houses. Additionally, he mentioned it violates the fundamental right to privacy as per Justice K. S. Puttaswamy vs. Union of India case² (Dutta 2021). Similarly, Manish Tewari, a member of the Indian National Congress, expressed his concerns regarding linking Aadhaar with Voter ID, violating the fundamental right to privacy and the ethos of our constitution (ibid.). The opposition fears that the enactment of the bill will give the government access to the voters' identity details. A consequent data leak of personal information may be misused for voter profiling and disenfranchisement. One of the major concerns for this Bill's success is the implementation process since, as per the Bill, this linkage is of voluntary nature and can not be imposed on the voter (Bhardwaj, 2021).

According to the Representation of People Act, 1950, the citizen was required to approach the electoral officers in charge for enrolling in the voter list. But as per the new Bill, a citizen is required to provide their Aadhaar details to determine their identity. If the voter is already registered, their unique Aadhaar number will be used to authenticate their entry in the final list. However, if a person is unable to provide their Aadhaar details, they will still be eligible for registration and can not be denied participation in the election process owing to its voluntary nature.

² In 2017, a nine judge bench in the Justice (retd.) K.S. Puttaswamy and Anr. vs the Union of India and Ors. case declared privacy as a fundamental right. This was based on the 1997 People's Union for Civil Liberties v. Union of India judgement, which laid the groundwork for telephonic surveillance and constitutional freedom.

Araghya Sengupta, founder of Vidhi Centre for Legal Policy, argues that the main idea behind this reform was to do away with bogus voting and that this amendment will not hold ground if the exercise is not made mandatory (Dutta 2021). However, Sengupta's statement is contestable. A person can choose not to provide their Aadhaar details in the absence of a 'sufficient cause'. However, the government has not clarified what 'sufficient' entails. Moreover, even though the directive of providing Aadhaar details is voluntary, the aforementioned ambiguity can cause conflict in the future. Said ambiguity signals loopholes curtailing voter agency.

Another debate surrounds non-citizens casting a vote. Nishikant Dubey, from the Bharatiya Janata Party, alleged that the opposition, especially the Trinamool Congress and the Indian National Congress, are protesting against the bill to garner votes from Nepalis and Bangladeshis residing in India (Verma 2013). However, this gives rise to legal vagueness since, per the Aadhaar Act, an Aadhaar card is not proof of citizenship but of residence and hence cannot prevent non-citizens from casting a vote. The Communist Party of India (Marxist) argued that the Bill undermines the relevance of secret ballots by providing the voter's identity through their Aadhaar card (Sharma, 2021). For instance, as Dutta (2021) outlines, a Hyderabad-based software company called IT Grids Pvt. Ltd was accused of stealing data of 7.8 crore Aadhaar cardholders from Andhra Pradesh and Telangana in 2019. The authorities raised concerns over security issues with regard to UIDAI servers holding the personal information of citizens and not being unable to prevent such data leaks. Despite the case being transferred to an investigation agency, the issue remains unresolved (Dutta, 2021).

IS LINKING AADHAAR TO VOTER IDS THE ONLY SOLUTION?

In 2019, the Association of Democratic Reforms and Common Cause filed a petition against the ECI. The petition noted a discrepancy in the counted votes on the ECI's Voter Turn Out application³. Around six seats had acquired more votes than mentioned in the winning margin, tallying up to approximately 7 lakh discounted votes. As Balaji (2019) reported, "there existed a mismatch in 347 out of 542 constituencies and the difference was bigger than the margin of victory in six seats. These were: Guntur and Visakhapatnam in Andhra Pradesh; Anantnag in Jammu and Kashmir; Khunti in Jharkhand; Koraput in Odisha and Machhlishahr in Uttar Pradesh." The petition stated that it's the duty of the ECI to collate data and make it available in the public domain so that the citizens can view the data and remain informed (Legal Correspondent 2019). Hence, a bench led by Chief Justice of India, Sharad Bobde, sent a notice to the ECI in light of this development (Association of Democratic Reforms and ANR. v. Union of India and Ors., 2019). The case is ongoing with vague replies from the ECI's. Nevertheless. The question remains whether linking Aadhaar to voter IDs is the only panacea available. Perhaps not.

During the 2013 Uttar Pradesh State Assembly elections, the ECI introduced a mechanism wherein the UIDAI issued a Unique Identity number to recognise voters double registering themselves (Verma 2013). The biometric details of individuals, including fingerprints, photographs, and iris scans, were gathered under the National Population Registration scheme by the Directorate of Census Operations. These details were to be expected to be easily available on UIDAI'S server. This was done

³ The Voter Turnout App was developed by the Election Commission of India. The application was developed to keep the citizens informed regarding the voter turnout in phases during any poll day. This application showcases authenticated data recorded by the Election Commission.

to identify voters through their Electoral Photo ID Cards [EPICs], making it easier for booth-level officers to recognise a voter who had already voted. The mechanism helped the chief election officer identify around 25 lakh voters with double registration (Verma, 2013). When such identification models are already in place, one needs to question the need for merging voter IDs with Aadhaar at all. This concern is exacerbated by privacy concerns and data leaks that are not in the best interest of the citizens.

