

ELECTION LAW AMENDMENT BILL, 2021

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The election is the feature that resembles democracy, which is the basic feature of the Indian Constitution. Elections will be monitored by the Election Commission of India to ensure free and fair elections. Indian Citizens have the right to choose their representatives. Our legislature enacted various laws on this aspect since 1950. A few laws are the Representation of People's Act, 1950, and the same act in 1951, the Delimitation Act, 2002. These are the laws that were governing the country during elections. Every country recognizes the significance of having elections in the country. India is what it is today because of elections. We have seen leaders like Atal Bihari Vajpayee, Sardar Vallabhai Patel, Dr. Rajendra Prasad, and APJ. Abdul Kalam, etc., had molded India into what it is today. Having a representative and a leader in the country is the most important feature and simultaneously giving the right to choose the leaders is another such feature that India and many other countries have. The chosen representative is the voice of people to express the public needs and appreciatively implement the same. For the same, it is important to form a good government that is transparent and unbiased. Election Laws Amendment Bill, 2021 is the other legislature proposal, which aims to better the previous laws in the current times. Though the fundamental feature is to link the electoral rolls and the Aadhar, it proposed various other changes which might be beneficial to society as a whole. However, despite the beneficial factors, it attracted criticism from many. This paper will further brief the changes proposed in the bill.

ANALYSIS

Recently on 20th December 2021, the Election Laws (Amendment) Bill, 2021 was put forth before the Lok Sabha. This said the bill was proposed as a modification of the People's Representation Act, of 1950 and also the People's Representation Act of 1951. It was introduced as a better version of the older acts and to enact various election reforms. The acts of 1950. The People's Representation Act, of 1950 monitors the borderline of parliamentary constituencies, the distribution of seats, and also the creation of electoral rolls and voter qualifications. On the other hand, the People's Representation Act of 1951 regulates election procedures, as well as election-related conflicts and offenses. Now the 2021 amendment act is

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an add-on to both these acts and is an updated law of the time and it is now yet to be approved for implementation in the country.

THE ELECTION LAWS AMENDMENT BILL 2021

The key point to note here is that this bill which was passed in Lok Sabha in 2021 December, aims to link the Voter ID cards and also the electoral data with the Aadhaar cards. This being the main point to highlight in the bill, the opposition leaders and the other members have raised many concerns and objections to this particular bill.

LINKING THE ELECTORAL ROLL DATA WITH THE AADHAAR CARD

The procedure for this is that a person initially has to request the office of the electoral registration to get their name added to the electoral roll of the constituency under the 1950 Act. If the application is approved as per the eligibility criteria by the inspector it will be considered registration only after the validation. The competent inspector will further instruct the other authorities to add the name of the individual to the list of the electoral rolls. In furtherance of the above-mentioned procedure, the official on duty to the electoral registration may also ask the application for his/her Aadhaar card number to verify their identification, as per the bill. If the applicant's name is already existing on the voter rolls, then the Aadhaar card number might be necessary for the changes to be made in the rolls and which are to be authenticated.

In case an individual is not able to give an Aadhaar card number for any reasonable and legitimate reason, the name of that individual will still be included in the voter rolls. Also, it can be removed from the roll depending upon the legitimacy of the reason provided. However, such people may be permitted to produce the alternative documents as insisted by the federal government. To discuss more on this, the amendment of section 23 of RP Act, 1950 led to this feature of linking Aadhaar and the electoral roll data. This amendment aims to come over the issue of multiple enrolments of the same individual in various places. It also helps the government to stop the menace of fraudulent and bogus voting. This step by the government was taken according to the 105th report of the Parliamentary Standing Committee which deals with the Public, Personal grievances, and issues with law and justice.

QUALIFYING DATE FOR ENROLMENT IN ELECTORAL ROLL

The qualifying dates were made more flexible than earlier. The date of qualification for the process of registration in the voter rolls under the People's Representation Act, 1950 is 1st January of the year in which the creation or amendment of the voter registration has taken place. Also, when the eighteen-year-old individual will become eligible to vote in the elections after the 1st of January and the so-called individual can register to vote in that election only when the voter roll is created and revised for the following year. However, the amendment bill proposed in 2021 modifies the same in an even more flexible way by introducing four such qualifying dates. It includes the dates 1st of January, April, July, and also of October as the dates eligible for the qualification to get their name registered in the voter rolls.

REQUISITIONING OF PREMISES FOR ELECTION PURPOSES

The Representation of People's Act, 1951 permits the state government to seize the property that is likely to be required or actually required for the use as polling stations or maybe used for the storage of ballot boxes after which a vote has been taken. The bill widens the types of premises that can be ordered and monitored. These include storing voting equipment, counting, and all other polling-related materials, and polling-related staff and housing security forces.

