IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 640 OF 2025

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS & ORS. …PETITIONERS

VERSUS

ELECTION COMMISSION OF INDIA ….RESPONDENT

VOLUME I

WRITTEN SUBMISSIONS

ON BEHALF OF THE PETITIONERS/APPLICANTS

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) 640 OF 2025

IN THE MATTER OF:

Association for Democratic Reforms & Ors. …Petitioners

versus

Election Commission of India …Respondent

WRITTEN SUBMISSIONS ON BEHALF OF GOPAL SANKARANARAYANAN,

FOR THE PETITIONERS

The Constitutional position

1. Article 326 stipulates that every person who is a citizen, above the age of eighteen on such date as may be legislatively prescribed and is not otherwise disqualified under the Constitution or a law on the grounds of "*non-residence, unsoundness of mind, crime or corrupt or illegal practice*", SHALL be entitled for registration as a voter.

2. The use of "shall" makes it evident that the Constitution mandates inclusion, unless a disqualification has been incurred on the above specified grounds, in terms of a law. The "law" in this case is:

    i. S. 16 of the Representation of the People Act, 1950 ["**RP Act**", which lists grounds for disqualification, including situations where such disqualification is incurred after inclusion on the roll]; [**the substantive law**] AND

    ii. Rule 21A of the Registration of Electors Rules, 1960 ["**RoE Rules**", which sets out the procedure for removing names on the roll on the grounds of death, migration and disqualification: requires the Electoral Registration Officer to prepare a list of names, exhibit it, invite claims and objections and give a reasonable opportunity for a hearing to a voter BEFORE deletion]. [**the procedural law**]

3. As such, exclusion of a person from the roll MUST be in terms of both the substantive and procedural law referable to Article 326. This is why compliance with Rule 21A is mandatory before deleting the name of any existing voter from the electoral roll. There is

NO EXCEPTION to this—even when a "special intensive revision" is carried out. [See ¶13, *Lal Babu Hussein* v. *Electoral Registration Officer*, (1995) 3 SCC 100 [3J]]

Burden of proving citizenship cannot be shifted to existing voters

4. It is settled law that presence on the electoral roll is *prima-facie* proof of voter eligibility (including citizenship), and probative value has to be attached to the same, even in a special intensive revision. The burden of proving otherwise lies on the objector. See:

    a. *Inderjit Barua* v. *ECI*, (1985) 1 SCC 21 [5J], ¶4

    b. *Lal Babu Hussein* (supra), ¶13

5. The Respondent claims that the burden of proving citizenship in a "special intensive revision" is on the person claiming inclusion in the electoral roll, *regardless of whether they are existing voters*. [¶97@64, *Counter*] This is clearly illegal, being the exact converse of what has been held by this Hon'ble Court.

Arbitrary cut-off date of 2003

1. A special intensive revision, in terms of Rule 25(2) of RoE Rules, requires the electoral rolls to be prepared afresh, with Rules 4 to 23 applying to the process "*as they apply in relation to the first preparation of a roll*".

2. The Respondent admits this. [¶32@21, *Counter*] However, the exercise being undertaken fixes an arbitrary cut-off date of 2003, and treats presence on the 2003 roll as presumptive proof of eligibility. This is evidently contrary to the statutory rule.

3. No such arbitrary cut-off date existed during intensive revision for NE States [@294, *Rejoinder*], Assam [@339, *Rejoinder*] and J&K [@398, *Rejoinder*].

4. ARGUENDO, there is no rationale for treating presence on the 2003 roll any differently from presence on account of inclusion between 2003 and 2025. As held by this Hon'ble Court in *Lal Babu Hussein* (supra), it must be presumed that such inclusion has been made after going through the proper procedural requirements, and the presumption under S. 114(e) of the Evidence Act has to be invoked. [¶6]

Eligibility documents

5. The Respondent has admitted that several of the 11 "indicative" eligibility documents are not widely available in Bihar [@38-40, *Counter*]. For instance:

i. Only 3.93 crore birth certificates have been issued between 2001-2024.

ii. Only 36.56 lakh passports have been issued till date.

iii. Only around 4.59 lakh matriculation certificates have been issued by the State Board between 1980-2005.

iv. No permanent residency certificates are issued in Bihar.

v. Only 8.72 lakh caste certificates issued since 2011.

vi. The Family Register is a document available with the State, and not with an individual.

6. To compound the problem, the Respondent is not accepting widely available documents, such as Aadhar, its own Electoral Photo Identity Card (EPIC) and ration cards, as "standalone documents". [see ¶124@84, *Counter*] This is despite the order of this Hon'ble Court dated 10.07.2025, which has directed the Respondent to consider these documents for the purpose of inclusion of existing voters in the draft roll.

7. **On Aadhar:** The Respondent claims that Aadhar can only be used to test identity and not eligibility. [¶115@ 81, *Counter*] This is contrary to S. 23(4) of the RP Act, which specifically permits the use of Aadhar for "*authentication*" of existing entries in the electoral roll.

8. **On EPIC:** The Respondent's claim is that EPIC cannot be considered as proof of eligibility because a special intensive revision is a "*de novo exercise*". [@83, *Counter*] This is in the teeth of the judgment in *Lal Babu Hussein* (supra), which requires the Electoral Registration Officer to "*bear in mind that the entire gamut for inclusion of the name in the electoral roll must have been undertaken and hence adequate probative value attached to that factum…*". [¶13(3)]

9. **On Ration Cards:** The Respondent claims that there are too many fake ration cards [¶118@82, *Counter*], and relies on a Government of India press note dtd. 07.03.2025 [@782-783, *Counter*] to substantiate this. In the first instance, the Respondent has ignored *Lal Babu Hussein*, which explicitly permitted the use of ration cards as an eligibility document, in view of the fact that it was a document that was widely available to poor and marginalised voters. [[¶8, placitem (d) and (e) r/w ¶13(1)] Second, *even on facts*, closer perusal of the aforesaid press note reveals that it actually says that five crore fake ration

cards have been weeded out of the system, and the remaining cards have been seeded with Aadhar.

Exclusion on the ground, without following due process

10. The Respondent has published the draft electoral roll on 01.08.2025, featuring "*more than 7.24 crore electors*". It is a matter of record that Bihar had 7.89 crore electors on the existing electoral roll as on 24.06.2025; therefore, roughly 65 lakh voters stand excluded from the draft roll.

11. According to the Respondent's press note dated 27.07.2025, of these 65 lakh voters:

    a. 22 lakhs voters have died,

    b. 7 lakhs are enrolled elsewhere, and

    c. 36 lakhs are "permanently shifted"/ "not found". The Respondent claims that this is on account of them becoming electors in other States/UTs, being found "*not in existence*", non-submission of the enumeration form until 25.08.2025 and/or being unwilling to register as electors. Pertinently, the Respondent has not provided any *inter-se* break-up in figures between these 4 categories.

12. The Respondent has claimed that a list of the approximately 65 lakh excluded voters has been supplied to Booth Level Agents of all local political parties. This is not borne out by facts on the ground, with several parties having written to the Respondent highlighting that they have not received complete lists. Even otherwise, where lists have been received for specific districts/constituencies, it has not been specified whether the exclusion is on the ground of death, migration or mere non-submission of enumeration forms. This proves the Petitioner's case that the special intensive revision is nothing but an exercise in mass deletion without the assigning of individual reasons, as mandated by Rule 21A and the judgments of this Hon'ble Court in *Inderjit Barua* and *Lal Babu Hussein*.

13. The exclusion figures also belie the Respondent's submission during oral arguments before this Hon'ble Court on 28.07.2025— that no existing voter would be left out of the draft roll. It is now clear that being a voter on the existing roll [who has not died or migrated] is NO GUARANTEE against exclusion from the new roll without recourse to due process prescribed under Rule 21A.

14. In these circumstances, the special intensive revision being undertaken by the Respondent is patently illegal, and is liable to be quashed forthwith.

Settled by:

Gopal Sankaranarayanan, Sr. Adv.

IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 640 OF 2025

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS & ORS. …PETITIONERS
VERSUS

ELECTION COMMISSION OF INDIA ….RESPONDENT

WRITTEN SUBMISSIONS ON BEHALF OF PRASHANT BHUSHAN

1. A Special Intensive Revision (SIR) of the Electoral Roll across the country has been ordered by the Election Commission of India (ECI) *vide* order dated 24.06.2025. The first part of this exercise is to be done for Bihar where State assembly elections are due in Oct-Nov, 2025. As part of this exercise the ECI has directed that all voters must fill an Enumeration Form giving various details about themselves and attach therein documents from among 11 specified by the EC which are :

   i. *Any Identity card/Pension Payment Order issued to regular employee/pensioner of any Central Govt./State Govt./PSU.*
   ii. *Any Identity Card/Certificate/Document issued in India by Government/ local authorities/Banks/Post Office/LIC/PSUs prior to 01.07.1987.*
   iii. *Birth Certificate issued by the competent authority.*
   iv. *Passport*
   v. *Matriculation/Educational certificate issued by recognised Boards/universities*
   vi. *Permanent Residence certificate issued by competent State authority.*
   vii. *Forest Right Certificate*
   viii. *OBC/SC/ST or any caste certificate issued by the Competent authority*

ix. National Register of Citizens (wherever it exists)
x. Family Register, prepared by State/Local authorities.
xi. Any land/house allotment certificate by Government

2. The timeline for this revision for Bihar has been tightly prescribed in the communication dated 24.06.2025 from ECI to CEO, Bihar in the manner as follows:

25.06.2025 to 26.07.2025	(i) ERO to print pre-filled Enumeration Form (in duplicate) for all existing electors and give it to the respective BLOs. (ii) ERO to give training to BLOs about the Revision Exercise. (iii) BLO to distribute Enumeration Form to all existing electors (in duplicate) through House to House visit. (iv) BLO to guide the public on filling up Enumeration Form. (v) BLO to collect Enumeration Forms from the public, along with required documents, or the public can also upload Enumeration Forms and documents online. (vi) Uploading collected Forms in BLO App/ECINet, on a day-to-day basis. (vii) BLO to give recommendations on each Enumeration Form so received. (viii) BLO Supervisor to check the BLO's output in quantitative as well as qualitative terms. (viii) AERO to verify all Enumeration Forms not-recommended by BLOs.
25.06.2025 to 26.07.2025	Rationalization/Re-arrangement of Polling Stations and finalization proposed restructuring of section/part boundaries, location of polling stations and obtaining approval of list of polling stations. A polling Station shall preferably contain not more than 1,200 electors
27. 07.2025 to 31.07.2025	Updation of Control Table and Preparation of draft roll having names of all the existing electors who submitted the duly filled Enumeration Forms.
01.08.2025	Publication of draft electoral roll

01.08.2025 to 01.09.2025	Period for filing claims & objections
By 25.09.2025	Decision on Enumeration Forms received during H2H enumeration period and disposal of claims and objections to be done concurrently and to be completed by the EROs by
By 27.09.2025	(i) Checking of health parameters of the finalised electoral rolls and obtaining Commission's permission for final publication. (ii) Updating database and printing of supplements
30.09.2025	Final Publication of Electoral Roll

3. The ECI has further stated that the draft Electoral Roll would not contain names of those who do not fill and submit their Enumeration Forms. They have further stated that those who are left out can apply as a new voter afresh for *de novo* registration. Further the ECI states that the BLO will make recommendations for inclusion or non-inclusion of names of persons who have filled the enumeration forms and thereafter the ERO (in charge of each assembly constituency) would then decide finally whether an elector's name is to be included or not after supposedly giving them a hearing.

4. The speed and timeline in which this exercise is being conducted for Bihar, to begin with, is unprecedented. On earlier occasions when intensive revision was ordered, a minimum of 6 months for this exercise was always provided for. Moreover, in earlier intensive revisions there was no requirement of providing documents from the among the 11 specified by ECI under the current SIR order.

5. The result of this hurried revision is that in many cases the forms have been filled up in the offices of the BLOs themselves with their having signed for the electors. Obviously, migrant labour temporarily working outside for their jobs have not been properly contacted and have been excluded *en masse*. A

series of reports published by Senior Journalist Ajit Anjum and his team which has been broadcast on his YouTube channel provides shocking evidence and discloses that enumeration forms are being filled in Bihar in the following manner:

a) Enumeration forms are being signed by BLOs themselves at various booths in absence of voters.
b) Voters who have not even filled the forms are getting messages on their phones that their forms have been filled.
c) Individuals who are dead are being shown to have filled the form.
d) ECI posted false claims about voters having received acknowledgment of having filled enumeration form.

6. The SIR is illegal and arbitrary for the following reasons:

i) It violates the Rule 21A of the Registration of Elector's Rules, 1960 which provides that for deletion for names notice for deletion of names have to be given to the elector whose name is already there and that the final determination for deletion is made only after providing him a hearing. Moreover, the ECI's own Manual on Electoral Roll dated March, 2023 states that all evidence of any form would be available to be given by the electors in order to show why his/her name should not be deleted and if the Electoral Registration Officer is still not in a position to decide the question of citizenship of an applicant, he should refer to the guidelines laid down by this Hon'ble Court in ***Lal Babu Hussein and others v. Electoral Registration Officer (1995) 3 SCC 100*** wherein this Hon'ble Court held:

13. From what we have stated hereinbefore it is clear that inhabitants of certain constituencies in Bombay and Delhi were treated as suspect foreigners and enumerators were appointed to verify if persons residing in certain polling stations were not citizens. The police was employed for this purpose and as observed earlier in Bombay they addressed as many as 1.67 lakh notices calling upon the addressees to produce (i) birth certificates

(ii) Indian passports, if any, (iii) citizenship certificates and/or (iv) extracts of entry made in the register of citizenship. In Delhi also similar notices were addressed to hundreds of residents of Matia Mahal Constituencies requiring them to produce the aforestated documents. The time given was short and requests for extension of time were refused presumably because the work had to be completed within a given time- frame. Except the documents stated in the notices, no other proof, documentary or otherwise, was entertained. The fact that the addressees were by and large uneducated and belonged to the working class, particularly those who lived in jhuggi jhompris, was overlooked. Perhaps the instructions issued from time to time by the office the Election Commission created an atmosphere which gave wrong signals that the verification had to be completed within the time-frame failing which they would incur the displeasure of the Election Commission exposing them to disciplinary action. This is evident from the fact that the police refused to accept any other document and prepared stereotype reports which betray non-application of mind and the Electoral Registration Officers abdicated their functions and merely super added their seals to such reports. This, notwithstanding the fact that these persons were voters in previous elections and hence it would ordinarily appear that their cases were verified before their names were entered in the electoral rolls. That is because it may be presumed that official acts performed under the provisions of the 1950 Act or the 1960 Rules were regularly done. Their names were already on the rolls and since they were sought to be removed by undertaking a special revision, whether intensive or otherwise, the procedure for removal had to be followed. Besides, as stated earlier, the atmosphere was fairly charged and because of the statements made time and again by the Election Commission the police went about its task with a mind-set which gave practically no opportunity to the addressees to place the relevant material for whatever it was worth because no other documentary evidence, save and except that mentioned in the show cause notices, was entertained. Even the Electoral Registration Officers merely acted on the police report, copies whereof were admittedly not supplied to the addressees thereby making a mockery of the reasonable opportunity of being heard requirement contemplated under the 1950 Act and the 1960 Rules.

