

Electoral malpractice and the criminalization through Aadhaar money transfersⁱ

Contents

Overview of the issues	1
Criminalization by government	1
Money power and the myth of choice.....	2
The myth of certification of free and fair elections	4
The need for reinforcing the principles of elections	5

Overview of the issues

[Electoral malpractice](#)ⁱⁱ is the manipulation of electoral processes and outcomes to substitute personal or partisan benefit for the public interest. Criminalization is the committing of illegal acts punishable by law. Much of electoral malpractice is not illegal or punishable by law.

Exclusion of voters, inability to ensure that the vote serves as a proxy to *governance* and not government formation, inability to ensure that every vote counts, inability to field or elect a candidate of choice, and inability to demonstrate the fidelity of the voting process are all electoral malpractice as they further or substitute private interests over public interest. Since the purpose of elections, to serve as a proxy to participation in governance and not government formation,ⁱⁱⁱ is defeated with electoral malpractice, this deposition will include electoral malpractice, irrespective of whether it is criminalization.

The exclusion of voters through the manipulation of electoral rolls is submitted in a separate deposition^{iv}. The inability to ensure every vote counts is also submitted in a separate deposition^v. This deposition will address inability to ensure that the vote serves as a proxy to governance, inability to field or elect a candidate of choice, particularly because of criminalization through altered money power of candidates, and inability to demonstrate the fidelity of the voting process.

Criminalization by government

Justice, liberty, equality and fraternity are delivered as a result of governance, not by the existence of government. The Preamble to the Constitution of India promises these, not a government. The Preamble, therefore, is a promise of governance, not government. When the promise of the Preamble is usurped by government in place of governance, it is criminalization by government.

A representative is the result of the promise of the Preamble to be a sovereign, democratic republic. In a sovereign, democratic republic promising justice, liberty, equality and fraternity, a representative is a proxy for governance, *not* government formation. If the representative cannot be one who represents the choice of the people, the representative becomes a proxy to the

formation of government. Elections, then, fail to provide people with the ability to govern themselves.

The process of enabling political parties through registration^{vi} and participation in electoral reforms, rather than the people, further pushes away the ability of the people to participate in governance. The candidates in an election as well as those nominated at other elections are ordered with preference to the recognized political parties, registered political parties and then others^{vii}.

Political parties are focused on formation of governments, not on issues of governance. They are focused on the political interests of their party and its leadership, not on the interests of the people. If it is political parties that are the centerpiece of the Representation of the People Act^{viii}, and not the people, it emerges as the Representation of Political Parties and not people.

We elect candidates to represent a constituency. However, constituencies are not immutable, permanent or administrative boundaries. Constituencies keep getting remapped through a process of delimitation^{ix}. This alters the geography, population and the number of representatives they may have. Constituencies also have no equivalence with the administrative boundaries thus destroying any ability of the people for self-governance.

Furthermore, candidates can represent a constituency where they are not domiciled. This has furthered the cause of career politicians who contest elections from multiple places or from “safe” constituencies in order to win. At the same time some constituencies are reserved^x making it impossible for all persons to participate in governance as the representative becomes one of a section of the community and not for governance for the people of the constituency.

In the absence of national governance policies as being the agenda for elections, government formation, not governance becomes the purpose of elections. The elected become lawmakers who decriminalize their actions or indemnify themselves from their malpractice. Worse, they criminalize the acts of the people whose common interests they were meant to protect.

The laws that decide criminalization of elections are themselves the work of those who benefit in ensuring electoral malpractices are de-criminalized. It is little wonder, then, that most of the electoral malpractices are not declared criminal or indemnify the criminals.

Money power and the myth of choice

The widespread dismay at the criminal background and money power of the candidates participating in various elections reflects a failure of the law to empower or attract candidates without muscle or money power, or those who inspire trust, understand local environmental and developmental problems or have visions beyond their own private interests.

As pointed out by Prof. Lawrence Lessig of Harvard Law School, our choice of representatives is already hijacked by those, like political parties and their anonymous donors, who choose and restrict the candidates we can vote for. In the process we have forgotten that democracy is not about voting or winning an election but about participation in decision making to protect public interest and national interest.

The procedures for nomination of candidates^{xi} fail to inspire anyone from the electoral college to seek candidacy, save those with money^{xii} or muscle. Currently there is no effort to allow the voter to even nominate a candidate^{xiii} of choice. The nomination procedures^{xiv} act as a filter rather than an enabler of choice to the voters to nominate candidates. This violates the principle of ensuring elections will offer candidates of choice to the voters.

The publishing of affidavits and criminal records have not made the elected offices free from criminal background, free of money power, diminished from private interests or encouraged, let alone favored, those with public interests and understanding of environmental and development issues. The candidates in the fray are restricted by the money power that is required to be in elections.

