



**O.P. Jindal Global University**  
*A Private University Promoting Public Service*

# MAKING THE INDIAN ELECTORAL PROCESS INCLUSIVE: CHALLENGES AND OPPORTUNITIES



**Prepared by**  
**Centre for Human Rights Studies**



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**Professor Balakrishnan Rajagopal**  
*Director, MIT Program on Human Rights & Justice  
Massachusetts Institute of Technology, U.S.A.*



## FOREWORD

The Jindal Global Law School of O.P. Jindal Global University has evolved an ambitious research agenda and has been exploring ways to undertake action-oriented research studies, which help establish a rule of law society and improve the quality of governance.

The Chancellor of O.P. Jindal Global University, Mr. Naveen Jindal in his article “Indians’ Right and Opportunity to Vote” published in the Asia Times in April 2009 raised a number of serious legal and procedural issues which hinder the exercise of the right to vote of millions of Indian citizens. Deeply concerned about this issue, the Centre for Human Rights Studies (CHRS) at O.P. Jindal Global University took up a study with a view to documenting the inadequacies in the present system and also to recommend concrete measures to strengthen India’s democratic system and to increase participation of the people in the electoral process.

I wish to acknowledge the guidance and critical comments received in this regard from Professor Jayanth Krishnan, Maurer School of Law, Indiana University, Mr. N. Gopalaswami, former Chief Election Commissioner, Professor Peter H. Schuck, Simeon E. Baldwin Professor of Law, Yale Law School, Mr. Aditya Singh, a final year student from the NALSAR University of Law, Hyderabad and Professor Parmanand Singh, former Dean, Faculty of Law, University of Delhi.

I wish to compliment CHRS and its Executive Director, Professor Y.S.R. Murthy, Research Associate, Ms. Chakravarti Patil, and Assistant Dean of Research and International Collaborations of the Jindal Global Law School, Professor Jonathan A. Burton-MacLeod, for their contribution to this research.

I am particularly pleased that this study is being published in a booklet form for widest possible dissemination among the concerned government departments, the Election Commission of India, Members of Parliament, academics, NGOs, media and the general public. I sincerely hope that it will prove useful for all those who are striving to strengthen and deepen our democratic process.

Professor C. Raj Kumar  
Vice Chancellor  
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## PREFACE

This report is an academic study of a fundamental problem in Indian democracy. The purpose of this study is to maximise democratic participation by overcoming existing hurdles in the right to vote in India. Through this report, the Centre for Human Rights Studies (CHRS) seeks to fill a crucial gap in applied law by bringing into public focus the need for protecting the rights of all persons and in particular the poor and other vulnerable groups.

India is the world's largest democracy. It has a tradition of popular democracy and oversight by the courts along with a robust Constitution that protects a broad array of human rights. Democracy is only as good as its functional capacity to uphold these rights. CHRS believes that this investigation of the right to vote not only broadens the definition of what it means to participate in the political process in the face of gender, caste, geographical, and other forms of identity bias, but in so doing expands the range of possible policy solutions. All of the policy suggestions outlined in this report are in one way or another comparative. They pertain to electoral innovations being enacted either in India or in democracies abroad. One purpose of this study on the right to vote is to demystify and challenge what is or is not considered possible in India's democracy: a democracy that consistently defies expectations placed upon it by the outside observer.

We are delighted to present this report that analyses drawbacks in the current electoral process and proposes suggestions on making it inclusive. We sincerely hope that this report will trigger a national debate on the voting rights of every Indian citizen and that alternative voting methods are made available to the citizens who are unable to cast their vote under prevalent electoral laws. In today's globalized world, we cannot limit our votes by our boundaries and it is time we introduced alternative voting methods at national level. Through this report, we hope to contribute towards a more inclusive and a vibrant Indian democracy.

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## I. Abstract

This study aims to discuss the concept of representative government and the right to vote in India.

Currently, unsound mind, criminality, corrupt or illegal practice and non-residence are the legal restrictions on voting for Indian citizenry.<sup>1</sup> This study considers both legal and practical impediments to the right to vote, in the belief that the right to vote is uneven in its current implementation. The study thus aims to emphasise inclusiveness of the electoral system, with particular focus on the ground of 'residence,' which has uniquely Indian implications. A major part of discussion revolves around the difference between the right to vote and an opportunity to exercise this right. To expound upon this difference, the study covers historical, comparative, constitutional, legislative and judicial aspects of the electoral process.

