

04.06.2026

**Legitimising Mass Disenfranchisement:
*PUCL Condemns the Supreme Court's SIR Verdict***

The PUCL condemns the 27th May, 2026 decision of the Supreme Court in '*Association of Democratic Rights v. Election Commission of India*' as a singular blow to the principle of political equality in India. In one of its most consequential decisions, the Court legitimized the mass disenfranchisement exercise conducted by the Election Commission of India which disproportionately affected minorities, migrants, the poor and women and was contrary to existing law and procedure. This mass disenfranchisement exercise went under the nomenclature of 'Special Intensive Review' (SIR).

While the Court goes through legal pyrotechnics to uphold the SIR, none of its legal justifications can hide the fact that at the end of the SIR exercise, the electorate of Bihar has effectively shrunk by more than 68 lakh voters. 65 lakh voters were deleted when the draft rolls were published. When the final rolls were published, another 3.66 lakh voters were deleted and 21.53 lakh voters were added. However, due to lack of transparency in the data published by ECI, it is impossible to know if the 21.53 lakh additions were of the same voters whose names were deleted. It has been widely reported that most of the deletions that took place were of voters from low-income, migrant working population as well as women.

The analysis placed by eminent social scientist Yogendra Yadav before the Court notes that 'there are three criteria for assessing the quality of electoral rolls: completeness, accuracy and equity.' 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.' Yadav demonstrated that 'before the impugned SIR exercise, Bihar's EP Ratio was at 97%, which is slightly below the national average.' After the SIR exercise, 'the ratio has been brought down to 88%, which is a sharp fall of nine percentage points.'

Yogendra Yadav further buttresses this argument by reference to the census data. As per the census data, 8.18 crore adults are presumptively eligible to vote. Before the SIR, the number of voters was 7.89 crore voters. The aim of the SIR should have been to ensure that all those eligible to vote are included in the rolls which means that the effort should have been to increase the number of voters to include as many of the 8.18 crore eligible voters as possible. However, instead of inclusion of eligible voters, what resulted through the SIR is the exclusion of eligible voters. As Yadav submitted before the Court, '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.'

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The Court failed to recognise that the SIR, by design, excludes the working poor, women and other marginalised communities. This is because the proof of eligibility in the SIR was restricted to a set of 11 documents, most of which are less likely to be found in the homes of marginalised communities. As the submissions before the Court indicated, the poorest people are often the ones with the least documents. The fact that the Court gave the green signal to the ECI's exclusion of documents to access the ability to vote such as ration card and EPIC (which was previously accepted by the ECI) indicts the Court's failure to call out the class bias of the ECI's decision on the question of what are the valid documents that presumptive voters can submit. This difficulty is compounded by the fact that those born after 2003, were asked to produce identity documents of both their parents. The Court ignored the sociological reality that India is a document poor society and came to the wrong conclusion that these documents are "ordinarily available to electors".

Effect of the SC ruling: *Approval for mass disenfranchisement*

What the Supreme Court judgment does is to give the seal of legal approval to mass disenfranchisement. The SIR lays waste to the work of the Election Commission ever since independence when the ECI sought to include more and more electors. This constitutional imperative to include, the SIR ignores, in its haste to remove voters. The Court turns a blind eye to the disproportionate removal of voters who are women and minorities from the rolls without any fair opportunity to contest the removal.

The ECI's work over the decades has been geared towards facilitating the inclusion of as many voters as possible in a society in which the literacy levels were historically low. In this context, the structural orientation of the ECI towards inclusion of as many voters as possible was manifested in the Representation of the People Act, 1951, the Registration of Electors Rules, 1960 as well as the manuals of the ECI as well as judgments of the Supreme Court. It is this entire body of law meant to ensure that electoral rolls are premised on inclusion, developed over decades, which the ECI ignored. The illegalities were encoded in the decision to do the SIR as well as the timing of the SIR. Illegality was also structurally inbuilt into the short time period in which it was conducted. Illegality pervaded the lack of procedural safeguards which were meant to ensure that no voter who was on the rolls was unfairly deleted from the rolls. It is unfortunate that the Supreme Court failed to evaluate the illegal conduct of the ECI against the parameter of inclusion which the Constitution mandated in its founding promise of '*We the people*'.

Why the SIR now: *Key question ignored*

The most basic question as to why the SIR was deemed necessary today, was not answered with any satisfaction by the ECI. The Court accepted without any evidence or data, the ECI's bald and bare assertion that the SIR was required because, 'a demographic

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change due to rapid urbanisation and migration in the last 20 years since the intensive revision in 2003 which has led to repeated, multiple and defective entries on the electoral roll. Second, the mandate of the Commission under Article 326 to ensure that only Indian citizens are on the electoral roll.'

Surely, it is the responsibility of the Court to probe the assertions a bit further? What is the data which indicates the scale of multiple and defective entries on the electoral rolls? How many non-Indian citizens are on the electoral rolls? These questions ought to have been asked by the Court as the ECI in effect delegitimized all its previous work by starting the process of enrolment of voters anew. Was the problem serious enough to create a new electoral roll, ignoring the legal framework on elections developed by the ECI as well as the interpretations of the Supreme Court?