Innovative methods of laundering money for elections have emerged in the last decade. Such mechanisms include Aadhaar Pay, Universal Payment Interface (UPI) and payment wallets like Paytm.

Since money must rest in bank accounts, Aadhaar payments require the mapping of Aadhaar numbers to bank accounts. This mapping is maintained in a table with a non-government private company that manages Aadhaar payments, the National Payments Corporation of India (NPCI), advised by [Nilekani who created the Aadhaar](#)^{xv}. This mapping is updated by the NPCI based on Aadhaar numbers seeded to bank accounts by various member banks. This means that the Aadhaar numbers seeded to the bank accounts decides the bank account that will receive the funds. Unlike bank accounts, this mapping is volatile and available for manipulation by seeding or deseeding Aadhaar numbers to bank accounts every time before, or after, making money transfers^{xvi}. Intriguingly the payment instructions are not verified by the payer's bankers. Nor are the payment receipts verified and confirmed by the payee's bankers. Instead Aadhaar payments may verify Aadhaar numbers with UIDAI, a party that has not onboarded the payer or payee as a bank customer, nor is it present to identify the transacting parties. This means Aadhaar payments operates exactly like hawala, making the transacting parties untraceable.

UPI provides the payer and payee the ability to transact with a virtual private address (VPA) to hide the real name or account number. Some UPI implementations create a fresh VPA for every transaction, leaving no trace of previous VPAs. The UPA allows money transfers not just between Aadhaar numbers but also to bank accounts, credit cards and payment wallets. This extends the digital hawala beyond the Aadhaar network and across national borders.

Paytm allows the loading of "currency" onto its app associated with a mobile SIM. Anyone who can obtain or generate SIM cards can charge each with up to Rs 10,000 without the need for any KYC and Rs 100,000 with a KYC. If the mobile number cannot identify the person, the money transfers will not be traced back to the person. If the person used a ghost, fake, duplicate or third persons Aadhaar number to obtain a SIM card, it does not trace back to the person.

Unfortunately, telecom companies have been using Aadhaar numbers to do KYC for issuing SIM cards. This means anyone in possession of Aadhaar numbers (or cards) can generate SIM cards and payment wallets. This was confirmed when the Airtel Payments Bank opened 37 lakh bank accounts that received Rs.167 crore of LPG subsidy without any authentication.

This becomes more serious if Aadhaar is flagged as the means of legitimising the KYC. Justice (retd.) P.B.Sawant has highlighted^{xvii} that at least 58.64 crore Aadhaar of the 118 crore numbers issued by the UIDAI are duplicates and ghosts. This means there are a huge number of benami Aadhaar are available to enable KYC for benami SIM, PAN, and bank accounts (for example Jan Dhan Accounts) and give the impression of legitimacy. These benami SIM, PAN and bank accounts are available to launder money for elections and criminal activities.

This mechanism was used as a Trojan horse to manipulate in the Parliament Elections of 2019 through state mechanisms of targeting subsidy, benefits and services to selected voters, like was done to manipulate votes by Cambridge Analytica. This has been described in detail in the section on “bribery of selected voters in electoral rolls” in a separate deposition on “Integrity of electoral rolls and the linkage of Voter ID to Aadhaar”.

The use of these instruments to finance elections beyond that permitted or will be reported^{xviii} under electoral law will go undetected as they are not directly associated with elections. This in addition to being corrupt practice under section 123(1) of the Representation of the People Act, 1951, is an expenditure in contravention of section 77 of the Representation of the People Act, 1951.

This also ensures that there is a disproportionate advantage to candidates who resort to money laundering using such tactics making it impossible for people to be able to elect a representative of their choice.

The myth of certification of free and fair elections

The task of supervision of elections is outsourced to the various governments for whose offices the election is being held. There is no member of the Election Commission of India^{xix} who directly supervises each constituency. This leaves little possibility for the impartial conduct of elections where the officers appointed by the government for the election process are the ones who get to decide on their political masters. The very officers that conduct the election also the ones to provide a clean chit and certify the procedure and freeness or fairness of the election.

The account of votes recorded on Form 17C^{xx} is made available, at best, to polling agents of candidates, not to the voters or on a public website.