The study establishes the relation between democracy and elections by showcasing unjust disenfranchisement in world democracies and their journey towards universal adult franchise. Owing to the limited approach of the term 'ordinary residence', the study criticises certain conflicting and outdated provisions that restrict Indian citizens from the opportunity to vote. The study strongly promotes legislative activism through the Representation of People (Amendment) Bill, 2006. It advocates for the voting rights of people migrating within the country who lose out on exercising this right due to absence from their constituency. The study also problematises the law preventing 'undertrials' from voting, in comparative experience with other jurisdictions as well as the practical impediments faced by the elderly and disabled. In light of the Prime Minister's recent announcement on Non Resident Indians (NRIs) voting, this study examines pros and cons of extending voting rights to NRIs. The study then proceeds to canvass solutions towards the goal of an 'inclusive electoral system.' The concept of 'compulsory voting' is analysed in depth, considering the recent legislation in Gujarat making voting mandatory. Australian and Belgian models that provide for compulsory voting are studied and compared to the Indian scenario, while the conflict of choice and compulsion are discussed from the human rights perspective. Again, based on the commendable judicial initiative, the study assesses the scope of 'negative voting' in India and its effects on the electoral system. Focusing on maximum involvement, the study promotes 'voting beyond boundaries' by

1. See Constitution of India, 1950, Art.326.

proposing alternative voting methods like postal voting, proxy voting, internet voting and phone voting. All these alternative methods are studied by taking examples from countries implementing such methods and the applicability is analysed in the Indian context. Pros and cons of each method are considered to understand its effectiveness, loopholes and possible remedies.

The study concludes by considering the tension between a constitutional right to vote and the difficulty of implementing this right in several contexts. However, it should be remembered that the stakes are high. Difficulties in implementation have resulted in the disenfranchisement of millions of Indians.<sup>2</sup> The study considers innovations in the electoral process from within and outside India, upon the understanding that many, if not all, democracies face similar problems. The study, thus, advocates several methods for greater enfranchisement and tries to demystify the notion that furtherance of the right to vote is logically difficult. The specific recommendations for law and policy reforms arising out of the study are mentioned in chapter X (p. 44-47).

## II. Introduction

Given India's democratic aspirations and global standing as the world's largest democracy, it must seek to increase greater electoral participation. The right to vote flows from both the Constitution of India and the Representation of People Act (RPA), 1950.<sup>3</sup> A citizen of India, above 18 years of age, has a right to register as a voter in a constituency irrespective of his or her race, religion, caste or sex.<sup>4</sup> The main objective of the study is to understand the gaps between the right to vote and the opportunity to vote.

This issue haunts Indian democracy, questioning the professed commitment to government 'by the people'.<sup>5</sup> The Preamble to the Constitution of India equally emphasises 'unity of the nation' and 'dignity of the individual',<sup>6</sup> who has equality of opportunity. The equality of opportunity unfortunately lacks when it comes to prohibiting right to vote on the ground of 'residence'. This prohibition is no longer relevant in today's increasingly globalised world.

2. As per census 2001, 314.54 million persons moved for various reasons within the country. Out of these, 29.90 million migrated for reasons of employment. See Press Release, Ministry of Labour & Employment (4 January 2007), available at [http://pib.nic.in/release/rel\\_print\\_page1.asp?relid=23797](http://pib.nic.in/release/rel_print_page1.asp?relid=23797).
3. Constitution of India, 1950, Art. 326; Representation of the People Act, 1950, §19.
4. Prior to the 61st Amendment (1988) of the Constitution of India, the age of voting was 21 years.
5. Constitution of India, 1950, Preamble.
6. See generally, R.C. LAHOTI, PREAMBLE: THE SPIRIT AND BACKBONE OF THE CONSTITUTION OF INDIA (2004).



The right to vote is a part of freedom of expression and thought. Through casting a vote, a citizen expresses his choice, his faith in the representatives. Considering that general elections are a constitutional compulsion, how does depriving a large segment an opportunity to exercise their right to vote, do justice to the compulsory elections? How can a limited citizenry decide for the rest? Is it then a truly representative government?

This study considers the ebb and flow of enfranchisement in Indian history. Interestingly, in ancient India, there existed notions of absentee voting and other enabling electoral processes. The right to vote was heavily restricted during the colonial period. This study illustrates that the contemporary, democratic vision of India still places visible limits on the right to vote. They include disenfranchisement of migrants and students on the basis of absence from constituency, restrictions on voting by 'undertrials' (whose number, given India's pendency problem, is significant), practical impediments to voting due to issues of voter identification and physical access, and disenfranchisement of NRIs.

The purpose of this study is to advocate for universal participation in the electoral process. Elections are an effective tool for public participation and right to vote is the most basic step towards democracy building. We thus propose certain amendments in the existing legal provisions to further the purpose.