….

…Having taken the guidelines suggested by either side into considerations and having heard counsel, we proceed to dispose of all the three matters by giving the following directions:

3. If any person whose citizenship is suspected is shown to have been included in the immediately preceding electoral roll, the Electoral Registration Officer or any other officer inquiring into the matter shall bear in mind that the entire gamut for inclusion of the name in the

electoral roll must have been undertaken and hence adequate probative value be attached to that factum before issuance of notice and in subsequent proceedings;

4. The Officer holdings the enquiry shall bear in mind that the enquiry being quasi- judicial nature, he must entertain all such evidence, documentary or otherwise, the concerned affected person may like to tender in evidence and disclose all such material on which he proposes to place reliance,. so that the concerned person has had a reasonable opportunity of rebutting such evidence. The concerned person, it must always be remem- bered, must have a reasonable opportunity of being heard;

5. Needless to state that the Officer in- quiring into the matter must apply his mind independently to the material placed before him and without being influenced by extraneous considerations instructions;

6. Before taking a final decision in the matter, the officer concerned will bear in mind the provisions of the Constitution and the Citizenship Act extracted hereinbefore and all related provisions bearing on the question of citizenship and then pass an appropriate speaking order (since an. appeal is provided);
....

ii) In the present case deletions are being done merely because the elector has not submitted the enumeration form in the short time-line prescribed. Further he is required to give from among the 11 specified documents, even one of which is possessed by only a minority of people.

iii) No guidelines have been prescribed for the BLO recommending and the ERO/AERO determining the eligibility of any person to be included or excluded from the Electoral Roll. Most of the 11 documents specified are certainly not proof of citizenship despite the fact that the commonly possessed documents by citizens are EPIC, Aadhar and Ration Card which the ECI has refused to accept, as per their counter affidavit. The scrutiny of the documents and the enumeration form is to be done in this tight timeline by BLO's/ EROs, this means that the

ERO is expected to finally decide for approximately 3 lakh persons (which is the average strength of the assembly constituency) in a period of so many days as to whether a person is to be included or excluded from the electoral roll. All this is being done without any guidelines which renders the exercise arbitrary. This Hon'ble Court has stated on numerous occasions that if executive power is delegated without any guidelines, that would render the exercise to be arbitrary and violative of Article 14 of the Constitution of India. This Hon'ble Court in its Constitution Bench judgment in ***W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1*** in para 39 has stated that, *"If an uncontrolled or unguided power is conferred without any reasonable and proper standards or limits being laid down in the enactment, the statute itself may be challenged and not merely the particular administrative act.".* Similarly, another constitution bench of this Hon'ble Court held in ***State of Punjab v. Khan Chand, (1974) 1 SCC 549*** this Hon'ble Court held: "8. ….. *Discretion which is absolute, uncontrolled and without any guidelines in the exercise of the powers can easily degenerate into arbitrariness. When individuals act according to their sweet will, there is bound to be an element of "pick and choose" according to the notion of the individuals. If a Legislature bestows such untrammelled discretion on the authorities acting under an enactment, it abdicates its essential function for such discretion is bound to result in discrimination which is the negation and antithesis of the ideal of equality before law as enshrined in Article 14 of the Constitution. It is the absence of any principle or policy for the guidance of the authority concerned in the exercise of discretion which vitiates an enactment and makes it vulnerable to the attack on the ground of violation of Article 14.*"

iv) This procedure for SIR under which voters are asked to submit one of 11 specified documents along with their enumeration form also contrary to the Form 6 appended to the RER, 1960 which is the form

in which a fresh voter applies to be included in the electoral roll. This Form includes documents like Aadhaar Card, Pan Card, Driving License etc. which are not mentioned in the 11 documents specified by the ECI. The requirement for evidence of citizenship under Form 6 is only a declaration by the voter that he is a citizen of India along with his place of birth and his address with a disclaimer that a false declaration is punishable. It is therefore anomalous that existing voters can be deleted by merely not filling up their enumeration form and without giving them any notice as provided under Rule 21A and that *an* existing voter filling up the enumeration form can also be arbitrarily excluded without any guidelines for the same. If inclusion only requires a self-declaration by the applicant, how can exclusion take place arbitrarily on the arbitrary decision of the ERO whether or not the individual has supplied any of the 11 mentioned documents.

v) Such manner of exclusion also violates the judgment of this Hon'ble Court in ***Lal Babu Hussein*** (supra) which requires the ECI to consider every evidence in support of an electors claim to be included in the electoral roll. It may be noted that it would be absolutely impossible for any ERO to reasonably and judicially examine the evidence presented by each elector and decide each case in a judicious manner which would be non-arbitrary. Moreover, the process under Section 24 for appeal to DM and second appeal to CEO against order for inclusion in electoral roll is highly unlikely to be completed before the imminent elections in Bihar.

vi) As per ECI's own press release dated 25.07.2025, the present SIR has excluded approximately 65 lakh existing voters from the electoral roll and further that BLOs have marked as "not recommended" against 10-12% of electors who have submitted enumeration forms for inclusion in electoral roll. The ECI has not released the names of the 65 lakh electors whose names do not figure in the draft electoral roll.

Election Commission claims to have given the list to some political parties but even in these lists they have not mentioned the reason for exclusion. This is despite the fact that the press note issued by ECI dated 25.07.2025 mentions that out of the approx. 65 lakh deleted names, approx. 22 lakhs electors are deceased, approx. 35 lakh electors have either permanently migrated or couldn't be traced, approx. 7 lakh electors are registered at multiple locations and approx. 1.2 lakh electors have not filled the enumeration forms. The ECI has also not released the names of persons who have been marked as "not recommended" by the BLOs despite that fact that this exercise has apparently been done by the BLOs, as mentioned in the guidelines i.e., *(vii) BLO to give recommendations on each Enumeration Form so received.*

vii) In these circumstances, if the ECI is permitted to exclude names of those who did not fill the enumeration form, or those whose names are not recommended for inclusion in this hurried exercise, it would lead to a devastating impact on the electoral roll and would to mass disenfranchisement.

viii) The norm across of the country for percentage of adult population who find their place in the ER is 97-99 percent, even in Bihar in the existing ER this percentage was 97%. However, if 65 lakh voters whose enumeration forms are not available are excluded and an additional 10-12% who have not been recommended by the BLOs are excluded, it would mean that the percentage of adult population of Bihar who would find themselves in the new electoral roll after the SIR exercise would drop to below 85%. Nothing close to this has ever happened in the country.

ix) Thus, it is essential that this Hon'ble Court directs the ECI to restore the original electoral roll before the SIR exercise and delete names only

after following the procedure described in Rule 21A of RER, 1960 read with the judgment of this Hon'ble Court in ***Lal Babu Hussein*** (supra).

Prashant Bhushan

IN THE SUPREME COURT OF INDIA
PUBLIC INTEREST LITIGATION
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 637 OF 2025

IN THE MATTER OF

Yogendra Singh Yadav …**Petitioner**

Versus

Election Commission of India & Anr. …**Respondents**

WRITTEN SUBMISSIONS FOR PETITIONER FILED ON BEHALF OF SHADAN FARASAT, SR. ADV.

1. The impugned exercise, that is, the Special Intensive Revision (**SIR**) of the Electoral Rolls in Bihar, threatens to permanently and irrevocably alter the architecture of universal adult franchise embedded in our Constitution and polity. While it is incumbent that this Court intervene urgently, and on an *ad-interim* basis, to ensure that all eligible voters already on the electoral rolls as on 24.06.2025 are able to exercise their constitutional right to vote in the ensuing elections, the Petitioner also seeks quashing of the entire SIR for, *inter alia*, the manifest arbitrariness inherent in the process and multiple violations of the Representation of People's Act, 1950 and the Registration of Electors Rules, 1960.

2. It is imperative to note that the SIR has already led to the biggest exercise in mass deletion of votes in the history of independent India. By their own

admission, the ECI has summarily ousted 65.2 lakh existing electors who were on the voter list as on 24.06.2025 , with no clarity as to what is:

(i) the basis of the BROs/EROs/BLOs' determination/conclusion that such 65.2 lakh electors are either deceased, registered in more than one location, permanently migrated or untraceable, especially since, in most cases, only a simple form has been submitted by electors; and

(ii) the remedy for these 65.2 lakh electors, who have been left out of draft roll, and are, in reality, not deceased, registered in more than one location, permanently migrated or untraceable, since the SIR Notification does not contemplate any recourse for such a person during the Claims and Objections period. These 65.2 lakh voters will now be compelled to reapply as fresh electors under Form 6 of the Registration of Electors Rules, which is to be submitted along with certain documentary proof. In this manner, the burden of proof and presumption of citizenship have been inverted by the SIR. Instead of the ECI justifying why a name has been deleted from the electoral rolls, the disenfranchised voter must now prove why they should be included in it.

3. Such manifest arbitrariness in determination at the very first stage of the SIR itself, i.e., during house-to-house enumeration, where most electors have not even been provided with a duplicate form/acknowledgement receipt betrays the manifest arbitrariness inherent in the exercise and renders it violative of

Article 14 of the Indian Constitution. It is against this background that it is respectfully submitted that if the SIR is allowed to continue, it will strike a fatal blow to the universality of the adult franchise, which is the cornerstone of a democratic and republican form of Government.

With approximately 94 lakh eligible adults absent from the draft electoral rolls, the SIR will open the floodgates for the largest disenfranchisement exercise in the global history of democracy.

4. It is submitted that there are three criteria for assessing the quality of electoral rolls: completeness, accuracy and equity (***James, T. S., & Garnett, H. A. (2023), The Determinants of Electoral Registration Quality: A Cross-National Analysis. Representation, 60(2), 279–302***). For completeness, the globally accepted measure is the Electoral to Adult Population ratio or the EP ratio, which is best measured by comparing the number of electors with the number of persons in the voting age population. In India, while there has been state-wide variation, most states are within an acceptable margin of the national average of 99%.

5. Before the impugned SIR exercise, Bihar's EP Ratio was at 97%, which is slightly below the national average. Since Bihar's ratio has remained 97% for some time, contrary to the ECI's assumption, Bihar's electoral rolls have not been inflated, but are in fact slightly deflated, and eligible potential electors need to be added. Shockingly, instead of improving the EP Ratio, by adding eligible voters, after the very first step of house-to-house

enumeration of the SIR, the ratio has been brought down to 88%, which is a sharp fall of nine percentage points. Here, it is pertinent to mention that the entire exercise of preparation of Draft Rolls has not led to the addition of a single name to the electoral rolls in Bihar (sources for these figures have been mentioned in the Petitioner's application, for additional documents, being IA No. of 2025, dated 25.07.2025)

6. The fall in the EP ratio, as mentioned above, is in fact contrary to the SIR's stated objective, which is that 'no eligible citizen is left out while no ineligible person is included.' Keeping with this objective, it was expected that at the stage of preparation of the Draft Rolls, the EP Ratio would improve to approach 100%, rather than drastically decreasing, especially since the BLO is supposed to conduct up to three house-to-house enumeration visits to ensure that all eligible citizens are enrolled.

7. According to the Government of India's own projections, Bihar's adult population in July 2025 was 8.18 Crores. These projections are based on Census 2011 data, adjusted for estimated fertility, mortality, and migration rates. Deaths in the population are therefore already accounted for. Duplication and permanent migration are also addressed in the Census, as each person is counted only once and permanent migrants are recorded at their current residence, not their place of origin.

8. Since the Census counts only citizens, the 8.18 crore adults it projects are presumptively eligible to vote. This means that the ECI should ideally aim to include 8.18 crore electors from Bihar in the electoral rolls. However, as of 24.06.2025, the rolls contained only 7.89 crore voters. A proper SIR exercise should therefore have resulted in a net *increase* of about 29 lakh voters. Instead, the very first step of the SIR exercise has caused a *decrease* of 65.2 lakh voters, and creates 94 lakh "missing voters." Even if every one of the 65.2 lakh deletions were genuinely due to death, duplication, or permanent migration, there would still be 94 lakh eligible adults in Bihar who are absent from the draft roll and thus unable to vote. Such a scale of exclusion is unprecedented in the history of any electoral roll revision in India and directly violates the SIR's own mandate, which is constitutionally supposed to be an inclusive process.

9. The nature of the SIR process (deletion, removal, inclusion, verification of documents, disposal of claims and objections*)* is made more exclusionary by dint of being conducted by BLOs/EROs, who have been given unfettered discretion at each stage. The discretion given to them must be contextualised against the fact that at the very outset of this exercise, there existed an acute shortage of EROs and BLOs. In contrast to previous electoral roll revision cycles where trained schoolteachers and librarians were deployed, this time, contractual workers with no prior experience or

training have been appointed. Therefore, within a compressed timeframe, untrained personnel have been entrusted with unchecked discretion to decide questions going to the heart of citizenship, without any governing principle or policy.

