

The need to safeguard the right to vote

What did the Supreme Court say about electoral rolls revision in Bihar? Is the right to vote a fundamental right in India? Can electoral roll errors invalidate an election? How can India balance electoral vigilance with the inclusion of genuine voters?

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A Booth Level Officer checks documents during special investigation revision of electoral rolls, at Kamalpur village, in Bihar | Photo Credit: SHASHI SHEKHAR KASHYAP

The story so far: On July 10, the Supreme Court directed the Election Commission (EC) to consider Aadhaar cards, voter ID cards, and ration cards as acceptable documents for the special intensive revision (SIR) of electoral rolls in Bihar. It has listed the batch of petitions challenging the EC's decision for further hearing on July 28. The court's remark — that the question of 'right to vote' goes to the very root of the functioning of our republic — has cast a spotlight on the foundational processes of India's electoral machinery and the genesis of India's 'universal adult suffrage' (UAS). India's constitutional promise of the 'right to vote' differs significantly from that of many Western democracies. Reflecting the flawed belief, espoused by thinkers

like J.S. Mill, that voting should be reserved for the “enlightened” and denied to the “ignorant,” countries like the U.K. initially restricted the franchise to male property owners. Universal male suffrage emerged only in 1918, and women were granted the right to vote a decade later in 1928. In the U.S., although the 15th and 19th Amendments extended voting rights to African Americans (1870) and women (1920), systemic barriers such as poll taxes and literacy tests continued to disenfranchise many for decades thereafter.

How was universal adult suffrage made real in India?

In sharp contrast, far from gradualism and the ‘privileged class’ criteria, India’s choice of immediate, universal inclusion ensured ‘democratic equality’ from the outset, bypassing the prolonged and often violent struggles seen elsewhere. Article 326 of the Constitution granted every adult citizen the right to vote, regardless of gender, caste, religion, education, or property, at a time when most of the world moved cautiously. Initially set at 21 years of age, this threshold was lowered to 18 by the 61st Constitutional Amendment in 1989. This commitment to a robust, inclusive democracy found further constitutional reinforcement in a series of Supreme Court judgments, notably starting with *Kesavananda Bharati v. State of Kerala* (1973), which established democracy as part of the ‘basic structure’ doctrine. For this ideal to function meaningfully, people should be able to freely decide the fate of their government, an unassailable right that shapes governance and must never be compromised.

This inclusive vision was operationalised through two key laws: the Representation of the People Act, 1950, which governs the preparation and revision of electoral rolls;

and the 1951 Act, which regulates election conduct, candidature, and electoral offences. The EC has repeatedly introduced administrative innovations to realise this 'constitutional promise'. Notably, the then Chief Election Commissioner Sukumar Sen, faced with the task of enrolling 173 million largely illiterate voters, turned a logistical hurdle into a democratic breakthrough by introducing election symbols, making UAS practically accessible.

In India, EC has a great responsibility to reach the last citizen, wherever they may be, to actualise their 'right to elect'. As Winston Churchill once said, "At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper..." His words remain a timeless reminder that the health of any democracy ultimately rests on the sanctity of the 'right to vote'.

Is voting a fundamental right in India?

The legal status of the 'right to vote' in India has long been debated. Although Dr. B.R. Ambedkar and K.T. Shah proposed including it in the Constitution's fundamental rights part, the Constituent Assembly's Advisory Committee ultimately rejected the idea. Importantly, a Constitution Bench of the Supreme Court in *Kuldip Nayar v. Union of India* (2006) held that the 'right to elect' is a statutory right under Section 62 of the RPA, 1951, and not a fundamental or constitutional right.

Later in 2016, though a two-judge bench in *Rajbala v. State of Haryana* described the 'right to vote' as a constitutional right, the larger bench ruling in *Kuldip Nayar* prevails. Again, in *Anoop Baranwal v. Union of India* (2023), the top court

declined to pronounce on the issue, noting that it had already been settled by the five-judge Bench in the Kuldip Nayar judgment. However, in his dissent, Justice Ajay Rastogi asserted that the 'right to vote' is an expression of Article 19(1)(a) and reflects the essence of Article 21. Yet, as this view remains a minority opinion, the 'right to elect' continues to be recognised as a statutory right under prevailing law.

Nevertheless, even though it is not a fundamental right, courts have regarded the right to vote as an inseparable part of democracy, anchoring their reasoning in the idea that it enables citizens to shape governance, making it a "democratic imperative" vital to the Indian republic's survival. As philosopher John Dewey said, democracy is not just a form of government, but a social and personal ideal.

