

# Electoral Roll Digitisation and Special Intensive Revision in India: A Corporate Risk, Data Governance, and Constitutional Analysis

Geetika Khullar<sup>1</sup>, Dr. Arvind P Bhanu<sup>2</sup>

**Abstract:** Digitization of voter lists and the practice of Special Intensive Revision (SIR), conducted by the Election Commission of India, is one of the greatest advances made towards establishing an information-driven system for election administration. Nonetheless, the use of such procedures raises issues regarding data management, the possibility of legal liability for private service providers, and constitutional safeguards. This research paper focuses on exploring the threats associated with the rise in algorithmic exclusion, systematic disenfranchisement, and possible misuse of data caused by the increasing role played by digital infrastructure and commercial technology vendors. Additionally, this research paper attempts to evaluate how well the emerging data protection law in India addresses risks associated with electoral data and ensures voter privacy. The paper uses the methodology of constitutional analysis in order to determine whether digitized SIRs are compatible with constitutional provisions related to equality, privacy, and free and fair elections in India.

**Keywords:** Electoral Digitization, Voter Privacy, Election Data Protection, Algorithmic Exclusion, Constitutional Rights.

## 1. Introduction

As they determine the set of people who have voting rights, hence the legitimacy of election results, electoral rolls form the basic process through which representative democracy operates. As per the Representation of the People Act, 1950, and Article 324 of the Indian Constitution, the Election Commission of India (ECI) holds the powers to create and update electoral records. As any form of discrimination in the process impacts the democratic rights of citizens, it is important that these records be accurate, as enshrined by the right to universal adult suffrage under Article 326.

The latest changes in the form of governance, which is attributed to the introduction of the digital voter list, indicate a fundamental change in the transition from an old system to a new one that operates using information. In line with the global trend to technologicalize elections, the Election Commission of India has increasingly depended on digital technology in registering and managing voter lists. It has been observed that although digital technology makes voter roll updating more efficient, it is fraught with several risks of governance, particularly due to central processing of large-scale personal information.<sup>1</sup> The procedure for Special Intensive Revision (SIR), which is carried out as a means of checking and updating the voters' list, becomes relevant here. SIR is implemented in accordance with the power bestowed on the Election Commission through the Representation of the People Act, 1950, in regard to enumerating and validating the rolls to avoid any mistakes like double counting. However, the increasingly popular use of computers in SIR operations has been generating concerns of possible lack of transparency and inclusion in the resulting decisions. Khaitan argues that processes that are capable of affecting political rights must follow certain

standards, especially in the case when there is the possibility of indirectly disenfranchising voters.<sup>2</sup>

The computerization of electoral rolls puts the administration of elections into a broader environment of information management and regulation in terms of data governance. From a scholarly perspective, the digitization of publicly accessible information related to elections might influence the information balance of a democratic system, making it possible to mobilize voters politically or even profile them.<sup>3</sup> This problem becomes acute considering the lack of an established legal framework for managing electoral data in India. However, there is also a similarly vital constitutional dimension to such developments. State-led data generation and processing is now highly constrained due to the landmark judgment in *Justice K.S. Puttaswamy v. Union of India*,<sup>4</sup> which has declared privacy to be a fundamental right. Moreover, the Supreme Court has traditionally considered free and fair elections to be a crucial part of the Constitution, making it imperative for electoral processes to remain inclusive, open, and non-discriminatory.<sup>5</sup> Digitization and its relation to SIR therefore creates a number of concerns regarding the potential for efficiency measures to undermine constitutional principles.

This research project attempts to examine the SIR system and the digitization of the electoral roll from the angles of corporate risk management, data governance, and constitutional law. The research will seek to ascertain whether the current legal and administrative framework adequately balances the constitutional emphasis on inclusiveness with efficiency and integrity.

<sup>2</sup> Tarunabh Khaitan, *Equality: Legislative Review Under Article 14*, 8 Nat'l L. Sch. India Rev. 1, 18–21 (2015).

<sup>3</sup> S. R. Bhattacharya et al., *Public Voter Data and Privacy Risks in India*, arXiv:2402.11582 (2024).

<sup>4</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

<sup>5</sup> *Indira Nehru Gandhi v. Raj Narain*, (1975) Supp SCC 1 (India); *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399 (India).

<sup>1</sup> Julia Black, *What Is Regulatory Innovation?*, in *Regulatory Innovation* 1, 10–12 (Julia Black et al. eds., 2005).