10. Consequently, there have been flagrant human errors in the inclusion of temporary and not permanent migrants, living and not dead persons in the 65.2 lakhs deletions. A summary of these cases has been shared in **Annexure X**. These individuals have been wrongfully left out of the Draft Rolls without the legal remedies available to them under Rule 21A of the Registration of Electors Rules, 1960.

The SIR, it is respectfully submitted, is not only exclusionary by design, i.e., its framework is exclusionary, but also in practice.

11. It is submitted that this mass exclusion by design and in practice will only worsen if the SIR is allowed to continue. Electors whose names appear on the draft rolls are now staring at further deletions in two major ways:

i. **"Not Recommended by BLOs":**

a. First, because they have not been recommended by BLOs. The ECI has not disclosed figures for this category. However, data gathered by the Bharat Jodo Abhiyan from just two districts in Bihar shows that BLOs have marked over 10% of electors on the draft rolls as

"Not Recommended." The basis for such a recommendation is unclear and without any determining principle or policy. This is because, as per the CEO of Bihar's own directions, eligibility documents could be submitted until 31 August 2025, and a large proportion of forms were in fact collected without these documents at this stage. Therefore, at the draft rolls stage, the only possible recommendation should be *inclusion* for all whose enumeration forms have been received. There is simply no legal or logical space for a "Not Recommended" category at this point.

b. Yet, now more than 72 lakh voters (based on the limited available data from 2 districts) face the prospect of deletion from the voter list solely for not submitting/not being given an enumeration form. This marks a radical departure from established law and precedent by effectively reversing the presumption of citizenship and shifting the burden of proof onto the elector.

c. Notably, (a) No law, rule, or even the official BLO Handbook contains any provision for "recommendation" or "non-recommendation" of electors; (b) the SIR order itself does not lay down any basis, process, or requirement for such a power; (c) The ECI has not informed the affected electors, nor has it disclosed the names or numbers in the public domain, giving the entire exercise a cloak of secrecy.

(ii) "**Lack of Eligible Documents"**

a. Second, due to a lack of 'eligibility documents'. The SIR contains an "indicative but not exhaustive" list of 11 documents. Any elector whose name was not on the 2003 electoral roll or who cannot now locate their name in that roll is required to submit one such document by 31.08.2025. The ECI has not disclosed how many of the 7.24 crore electors on the draft rolls had their names in 2003.

b. However, per Bharat Jodo Abhiyan's data from two districts, the figures are well below one-third. This means roughly two-thirds (approximately 4.82 crore electors) will need to submit documents.

c. Further, while there is no official data on how many electors have already submitted documents, it is reasonable to assume the number is very low. More importantly, the real question is how many *possess* any of these documents in the first place. As pointed out by the Association for Democratic Reforms in their pleadings before this Court in a connected matter, this cannot be more than half of those required to submit, i.e., around 2.41 crore electors.

d. Further, the current list of 11 documents disproportionately disadvantages non-matriculates. Most such persons have no reason to possess any of the 11 listed documents and would need to apply for one in these last five weeks. Many will inevitably be left out.

e. It would be naïve to think that all these electors can manage/have managed to obtain these documents in the past five weeks or upcoming three weeks.

f. Resultantly, there are likely to be massive deletions of eligible voters simply because the ECI has not expanded the list of acceptable documents to make the process inclusive rather than exclusive.

g. At the very least, ECI must allow people to produce Aadhaar, EPIC, and Ration Cards, which enjoy high coverage. Without including these documents, large sections of people, who are already bearing the burden of social and economic inequality, now face the imminent loss of their entitlement to political equality.

h. The requirement to produce documentary evidence to show documentary proof of place of birth, date of birth and lineage is particularly onerous for women, transgender persons, migrants, and persons belonging to socially and economically weaker sections of society. An on-ground analysis by The Hindu shows that more than 55% of voters deleted from the Draft Rolls are women. These deletions are officially attributed to three causes: death, permanent migration, and duplication. But in Bihar, adult male and female death rates are similar. Most female migration is marriage-related and takes place within the state. For duplication, there is no logical reason why women would enrol in multiple places more than men.

The real explanation lies in the literacy gap: according to the 2011 Census, 61% of adult women were illiterate compared to 34% of adult men. This lack of literacy has meant fewer enumeration forms submitted by women, leading to their disproportionate exclusion from the Draft Rolls.

12. The mass, automatic deletion of existing voters from the electoral rolls (because they were not recommended by the BLOs or did not possess eligible documents), without giving them a reasonable opportunity of being heard or basing the suspicion on reasonable grounds, is violative of Article 10 of the Constitution (which recognises the continuance of citizenship), the provisions of the Representation of the People Act, 1950 (Section 22), and the Rules (Rules 4 to 23, 21A, and 25 of the Registration of Electors Rules, 1960) framed thereunder.

13. Further, as categorically held by this Hon'ble Court in Lal Babu Hussein v. Electoral Registration Officer, (1995) 3 SCC 100 (Paras 6 and 13), once a person's name is on the electoral rolls, she enjoys a presumption of citizenship. In Para 13 of Lal Babu, this Hon'ble Court observes that "if any person whose citizenship is suspected is shown to have been included in the immediately preceding electoral roll, the Electoral Registration Officer or any other officer inquiring into the matter shall bear in mind that the entire gamut for inclusion of the name in the electoral roll must have been undertaken and hence adequate probative value be attached to that factum before issuance of notice and in

subsequent proceedings…". Therefore, all voters on the Bihar electoral rolls, including those who have not been given or have not submitted an enumeration slip, are entitled to the same presumption of citizenship and the corresponding protection from arbitrary deletion.

14. What is unfolding in Bihar is, therefore, not only unconstitutional and violative of statute and court-evolved case law, but also unprecedentedly exclusionary in its design and execution. If permitted to continue, the SIR will irreparably damage the universality of the adult franchise, distort electoral outcomes, and set a dangerous precedent for the exclusion of citizens from the polity.

15. For all the reasons stated hereinabove, the SIR should be struck down summarily for violation of Article 326 of the Constitution, Basic Structure of the Constitution and multiple provisions of the Representation of the People Act, 1950 and the Registration of Electors Rules, 1960.

PLACE: New Delhi

DATE: 08.08.2025

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THE SUPREME COURT OF INDIA

EXTRAORDINARY WRIT JURISDICTION
W.P. (C) NO. 642 OF 2025

IN THE MATTER OF:

K.C. VENUGOPAL & ORS. …PETITIONERS

VERSUS

ELECTION COMMISSION OF INDIA & ANR. …RESPONDENTS

And

W.P. (C.) NO. 700 OF 2025

IN THE MATTER OF:

THOL THIRUMAVALAVAN …PETITIONER

VERSUS

ELECTION COMMISSION OF INDIA …RESPONDENT

SUBMISSIONS BY MR. P.C. SEN, SENIOR ADVOCATE, ON BEHALF OF THE PETITIONERS

A. The SIR leads to large scale disenfranchisement of voters who are being denied their right to vote as well as exercise of their basic citizenship rights:

A.1 One of the reasons for the Special Intensive Revision ("**SIR**") is stated to be frequent migrations. However, the scope and ambit of the said term is unclear.

A.2 This makes it difficult to determine and ascertain the relationship between frequent migration and being an ordinary resident.

A.3 The small window for such an exercise being conducted could lead to a situation where migrant workers may not be able to show territorial nexus with the place where they are employed as migrant workers.

A.4 The burden of proving citizenship has been placed on the elector, as opposed to the earlier practice, wherein it was the Election Commission of India ("**ECI**"), which would do the requisite enumeration and determine whether the requisites of citizenship were satisfied or not for the purpose of electoral rolls.

A.5 The presumption of a person on the electoral rolls being a citizen holds no meaning in this entire exercise.

A.6 The limited time-frame in which the exercise is being conducted has resulted in a shortcut being taken by the authorities, by putting the burden of proving citizenship on the citizen.

A.7 Electoral processes are premised on decentralised and distributed execution. Constitutional and legal framework supports this. The Election Commission only plays a supervisory and regulatory role, laying down guidelines and standards. All elements of the electoral process - preparation of rolls; scrutiny of nomination forms; conduct of polls to maintenance of security of the ballots and machines; to the counting of the votes; and finally to the declaration of results and thereafter - are decentralised processes.

A.8 In dictating to the competent BLOs and EROs on the specific documentation that may or may not be accepted has placed unconstitutional fetters on the discretion. The level of documentation required to demonstrate eligibility to be in a voterlist varies with different places and circumstances and that discretion may not be fettered. This discretion is also key in retaining the decentralised nature of execution.

B. No issues or problems demonstrated with SSR.

B.1 The Special Summary Revision ("**SSR**"), was conducted in Bihar between 29.10.2024 and June 2025. The Counter-Affidavit does not demonstrate any major issues with that SSR or the previous SSRs requiring the exercise of power to order SIR.

B.2 No reasoning given by ECI as to why SSR of 2025 was inadequate, and what were the inadequacies.

B.3 SSR being a summary review, took almost 8 months. It defies imagination as to how an SIR, which is a more comprehensive review, can be completed in 2 months.

B.4 Another reason given for conducting SIR is that complaints have been received regarding accuracy of electoral rolls (**@ R-3 of the Counter Afidavit**). However these do not pertain to Bihar SIR.

B.5 Any rolls prepared for any constituency - even if done through an SIR process must be easily comparable to the earlier rolls - which will enable both citizens and political parties to be able to detect and remedy improper exclusions or inclusions. The draft SIR prepared is not easily comparable to the previous roll - which also adds to its arbitrariness - not just of the process, but also of its outcome.

C. Reliance on 2003 SIR is arbitrary.

C.1 No reason given by ECI as to why individuals who had qualified as part of the 2003 SIR would automatically stand qualified under 2025 SIR.

C.2 No reason has been given as to why persons who had appeared on the electoral rolls as per 2003 SIR would stand automatically qualified under 2025 SIR, by merely relying on the fact that their parents were part of the 2003 SIR.

D. The process of conducting the SIR through enumeration forms is contrary to law and de hors the Act and Rules.

D.1 Neither the Representation of People Act, 1950 ("**1950 Act**"), nor the Registration of Electors Rules, 1960 ("**1960 Rules**"), contemplate an enumeration form.

D.2 The 1950 Act and the 1960 Rules circumscribe the manner in which the power, superintendence, and control can be exercised by the

ECI, under Article 324 of the Constitution of India, 1950 ("**Constitution**").

D.3 This is also violative of the principles laid down in the case of ***Nazir Ahmad v. King-Emperor*** **[(1936) 38 Bom LR 987]**.

E. The documentation required is also arbitrary.

E.1 Neither the 1960 Rules nor the guidelines have provided any exhaustive list of documents which are required.

E.2 Aadhar, EPIC and Ration Cards have been arbitrarily excluded from this eligibility list, when in fact these would be the documents most easily available with the voters.

E.3 The ostensible reason is that these do not help in identifying citizenship.

E.4 That by itself cannot be a ground to exclude these documents, if they would help otherwise in determining the identity of the voter.

P.C. Sen, Sr. Advocate

New Delhi
08.08.2025

IN THE SUPREME COURT OF INDIA

WRIT PETITION (CIVIL) No. 645 OF 2025

IN THE MATTER OF:

MR. ARSHAD AJMAL AND ANR. …PETITIONER

Versus

ELECTION COMMISSION OF INDIA & ORS. …RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF THE PETITIONER

BY MS. VRINDA GROVER, ADVOCATE

I. Preliminary Statement

i. The Petitioners submit that the SIR framework violates the constitutional guarantees of equal citizenship and universal suffrage by introducing procedures that lack legislative sanction, are ultra vires, structurally exclusionary, and corrosive of trust in the electoral process.

ii. In *Anoop Baranwal v. Union of India*, (2023) 2 SCC 453, this Hon'ble Court held that the right to vote forms part of Part III of the Constitution. It affirmed that the Election Commission's actions must facilitate, not frustrate, the exercise of voting rights. Executive frameworks that undermine access, contradict statutory guarantees, or reinforce systemic disadvantage must pass constitutional scrutiny. The SIR framework fails this test.

iii. The present SIR exercise demonstrates that persons enrolled as voters during an SIR, as in 2003, stand to benefit across generations from presumptions of genuineness of eligibility, as compared to those voters who enrol after the SIR. This makes it even more imperative for the exercise to not be carried out in undue haste with an impending election due In November, 2025.

II. The SIR Order dt. 24.06.2025 is ultra vires the Representation of the People Act, 1950 ('RP Act, 1950') and the Registration of Electors Rules, 1960 ('Rules 1960')

i. *Rule-Making Power lies solely with the Central Government*: Under Section 28(1) RP Act, 1950, read with the Rules, 1960, the power to make rules lies solely with the Central Government. The Election Commission of India (ECI) has only a consultative role.

ii. Rule 13(1) stipulates that every claim to be on the elector roll must be as per Form 6. Under the SIR order dt. 24.06.2025, the ECI has mandated the compulsory submission of a Declaration Form beyond what has been included in Form 6, coupled with a restrictive list of mandatory documents which is contrary to the documents permitted by Form 6, thereby circumventing Rule 13(1). Any amendment to the requirements of Form 6 can only be made by the Central Government by following the procedure under Section 28 RP Act.

iii. **S**ection 28(3) requires all Rules to be notified in the Official Gazette and laid before Parliament. No such notification or laying has occurred in relation to the SIR, which is an executive order of the ECI without the force of law. Thus, Rule 13(1) and Form 6 govern the field with regard to claims for inclusion in the electoral roll as the law stands, and ECI is bound by the said Rules.

iv. *ECI Has Exceeded Its Constitutional and Statutory Limits***:** By imposing binding procedural requirements through executive instructions contrary to the letter and spirit of Rule 13 read with Form 6, the ECI has acted *ultra vires* its statutory mandate and assumed a legislative and rule-making function it does not possess.

v. *Plenary powers cannot supplant statutory provisions and Rules enacted by Parliament***:***:* The ECI under Art. 324 can exercise its plenary powers only where the law is silent, and not when the statute and Rules provide for the procedure to be followed. ECI cannot subvert the will of the people expressed through Parliamentary law, as that would erode the very essence of democracy.[*Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405 (Para 92), *Association for Democratic Reforms*, (2002) 5 SCC 294 (para 19-20)].