Why does electoral roll accuracy matter?

Free and fair elections rest on accurate electoral rolls, under the RPA, 1950.

Inaccuracies — such as mass omissions, ineligible inclusions, duplicates, or incorrect entries — undermine the "one person, one vote" principle by enabling impersonation, disenfranchisement, or dilution of votes, ultimately distorting the people's mandate. Therefore, the EC is empowered under Section 21 of the 1950 Act to prepare and revise these rolls to ensure integrity.

While discrepancies may arise, courts have consistently held that only substantial and systemic errors that demonstrably "materially affected" the election outcome can compromise the sanctity of the electoral roll. Minor mistakes or isolated disenfranchisement are insufficient. Allegations like those in Bihar warrant scrutiny, but it must also be noted that purification of rolls is necessary because just as the

exclusion of an eligible voter undermines democracy, so does the inclusion of an ineligible name. Therefore, rather than disrupting or delaying the exercise, efforts should focus on helping improve the process. The Supreme Court's suggestion to include more accepted documents helps safeguard every genuine elector's right to be represented.

While the right to inclusion or objection in electoral rolls is conferred on individuals, not political parties, the court in *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman* (1985) observed that in a largely illiterate and politically unaware electorate, parties should take steps to ensure eligible voters are included and ineligible ones are removed. Given India's party-based Parliamentary system, such vigilance will help to preserve 'electoral integrity'.

Who qualifies as an ordinary resident?

The EC under Article 324 serves as the constitutional guardian of elections, with powers of superintendence, direction, and control. A key duty is preparing accurate electoral rolls, guided by Section 19 of the RPA, 1950, which mandates that any citizen aged 18 or above, "ordinarily resident" in a constituency and not disqualified, is entitled to be registered. "Ordinary resident" implies a genuine, continuous presence, not a temporary stay. For example, a student living in a hostel may not qualify if their permanent home and intent to return lie elsewhere. Mere temporary absence from one's place of ordinary residence does not negate one's status as an ordinary resident of that location. This criterion prevents fraudulent registrations and ensures voters maintain real ties to their constituencies, preserving representative accountability.

Interestingly, the Manmohan Singh case (1991) exemplifies judicial scrutiny on this front. His election from Assam was challenged for lack of “ordinary residence,” leading the court to clarify that ordinary residence means habitual, regular, and genuine presence, not a temporary or casual stay or a nominal address. Beyond ordinary voters, India’s electoral system accommodates those unable to vote conventionally. Under Rule 18 of the Conduct of Election Rules, 1961, ‘postal ballots’ are available to service voters like armed forces personnel, paramilitary, armed State police posted outside, and government staff abroad, and voters on election duty. Overseas electors — Indian citizens living abroad without foreign citizenship — can register under Section 20A of the RPA, 1950. However, they must vote in person, as they are currently ineligible for postal or proxy voting.

One of the most contentious issues regarding the SIR exercise in Bihar is the debate on ‘citizenship verification’. In *Lal Babu Hussein v. ERO* (1995), the court quashed two EC directives (1992 and 1994) allowing District Collectors and Electoral Registration Officers (EROs) to identify and delete alleged foreigners from voter rolls. The Supreme Court noted that the poll body guidelines put the “onus of proof of citizenship” on the person involved, even disregarding that several persons were voters in previous elections.

The court ruled that EROs must give due weight to past electoral rolls, conduct full inquiries, and follow quasi-judicial procedures, ensuring natural justice and adherence to the Citizenship Act and Constitution. These safeguards must guide the current exercise as well. Moreover, allegations or vague suspicions cannot justify the

exclusion of individuals from citizenship or voter lists without credible evidence and due process, according to the judgments in *Lal Babu and Md. Rahim Ali* (2024).

What is next?

The Bihar SIR controversy and broader electoral reform debates highlight a core democratic truth: India's democracy depends on electoral rolls that are accurate, inclusive, and accessible. As the Supreme Court prepares to resume hearings on July 28, the EC must complete the exercise with a careful balance between genuine vigilance and inclusion to uphold the fairness of the process.

Public awareness should empower voters to verify and update their entries, making them active custodians of electoral integrity. Safeguarding the vote is not merely a statutory obligation; it is a shared democratic responsibility, requiring vigilant institutions, informed citizens, and forward-looking legal reforms.

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