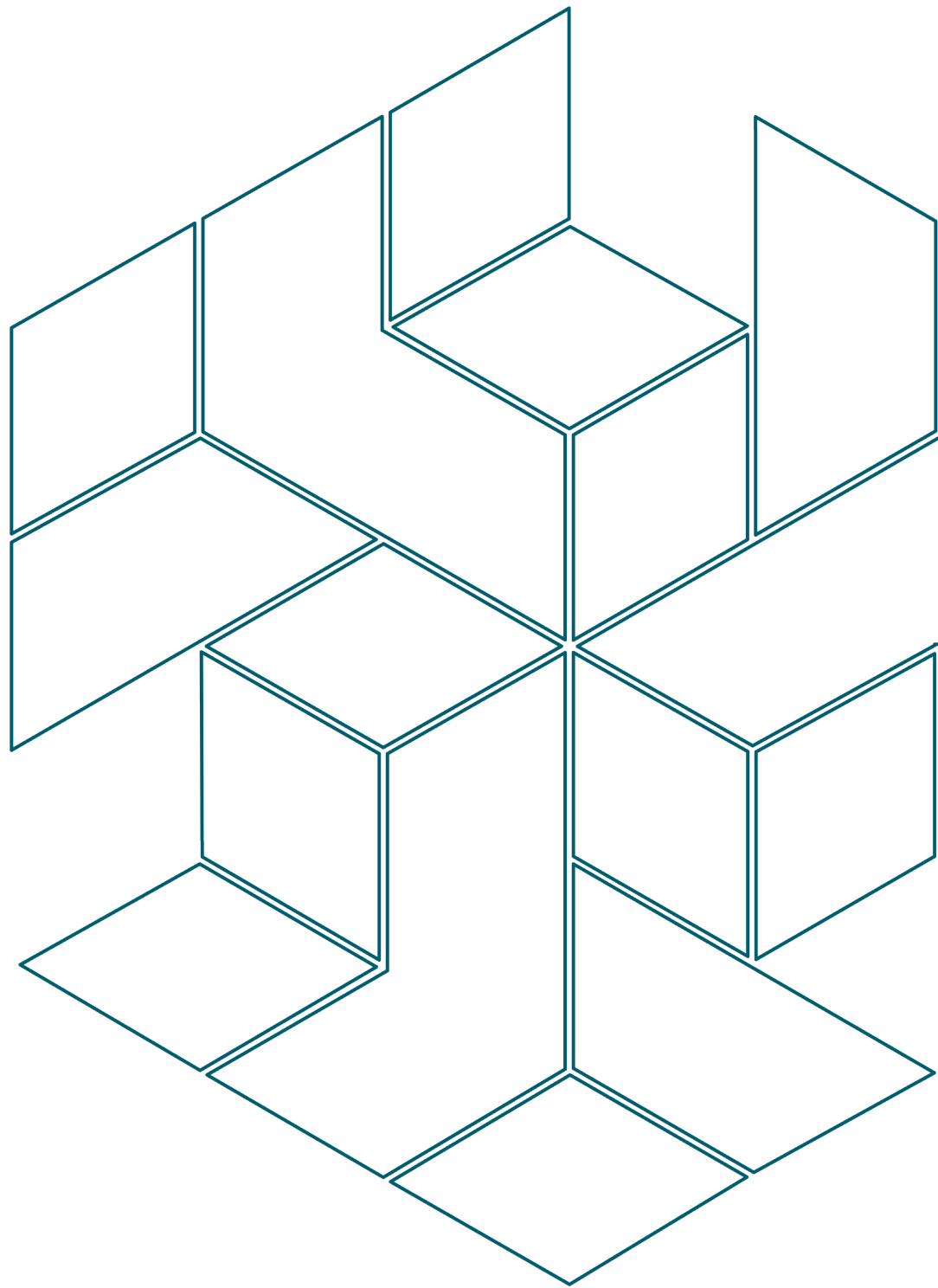
CONCLUSION

As far as the legislation is concerned, there exists a need for it to be more comprehensive. The underlying conceptual confusion around Aadhaar linkage and its purpose need to be addressed. Since there are already mechanisms in place that proved successful in curbing the double registration, the bill owes the Indian citizens more clarity on the personal data being shared, methods of acquiring consent for data usage, and whether the consent can be reversed in the future. Reforms other than the Aadhaar linkage may be deemed necessary since they cover aspects such as voter registration, accessibility, and gender neutrality. However, the government must explain the reason for merging electoral rolls with the Aadhaar ecosystem, especially when other effective methods already exist. There still remains scope in addressing the public view with regard to privacy, data linkage, and ambiguity while enrolling in the voter list. As the biggest participatory democracy of the world, the Indian state owes its citizens a free, fair, and transparent electoral procedure to maintain the sanctity of the institution.