III. SIR's Restrictive and Unauthorized Conditions Override Rule 13 read with Form 6 without Authority of Law

i. *Intensive Revision Must Follow the Statutory Framework of First Roll Preparation***:** Rule 25 of the Rules, 1960 permits intensive revision only by following the procedure for first-time roll preparation under Rules 4 to 23, including house-to-house verification (Rule 5), draft roll publication (Rule 10), and adjudication of claims and objections (Rules 13 to 20). The present SIR departs from the statutory scheme rendering it unlawful.

ii. *Statutory Scheme under Rules 13 and 26 Is Inclusive and Accommodative***:** Rule 13(1) mandates the use of Form 6 for inclusion claims, and Rule 26 requires written reasons for rejection. Form 6 recognises a broad range of documents adapted to diverse socio-economic conditions, such as parental declarations,

self-declarations for age, and field verification for homeless persons and sex workers.

iii. *The SIR Framework Narrows Lawful Routes Without Legal Authority***:** The SIR order unlawfully curtails the enrolment modes prescribed under the Registration of Electors Rules, 1960, by mandating a Declaration Form and restricting proof to eleven documents, in an illegal and untenable overreach into legislative functions of Parliament. Crucially, documents expressly permitted under Form 6, such as utility bills, rent agreements, bank passbooks, are excluded from the mandatory documents in the SIR. This amounts to an impermissible narrowing of evidentiary standards without legal authority..

IV. The Right of Appeal under the RP Act is rendered Illusory and Ineffective by the Compressed and Structurally Misaligned Timeline of the SIR Process

i. *No Timeline Prescribed for Appeal Disposal***:** While Rule 12 of the Rules, 1960 allows 30 days for filing claims and objections post-publication of the draft roll (as also explicated in the SIR order), no statutory timeline exists for the disposal of Appeals under Sec. 24(a) or (b) of the RP Act, 1950. The deadline for publication of the final roll (30.09.2025) will in all likelihood be before validly filed appeals are duly adjudicated.

ii. *Timely Claims and Appeals Do Not Guarantee Inclusion***:** Even if a person complies with the prescribed timelines, late rejection orders and the absence of a guaranteed disposal window before final roll publication mean that wrongfully excluded electors may remain excluded for the purpose of the impending polls and the publication of the revised SIR rolls. The appeals process is thus rendered nugatory in practice.

iii. *Volume of Exclusion Renders Appeals Illusory***:** Nearly 65 lakh deletions under the SIR framework, that too at only the draft roll publication stage, are likely to generate a high volume of appeals. The time available between the close of claims and objections (01.09.2025) and final roll publication (30.09.2025) is procedurally inadequate to adjudicate such appeals meaningfully by application of judicious mind.

iv. *Natural Justice is Structurally Compromised***:** The compressed timeline ensures that the right of appeal becomes a mechanical and perfunctory formality. Principles of natural justice, including *audi alteram partem*, are compromised when the adjudicating authority cannot provide individualised, reasoned decisions. This does not meet the requirement of fair, just and reasonable procedure under Article 21, as clarified by this Hon'ble Court in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

V. The SIR Framework Results in Structural, Systematic and Arbitrary Exclusion of Marginalised Groups

i. *Documentary Barriers Disproportionately Affect Marginalised Groups*: The SIR's rigid and arbitrary eleven-document requirement fails to accommodate the realities of disadvantaged communities such as the Musahars, Santhals, and Shershahbadis, who face chronic under-documentation. Field reports indicate that in many Musahar-dominated villages, only 2–4% possess birth certificates, making compliance with the SIR practically impossible, and reinforces the need to strictly follow Rule 13 and Form 6.

ii. *Women Voters Are Systemically Disadvantaged*: Women encounter distinct barriers arising from post-marital relocation, inconsistent identifiers, and lack of educational records. NFHS-5 data confirms that only 28.8% of women in Bihar have completed 10 or more years of schooling. The SIR's design does not take this systemic gender disadvantage into account, unlike the inclusive tenor of Form 6.

iii. *Violation of Articles 14 and 326 of the Constitution*: By imposing rigid and exclusionary requirements without accommodation for structural disadvantage, the SIR violates the guarantee of substantive equality under Article 14 and the right to universal adult suffrage under Article 326.

VI. Disenfranchisement to Statelessness - the dangers of unbridled discretion writ large in SIR Order

i. *SIR Order makes paradigm leaps from eligibility for voting to scrutiny of citizenship without legal mandate*: In terms of Clause 5(b) of the SIR Order, if the ERO/AERO "doubts" the eligibility of a proposed voter, he may conduct a suo-motu inquiry and decide on the inclusion / deletion of the voter from the list. However, the same Clause 5(b) of the SIR Guidelines further permits ERO/AEROs to refer individuals as "suspected foreign nationals" under the Citizenship Act, 1955. Thus, in Clause 5(b), the "doubt" regarding eligibility to vote metamorphs into "suspicion" of being a foreign national, as no other statutory guideline exists for determining the latter. This vitiates the entire SIR exercise, as it mutates from its stated objective of purification of voter rolls into a machinery for casting suspicion on citizenship and initiation of proceedings which have immediate and grave social, economic, political, familial and fraternal consequences, including statelessness.

ii. *Referrals Sans Procedural Safeguards*: Referrals under 5(b) are based on "suspicion" without any requirement of notice or personal hearing and are not governed by any rules of due process. While the eligibility determination by the ERO is subject to two levels of appeals as per Section 24, the arbitrary referral

once set in motion by the ERO cannot be recalled. Even a successful appellant for eligibility under the Electoral Rules may continue to be subjected to the citizenship inquiry merely because of "suspicion" of an ERO/AERO. Such dehumanizing and capricious alienation of citizens merely on "suspicion" which is predicated on "doubt" about voter eligibility militates against Art. 14, 21 and 326 of the Constitution. Further, this threat of referral on mere doubts and suspicions casts a chilling effect on electoral participation.

VII. Discriminates Against Bihar's Migrant Workers and Fails to Provide Reasonable Accommodation for their Electoral Participation in Violation of Articles 14, 19(1)(d), 21 and 326

i. *Disproportionate Burden on Migrant Workers Violates Article 14***:** Excluded migrant workers face structural barriers at every stage of the process. While initial claims or objections may be submitted by post, if their names remain excluded and a rejection is issued, exercising the right of appeal becomes materially unviable. The appeal process under Section 24 requires in-person follow-up, and no remote or proxy mechanism has been notified. If a second appeal becomes necessary, this would require repeat travel, additional costs, and time away from insecure employment. This imposes a cumulative and discriminatory burden on migrant workers, failing the standard of substantive equality under Article 14 and rendering their right to effective participation under Article 326 practically hollow.

ii. *Lack of Enrolment Pathway for Migrants Defeats Article 326***:** Despite well-documented constraints of digital access and mobility, the SIR provides no real and practical means for migrant workers to secure continued enrolment while residing outside the state. This creates significant barriers to participation and undermines the constitutional principle of universal adult suffrage under Article 326.

VIII. The Justification for the 11 Document(s)-Based Verification is Misleading

i. *Absence of Disaggregated Data Invalidates the Rationale for Document Restrictions***:** Respondent No.1 cites aggregate document issuance figures without disaggregating for adult eligibility as of 01.01.2025. As highlighted in Rejoinder, Paras 34–40, the absence of such disaggregation renders the empirical basis of the document list unsound.

ii. *Only One of the Eleven Documents Establishes Citizenship***:** Of the eleven prescribed documents, only the passport constitutes proof of citizenship. As of 2023, approximately 27.44 lakh valid passports had been issued in Bihar, accounting for less than two percent of the state's population.

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL EXTRAORDINARY JURISDICTION

WRIT PETITION (C) NO.701 OF 2025

IN THE MATTER OF:

National Federation of Indian Women …Petitioner

VERSUS

Election Commission of India & Anr. …Respondents

WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER BY MS.RASHMI SINGH, ADVOCATE

It has been held by this Hon'ble Court in *Smt.Indira Gandhi v. Raj Narain, (1976) 2 SCR 347* that the concept of democracy as visualised by the Constitution presupposes the representation of the people in Parliament and state legislatures by the method of election. And, before an election machinery can be brought into operation, there are three requisites which require to be attended to, namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2). **there should be an executive charged with the duty of securing the due conduct of elections;** and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections.

It is submitted that the duty, nay the sacred duty, of the executive, that this Hon'ble Court recognises as one of the three requisites for bringing an election machinery into operation, is the duty *"to secure due conduct of elections"* which essentially puts the onus of ensuring proper facilitation and participation of voters in each election conducted across the country, on the executive which, as further elucidated by this Hon'ble Court, is the Election Commission of India. Maximum voter participation is the *sine qua non* for a democracy to thrive and for elections to be truly free and fair. Reliance in this regard is placed on the judgement of this Hon'ble Court in *People's Union for Civil Liberties v. Union of India* (2013) 10 SCC 1 wherein this Hon'ble Court held as follows:

"45) Democracy and free elections are part of the basic structure of the Constitution. In Indira Nehru Gandhi vs. Raj Narain, 1975 Supp 1 SCC 198, Khanna, J., held that democracy postulates that there should be periodic elections where the people should be in a position to re-elect their old representatives or change the representatives or elect in their place new representatives. It was also held that democracy can function only when elections are free and fair and the people are free to vote for the candidates of their choice. In the said case, Article 19 was not in issue and the observations were in the context of basic structure of the Constitution. Thereafter, this Court reiterated that democracy is the basic structure of the Constitution in Mohinder Singh Gill and Another vs. Chief Election Commissioner, New Delhi and Others, (1978) 1 SCC 405 and Kihoto Hollohon vs. Zachillhu and Others, 1992 (Supp) 2 SCC 651.

49) However, correspondingly, we should also appreciate that the election is a mechanism, which ultimately represents the will of the people. The essence of the electoral system should be to ensure freedom of voters to exercise their free choice. Article 19guarantees all individuals the right to speak, criticize, and disagree on a particular issue. It stands on the spirit of tolerance and allows people to have diverse views, ideas and ideologies. Not allowing a person to cast vote negatively defeats the very freedom of expression and the right ensured in Article 21 i.e., the right to liberty.

50) Eventually, voters' participation explains the strength of the democracy. Lesser voter participation is the rejection of commitment to democracy slowly but definitely whereas larger participation is better for the democracy. But, there is no yardstick to determine what the correct and right voter participation is. If introducing a NOTA button can increase the participation of democracy then, in our cogent view, nothing should stop the same. The voters' participation in the election is indeed the participation in the democracy itself. Non-participation causes frustration and disinterest, which is not a healthy sign of a growing democracy like India.

Conclusion:

51) Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections would alone guarantee the growth of a healthy democracy in the country. The 'Fair' denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance

of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote.

Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting.

52) No doubt, the right to vote is a statutory right but it is equally vital to recollect that this statutory right is the essence of democracy. Without this, democracy will fail to thrive. Therefore, even if the right to vote is statutory, the significance attached with the right is massive. Thus, it is necessary to keep in mind these facets while deciding the issue at hand.

53) Democracy is all about choice. This choice can be better expressed by giving the voters an opportunity to verbalize themselves unreservedly and by imposing least restrictions on their ability to make such a choice. By providing NOTA button in the EVMs, it will accelerate the effective political participation in the present state of democratic system and the voters in fact will be empowered. We are of the considered view that in bringing out this right to cast negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and also fulfill one of its objective, namely, wide participation of people.

54) Free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress or coercion. Protection of elector's identity and affording secrecy is therefore integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14. Thus, secrecy is required to be maintained for both categories of persons."

Further reliance is also placed on the judgement of this Hon'ble Court in *Manoj Narula v. Union of India,* (2014) 9 SCC 1 wherein this Hon'ble Court held as follows:

"4. In the beginning, we have emphasized on the concept of democracy which is the corner stone of the Constitution. There are certain features absence of which can erode the fundamental values of democracy. One of them is holding of free and fair election by adult franchise in a periodical manner as has been held in Mohinder Singh Gill and another v. Chief

Election Commissioner, New Delhi and others[5], for it is the heart and soul of the parliamentary system. In the said case, Krishna Iyer, J. quoted with approval the statement of Sir Winston Churchill which is as follows: -

> *"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 – no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point." In Raghbir Singh Gill v. S. Gurcharan Singh Tohra, the learned Judges, after referring to Mohinder Singh Gill's case, stated that nothing can diminish the overwhelming importance of the cross or preference indicated by the dumb sealed lip voter. That is his right and the trust reposed by the Constitution in him is that he will act as a responsible citizen choosing his masters for governing the country.""*

In the present case, however, the Respondent No.1 has miserably failed to discharge its sacred duty of ensuring free and fair elections with maximum voter participation and has arbitrarily, illegally and unconstitutionally excluded voters through the exercise of Special Intensive Review (SIR) conducted pursuant to impugned order dated 24.06.2025.

I. EXCLUSION OF WOMEN:

It is submitted that in general women continue to be underrepresented on electoral roll but the current methodology and timeline adopted by the Respondent No. 1 in the instant SIR exercise including stringent documentation demands and excessive reliance on ground level mechanism exacerbate pre-existing systemic barriers leading to disproportionate exclusion of women.

As per the data released by the Respondent No.1 itself, approximately 65 lakh people have been excluded from the draft electoral roll released on 01.08.2025 implying an arbitrary, hasteful and unreasonable exercise having been conducted by the Respondent No.1.

It is further submitted that as per reports[1], shockingly, women constitute 55% of voters excluded from the voter list after the SIR exercise which goes to show that the approach of the Respondent No.1 is completely bereft of the *bonafide* will to ensure that women, particularly women belonging to poor, marginalised, illiterate and minorities, are not disenfranchised. The most glaring proof of the malicious

[1] https://scroll.in/article/1085160/highest-exclusion-in-bihar-draft-roll-women-muslim-dominant-districts

approach of the Respondent No.1 at least in so far as women voters are concerned in the fact that under the Manual for Electoral Rolls (March 2023) in the case of married women who changed their residence as a result of marriage and could not produce documentary evidence as a proof of citizenship, the documents accepted by the ERO included proof of being registered as voter as an unmarried girl; proof of marriage; certificates issued by headmen of village; certificate issued by Secretary, Gram Panchayat; certificate issued by Panchayat President[2]. This, it is submitted, was done with the intention to make the process of application easier for women and thereby include as many women as possible. However, the impugned order restricts the documentary proof for married women to the documents contemplated therein.

