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DUE PROCESS VIOLATIONS IN BIHAR'S SPECIAL INTENSIVE REVISION BY ECI: FROM CLEAN UP TO WIPE OUT

~ *Yasir Mustafa Khan*¹

The Special Intensive Revision (SIR) of voter rolls, started few months before Bihar election was aimed by the Election Commission of India (ECI) to rectify the serious inadequacies in the voting process in Bihar. The SIR which began on June 24, 2025, and ended on September 30, produced a "clean" roll for a total of 74.2 million voters. The SIR represented an attempt to achieve increased accuracy with verification by way of door-to-door visitation, and connection to historically older lists, in some cases back to 2003. Now that the Supreme Court is hearing challenges to the process in cases such as *Association for Democratic Reforms v. Election Commission of India (W.P.(C) No. 784/2025)*, we see not a 'cleanup', but rather a disturbing deletion of names. The SIR has a significant amount of undermined criteria which could disenfranchise millions from their vote, including long-time residents, and Bihar voters. This claim does not simply reinforce the notion of oversight or error; it infringes upon an expressly protected right to vote per Article 326 of the Constitution, as well as many of India's own electoral codes, including Sections 21-26 of the Representation of the People Act, 1950 (RP Act), and the articulated principles of international human rights documents.

The primary concern is the hurried process of the SIR, which does not acknowledge fairness and the requirements of law. The ECI removed more than 65 lakh entries from the original list followed by the removal of another 3.66 lakh entries without first notifying any persons.

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This places the burden on citizens to prove that their eligibility is the same and negates the presumption of validity mandated by section 23 of the RP Act, which requires that ECI maintain rolls that presume citizenship until proven otherwise. Group such as the Association for Democratic Reforms (ADR) contend that this is a violation of Section 22 of the RP Act, which requires individuals be required to receive warning before name removals in addition to section 24 where accountability is allowed for removal but only after the due notice had been explained. In addition, the ECI opted not to use its own software that could be effective for the 2024 national elections and that matched the names, age, photo, and address of any duplicate in its system. They would instead require administrative removal to be honest written led where would also include a checking method that is prone to error and favouritism, which is transparent in compliance with rule 25 of the Registration of Electors Rules, 1960.

In the historic Supreme Court case launched by ADR and others, senior advocate Kapil Sibal, representing petitioner Prof. Manoj Kumar Jha, criticized the ECI during the July and August 2025 hearings for conducting what he referred to as a "citizenship test in camouflaged fashion." Sibal stated that the SIR's requirement for resubmitting forms under Form 6 of the 1960 Rules amounted to a presumption of validity of existing entries that goes beyond the ECI's ability under Section 21 of the RP Act, which only permits periodic reviews without de novo inquiries of citizenship. Citing *Lal Babu Hussein v. Electoral Registration Officer (1995) 3 SCC 640*, Sibal argued that the issue of citizenship falls within the jurisdiction of the Central Government under the Citizenship Act, 1955 and that the ECI could not delete via list without the Central Government formally revoking a person's citizenship so the deletions were arbitrary actions contrary to the equality clause at Article 14. The Court, which included *Justice Surya Kant and Justice Joymalya Bagchi*, raised concerns of a "trust deficit" in relation to the ECI's lack of transparency, noting that while the ECI would not publicly share the deletion lists, they provided the lists to political parties.

There is a lack of transparency as well the ECI has not indicated how many men, women, or youth had their names taken off the list, which raises alarms about the ECI removing names disproportionately in these sub-populations and likely violating the prohibitions contained in Article 15 against discrimination. By July 20, lists of likely removals had

reportedly been shared with political parties. The public forums, one hosted by specialist Jean Drèze, raised significant challenges and led a collective of specialists to call for annulment of the entire process. The Supreme Court's October 9 orders to provide free legal assistance via the Bihar State Legal Service Authority and assistance to the 3.66 lakh who were taken off the voter rolls speak to these problems, which align with prior orders under Section 12 (a-c), providing assistance to disadvantaged litigants under the auspices of the Legal Services Authorities Act, 1987. The judges admonished the ECI saying it had provided the Court "too much anger, not enough sense" when questioning the totally unexplained addition of another 21 lakh voters, which had been highlighted in the October 7th hearing, when the Court asked the ECI to clarify if these were restorative measures for previously deleted names.

Article 21 of the Universal Declaration of Human Rights states that everyone has the right "to take part in the government of his country, directly or through freely chosen representatives." Article 25 of the International Covenant on Civil and Political Rights, which India has signed; ensures that all adults are provided the right to vote and that there are no unreasonable impediments to voting. The withdrawals by the SIR and demand for documents are counter to this requirement by creating barriers to voting in silence that forecloses anyone who might be in a vulnerable category; this complies with what was described as a "pushout plan" in the international coverage of India's clean-up plan regarding voters and can, in parts of the world, be subject to reasonable scrutiny; monitoring the voting rights of the vulnerable are more common in some parts of the world such as in India. Organizations, specifically Amnesty International, have also warned that the longer this remains unaddressed it will impair the "free and fair" election requirement of the treaty and could be topic of assessment at UN level. Particularly in this case and in Bihar, where poverty is magnified, the ECI not only dismiss these agreements but they also do not take them into considerations, all the while allowing for "integrity" flaws and compartmentalization of non-equivalence to voting for all than which the Supreme Court addressed, in part, on September 8, 2025, ordering the ECI to accept Aadhaar, as an additional 12th document of identity pursuant to Section 23(4) of the RP Act, with a caveat that Aadhaar only proved residence but not citizenship, despite Sibal's impassioned case addressing BLO refusals.

After the completion of SIR exercise in Bihar the EC has notified a similar exercise is for 9 other states and 3 UT's. These issues discussed above will remain vital for the upcoming SIR in the different states will again create a chaos for the citizen of the respective states. The Supreme Court before 4th December could either patch these issues or remove them altogether, and possibly by suspending the SIR lists until a revision has clearly been undertaken, as is sought in Sibal's written submissions that challenged the ECI's June 24 Order as unconstitutional. The ECI was once an important institution, and needs to improve, not revert, and part of this will mean restoring its institution's role and responsibilities in the context of elections, with easy access to fair and equitable practices, and appropriate uses of technology, at least in the remediation of future clean ups. True democracy does not flourish out of sanitized lists, but through inclusion of the voices of everyone, no matter their imperfections and faults. Let the crisis catalyse change that makes its mark over the long term.