BIBLIOGRAPHY

- Association of Democratic Reforms and ANR. v. Union of India and Ors, interlocutory application no. 183625 of 2019 (2019). https://main.sci.gov.in/supremecourt/2015/16902/16902_2015_31_1502_27229_Judgement_26-Mar-2021.pdf.
- Balaji, R. (2019, November 20). Vote mismatch in 347 LS seats: Petition. *The Telegraph*.
- Bhardwaj, D. (2021, December 21). Bill to link voter IDs with Aadhaar cards passed by Lok Sabha. *Livemint*. <https://www.livemint.com/news/india/bill-to-link-voter-id-with-aadhaar-cards-passed-by-the-lok-sabha-11640030727923.html>.
- Dutta, A. (2021, December 23). Explained: Why there is objection to linking voter rolls to Aadhaar. *Indian Express*. <https://indianexpress.com/article/explained/election-laws-amendment-bill-linking-voter-rolls-to-aadhaar-7684305/>.
- Haneef, M. (2021, March 31). Kerala assembly polls: Take measures to prevent double or fake voting, HC tells Election Commission. *The Times of India*. <https://timesofindia.indiatimes.com/elections/assembly-elections/kerala/kerala-assembly-polls-take-measures-to-prevent-double-or-fake-voting-hc-tells-election-commission/articleshow/81783350.cms>.
- Justice K.S. Puttaswamy (retd.) and another v. Union Of India and Others, AIR 2017 SC 4161 https://uidai.gov.in/images/news/Judgement_26-Sep-2018.pdf.
<https://www.telegraphindia.com/india/vote-mismatch-in-347-ls-seats-petition/cid/1720761>.
- Mohanty, K. (2021, December 16). EXPLAINED: Why Election Commission Wants To Link Voter IDs To Aadhaar Card And What It Means. News18. <https://www.news18.com/news/explainers/explained-why-election-commission-wants-to-link-voter-ids-to-aadhaar-card-and-what-it-means-4560152.html>.
- Poddar, U. (2021, December 19). Explainer: Why the move to link Aadhaar to voter ID cards is so contentious. *The Scroll*. <https://scroll.in/article/1013078/explainer-why-linking-aadhaar-to-voter-id-cards-could-prove-to-be-problematic>.
- Legal Correspondent. (2019, December 13). Poll panel to use UID to check duplicity in electoral roll. *The Hindu*. <https://www.thehindu.com/news/national/sc-issues-notice-to-poll-panel-on-discrepancies/article30299992.ece>.
- Raghava, M. (2019, March 18). Duplication of names in electoral rolls still a cause for concern. *The Hindu*. <https://www.thehindu.com/news/national/karnataka/duplication-of-names-in-electoral-rolls-still-a-cause-for-concern/article26562621.ece>.
- Sapra, S. (2021, December 30). The Election Laws Amendment 2021. *Times of India Readers Blog*. <https://timesofindia.indiatimes.com/readersblog/realisitic-thoughts/election-laws-amendment-bill-2021-40008/>.

- Sharma, R. (2021, December 21). Linking of Aadhar with voter ID will eliminate bogus voting. *India TV*. <https://www.indiatvnews.com/news/india/linking-of-aadhar-with-voter-id-will-eliminate-bogus-voting-aaj-ki-baat-rajat-sharma-blog-opinion-750520>.
- The Election Laws Amendment Bill, bill no. 162, (2021). http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/162_2021_LS_Eng.pdf
- Vanamalli, K. V. (2022, January 3). What is the Election Laws (Amendment) Bill, 2021? *Business Standard*. https://www.business-standard.com/podcast/current-affairs/what-is-the-election-laws-amendment-bill-2021-122010300051_1.html.
- Verma, L. (2013, June 5). Poll panel to use UID to check duplicity in electoral roll. *The Indian Express*. <https://indianexpress.com/article/cities/lucknow/poll-panel-to-use-uid-to-check-duplicity-in-electoral-roll/>.
- Unique Identification Authority of India. (n.d.). <https://www.uidai.gov.in/16-english-uk/aapka-aadhaar/14-what-is-aadhaar.html>.



SPRF.IN