Structural Barriers Amplified by SIR:

1. Low Document Ownership – Only 14.71% of Bihar women aged 15+ have completed class 10, making the matriculation certificate (a key SIR document) disproportionately scarce among women.[3][4][5]

2. Gatekeeping & Mobility – In rural households, husbands or in-laws decide public interactions; a Bihar experimental study found women 25% less likely to be chosen to interact with officials[6]

3. Digital Divide – Merely 16% of rural Bihar women own smartphones, versus 46% of men. ECI's ECINet app thus skews access toward men.[7][8][9]

4. Prejudice to Married women – Under the Manual for Electoral Rolls (March 2023) in the case of married women who change their residence as a result of marriage and who cannot produce documentary evidence as a proof of citizenship, the documents accepted by the ERO include proof of

[2] https://www.ceoandaman.nic.in/election/HANDBOOKS/MANUAL%20ON%20ELECTORAL%20ROLLS%202024.pdf
[3] https://www.engenderhealth.org/wp-content/uploads/2022/03/GYSI-Analysis-in-Bihar-India.pdf
[4] https://themultidisciplinaryjournal.com/assets/archives/2025/vol10issue1/10004.pdf?utm_source=perplexity
[5] https://themultidisciplinaryjournal.com/assets/archives/2025/vol10issue1/10004.pdf?utm_source=perplexity
[6] https://www.amarujala.com/india-news/election-commission-launch-sir-nationwide-special-intensive-revision-campaign-of-voter-list-hindi-updates-prog-2025-07-25
[7] https://www.engenderhealth.org/wp-content/uploads/2022/03/GYSI-Analysis-in-Bihar-India.pdf
[8] https://themultidisciplinaryjournal.com/assets/archives/2025/vol10issue1/10004.pdf?utm_source=perplexity
[9] https://themultidisciplinaryjournal.com/assets/archives/2025/vol10issue1/10004.pdf?utm_source=perplexity

being registered as voter as an unmarried girl; proof of marriage; certificates issued by headmen of village; certificate issued by Secretary, Gram Panchayat; certificate issued by Panchayat President[10].
However, the impugned order restricts documentary proof for married women to just 11 documents contemplated therein.

Instances:

- JD(U) MP Giridhari Yadav made four trips Delhi–Bihar to secure his daughter-in-law's papers; one son's name still uncertain. "Imagine common voters," he warned.[11]

- Widows in Kishanganj – Two widowed women lacking death certificates were refused EF processing; one pleaded, *"Aap mere behen jaise ho, please madad kardo* (You're like my sister, please help)"[12]

- Nepali-origin 'bahus' in Kishanganj border villages fear deletion because their parental lineage lies across an open border and BLOs demand 2003 roll trace.[13]

It is further submitted that large-scale exclusion of women as a result of the manner, conduct and requirements of the SIR exercise also falls foul of Article 21 the Universal Declaration of Human Rights which provides that *"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."*

In this regard reliance is also placed on the Handbook released by the United Nations titled *"Women & Elections: Guide to promoting the participation of women in elections"* that elaborates upon the importance of ensuring voting rights for women. The relevant extract therefrom is reproduced hereinbelow:

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[10] https://www.ceoandaman.nic.in/election/HANDBOOKS/MANUAL%20ON%20ELECTORAL%20ROLLS%202024.pdf
[11] https://www.indiatoday.in/india/story/jdu-mp-giridhari-yadav-questions-bihar-voter-roll-revision-my-sons-name-missing-from-list-2760526-2025-07-24
[12] https://www.indiatoday.in/india/story/women-struggle-to-prove-existence-without-official-documents-amid-bihars-voter-revision-2760308-2025-07-23
[13] https://behanbox.com/2025/07/22/in-bihars-border-districts-bahus-from-nepal-fear-loss-of-citizenship-after-sir/

"It is important to keep in mind, however, that electoral rights mean much more than simply the right to vote. Freedom of expression, assembly and association, and the freedom to take part in the conduct of public affairs, hold public office at all levels of Government, and participate in the formulation of government policy are subsumed under this heading as well. ***United Nations international human rights instruments affirm that women are entitled to enjoy all these rights and freedoms on the same basis as men. Women's equal participation is therefore essential to the conduct of democratic elections****. At the practical level, an election fails to comply with international obligations and standards unless the opportunity for full and equal participation by women is provided.*

For elections to be truly free and fair, women must have the same opportunities as men to participate in all aspects of the electoral process. *Women should have an equal chance to serve at all levels within local and national election management bodies. Women should be engaged on an equal basis as election monitors or observers. Women should be able to participate fully in all aspects of political party operations. Women candidates and issues of special concern to women should be given fair and equal treatment in the media. Focusing on areas of the greatest potential impact can help ensure that women's participation in the electoral process is more than a pro forma exercise, and that free and fair elections fulfil their potential for contributing to the advancement of women, particularly in post-conflict situations.*

In almost all countries, voters must be registered and appear on voter lists to be eligible to participate in elections. The accuracy and inclusiveness of the lists are central elements in ensuring women's full participation. *Voter registration may be either State-initiated, meaning that electors are automatically registered by local authorities on the basis of residence or other records, or self-initiated, meaning that constituents must take individual responsibility for registering themselves.* ***With State-initiated registration, women are less likely to be left off the registers, but this system must be carefully implemented to ensure that women are not removed from the lists if they change their name or address when they marry.*** *Another important consideration is whether a country has dedicated electoral registers or relies on civil registers that are also used for purposes other than elections. Whatever system is used for voter registration, the lists should be compiled in a manner that is clear and transparent, and voters should have an easy way to check for mistakes and correct inaccuracies."*

(Emphasis Supplied)

II. BLO'S ACTING AS PRIMA FACIE DECISION MAKING AUTHORITY:

It is submitted that even though the Representation of People Act, 1950 contemplates a detailed mechanism and thereunder it lays down the authorities competent to decide, inter alia, issues of deletion from electoral roll, in reality, and as a direct result of the impractical timeline provided under the impugned order for the conduct of the SIR exercise, the Booth Level Officers (BLOs) is ultimately acting as the prima facie decision making authority so far as the issue of keeping or deleting names of voters in the electoral roll is concerned. In other words the statute is violated by actual practice as elaborated hereinbelow:

- Statute: Deletion can occur only after a show-cause notice and Electoral Registration Officer (ERO) order; affected voters may appeal to the District Magistrate within 15 days.[14]
- Reality: BLO's *prima facie* "Shifted/Dead/Not Found" (SDNF) flag automatically removes the elector from the draft roll; no individual notice is given before 1 Aug draft.[15]
- Loss occurs 30 days before the voter is even allowed to object.

It is further pertinent to note that the empirical evidence from a 2019 Bihar Chief Electoral Officer report reveals significant operational shortcomings and systemic challenges that impede BLOs from effectively performing these crucial duties, particularly the mandated door-to-door verification.[1] The report indicates that a substantial 37.4% of respondents who did not vote cited the absence of their name from the electoral roll as the reason, and 43.2% of those not enrolled were unaware of the enrollment procedure.[16] These figures point to failure in BLOs' mandated duty to visit households, educate citizens about the electoral process, and assist in updating voter lists. Furthermore, the report details logistical and administrative barriers: BLOs were often not active, not from the locality, or posted at schools distant from their assigned areas, making regular and thorough door-to-door visits difficult. The report explicitly states that updation of voters' lists is not happening, leading to significant discrepancies where 10-15% of eligible voters were reported missing or had errors.[1] Compounding these issues is the "avoidable laxity" in periodic reporting by higher-level officials (District Election Officers and Electoral Registration Officers) to the ECI dashboard,

[14] https://www.theindiaforum.in/politics/explainer-what-special-intensive-revision-electoral-rolls
[15] https://www.pib.gov.in/PressReleseDetail.aspx?PRID=2147823
[16] To The Point With Preeti Choudhry: Bihar Voter List Row—Cleanup Or Exclusion Drive Underway? - YouTube, accessed on July 25, 2025, https://www.youtube.com/watch?v=ZCeVC7tw7W4

indicating a lack of robust top-down oversight that allows these ground-level failures to persist unaddressed.[1]

Thus while the ERO is the ultimate deciding authority on whether a person stays on the roll, the BLO's initial assessment or "prima facie opinion" carries significant weight. If a BLO, based on their verification (or lack thereof), forms an opinion that a person is not eligible, or marks them as 'shifted' or 'deceased' without proper due diligence, that person's name is effectively flagged for exclusion from the draft roll. This shifts the immediate burden onto the citizen to proactively discover the potential exclusion and initiate a redressal process, even before the ERO's final decision.

III. EFFECTIVE DENIAL OF STATUTORY RIGHT TO APPEAL:

As per the time line contemplated under the impugned order, claims and objections are to be filed within a span of 30 days commencing from 01.08.2025 to 01.09.2025. It is submitted that the set. Is unreasonably short and denies people the statutory right of appeal from the decision of the ERO to the District Magistrate and from the decision of the District Magistrate to the Chief Electoral Officer.

It is submitted that once the draft roll is published on 01.08.2025 citizens must proactively check it to ascertain if their names are missing or incorrectly entered. Many, particularly the illiterate, those with restricted mobility, or migrant workers, may not even be aware that their names have been deleted.[17] It may not be out of place to point out the high illiteracy rate in the State of Bihar. As per the 2011 census[18] the male literacy rate in Bihar in 2011 stood at 70%, whereas female literacy was just over 50%, indicating that almost half of the women were outside the ambit of literacy which shows the grave issue of gender disparity that becomes more prominent in rural areas, female literacy stands at only 29.6% compared to male literacy of 57.1% in 2011.

It is submitted that with only one month (August 1 to September 1) for filing claims and objections, the window for taking any effective recourse is extremely narrow. This is particularly challenging for vulnerable populations who may need

[17] https://www.thehindu.com/opinion/lead/fencing-out-the-voter-in-bihars-poll-roll-preparation/article69820024.ece
[18] https://www.census2011.co.in/literacy.php

to travel, gather new or difficult-to-obtain documents, or navigate complex bureaucratic hurdles.[20]

IV. MALICE IN LAW AND VITIATION OF ADMINISTRATIVE ACTION:

It is submitted that the entire exercise of SIR being carried out by the Respondent No.1 is marred by malicious intent which is fortified by the following:

- **Unreasonable and Arbitrary Classification:** The Respondent No.1's decision to re-verify voters added after 2003 without clear justification, and its exclusion of widely held documents like Aadhaar and Ration Cards while accepting others like school-leaving certificates, introduces an *"element of unreasonableness that is impossible to reconcile with the guarantee of equal treatment"*. This classification appears to fail the *"intelligible differentia"* test under Article 14 of the Constitution, which guarantees the right to equality.[19]
- **Purpose Foreign to Statute:** The Respondent No.1's constitutional and statutory mandate is to prepare and revise electoral rolls for the conduct of elections. It is not empowered to conduct a citizenship test, which falls under the purview of the Ministry of Home Affairs. By imposing citizenship-like burdens of proof, the SIR appears to be acting beyond its statutory purpose, effectively functioning as a de facto National Register of Citizens (NRC).[20]
- **Undue Burden and Disregard for Rights:** Imposing unduly onerous burdens without adequate notice on registered voters to re-establish their citizenship, leading to exclusions based on vague and inconsistently applied criteria, falls afoul of imperatives of fair process and the right to vote. Such an act constitutes a deliberate act in disregard to the rights of others. While this Hon'ble Court has consistently upheld the Respondent No.1's broad authority in electoral matters, affirming that its superintendence must be given the "broadest interpretation" [1], this judicial deference is not absolute. The Court has long been aware of ground-level realities, with Justice Baharul Islam's dissent in *Lakshmi Charan Sen v A.K.M. Hassan Uzzaman* (1985 AIR 1233) noting the vulnerability of

[19] https://www.thehindu.com/opinion/lead/fencing-out-the-voter-in-bihars-poll-roll-preparation/article69820024.ece
[20] https://www.epw.in/journal/2025/29/editorials/intensive-revision-universal-franchise.html

"illiterate people" who are *"not politically so conscious as to ensure their names are in the electoral roll".*

V. BREACH OF RIGHT TO VOTE: VIOLATION OF DEMOCRATIC SET UP:

The result of the callous attitude of the Respondent No.1 in conducting the SIR, an exercise marred by insufficient time for grievance redressal and an unreasonable demand for documents that are not available with the poorer sections of the population, will have a gravely prejudicial impact on the conduct of free and fair elections which has been recognised by this Hon'ble Court as the basis and the very essence of democracy where each and every vote is essential. The entire exercise of SIR, it is submitted, stands vitiated as a result of the arbitrary and unreasonable manner in which it is being executed. Reliance in this regard is placed the following paras of the judgement by this Hon'ble Court in *Mohinder Gill v. Chief Election Commissioner, New Delhi*, 1978 (1) SCC 405:

> *"16.Democracy digs its grave where passions, tensions and violence, on an overpowering spree, upset results of peaceful polls, and the law of elections is guilty of sharp practice if it hastens to legitimate the fruits of lawlessness. The judicial branch has a sensitive responsibility her to call to order lawless behaviour. Forensic non-action may boomerang, for the court and the law are functionally the bodyguards of the People against bumptious power, official or other.*
>
> *....*
>
> *38.And the supremacy of valid law over the Commission argues itself. No one is an imperium in imperio in our constitutional order. It is reasonable to hold that the Commissioner cannot defy the law armed by Art. 324. Likewise, his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system.*
>
> *39. So it is that the Constitution has made comprehensive provision in Art. 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor mala fide, nor arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify; less is insufficient to leave unsaid. Article 324, in our view, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections' are the broadest terms. Myriad maybes, too mystic to be precisely*

presaged, may call for prompt action to reach the goal of free and fair election. It has been argued that this will create a constitutional despot beyond the pale of accountability; a Frankenstein's monster who may manipulate the system into elected despotism--instances of such phenomena are the tears of history. To that the retort may be that the judicial branch, at the appropriate stage, with the potency of its benignant power and within the leading strings of legal guidelines, can call the bluff, quash the, action and bring order into the process. Whether we make a triumph or travesty of democracy depends on the man as much as on the Great National Parchment. Secondly, When a high functionary like the Commissioner is vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously.