GENDER-NEUTRAL PROVISIONS

The Representation of People's Act, 1950 permits certain people who reside in a particular area to register as voters. The people who have a service qualification, such as central government officials who are stationed outside India or the soldiers of the military forces are examples of such people. In case they live together, their wives and children are considered to be dwelling in the same constituency. The RPA, 1951 permits the wife of someone who qualifies for service to vote either in person or by a paper vote. In both of these Acts, the Bill substitutes the term "wife" with "spouse." Section 20 of the Representation of People's Act, 1950 and Section 60 of the Representation of People's Act, 1951 were amended respectively to permit the election procedure to become gender-neutral for service voters.

OTHER CONCERNS

Is Aadhar connection mandatory: The government tried doing this earlier and it backfired. In the year 2015, then move to link voter ID to Aadhaar cards was set aside immediately after the judgment declared by the Hon'ble Supreme Court of India. The court in a particular case specifically held that Aadhaar should not be considered as proof of citizenship as it is merely

a proof of residence. And declared that the scheme to link Aadhaar to the Voter IDs is completely left to the discretion of the people and is voluntary. Privacy at stake: in furtherance of the above statements, currently the Electoral data is held by the Election Commission of India in its database and it has its verification process and is separate from any other existing government databases. Through the proposal of the new bill and as per its requirements of it, the personal data of the individual will be easily accessible to the ECI as well as to UIDAI. This will lead to a clear infringement of a citizen's privacy which is against their fundamental rights. Fears of deprivation of Right to Vote: The recently proposed bill by the government permits the officers of electoral registration to ask the people for the Aadhaar cards or Aadhaar numbers of the applicants for the registration as voters to establish the applicant's identity. Otherwise, the government will disable the people's right to vote and also the profile of the citizens if they fail to provide the required essentials as per the new bill.

Violation of Data Protection Law: Aadhaar card is a sort of identity of a person through which the other person can get access to lots of personal details. If the government seeks such details from the individual, it is also important for them to ensure to people about the protection of people's privacy at the same time. As of now, this personal data protection law is not inserted and ensured in the law but is still upheld in the parliament for consideration. Before the safety promises, sharing personal data is not advisable to anybody in the country in any case. Meanwhile, the opposition party leaders and the members have been targeting the government for its passage of the Election Laws Amendment Bill, 2021 in the Lok Sabha. The opposition parties preferred the bill to be sent to a standing committee. The opposition parties want to resist the electoral reforms bill, from being presented in Rajya Sabha. The CPI(M) stated that this 2021 Bill is most likely to violate the privacy and both secrecy of the vote in light of the secret ballot and the fundamental right guaranteed by the constitution which is the individual's right to privacy. It also has a danger to violate the Right to Vote. The CPI(M) also stated the concern in the matter that major changes were made to the existing acts i.e., RPA, 1950 and 1951. This newly proposed version has far-reaching consequences.

GOVERNMENT VIEWPOINT

Voluntary Linking: The linkage between the Aadhaar and the election database which was proposed in the new 2021 bill is voluntary and at the discretion of the individual.

No Risk of Disenfranchisement: No application made for the inclusion of the name of any individual in the electoral roll shall be denied and no applications made in the electoral roll shall be deleted for the failure of an individual to produce or intimate Aadhaar number.

CRITICISM

In the case of *K.S. Puttaswamy v. Union of India*¹, the court restricted the linkage of Aadhaar card to any extensive use and it is limited only to personal welfare and financial uses. Therefore, the current bill was criticized as it violating this judgment of the Supreme Court. It is the extensive involvement in the privacy of an individual and, as it is involuntary and the consequences for the failure were strict, it is criticized largely. The fundamental feature of elections is the Universal adult franchise, free and fair elections, and most importantly the secret ballot. It is contended that the bill violates the same and is not valid. The Aadhaar linking feature will enable the political parties to differentiate between the votes and classify them into favorable and unfavorable categories followed by consequences.

SUGGESTIONS

Comprehensive Legislation: An error-free Electoral Roll is the need of the hour and a major necessity at times for a free and fair election. Therefore, the Government needs to come up with a comprehensive bill to have a proper discussion on the new bill in the parliament. Better

Clarification: The bill should provide some clarity on the extent of data sharing that takes place between the two databases, and also on the methods through which the consent of an individual will be obtained. Also, whether the consent of any person to link the databases can be revoked or not must be clarified.

CONCLUSION

Considering the place that elections have in our country, the bill needs to be reconsidered. It can be implemented with certain changes to avoid any negative consequences from society. It has fewer chances to be successful implementation because it is violating the fundamental right to privacy and is also the most important feature of the Indian election system. Therefore, changes in election laws are always welcomed because society is based on change. At the same time, the legislators have to make sure that the rights of individuals are not violated due to such changes in the system. The system of free and fair elections, secret ballots, etc., are the most

¹ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

important features of elections in India, and the same cannot be violated in any case because the constitution is above everything.