In his Inaugural Address at the 8th Pravasi Bharatiya Divas on 8th January 2010, the Prime Minister of India expressed hope that the NRIs would be entitled to vote in the forthcoming regular general elections. However, even if implemented, the provision only enables the NRIs to retain their name in the voters list, and if they wish to exercise their right, they ought to come back to India. There is an initiative taken by the social groups who have filed petitions to amend the election and voting rights in this regard, all of which is discussed in detail at a later stage.

Using this background, the study pushes for three concrete changes in electoral process: first, to cover not just the NRIs but also migrants within the country and the undertrials. Second, to amend existing laws that regulate the election mechanism in such a manner that NRIs are not forced to come back to India to vote. This evidently calls in for the third change - absentee voting. India is already implementing postal voting for limited sections of society. With adequate safeguards, it can be made to work for those on temporary move, the

under trials, persons with disability and elderly persons. The same applies to proxy voting. It is currently limited to members of the armed forces and has caused significant increase in voting percentage in spite of the cumbersome procedure involved. As far as internet voting is concerned, without any doubt, it is the quickest and efficient way of casting a vote. It will cut down huge costs of maintaining poll booths as the number of people thronging them is likely to reduce. Of course, internet is prone to hacking, and countries, big and small, are trying to curb such acts.

In addition to these measures, more progressive provisions can be considered to improve public participation and make the electoral process inclusive. In India, Gujarat has emerged as the first state to make voting compulsory in elections to local authorities. Indeed, the idea is innovative in the Indian context and should not be criticized simply because it tries to strike a balance between a citizen's right and duty to ensure that the principle of majority rule that forms the foundation of our democracy is not weakened. However, there is a general notion that voting is a civic right rather than a civil duty. The study does not completely disapprove of the notion of mandatory voting but points out that there are other urgent demands glaring at the current system, seeking immediate attention. Further, there are doubts about the coercive nature of compulsory voting as right to vote would also include right not to vote. Another interesting step would be to allow negative voting, where a voter can express his distrust towards all candidates and cast his vote for none. One of the most positive outcomes of negative voting would be to express 'protest vote'. The provision is under battle before the Supreme Court of India and unfortunately, the Indian government is opposing negative voting. Also, empowering voters to recall non-performing representatives would build up people's trust in the system and shall increase participation. Chandigarh is already implementing such a provision, although there are obvious pitfalls to insecure legislative tenure.

The proposed expansion needs careful consideration of the issues relating to security and integrity of the electoral process. Secrecy of ballot and proper implementation of various systems has to be ensured; efforts have to be taken to reduce and progressively eliminate the abuse of these systems; complexity of logistics and resource requirements of central and state election commissions need to be factored into. However, these challenges, formidable as they are, should not discourage India as a mature democracy from moving towards

developing a wider framework that will increase the political participation of people in the electoral process. The potential abuse of absentee voting methods should not deter the Indian government from ensuring that the right to vote of every Indian citizen is duly enforced. The purpose of this study is to make the electoral process in India far more inclusive and to address unreasonable fears associated with such change.

### III. Historical Perspective

“Democracy is government by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. The little man, in his multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of his proxy. Although the full flower of participative government rarely blossoms, the minimum credential of popular government is an appeal to the people after every term for the renewal of confidence. So we have adult franchise and general elections as constitutional compulsions.”<sup>7</sup>

This realisation of constitutional compulsion prevailed in ancient times, but things changed with foreign rule. Colonised India was divided on grounds of class and pre-existing caste system fostered under the disguise of religious representation. Franchise in the constituencies to both the House of People and the Council of States was limited to people with ownership of property and tax qualifications. World War II further changed the face of world polity. India gradually achieved freedom from colonisation and began to draft its Constitution. In the context of varied governance systems adopted around the world, India adopted and advocated a democratic setup.<sup>8</sup> One of the major tasks before free India was to establish universal adult franchise. Described below is the elaborate history of that struggle.

#### A. Voting in Ancient India

Available records<sup>9</sup> reveal that in ancient India, in some of the republics, every adult male member had the right to vote and to be present in the general assembly, which decided all public affairs. “A vote was known as ‘chhanda’ which literally means a ‘wish’. This expressive term was used to convey the idea that by voting, a member was expressing his free will and choice.”<sup>10</sup> There is also a reference to absentee voting, through description

7. Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851.

8. India has borrowed fundamental rights from model of American Constitution, adopted the parliamentary system of government from United Kingdom, idea of directive principles of state policy from Irish Constitution and added elaborate provisions relating to emergency in the light of the Constitution of the German Reich and the Government of India Act, 1935.

9. See generally, FIRST GENERAL ELECTIONS OF INDIA (1951-52), available at [http://eci.nic.in/eci\\_main/Eci\\_Publications/books/genr/FirstGenElection-51-52.pdf](http://eci.nic.in/eci_main/Eci_Publications/books/genr/FirstGenElection-51-52.pdf).