.....

43.Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of Authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law....

52. If the rule is sound and not negatived by statute, we should not devalue it nor hesitate to hold every functionary who effects others' right to it. The audi alteram partem rule has a few facets two of which are (a) notice of the case to be met; and (b) opportunity to explain....

56. Normally, natural justice involves the irritating inconvenience for men in authority, of having to hear both sides since notice and opportunity are its very marrow. And this principle is so integral to good government, the onus is on him who urges exclusion to make out why. Lord Denning expressed the paramout policy consideratlon behind this rule of public law (while dealing with the nemo judex aspect) with expressiveness.

"Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking 'the judge was biased'.

"We may adapt it to the audi alteram situation by the altered statement : "Justice must be felt to be just by the community if democratic legality is to animate the rule of law. And if the invisible audience sees a man's case

disposed of unheard, a chorus of 'noconfidence' will be heard to say, 'that man had no chance to defend his stance'."

61. Nobody will deny that the Election Commission in our democratic scheme is a central figure and a high functionary. Discretion vested in him will ordinarily be used wisely, not rashly, although to echo Lord Camden wide discretion is fraught with tyrannical potential even in high personages, absent legal norms and institutional checks, and relaxation of legal canalisation on generous 'VIP' assumptions may boomerang. Natural justice is one such check on exercise of power. But the chemistry of natural justice is confused in certain aspects., especially in relation to the fourfold exceptions put forward by the respondents.

62. So let us examine them each. Speed in action versus soundness of judgment is the first dilemma. Ponnuswamy has emphasised what is implicit in Article 329(b) that once the process of election has started, it should not be interrupted since the tempo may slow down and the early constitution of an elected parliament may be halted. Therefore, think twice before obligating a hearing at a critical stage when a quick repoll is the call. The point is well taken. A fair hearing with fun notice to both or others may surely protract; and notice does mean communication of materials since no one can meet an unknown ground. Otherwise hearing becomes hollow, the right becomes a ritual. Should the cardinal principle of 'hearing' as condition for decision-making be martyred for the cause of administrative, immediacy? We think not. The full panoply may not be there but a manageable minimum may make-do.

63. In Wiseman v. Bornenwn(1) there was a hint of the competitive claims of hurry and hearing. Lord Reid said : 'Even where the decision has to be reached by a body acting judicially, there must be a balance between the need for expedition and the need to give fall opportunity to the defendant to see material against him (emphasis added). We agree that the elaborate and sophisticated methodology of a formalised hearing may be injurious to promptitude no essential in ,in election under way. Even so, natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To burke it altogether may not be a stroke of fairness except in very exceptional circumstances. Even in Wiseman where all that was sought to be done was to see if there was a prima facie case to proceed with a tax case where, inevitably, a fuller bearing would be extended at a later stage of the proceedings, Lord Reid. Lord Morris of Borthy- Gest and Lord Wilborforce suggested "that there might he exceptional cases where to decide upon it ex-parte would be unfair, and it would be the duty of the

tribunal to take appropriate steps to eliminate unfairness "(Lord Denning M. R., in Manward v. Bornenam(2) summarised the observations of the law Lords in this form). No doctrinaire approach is desirable but the Court must be anxious to salvage the cardinal rule to the extent permissible in a given case. After all, it is not obligatory that counsel should be allowed to appear nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for Disclosure of the, prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hours notice, or in a crisis even a telephone call, may suffice. If all that is not possible as in the cue of a fleeing person whose passport has to be impounded lest he, should evades the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible. It is quite on the cards that the Election Commission if pressed by circumstances, may give a short hearing. In any view, it is not easy to appreciate whether before further steps got under may he could not have afforded an opportunity of hearing the parties, and revoke the earlier directions. We do not wish to disclose our mind on what, in the critical circumstances, should have been done, for a fair-play of fair hearing. This is a matter pre-eminently for the election tribunal to judge, having before him the vivified totality of all the factors. All that we need emphasize is that the content of natural justice is a dependent variable, not an easy casualty.

66. ....A civil right being adversely affected is a sine qua non for the invocation of the audi alteram partem rule. This submission was supported by observations in Rain Gopal(1) and Col. Sinha (2). Of course, we agree that if only spiritual censure is the penalty, temporal laws may not take cognisance of such consequences since human law operates in the material field although its vitality vicariously depends on its morality. But what is a civil consequence, let us ask ourselves,; by passing verbal boobytraps ? ***'Civil consequence' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.*** *Civil is defined by Black (Law Dictionary 4th Edn.)at p.311.*

"Ordinally, pertaining or appropriate to a member of a civitas of free political community; natural or proper to a citizen. Also, relating to the

community, or to the policy and government of the citizens and subjects of a state.

The word is derived from the Latin civilie, a citizen. In law, it has various significations."

'Civil Rights' are such as belong to every citizen of the State or country, or, in a wider senes, to all its inhabitants, and are not connected with the organisation or administration of government. They include the rights of property, marriage protection by the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable or being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various act,-, of congress made in pursuance thereof.

(p. 1487-Blacks Legal Dictionary)

The interest of a candidate at an election to Parliament regulated by the Constitution and the laws comes within this gravitational orbit. ***The most valuable right in a democratic policy is the 'little man's' little pencil-marking, assenting or dissenting, called his vote. If civics mean anything to a self-governing citizenry, if participatory democracy is not to be scuttled by the law, we shall not be, captivated by catchwords. The straightforward conclusion is that every Indian has a right to elect and be elected and this is a constitutional as distinguished from a common law right and is entitled to cognizance by courts subject to statutory regulation. We may also notice the further refinement urged that a right accrues to a candidate only when he is declared returned and until then it is incipient inchoate and intangible for legal assertion-in the twilight zone of expectancy, as it were.. This too, in our view, is legicidal sophistry. Our system of 'ordered' rights cannot disclaim cognizance of orderly processes as the right means to a right end. Our jurisprudence is not so jejune as to ignore the concern with the means as with the end with the journey as with the destination. Every candidate, to put it cryptically, has an interest or right to fair and free and legally run election. To draw lots and decide who wins, if announced as the electoral methodology, affects his right, apart from his luckless rejection at the end. A vested interest in the prescribed process is a processual right actionable if breached, the Constitution permitting. What is inchoate, viewed from the end, may be complete, viewed midstream. It is a subtle fallacy to confuse between the two. Victory is still an expectation qua mado is a right to the statutory procedure. The appellant has a right to have the election conducted nor***

according to humour or hubris but according to lay and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import. But in the present case, the Election Commission contends that a hearing has been given although the appellant retorts that a vacuous meeting where nothing was disclosed and he was summarily told off would be strange electoral justice. We express no opinion on the factum or adequacy of the hearing but hold that where a candidate has reached the end of the battle and the whole poll is upset, he has a right to notice and to be heard, the quantum and quality being conditioned by the concatenation of circumstances.

72. …After all, the Election Court can exercise only a limited power of review and must give regard to the Commission's discretion. And the trouble and cost of instituting such proceedings would deter all but the most determined of parties aggrieved, and even the latter could derive no help from legal principle in predicting whether at the end of the day the court would not condone their summary treatment on a subjective appraisal of the demerits of the case they had been denied the opportunity to present. The public interest would be ill-served by judicially fostered uncertainty as to the value to be set upon procedural fair play as a canon of good administration. And further the Wiseman law Lords regarded the cutting out of 'hearing' as quite unpalatable but in the circumstances harmless since most of the assessees know the grounds and their-declaration was one mode of explanation.

73. We consider it a valid point to insist on observance of natural justice in the area of administrative decision- making so as to avoid devaluation of this principle by 'administrators already alarmingly insensitive to the rationale of audi alteram partem':

"In his lecture on "The Mission of the Law' Professor H. W. R. Wade takes the principle that no man should suffer 'without being given a hearing as a cardinal example of a principle 'recognised as being indispensable to justice,, but which (has) not yet won complete recognition in the world of administration..... The goal of administrative justice can never be attained by necessarily sporadic and ex post facto judicial review. The essential mission of the law in this field is to win acceptance by administrators of the principle that to hear a men before he is penalised is an integral part of the decision-making process. A measure of the importance of resisting the incipient abnegation by the courts of the firm rule that branch of audi alteram partem invalidates, is

that if it gains ground the mission of the law is doomed to fail to the detriment of all."

74. Our constitutional order pays more than lip-service to the rule of reasonable administrative process. Our people-are not yet conscious of their rights; our administrative apparatus has a hard of- hearing heritage. Therefore a creative play of fairplay, irksome to some but good in the long run, must be accepted as part of our administrative law. Lord Hailsham L.C. in Pearlbeg presaged :

"The doctrine of natural justice has come in for increasing consideration in recent years, and the courts generally, and (the House of Lords) in particular, have advanced its frontiers considerably. But at the same time they have taken an increasingly sophisticated view of what is required in individual cases."

And in India this case is neither the inaugural nor the valedictory of natural justice.

75. Moreover, Sri Rao's plea that when the Commission cancels, viz., declares the poll void it is performing more than an administrative function merits, attention, although we do not pause to decide it. We consider that in the vital area of elections where the people's faith in the democratic process is hypersensitive it is republican realism to keep alive audi alteram even in emergencies, 'even amidst the clash of arms'. Its protsan shades apart we recognise that 'hearing' need not be an elaborate ritual and may, in situations of quick despatch, be minimal, even formal, nevertheless real. In this light, the Election Court will approach the problem. To scuttle the ship is not to save the cargo; to jettison may be.

76. Fair hearing is thus a postulate of decision-making cancelling a poll, although fair abridgement of that process is permissible. It can be fair without the rules of evidence or forms of trial. It cannot be fair if apprising the affected and appraising the representations is absent. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law.

77. We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specificated it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Art. 324 vests a wide power and where some direct consequence on candidates emanates from its exercise, we must read this

functional obligation. There was much argument about the; guidelines in S. 58and 64A being applicable to an order for constituency-wide repoll. It may be wholesome to be guided; but it is not illegal not to do so, provided homage to natural justice is otherwise paid. Likewise, Shri P. P. Rao pressed that the Chief Election Commissioner' was arbitrary in ordering a re- poll beyond Fazilka segment or postal ballots. Even the 3rd respondent had not asked for it; not was there any material to warrant it since all the ballots of all the other segments were still available to be sorted out and recounted. A whole re-poll is not a joke. It is almost an irreparable punishment to the constituency and the candidates. The sound and fury, the mammoth campaigns and rallies, the whistle-story, speeches and frenzy of slogans, the white-heat of tantrums, the expensiveness of the human resources and a hundred other traumatic consequences must be remembered before an easy re- poll is directed, urges Shri Rao. We note the point but leave its impact open for the Election Court to assess when judging whether the, impugned orders was scary, arbitrary, whimsical or arrived at by omitting material considerations. Independently of natural justice, judicial review extends to an examination of the order as to its being perverse, irrational, bereft of application of the mind or without any evidentiary backing. If two views are possible, the Court cannot interpose its view. If no view is possible the Court must strike down.

79. We have projected the panorama of administrative law at this length so that the area may not be befogged at the trial before the Election Court and for action in future by the Election Commission. We have held that Art. 329(b) is a bar for intermediate legal proceedings calling in question the steps in the election outside the machinery for deciding election disputes. We have further held that Art. 226 also suffers such eclipse. Before the notification under s. 14 and beyond the declaration under r. 64 of Conduct of Election Rules, 1961 are not forbidden ground. In between is, provided, the step challenged is taken in furtherance of not to halt or hamper the progress of the election. We have clarified that what may seem to be counter to the match of the election process may in fact be one to clear the way to a free, and fair verdict of the electorate. It depends. Taking the Election Commission at his word (the Election Court has the power to examine the validity of his word), we proceed on the prima facie view that writ petition is not sustainable. If it turned out that the, Election Commission acted bizarre fashion or in indiscreet haste, it forebodes ill for the Republic.

81. ....Certain obvious questions will claim the Election Court's attention. Did the Commission violate the election, rules or canons of fairness ? Was

the play, in short, according to the script or did the dramatis personae act defiantly, contrary to the text ? After all, democratic elections may be likened to a drama, with a solemn script and responsible actors, officials and popular, each playing his part, with roles for heroes but not for villains, save where the text is travestied and unscheduled anti-heroes intervene turning the promising project for the smooth registration of the collective will of the people into a tragic plot against it. Every corrupt practice, partisan official action, basic breach of rules or deviance from the fundamental of electoral fairplay is a danger signal for the nation's democratic destiny. We view this case with the seriousness of John Adams' warning :

"'Remember', said John Adams, 'remember', democracy never lasts long. It soon wastes, exhausts and murders itself. There never was a democracy that did not commit suicide."

113. …The Election Commission is a high-powered and independent body which is irremovable from office except in accordance with the provisions of the Constitution relating to the removal of Judges of the Supreme Court and is intended by the framers of the Constitution to be kept completely free from any pulls and pressures that may be brought through political influence in a democracy run on party system. Once the appointment is made by the President. the Election Commission remains insulated from extraneous influences, and that cannot be achieved unless it has an amplitude of powers in the conduct of elections-of course in accordance with the existing laws. But where these are absent, and yet a situation has to be tackled, the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situation. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see, that the election process is completed properly, in a free and fair manner. "An express statutory grant of power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power or the performance of the duty. That which is clearly implied is as much a part of a law as that which is expressed."(1) The Chief Election commissioner has thus to pass appropriate orders on receipt of reports from the returning officer with regard to any situation arising in the course of an election and power cannot be denied to him to pass appropriate orders. Moreover, the power has to be exercised with promptitude. Whether an

order passed is wrong. arbitrary or is otherwise invalid, relates to the mode of exercising the power and does not touch upon the existence of the power in him if it is there either under the Act or the rules made in that behalf, or under Article 324(1)."