## 2. Procedural Framework of the Study

The doctrinal and analytical methodology adopted in this dissertation is largely centered around the analysis of secondary literature. The compilation, revision and protection of the electoral rolls takes place according to constitutional requirements, legislative regimes including the Representation of the People Act, 1950, and relevant judgments passed by the courts.<sup>6</sup> In order to assist in analyzing the doctrine through an interdisciplinary analytical method, the study takes advantage of the insights derived from research in digital regulation, electoral administration and data governance.<sup>7</sup> This enables the critical appraisal of the consequences of digitizing the electoral roll as well as the process of SIR with respect to concerns about accountability, transparency and exclusion. In addition, the operations relating to the management of the electoral rolls are also examined using documents issued by the Election Commission of India.<sup>8</sup>

The analysis employed here is interpretive in nature. The focus of the analysis lies in the integration of legal doctrine and contemporary scholarly discourse with respect to whether present-day institutions and laws are adequate to address issues that arise in the digitization of elections.

## 3. Research Proposition

In this study, the proposed hypothesis suggests that despite the positive impact of SIR on administrative efficiency and effectiveness, there are significant possibilities of systemic exclusion, manipulation of data, and a decrease in accountability of institutions that could undermine the constitutional provisions of equality and fair elections. Furthermore, this hypothesis highlights that in the absence of a dedicated governance framework for managing election data, procedural and technical discretion might occur without appropriate safeguards, which would allow discrimination against the weak.

From the perspective of academic literature, the proposed theory is compatible with concerns raised in existing theories of technical governance and regulation, which argue that inadequate governance of digital infrastructures may exacerbate power imbalances and obfuscation in decision-making processes.<sup>9</sup> These risks are heightened when applied in the political arena, where minor oversights or oversights may result in severe negative consequences for democratic processes. Hence, the predicted hypothesis in this context assumes that digitalized elections could violate constitutional provisions upheld by institutions such as the Election Commission of India due to a lack of legal enforcement and accountability.<sup>10</sup>

<sup>6</sup> Election Commission of India, *Handbook for Electoral Registration Officers* (latest ed.).

<sup>7</sup> H. L. A. Hart, *The Concept of Law* 124–27 (3d ed. 2012).

<sup>8</sup> Daniel J. Solove, *A Taxonomy of Privacy*, 154 U. Pa. L. Rev. 477, 489–92 (2006).

<sup>9</sup> Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* 18–21 (2015).

<sup>10</sup> Shoshana Zuboff, *The Age of Surveillance Capitalism* 376–80 (2019).

## 4. Points of Inquiry

- What extent has the digitalization of electoral rolls by the Election Commission of India enhanced accuracy in elections, and at what cost of disenfranchisement and unfair exclusion?
- What challenges exist for the accountability and transparency of the SIR process as outlined in the Representation of the People Act, 1950, and how does it work in the context of digitalization?
- What kinds of corporate-like systemic risks come up with the digitalization of electoral roll management in India, like algorithmic discrimination, data security issues, and reliance on private technology platforms?
- Considering the privacy implications, how effective has the existing data governance regime been in regulating the collection, handling, and access to electoral data?
- To what extent has the digital implementation of the SIR process conformed to the constitutional principles of equality and privacy in the understanding of Indian courts?

### An Assessment of Accuracy, Accountability, Systemic Risk, Data Protection, and Constitutionality in India's Digital Electoral Management:

The electronic management of the electoral roll by the Election Commission of India seems to have been successful in increasing the efficiency of administration and allowing for wide-ranging verification; however, there are many difficulties regarding the conflict between the technology and democracy. Even though the use of digital technologies helps simplify the processes of deduplication and updating of electoral rolls in real time, several cases prove that such systems may have an exclusionary impact. Indeed, the problems observed during the revision of the electoral rolls in the state of Bihar in 2017 and the mass deletion of voters' names in the state of Telangana prior to the Assembly elections in 2018<sup>11</sup> demonstrate how data errors, migration, and lack of proper documentation can result in incorrect exclusions.<sup>12</sup> Similar concerns about the risk of outsourcing verification of data may cause problems are evident from the case of the revision of the electoral roll in Karnataka in 2023.<sup>13</sup>

From the perspective of accountability, the conventional forms of supervisory practice become more challenging due to the rising prevalence of digitally mediated decision-making. While in the case of *Mohinder Singh Gill v. Chief Election Commissioner*<sup>14</sup>, it was stressed that any electoral process should conform to the principles of equity, openness, and reasonableness, decisions made using algorithms or bulk data analysis tools often lack explainability. This results in the emergence of the phenomenon known among scholars as "institutional opacity gap," which may impede effective grievance redressal,

<sup>11</sup> K. Balagopal, *Electoral Rolls and the Question of Exclusion*, 53 Econ. & Pol. Wkly. 10, 12–15 (2018).

<sup>12</sup> Association for Democratic Reforms, *Electoral Roll Issues in Karnataka* (2023).

<sup>13</sup> Rob Kitchin, *The Data Revolution: Big Data, Open Data, Data Infrastructures* 98–102 (2014).

