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### Up to 15% of voters left out of rolls, without even a fair hearing

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On August 21, 1992, the Election Commission of India asked registration officers deputed to prepare the voters' list to identify and delete foreign nationals from the electoral rolls. It also asked district collectors and the police to prepare a list of suspected foreign nationals. The police listed the residents of the localities, it believed, had a substantial presence of foreign nationals based on "intelligence reports". Only those who were not in this list could apply for enrolment as voters. The others had to provide documentary evidence to satisfy registration officers that they were Indian citizens.

Expectedly, this enumeration and the rejection of voters in thousands led to mayhem. Alleging harassment and disenfranchisement, citizen groups went to the Supreme Court, which came down heavily on an extremely embarrassed state machinery. The right of citizens to participate in elections, according to the principle of adult franchise, is central to their citizenship status. Responding to these concerns in the L B Hussein case, the court ruled that determination of the citizenship status of voters should be treated like a court proceeding. The EC must adopt the highest procedural standards if it wishes to deny any person the right to vote.

Unfortunately, we may have come full circle. Two of us conducted an empirical study showing that millions of adults may have been excluded from electoral lists (EPW, May 19, 2018). Up to 15% of the total electorate of around 130 million adult citizens is missing from the electoral rolls. Data also showed a disproportionate exclusion of Muslims, and pointed to the possibility of similar exclusion among marginalised castes.

To assess the extent to which rejections by the EC contribute to this, we studied data from Karnataka. Out of 2.8 lakh new applications for enrolment during 2017-18, a high 62% were rejected — as many as 18% were denied on the ground of not being Indian citizens and 24% for unspecified reasons. To put it more dramatically, among the total number of rejects, around 30% were rejected on the ground of not being Indian citizens and 39% for reasons not publicly available.

We visited a selection of rejected households to assess the procedures that the EC had followed. The claimants were oblivious of the fact that they had been rejected and the reasons for it. They had been given no meaningful opportunity to present contrary evidence to the commission. We found that the rejected individuals had Aadhaar for their residential address and were able to produce additional documents like electricity bills. Others reported to have been born at their registered residential addresses and were able to produce school certificates in lieu of birth certificates.

As more evidence comes in, it is becoming increasingly apparent that there has been a disconcerting level of procedural violation. Under Indian election law, a person can be disqualified from the electoral rolls if he/she is not a citizen. The EC is expected to take the citizenship status into account as it updates the rolls. But the law also requires that this be done strictly in line with principles of natural justice and transparency.

The Representation of People's Act 1950 provides that registration officers must evaluate fresh claims for enrolment only after "proper verification of facts". A detailed due process is further provided under the Registration of Electors Rules 1960, including notification to claimants, in-person hearing and the recording of reasons.

The L B Hussein case further emphasised the importance of these procedural safeguards. The SC lay down that individuals already on the rolls will be presumed to be citizens. Individuals who are rejected will have to be given reasons why their citizenship is suspect, and then allowed to present evidence to contest that. The court rejected any attempt at limiting the range of documents that individuals could produce to establish citizenship. Finally, the EC must independently apply its mind in each individual case and not rely on external instructions. The court found it unacceptable that the EC relied on generalisations based on police reports.

Procedural safeguards are crucial for upholding the constitutional promise of universal adult franchise. Without due process, there is a danger of abuse of power on the ground and disenfranchisement of the weakest sections of society. The unusually high proportion of individuals being rejected on the ground of not being Indian citizens, without getting a fair opportunity to contest their exclusion, amounts to a crisis for democracy. The Election Commission must immediately respond with a rectification protocol to ensure that citizens do not miss the opportunity to vote.

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