(Emphasis Supplied)

IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
IA NO. 185829 OF 2025
IN
WRIT PETITION (CIVIL) NO.640 OF 2025

IN THE MATTER OF:
Association for Democratic Reforms & Ors. … Petitioners
Versus
Election Commission of India … Respondent

AND IN THE MATTER OF:
State of West Bengal … Applicant

WRITTEN SUBMISSIONS ON BEHALF OF THE STATE OF WEST BENGAL

A. INTRODUCTION

1. The instant Written Submissions are being filed on behalf of the Applicant – State of West Bengal [intervenor] in the captioned Writ Petition which has been filed by the Petitioner challenging the constitutional validity of the Special Intensive Revision ["**SIR**"] of Electoral Rolls in the State of Bihar, which is being undertaken by the Respondent – Election Commission of India ["**ECI**"] pursuant to its order dated 24.06.2025 ["**Impugned Exercise**"], purportedly issued under Section 21(3) of the Representation of the People Act, 1950 ["**RP Act**"].

2. The Applicant State seeks to intervene in the present matter to assist this Hon'ble Court in adjudicating the legality and constitutional validity of the exercise of SIR of electoral rolls undertaken by the ECI in Bihar which is an unprecedented and unsupported exercise with potentially wide ramifications. The outcome of the present proceedings will significantly affect not just Bihar but other States, including West Bengal, where concerns have arisen about the possible replication of such an exercise ahead of upcoming Assembly elections. The intervention is sought to address critical constitutional issues concerning the scope of the powers of the ECI, the sanctity of the right to vote and the federal balance between the Union and the States.

B. SUBMISSIONS

Re.: Lack of compelling reasons to lawfully justify the Impugned Exercise

3. It is humbly submitted that the Impugned Exercise lacks any statutory basis and is, therefore, *ultra vires* to the Section 21 of the RP Act as well as Rule 21A of the Registration of Electors Rules, 1960 ["**1960 Rules**"] to the extent that the 1960 Rules do not contemplate such a wholesale *de novo* verification of the entire electoral roll in the guise of a 'Special Intensive Revision' within an unreasonably truncated timeframe and absent demonstrated administrative exigency.

4. Pertinently, Section 21(3) of the RP Act permits a special revision of the electoral roll for any constituency or part thereof and only 'for reasons to be recorded', which is a condition precedent conspicuously unfulfilled in the present case. This departure from the statutory scheme is even more stark when seen in light of the legislative intent underlying the RP Act, as reflected in its Statement of Objects and Reasons, which states that:-

> *"...*
> *It further provides for the registration of electors for Parliamentary Constituencies and for the Assembly and Council Constituencies, and the qualifications and disqualifications for such registration. A special provision has been included for relaxation of the residence qualification in the case of displaced persons who migrated before the 25th day of July, 1949, to India from the territory of Pakistan.* ***Provisions have been made for the preparation of electoral rolls, the period of currency of such rolls, and the revision and correction of such rolls during such period in special cases.***
> *..."*
>
> (emphasis supplied)

5. It is submitted that from the use of the phrase *special cases*, it is evident that the legislative intent has always envisaged only targeted revisions and corrections of electoral rolls, confined to a specific constituency or part thereof and undertaken solely where special, exceptional and compelling reasons exist. A disruptive, State-wide exercise [i.e. Impugned Exercise], which inverts the settled presumption of validity accorded to enrolled electors, finds no sanction in the statutory framework.

6. It is apposite to mention that since 2003, 5 [five] General Elections and 5 [five] Assembly Elections have taken place in the State of Bihar, during which its electoral rolls have been continuously updated to add new electors and remove ineligible ones. Notably, a Special Summary Revision ["**SSR**"] had only recently been concluded in the State of Bihar between 29.10.2024 and 06.01.2025, with 01.01.2025 as the qualifying date, followed by continuous updating until June 2025. The electoral rolls, having already been finalised through a statutorily mandated process supervised by the ECI itself, were fit and sufficient for use in the forthcoming Assembly Elections.

7. The ECI has sought to justify the Impugned Exercise by placing reliance on the special revision of electoral rolls undertaken in the State of Bihar in 2003. However, such reliance is wholly misplaced. The 2003 revision, like similar exercises conducted in 2004 in the North-Eastern States and the erstwhile State of Jammu and Kashmir, was designed as a structured and multi-phase process spread over an extended period, which provided sufficient time for preparatory work, house-to-house enumeration, verification and the disposal of claims and objections. Crucially, reports suggest that there was no requirement for voters already enrolled in the electoral rolls to prove their citizenship during house-to-house verification. Since the computerisation of electoral rolls post-2003, no comparable large-scale State wide and disruptive exercise has been undertaken, making the present Impugned Exercise an unprecedented and unjustified departure from settled electoral practice.

8. In these circumstances, there existed no necessity for directing a *de novo* verification of this nature, nor does the order of the ECI dated 24.06.2025, disclose any exceptional or compelling reason that could constitute adequate justification for the Impugned Exercise. The order thus amounts to a colourable exercise of power and is patently arbitrary, unreasonable and egregious.

9. In effect, it serves only to burden voters with onerous documentation requirements to re-establish their eligibility within an unreasonably truncated timeframe, while also reversing the settled presumption of legitimacy accorded

to an enrolled elector. The said Impugned Exercise is in derogation of the observations of this Hon'ble Court in the case of *Lal Babu Hussein* v. *Electoral Registration Officer* reported as (1995) 3 SCC 100, wherein this Hon'ble Court criticised such a hasty and arbitrary process likely to result in the disenfranchisement of *bona fide* electors and held that:-

> *"...*
> *From what we have stated hereinbefore it is clear that inhabitants of certain constituencies in Bombay and Delhi were treated as suspect foreigners and enumerators were appointed to verify if persons residing in certain polling stations were not citizens. The police was employed for this purpose and as observed earlier in Bombay they addressed as many as 1.67 lakh notices calling upon the addressees to produce (i) birth certificates, (ii) Indian passports, if any, (iii) citizenship certificates and/or (iv) extracts of entry made in the register of citizenship. In Delhi also similar notices were addressed to hundreds of residents of Matia Mahal constituency requiring them to produce the aforestated documents. The time given was short and requests for extension of time were refused presumably because the work had to be completed within a given time-frame. Except the documents stated in the notices, no other proof, documentary or otherwise, was entertained. The fact that the addressees were by and large uneducated and belonged to the working class, particularly those who lived in jhuggi jhompris was overlooked. Perhaps the instructions issued from time to time by the office of the Election Commission created an atmosphere which gave wrong signals that the verification had to be completed within the time-frame failing which they would incur the displeasure of the Election Commission exposing them to disciplinary action. This is evident from the fact that the police refused to accept any other document and prepared stereotype reports which betray non-application of mind and the Electoral Registration Officers abdicated their functions and merely superadded their seals to such reports.* ***This, notwithstanding the fact that these persons were voters in previous elections and hence it would ordinarily appear that their cases were verified before their names were entered in the electoral rolls. That is because it may be presumed that official acts performed under the provisions of the 1950 Act or the 1960 Rules were regularly done. Their names were already on the rolls and since they were sought to be removed by undertaking a special revision, whether intensive or otherwise, the procedure for removal had to be followed.*** *Besides, as stated earlier, the atmosphere was fairly charged and because of the statements made time and again by the Election Commission the police went about its task with a mind-set which gave practically no*

opportunity to the addressees to place the relevant material for whatever it was worth because no other documentary evidence, save and except that mentioned in the show-cause notices, was entertained. Even the Electoral Registration Officers merely acted on the police report, copies whereof were admittedly not supplied to the addressees thereby making a mockery of the reasonable opportunity of being heard requirement contemplated under the 1950 Act and the 1960 Rules...

Having taken the guidelines suggested by either side into consideration and having heard counsel, we proceed to dispose of all the three matters by giving the following directions:

1. We allow the appeal arising from SLP (C) No. 21961 of 1994 and set aside the impugned judgment and order of the Division Bench of the Bombay High Court dated 17-11-1994, except the undertakings given by the learned Advocate General;

2. In all the three cases we quash the proceedings and direct that the Election Commission may, if so desired, initiate fresh proceedings by issuance of a notice under the relevant provision disclosing the material on the basis whereof it has reason to suspect that the person concerned is not a citizen of India;

3. ***If any person whose citizenship is suspected is shown to have been included in the immediately preceding electoral roll, the Electoral Registration Officer or any other officer inquiring into the matter shall bear in mind that the entire gamut for inclusion of the name in the electoral roll must have been undertaken and hence adequate probative value be attached to that factum before issuance of notice and in subsequent proceedings****;*

4. ***The Officer holding the enquiry shall bear in mind that the enquiry being of quasi-judicial nature, he must entertain all such evidence, documentary or otherwise, the affected person concerned may like to tender in evidence and disclose all such material on which he proposes to place reliance, so that the person concerned has had a reasonable opportunity of rebutting such evidence. The person concerned, it must always be remembered, must have a reasonable opportunity of being heard****;*

5. Needless to state that the Officer inquiring into the matter must apply his mind independently to the material placed before him and without being influenced by extraneous considerations or instructions;

6. Before taking a final decision in the matter, the Officer concerned will bear in mind the provisions of the Constitution and the Citizenship Act extracted hereinbefore and all related provisions bearing on the question of citizenship and then pass an appropriate speaking order (since an appeal is provided);

7. ***The directive issued by the Election Commission on 9-9-1994 prohibiting the Officer from entertaining certain documents will stand quashed and the documents will be received, if tendered, and its evidentiary value assessed and applied in decision-making****;*

8. These guidelines not being exhaustive, the Officer concerned must, where special situations arise, conduct themselves fairly and in a manner consistent with the principles of natural justice and should not appear to be acting on any preconceived notions; and;

9. ***We deem it appropriate to clarify that the final electoral roll with regard to others whose names were not sought to be deleted on the suspicion that they were not citizens of India shall remain undisturbed but in respect of the petitioners and others similarly situated, these being petitions in the nature of public interest litigations, if the revision of the roll is not possible on account of paucity of time, they will be governed by the previous roll.****"*

(emphasis supplied)

Re.: Violation of Part III and Articles 324, 325 and 326 of the Constitution of India

10. It is submitted that the Impugned Exercise directly infringes the fundamental rights of voters as enshrined under under Articles 14, 19(1)(a) and 21 of the Constitution of India. The Impugned Exercise further also violates Articles 324, 325 and 326 of the Constitution of India, thereby undermining the sanctity of the right to vote, fairness of the electoral process and the constitutional commitment to free and fair elections based on universal adult franchise, which forms part of the basic structure of the Constitution of India.

11. In particular, for the purposes of the Impugned Exercise, the ECI has directed that:-

(a) **Electors born before 01.07.1987**, must produce documents to establish their date or place of birth;

(b) **Electors born between 01.07.1987 and 02.12.2004,** must produce documents to establish their date or place of birth, as well as furnish similar proof for either parent; and

(c) **Electors born after 02.12.2004**, must produce documents to establish their date or place of birth and submit such documents for both parents.

12. This artificial classification introduced *inter se* electors based on age and date of birth, imposing unequal and onerous documentation requirements on certain electors without any rational justification is arbitrary, irrational and wholly unrelated to the stated objective of maintaining accurate electoral rolls, and accordingly does not pass muster under Article 14 of the Constitution of India.

13. Furthermore, the Impugned Exercise limits proof of eligibility to an unduly narrow list of 11 [eleven] documents, while arbitrarily excluding widely accepted and government issued identity documents such as Aadhaar, PAN, Voter ID and Ration Card, all of which ordinarily carry a statutory presumption of authenticity. Such exclusion disproportionately burdens vulnerable sections of society, including migrants, economically weaker sections and marginalised communities, who are least likely to possess or readily produce the prescribed documents within the truncated timeframe. This approach is manifestly arbitrary, violative of Article 14 of the Constitution of India and runs contrary to the ruling of this Hon'ble Court in *Lal Babu Hussein [supra]* wherein this Hon'ble Court categorically deprecated the prohibition of otherwise valid and widely available identity documents.

14. It is submitted that universal adult suffrage, constitutionally guaranteed under Article 326 of the Constitution of India, as the foundational basis of free and fair elections is integral to the democratic framework of the Republic. Therefore, wrongful exclusion from electoral rolls strikes at the very core of this guarantee and directly infringes Article 19(1)(a) of the Constitution of India, which protects the expression of political opinion of which the freedom of voting is an essential

extension. This Hon'ble Court in the case of *People's Union for Civil Liberties* v. *Union of India* reported as (2013) 10 SCC 1, held that:-

> *"...[T]he right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, namely the RP Act. That, in my understanding, is the correct legal position as regards the nature of the right to vote in elections to the House of the People and Legislative Assemblies. It is not very accurate to describe it as a statutory right, pure and simple. Even with this clarification, the argument of the learned Solicitor-General that the right to vote not being a fundamental right, the information which at best facilitates meaningful exercise of that right cannot be read as an integral part of any fundamental right, remains to be squarely met. Here, a distinction has to be drawn between the conferment of the right to vote on fulfilment of requisite criteria and the culmination of that right in the final act of expressing choice towards a particular candidate by means of ballot.* ***Though the initial right cannot be placed on the pedestal of a fundamental right, but, at the stage when the voter goes to the polling booth and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate tantamounts to expression of his opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter. That is where Article 19(1)(a) is attracted. Freedom of voting as distinct from right to vote is thus a species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom.****"*

(emphasis supplied)

15. In this context, it is also apposite to refer to the separate opinion of Hon'ble Mr Justice Ajay Rastogi in the case of *Anoop Baranwal* v. *Union of India* reported as (2023) 6 SCC 161, wherein it was emphasised that the ECI must remain fearlessly and robustly independent and free from any executive influence that could compromise its neutrality. Significantly, in his separate opinion, Hon'ble Mr Justice Ajay Rastogi held that the right to vote was a fundamental right forming part of Part III of the Constitution of India. The relevant portion of the concurring opinion is extracted below for the ease of reference:-

> *"****The right to take part in the conduct of public affairs as a voter is the core of the democratic form of Government, which is a basic feature of the Constitution. The right to vote is an expression of***

> ***the choice of the citizen, which is a fundamental right under Article 19(1)(a). The right to vote is a part of a citizen's life as it is their indispensable tool to shape their own destinies by choosing the Government they want. In that sense, it is a reflection of Article 21. In history, the right to vote was denied to women and those were socially oppressed. Our Constitution took a visionary step by extending franchise to everyone. In that way, the right to vote enshrines the protection guaranteed under Articles 15 and 17. Therefore, the right to vote is not limited only to Article 326, but flows through Articles 15, 17, 19 and 21. Article 326 has to be read along with these provisions. We therefore declare the right to vote in direct elections as a fundamental right, subject to limitations laid down in Article 326.*** *This Court has precedents to support its reasoning. In Unni Krishnan, J.P. v. State of A.P., this Court read Articles 45 and 46 along with Article 21 to hold that the right to education is a fundamental right for children between the age group of 6-14.*
>
> *Now that we have held that the right to vote is not merely a constitutional right, but a component of Part III of the Constitution as well, it raises the level of scrutiny on the working of the Election Commission of India, which is responsible for conducting free and fair elections. As it is a question of constitutional as well as fundamental rights, this Court needs to ensure that the working of the Election Commission under Article 324 facilitates the protection of people's voting rights."*
>
> (emphasis supplied)

16. As observed above, the right to vote is an essential facet of a citizen's life, serving as an indispensable tool through which individuals shape their destinies by choosing the Government that governs them. In this sense, it is integrally linked to the constitutional guarantees under Article 21 of the Constitution of India. The arbitrary removal of names from electoral rolls without due process disproportionately impacts vulnerable sections of society and undermines not only their rights under Article 326 of the Constitution of India and the RP Act but also the inherent dignity of these individuals. It is submitted that persons excluded through the Impugned Exercise risk being subjected to social stigma and the ignominy of being branded as 'doubtful voters' or 'infiltrators', thereby striking at the very core of the right to live with dignity as enshrined under Article 21 of the Constitution of India.