<sup>14</sup> *Mohinder Singh Gill v. Chief Election Comm'r*, A.I.R. 1978 S.C. 851.

particularly when people find it difficult to determine why they were excluded.<sup>15</sup>

On another note, the issue of systemic risk cannot be overlooked. The use of digitized databases and interconnected information systems makes digital electoral infrastructures similar to highly complex networks of corporations, wherein a minor local mistake may have a domino effect and trigger problems throughout the whole country. Indeed, the discussions about the Aadhaar-voter ID link-up raised concerns regarding the risks associated with dependency on a single identification database, including possible data leaks and authentication problems.<sup>16</sup> The sociological notion of manufactured risk proposed by Anthony Giddens will prove useful in this situation, as it highlights the problem of creating institutional risk through technological means.<sup>17</sup>

The issue is complicated by concerns regarding the protection of sensitive data. While electoral rolls remain partially accessible in the interest of transparency, they include sensitive personal data that could be used for political targeting or profiling purposes. The data collection practices should observe standards of necessity and proportionality in the context of privacy rights recognized by the Supreme Court in *Justice K.S. Puttaswamy v. Union of India*. Nevertheless, there are gaps in regulatory oversight in the Indian context, primarily because there is no election data protection law. Consent, purpose limitation, and third-party disclosure are particularly vulnerable to abuse due to inadequate regulation.<sup>18</sup>

Ultimately, the constitutional nature of digital electoral administration relies on the effective balance between inclusiveness and efficiency. Court decisions, including *People's Union for Civil Liberties v. Union of India*<sup>19</sup>, recognize the need to ensure participatory rights in elections as an essential feature of democracy. But there may be a contradiction to the principle of equality that is contained in the Constitution of India under Article 14 due to the digital management of elections. Scholarly literature emphasizes the importance of implementing adequate legal measures alongside technology advancement to validate such processes.<sup>20</sup>

### **An Empirical Case Study: Relationship between WhatsApp and Political Mobilization and Data Governance in Indian Elections (General Elections 2019)**

In the 2019 General Elections, there was one empirical instance that stood out from India, showing the connection between digital infrastructures, surveillance, and voting in

the country, particularly when using the application, WhatsApp. Meta Platforms owns WhatsApp, and it evolved as a critical means of communication, voter mobilization, and campaign material distribution. This brought to mind the question of how the technology companies were affecting elections.

Upon engaging with WhatsApp and other digital platforms regarding the spreading of misinformation through unverified political messages, the issue garnered regulatory interest from the Election Commission of India. In addition, the Commission made it evident that WhatsApp's encryption prevented tracing and regulation, while digital platforms were being widely used for political purposes.<sup>21</sup> Some of the steps taken by WhatsApp towards compliance with regulations in the period leading up to elections include limiting forwarding as well as marking forwarded messages.

The basis for the empirical part of this case study is parliamentary scrutiny and recorded institutional actions. The Parliamentary Standing Committee on Information Technology conducted an interview with representatives of WhatsApp on the role of WhatsApp in political communication, user privacy, and data management practices. It was emphasized how data-targeted messaging, group messaging, and bulk messaging could influence voters' perception without any oversight or transparency. Although WhatsApp acknowledged the scope of political messaging on their platform, they insisted that end-to-end encryption made them incapable of accessing the contents of messages.<sup>22</sup>

Moreover, the use of WhatsApp group discussions was widespread among political parties and their affiliates as a means to spread the political discourse of their campaigns, mobilize voters, and conduct grassroots communications, as highlighted in reports published by policy think tanks and electoral watchdogs. These factors have altered the information environment within which voters form their preferences in ways that have created an environment conducive to information dissemination being fragmented, fast, and difficult to regulate.<sup>23</sup>

From an empirical point of view, the election integrity implications of this case are that the privately owned digital network can impact the election indirectly by means of controlling the flow of information, which does not involve interference in the voter registration or voting process. Instead of interfering in the voter roll, WhatsApp was utilized to control the flow of information among the electorate. The widespread dissemination of such communications is facilitated by a private entity, raising questions related to transparency, accountability, and regulatory reach over private networks.<sup>24</sup>

<sup>15</sup> Mark Bovens, *Analysing and Assessing Accountability: A Conceptual Framework*, 13 Eur. L.J. 447, 452–55 (2007).

<sup>16</sup> Usha Ramanathan, *Aadhaar and the Right to Privacy*, 52 Econ. & Pol. Wkly. 32, 34–37 (2017).

<sup>17</sup> Anthony Giddens, *Modernity and Self-Identity* 27–29 (1991).

<sup>18</sup> David Carroll, *The Political Economy of Voter Data*, 22 Info., Comm'n & Soc'y 1234, 1238–41 (2019).

<sup>19</sup> *People's Union for Civil Liberties v. Union of India*, A.I.R. 2003 S.C. 2363.

<sup>20</sup> Helen Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life* 127–31 (2010).