Although voting is a blank cheque to trillions of rupees of spending, a license to control the civil liberty in a country, a framework that pushes thousands of decisions to every citizen, it is perhaps the most unchallengeable and unauditable process in a country^{xxi}. There is no way anyone can verify the claims of those who conduct and control the voting process and certify them to be true and correct. There is no way that anyone can follow the transactions of voting and certify that a candidate did indeed get as many votes as counted from legitimate sources. There is no way anyone can certify that the vote cast by anyone ended up for the candidate for whom it was destined. There is no way anyone can certify that every voter counted at the polling booth was the one who was entitled to vote. Arguably the process of audit requires a transaction trail. A publicly auditable process would require a public access to the trail. Those against a transaction trail argue that such trails make the ballot free of secrecy. Those for the trail argue about the inability to distinguish legitimate votes from illegitimate ones resulting in a possible compromise

of the polling process. Whatever the merits of secrecy, it certainly fails to enthuse confidence about the voting process and voter-based democracy. While we would not trust any secret financial institutions certifying their own operations, we have been accepting secrecy and the self-certification of the Election Commission of India.

The need for reinforcing the principles of elections

Reactive and adhoc interventions will not prevent electoral malpractice and criminalization of elections. For a sustained and effective means to prevent electoral malpractice and criminalization of elections we will need to address the principles of election reform^{xxii}.

Ensuring the inclusion of all voters, ensuring that the vote serves as a proxy to *governance* and not government formation, ensuring that every vote counts, ensuring the ability to field or elect a candidate of choice, and ensuring the ability to demonstrate the fidelity of the voting process are the 5 principles of elections that require to be protected and reinforced through reforms.

ⁱ Deposition submitted by Dr. Anupam Saraph to the Citizen Commission on Elections chaired by Justice (retd.) Madan Lokur. Dr. Saraph sits on the board of Moneylife Foundation, is Adjunct Professor of Governance and Sustainable Development of Complex Systems at the Symbiosis Institute for Computer Studies and Research and a former Advisor to various local state and national governments on governance and IT. He has been researching electoral fraud from 2009 and deposed before the Election Commission and the Law Commission.

ⁱⁱ <https://global.oup.com/academic/product/electoral-malpractice-9780199606160?cc=in&lang=en&>

ⁱⁱⁱ Saraph, Anupam, *An Agenda for Reform of the Election System in India*, EPW, March 19, 2011, Vol. XLVI No 12

^{iv} Deposition of Dr. Anupam Saraph on the Integrity of electoral rolls and the linkage of Voter ID to Aadhaar

^v Deposition of Dr. Anupam Saraph on the Electronic Voting Machines

^{vi} The Representation of the People Act, 1950 (29A).

^{vii} The Representation of the People Act, 1950 (38, 39).

^{viii} The Representation of the People Act, 1950 (29A, 29B).

^{ix} Representation of the People Act, 1950 (38); Delimitation Act, 2002 (8, 9)

^x The Constitution of India Part XV (330, 331, 332, 333, 334); The Representation of the People Act, 1950 (9A, 9B).

^{xi} The Representation of the People Act, 1950 (32, 33, 33A, 33B, 34, 35, 36, 37, 39).

^{xii} The Representation of the People Act, 1950 (29B, 29C).

^{xiii} The Representation of the People Act, 1950 (38).

^{xiv} Part I of the Constitution of India, The Representation of the People Act, 1950 (3, 4, 5); Part I of the Constitution of India; The Constitution of India Part XV (330, 332); The Representation of the People Act, 1950 (9A, 9B) also defines the Power of Election Commission to determine the constituencies to be reserved; The Constitution of India Part XV (334); Chapter IX A (171A).

^{xv} <https://www.npci.org.in/nandan-nilekani%C2%A0>

^{xvi} <https://medium.com/@anupamsaraph/how-does-linking-your-aadhaar-to-your-bank-account-destroy-the-banking-system-5bb0379f2886>, <https://medium.com/@anupamsaraph/searching-for-beneficiaries-of-subsidies-and-benefits-560835b8afaf>, <https://www.sundayguardianlive.com/news/uidai-database-defective-targeting-subsidies-benefits>

^{xvii} <https://indianexpress.com/article/opinion/columns/aadhaar-uidai-biometrics-the-numbers-dont-add-up-5512538/>

^{xviii} Conduct of Elections Rules, 1961 (86, 87, 88, 89, 90).

^{xix} The Representation of the People Act, 1950 (13A, 13AA, 13B, 13C) chief electoral officer, district election officer, electoral registration officer, assistant electoral registration officer.

^{xx} Conduct of Elections Rules, 1961 (49S).

^{xxi} Part I of the Constitution of India; Chapter IXA (171B, 171C, 171D, 171F, 171G, 171H, 171I) Bribery and undue influence in elections, Personation at elections, False statement in connection with an election, Illegal payments, in connection with an election, Failure to keep election accounts. Also defined by The Representation of the People Act, 1950 (Part VII); The Representation of the People Act, 1950 (8, 8A, 9, 9A, 10, 10A, 11A); The Representation of the People Act, 1950 (58, 58A).

^{xxii} Saraph, Anupam, *An Agenda for Reform of the Election System in India*, EPW, March 19, 2011, Vol. XLVI No