The ECI found its scrap of legality for doing the SIR in Section 21 (3) of the Representation of People Act, 1950 which states that, '*Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit.*' The strained interpretation arrived at is to argue that SIR is justified under this provision as the word used is '*any constituency*', which can be taken to mean '*every*' constituency.

So, in effect, what is actually a limited power given to the ECI is interpreted by the apex Court as an unlimited power to do SIR throughout the country.

This technique of statutory interpretation by the Supreme Court is devoid of a constitutional ethos. One would expect the highest constitutional court of the largest democracy in the world, to interpret a statute of such far reaching effects such as the Representation of the People Act, not merely in terms of its wording, but rather interpret the wording animated with the spirit of the Constitution.

Upturning the constitutional ethos

The ethos of the Constitution is manifested in the Supreme Court decision in '*Lal Babu Hussain v. Electoral Officer*' (1995) which had held that the inclusion of a person's name in the electoral roll carries with it a presumption of eligibility to vote and presumption of citizenship. In this case the court had directed that where the citizenship of a person is suspected, a fresh notice had to be issued "*disclosing the material on the basis whereof he has reason to suspect that the person concerned is not a citizen of India.*" In *ADR v. ECI* (2026), the Court ignored this crucial protection given to people already enrolled in voter rolls, on the flimsy basis that Lal Babu Hussain was not delivered in the context of a systemic or intensive verification exercise by the ECI. The Court failed to acknowledge that SIR completely reverses the presumption that a person on the voter roll, and who has voted in previous elections, is a citizen.

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The diabolical response: *Backdoor entry of NRC and depriving welfare schemes*

The troubling nature of this judgment lies in the fact that it opens the door for the NRC. The Court holds that where the Commission “is not satisfied that a person meets the statutory conditions for inclusion in the electoral roll,” it “would be incumbent upon it to refer such an individual to the competent authority within the Central Government for adjudication” of citizenship under the Citizenship Act, 1955. The Court mandates the setting up of an institutional infrastructure within four weeks without mandating any constitutional safeguards. The similarities to the NRC process, with all its documented catastrophes, are too stark to ignore. The Court has created the architecture of an NRC by judicial fiat, through the backdoor of an electoral revision exercise.

The implications of this judgment are far reaching and go beyond the right to vote. Even before the Court delivered this judgement, the Bihar Chief Minister had already announced that people deleted in the SIR “will not be entitled to any government benefits, including ration and other welfare schemes” and that their bank passbooks will be cancelled. Similar announcements have also been made by West Bengal Ministers. By upholding the constitutionality of the SIR, the Court has legitimised not only disenfranchisement but the stripping away of other socio-economic rights from those who are deleted from the voter rolls. It is not just the right to vote that the SIR threatens to snatch away – it is all other rights guaranteed to us as citizens. This judgment lays the basis for the ECI to go ahead with this exercise of mass disenfranchisement nationwide and a stripping of socio-economic rights from all those whose names are deleted from the rolls.

One had hoped that the Court’s institutional memory would have kicked in and the Court would have recalled how its judgment in ‘*Anoop Baranwal v Union of India*’ (2023) which had laid down an important safeguard to preserve the independence of the ECI was casually overturned by the Modi government. In *Anoop Baranwal* the Court had laid down that the appointment of the Chief Election Commissioner and the Election Commissioners, shall be on the advice of a Committee consisting of the Prime Minister, the Leader of the Opposition of the Lok Sabha and the Chief Justice of India. Just before the parliamentary elections of 2024, the Modi government passed a law nullifying the judgement of the Supreme Court and removing the Chief Justice from the Selection Committee and replacing him with a Union Cabinet Minister. The law now prescribes that the Selection Committee will consist of the Prime Minister, a Union Cabinet Minister, and Leader of Opposition/leader of the largest opposition party in Lok Sabha.

The implications of the overturning of *Anoop Baranwal* has been far reaching. It is the ECI - which is controlled by the ruling party - which has initiated the SIR, ignoring the legal and constitutional framework, essentially to serve the interests of the ruling party. The Supreme Court seems unable to take on board the fact that the SIR process is undertaken by an entity which is no longer independent, but rather by design, totally under the control

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of the government. If the Supreme Court had taken forward its institutional commitment to preserving the independence of the ECI, and hence the right to vote in India it would not have so blithely concluded that the SIR 'exercise is firmly anchored in both constitutional principle and statutory design.'

In conclusion: *Instead of electorate choosing the government, the government is choosing the electorate!*

The PUCL is of the opinion that the judgement in *ADR v ECI* is devoid of a constitutional imagination, lacks fidelity to the existing law on elections and empowers the ECI to lay waste to the principle of political equality.

Just as the Supreme Court betrayed the promise of the Constitution in *ADM Jabalpur* (1976) by stripping individuals of judicial recourse when detained during the emergency, the Supreme Court in *ADR v ECI* (2026) lays waste to one of the key goals of the Constitution so eloquently described by Babasaheb Ambedkar, '*In politics we will be recognizing the principle of one man, one vote and one vote, one value.*'

While *ADM Jabalpur* was limited to the context of the emergency, the decision in *ADR v ECI* sets the seal of the Supreme Court on the betrayal of the promise of political equality, for all time.

This complete betrayal of the promise of political equality in effect sets in place the template for a new India – an India in which the Union government acting through the ECI will select its own electorate. This presages nothing less than the death of democracy as we know it, in this country.

04.06.2026

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