<sup>21</sup> Election Commission of India, *Compendium of Instructions on Media and Social Media Guidelines* (2019); <https://eci.gov.in>

<sup>22</sup> Parliamentary Standing Committee on Information Technology (India), *Evidence and Proceedings on Social Media Platforms and Data Security* (2019).

<sup>23</sup> Meta Platforms / WhatsApp, *Public policy responses and election integrity measures* (2019).

<sup>24</sup> Internet and Mobile Association of India (IAMAI), *Voluntary Code of Ethics for Social Media Platforms* (2019).

Moreover, it brings up the issue of a more general structure: dependence of election processes on private digital networks that operate in a space outside the scope of existing laws. The Indian Election Commission asked for voluntary cooperation of platforms and gave advisories, but their powers to impose control were limited since no comprehensive legal regime existed. It becomes clear why it is imperative to view election integrity not only as something linked with bureaucratic exactness but also as integrity of the digital information space affected by corporations.

### Critical Evaluation of the Study

While the adoption of technology to manage the electoral rolls through the Election Commission of India is more efficient administratively, there are significant problems regarding accountability, governance of the data collected, and constitutional considerations. One of the key concerns related to digital electoral verification processes is the systemic exclusion, which can arise due to errors in huge databases that cause incorrect deletion of individuals' information. Scholars have found that while algorithmic governance can improve operational performance, it can create opacity in institutions and make it hard for affected citizens to challenge adverse decisions.<sup>25</sup> Moreover, involving commercial entities in electoral data governance undermines existing public monitoring regimes by creating diffuse accountability. The concerns surrounding data abuse, opacity, and inadequate protection measures persist without an explicit set of standards governing election data.<sup>26</sup> In terms of the constitutional considerations, such actions may jeopardize equality and procedural justice, which are critical in ensuring free and fair elections. Digital electoral procedures should be embedded within robust regulatory and rights-oriented mechanisms to maintain democratic integrity since academic literature emphasizes the importance of efficiency without undermining accountability.<sup>27</sup>

## 5. Conclusion and Suggestions

### 5.1 Conclusion

The beginning of a movement towards technology-assisted governance of elections in India can be discerned in the implementation of the SIR and the digitization of electoral roll management. The credibility of the above-mentioned initiatives would depend upon how effectively they fit into constitutional values of equality, privacy, and democracy despite increasing administrative efficiency and verification capacity. This paper demonstrates that the increased reliance on technical assistance and data management exposes structural challenges that cannot be addressed administratively. These challenges are related to the concerns about exclusion, lack of transparency, and accountability. Thus, a transition from an efficiency-focused approach to governance to a rights-based regulatory regime

based on the principle of transparency and the Constitution becomes inevitable.<sup>28</sup>

### 5.2 Suggestions

- 1) Use a Particular Regulatory Regime to Safeguard Election Information:  
There should be particular legislation to guide the collection, manipulation, and sharing of election information through notions such as independent regulation, data minimization, and purpose limitation.<sup>29</sup>
- 2) Enhance Auditing and Transparency Mechanisms:  
Regular auditing of online elections should be a requirement set forth by the Indian Election Commission, with a discussion of methods used to validate data and involving third parties.
- 3) Limit and Control Private Participation:  
It is important to have a regulatory regime defining the involvement of private actors in election data management to promote accountability and prevent inappropriate handling.<sup>30</sup>
- 4) Develop Effective Complaint Handling Procedures:  
Efficient and timely measures should be put in place to enable individuals to challenge wrongful deletions or errors made during election data management.
- 5) Embrace Data Integration Using Proportional Criteria:  
It has been noted in the case of *Justice K.S. Puttaswamy v. Union of India* that the integration of electoral data into other databases must fulfill constitutional criteria for necessity and proportionality.
- 6) Enhancing Skills and Oversight Institutions:  
If there is training for election administrators and oversight institutions are created, technology will be used in a manner that is responsible and consistent with the provisions of the Constitution.

<sup>25</sup> Frank Pasquale, *The Black Box Society* 8–12 (2015).

<sup>26</sup> Orly Lobel, *The Law of the Platform*, 101 Minn. L. Rev. 87, 92–95 (2016).

<sup>27</sup> Danielle Keats Citron, *Technological Due Process*, 85 Wash. U. L. Rev. 1249, 1256–60 (2008).

<sup>28</sup> Jack M. Balkin, *Information Fiduciaries and the First Amendment*, 49 U.C. Davis L. Rev. 1183, 1190–93 (2016).

<sup>29</sup> Ira S. Rubinstein, *Big Data: The End of Privacy or a New Beginning?*, 3 Int'l Data Privacy L. 74, 80–82 (2013).

<sup>30</sup> Julie E. Cohen, *Configuring the Networked Self* 213–16 (2012).