17. It is further submitted that the Impugned Exercise represents a clear case of

constitutional overreach as Article 324 of the Constitution of India, while vesting the ECI with superintendence and control over elections, operates only in fields unoccupied by legislation. The preparation and revision of electoral rolls are comprehensively governed by the RP Act and the 1960 Rules. By mandating an unprecedented *de novo* verification of voters based on an arbitrary 2003 cut-off date, the ECI has acted in violation of, rather than in conformity with, the statutory framework, thereby seeking not to supplement but to supplant it. Such an exercise of power stands expressly proscribed by this Hon'ble Court in *Mohinder Singh Gill* v. *Chief Election Commissioner* reported as (1978) 1 SCC 405 and *AC Jose* v. *Sivan Pillai* reported as (1984) 2 SCC 656.

18. In *Lal Babu Hussein* [*supra*], this Hon'ble Court held that the question whether a person is a foreigner i.e non-citizen is a question of fact and has to be determined by the Central Government under the Citizenship Act, 1955. Given the quasi-judicial character of such an exercise, it would require careful and detailed scrutiny of evidence. However, if any authority is called upon to decide, for the limited purpose of another law, whether a person is a citizen of India, such an authority is, nonetheless, obligated to examine the matter strictly within the framework of the constitutional provisions and provisions of the Citizenship Act, 1955. It was held by this Hon'ble Court in *Lal Babu Hussein* [*supra*] that:-

> *"6. From the resume of the aforementioned provisions of the Constitution and the Citizenship Act, it becomes clear that whenever any authority is called upon to decide even for the limited purpose of another law, whether a person is or is not a citizen of India, the authority must carefully examine the question in the context of the constitutional provisions and the provisions of the Citizenship Act extracted hereinbefore.*
>
> *(emphasis supplied)*

19. The extent to which the ECI can be permitted to act as a quasi-judicial body and decide questions of fact with wide powers to deprive a person of his essential fundamental rights is an issue which requires thorough judicial scrutiny.

20. It is also relevant to state in this regard that neither the Constitution of India nor the Citizenship Act, 1955 specify document[s] that can serve as a conclusive proof of citizenship of an individual. In light of this, any attempt to fixate on a predetermined and limited set of documents, such as the listed 11 [eleven] documents, is arbitrary, lacks statutory backing and is inconsistent with the constitutional and legal framework governing citizenship.

21. It is submitted that the refusal of the ECI to accept Aadhaar, PAN, Voter ID and Ration Card while simultaneously accepting other comparable documents is arbitrary, discriminatory, devoid of any intelligible differentia and violative of Article 14 of the Constitution of India. The selective exclusion of widely recognised government issued documents also fail the test of fairness and reasonableness.

Re.: Heightened risk of wrongful exclusion among vulnerable sections

22. At the cost of repetition, it is submitted that the onerous documentation requirements prescribed by the ECI to carry out the Impugned Exercise disproportionately burden the youth, migrants, economically weaker sections and marginalised communities, who are least likely to be able to furnish such records within the unreasonably truncated timeline prescribed. As stated above, this inequity is further aggravated by the arbitrary exclusion of widely accepted government issued identity documents, despite such documents carrying a statutory presumption of correctness.

23. It is submitted that the Impugned Exercise heightens the risk of wrongful exclusion, carrying with it the consequence of depriving affected individuals of their statutory rights and constitutionally guaranteed entitlements. As a result, and for the first time in electoral history of India, electors whose names are already included in the rolls and who have repeatedly exercised their franchise in previous elections now stand at risk of being presumed ineligible solely for non-compliance with the unreasonable and onerous directions issued by the ECI to carry out the Impugned Exercise.

24. It is submitted that there have been deeply disturbing reports of coercive tactics including but not limited to, removal of names from electoral rolls without affording meaningful opportunity of hearing or verification. In particular, allegations have emerged that certain voters, despite being Indian citizens and possessing valid government-issued identity documents such as Aadhaar and EPIC, have been arbitrarily branded as non-citizens, leading to their wrongful exclusion. Such actions have been reportedly undertaken using digital means at data centres, without adherence to the principles of natural justice or due process under the RP Act and 1960 Rules. The consequence of such arbitrary deletions is not merely procedural but strikes at the heart of electoral citizenship. Such unilateral disenfranchisement, absent statutory safeguards or judicial oversight, has already caused widespread fear, including reported instances of suicides, and requires urgent judicial intervention.

25. It is further submitted that the refusal to accept Aadhaar and EPIC, despite billions of public funds having been spent on their generation and issuance, represents a betrayal of legitimate expectations created by the State itself and violates settled norms of administrative fairness. In a context where institutional births and formal documentation were not commonplace 2 [two] decades ago, particularly among rural and marginalised communities, it is wholly unreasonable to demand birth certificates or parental proof from electors born before 2002. These voters have consistently participated in the democratic process in earlier elections and their sudden exclusion on the basis of retrospective documentation requirements is manifestly unjust. The arbitrary discarding of statutory identity documents, combined with the lack of transparency in deletion procedures, raises a real and imminent risk of constitutional subversion and widespread disenfranchisement, warranting this Hon'ble Court's urgent and corrective scrutiny.

Re.: Violation of the principle of Co-operative Federalism

26. It is submitted that the unilateral imposition of such an unprecedented, resource-intensive and socially disruptive process on a State, without

consultation or demonstrable administrative exigency, transgresses the federal structure of the Constitution, recognised as part of its basic structure by this Hon'ble Court in *SR Bommai* v. *Union of India* reported as (1994) 3 SCC 1. The Impugned Exercise gives a complete go-by to the statutory framework, particularly Section 21(3) of the RP Act, which permits a special revision only for specified constituencies or parts thereof and only upon recorded reasons justifying such an exercise. In bypassing these statutory safeguards, the State concerned has effectively been reduced to a mere implementing agency for centrally determined, unilateral processes posing a grave risk of disenfranchising large numbers of *bona fide* voters within its territorial limits and infringing their constitutionally guaranteed rights.

27. It is submitted that under Section 13B of the RP Act, read with the 1960 Rules, the primary responsibility for implementing any revision of electoral rolls rests with the State Government, which is required to provide personnel, logistics and infrastructure whenever directed by the ECI. An exercise of the unprecedented scale and intensity of the Impugned Exercise imposes an unplanned and extraordinary financial and administrative burden on the State machinery, compelling it to divert significant human and fiscal resources away from essential governance and welfare functions. This strain is aggravated by the diversion of teachers, panchayat officials, *anganwadi* workers, health and other personnel, who are critical to the delivery of education, public health, food security and various welfare schemes. This may result in the disruption of essential services and in some cases even affect statutory entitlements of beneficiaries under various schemes. When a decision to undertake an exercise of the unprecedented scale of the Impugned Exercise is made unilaterally and without prior consultation with the State Government and/or any demonstrated administrative necessity and despite the recent completion of a Special Summary Revision in strict conformity with the statutory framework, it undermines the fragile and delicate edifice of trust and cooperation on which Centre and the State relations in electoral administration rest.

28. Further, by imposing extraordinary financial and administrative burdens without justification or dialogue, the Impugned Exercise inflicts irreparable harm on the delicate federal balance between the Centre and the States. The concept of coequal constitutional units [i.e. the Center and the State] in a framework of cooperative federalism has been recognized by this Hon'ble Court in *Jindal Stainless Limited* v. *State of Haryana* reported as (2017) 12 SCC 1, besides understandably generating widespread alarm among States, including the State of West Bengal, over the potential misuse of the powers of ECI affecting lakh of electors within their territorial jurisdictions, and the integrity of electoral governance being compromised. This Hon'ble Court in *Jindal Stainless Limited [supra]* held that:-

> *"**The Union and the States are co-equal in the Indian Federal structure. Our framers created a unique federal structure which cannot be abridged in a sentence or two.** The nature of our federalism can only be studied having a thorough understanding of all the provisions of the Constitution. Confirmation that the Union and States are co-equals in the Indian federal structure. can be found in the speeches of Hon'ble P.S. Deshmukh, Shri T. T. Krishnamachari and Hon'ble Dr. B. R. Ambedkar before the Constituent Assembly. **Common philosophy which runs through our Constitution is that both Center and States have been vested with the substantial powers which are necessary to preserve our unique federation with clear demarcation of power. Calling India as quasi-federal might not be advisable as our features are unique and quite different from other Countries like United States of America etc. Courts in India should strive to preserve this unique balance which our framers envisaged, any interference into this balancing act would be detrimental for grand vision proscribed by our makers.** Amphibious nature of our federalism has been even noted by the Sarkaria Commission Report on Center-State relationship. Co-operative federalism envisaged under our Constitution is a result of pick and choose policy which our framers abstracted from the wisdom of working experience of other Constitutions."*

(Emphasis supplied)

29. It is submitted that the importance of co-operation between the ECI and the State Government for the conduct of a free and fair election has also been highlighted by this Hon'ble Court in *Election Commission of India v. State of T.N.* reported as 1995 Supp (3) SCC 379. This Hon'ble Court has held that the breadth of

power exercised by the ECI corresponds to the gravity of constitutional responsibilities it upholds and discharges. However, given the scale and complexity of the election process, differences in perception may arise between the stakeholders – especially the ECI and the Central or the State Government. In such a case, a harmonious and collaborative approach is to be taken by the parties. Differing viewpoints may exist, which should be resolved through mutual dialogue. The Hon'ble Court in *Election Commission of India [supra]* held that:-

> *"The Election Commission of India is a high constitutional authority charged with the function and the duty of ensuring free and fair elections and of the purity of the electoral process. It has all the incidental and ancillary powers to effectuate the constitutional objective and purpose.* ***The plenitude of the Commission's powers corresponds to the high constitutional functions it has to discharge. In an exercise of the magnitude involved in ensuring free and fair elections in the vastness of our country, there are bound to be differences of perception as to the law and order situation in any particular constituency at any given time and as to the remedial requirements.*** *Then again, there may be intrinsic limitations on the resources of the Central Government to meet in full the demands of the Election Commission. There may again be honest differences of opinion in the assessment of the magnitude of the security machinery.* ***There must, in the very nature of the complexities and imponderables inherent in such situations, be a harmonious functioning of the Election Commission and the Governments, both State and Central. If there are mutually irreconcilable viewpoints, there must be a mechanism to resolve them****. The assessment of the Election Commission as to the state of law and order and the nature and adequacy of the machinery to deal with situations so as to ensure free and fair elections must, prima facie, prevail. But, there may be limitations of resources. Situation of this kind should be resolved by mutual discussion and should not be blown up into public confrontations. This is not good for a healthy democracy. The Election Commission of India and the Union Government should find a mutually acceptable coordinating machinery for resolution of these differences."*
>
> (emphasis supplied)

C. CONCLUSION

30. The Impugned Exercise has effectively subjected voters in Bihar to a de facto citizenship verification, generating widespread apprehension and insecurity

across the country. These concerns are particularly acute in the State of West Bengal, where a significant migrant population and heightened socio-political sensitivities make the State especially vulnerable to the exclusionary consequences of such a hasty and unreasoned exercise, which is statutorily and constitutionally suspect.

31. It is submitted that marginalised communities, migrants, economically weaker sections and especially linguistic and religious minorities [most notably women from these groups] reportedly face an elevated risk of wrongful deletion from electoral rolls, as indicated by analysis of the draft roll of the State of Bihar published by the ECI on 01.08.2025. These findings are deeply troubling for all States, including State of West Bengal, which already grapples with an alarming public narrative fuelled by insensitive political statements and sections of the mainstream media portraying Bengali speaking persons as 'infiltrators'. This narrative has translated into arbitrary crackdowns and detentions of Bengali-speaking persons on vague suspicions of illegal migration, exemplified by a recent communication from the Delhi Police controversially describing Bangla [language of over ten crore Indian citizens] as the 'Bangladeshi national language'.

32. In view of the foregoing, there exists a grave and imminent risk of *bona fide* citizens, particularly those belonging to vulnerable and marginalised communities, being wrongfully targeted and disenfranchised, thereby imperilling democratic polity, constitutional morality, communal harmony, public order and the constitutional obligations of the State of West Bengal, thus necessitating the urgent intervention of this Hon'ble Court.

Filed By:

KUNAL MIMANI
Advocate for the Intervenor

Date: 08.08.2025
Place: New Delhi