10. *Id.* at 14.

of the methods of collection of votes of citizens who could not be present at the meeting of the assembly.<sup>11</sup> Votes collected in such manner could either be secret or open. There were provisions that allowed foreigners to acquire voting rights on becoming a citizen by naturalisation. Representative form of government evolved as growing population and increasing complexities of the social structure made it difficult for everyone to assemble at one place for deliberating state affairs.

The system of regulating the local corporate life through popular assemblies was absorbed by various empires that ruled India. During the Muslim period, trade corporations and village affairs continued to be carried on by popular assemblies.<sup>12</sup> The British administration brought a fundamental change by centralizing revenue, judicial and legal affairs. The drastic change in system of governance led to social, political and economic upheaval, and gradually the organizations based on popular will faded out.<sup>13</sup>

## ***B. Voting during the Colonial Era***

In the nineteenth century, the British Parliament took over the East India Company under the Government of India Act, 1858. For the governance of Indian territories, it provided for the constitution of bodies to legislate on local laws under the Indian Councils Act 1861 and 1892. But the former Act did not have any representation of the local people and the latter Act had only a small element.<sup>14</sup> The elective element for the natives in legislative bodies in British India was introduced under the Indian Councils Act, 1909, passed under the popular reforms known as Morley-Minto Reforms. The first Central Legislative Council constituted under that Act consisted of 68 members, out of which 27 were elected.<sup>15</sup> However, they were not chosen by the common people of India, but by the special constituencies like the universities, municipalities, district and local boards, chamber of commerce and trade associations and groups of people such as landholders or tea planters. This was followed by the Government of India Act, 1919, also known as Montagu-Chelmsford Reforms. This Act not just continued

11. For purposes of voting in the assembly, there would be multi coloured voting tickets, called 'shalakas' (pins), which were distributed to members when a division was called and were collected by a special officer of the assembly, known as 'shalaka grahak' (collector of pins).
12. See *generally*, SADIYA & SADIYA, PUBLIC ADMINISTRATION IN INDIA (2007).
13. V. S. RAMA DEVI & S. K. MENDIRAITA, HOW INDIA VOTES: ELECTION LAWS, PRACTICE AND PROCEDURE (2007).
14. C. L. ANAND, CONSTITUTIONAL LAW AND HISTORY OF GOVERNMENT OF INDIA 103-139 (2008).
15. SUBHASH C. KASHYAP, HISTORY OF THE PARLIAMENT OF INDIA 55 (2000).

with Muslim reservations but extended reservations for the Sikhs. Thus, the British under the pretext of introducing community representation chalked out the 'divide and rule' policy and such representations resulted in religious conflicts among the Indians rather than build up healthy representative government. A bicameral legislative body was created at the Centre.<sup>16</sup> For the first time, the elected members constituted the majority in each of the Houses.<sup>17</sup>

Although the 1919 Act provided for direct elections from the constituencies to both the Houses, only a limited number of persons were granted the right to vote and even they had to satisfy certain high qualifications like ownership of property, or payment of income tax or municipal tax, or the holding of land.<sup>18</sup> The franchise to the Council of States was far more restricted; property qualifications ensured that only the wealthy merchants and landlords could vote. Other prerequisites for voting included previous experience with the central or provincial legislature, service as chair of a municipal council, experience in the public affairs etc.<sup>19</sup> This Act fell short of popular expectations. With World War II starting in 1939, the Indian National Congress began to spearhead the freedom struggle in India. After the war ended in 1945, the labour party came to power in Britain and favoured the Indian demand for freedom. However, World War II had changed the world economy and polity. A brief history of the right to vote in other parts of the world provided the context in which India began to draft its own Constitution and voting rights.

### **C. World Democracies and Universal Adult Franchise**

According to an eminent legal scholar, Professor Yash Ghai,

"Minorities have the right to influence the formation and implementation of public policy, and to be represented by people belonging to the same social, cultural, and economic context as themselves. For a political system to be truly democratic, it has to allow minorities a voice of their own, to articulate their distinct concerns and seek redress, and lay the basis for a deliberative democracy."<sup>20</sup>

Across the world, the right to vote was often taken as a matter of privilege and was for long limited to the rich. Certain social strata such as women,

16. The Council of States as the Upper House and the Central Legislative Assembly as the Lower House.
17. SUBHASH C. KASHYAP, *supra* n.15, at 55.
18. This conclusion can be reached by reading Rule VII along with Schedule II of the Legislative Assembly and Council of State Electoral Rules, respectively. These rules have been formulated under the power granted by Sections 23 and 64 of the 1919 Act.
19. I M. GWYER & A. APPADORAI, *SPEECHES AND DOCUMENTS ON THE INDIAN CONSTITUTION*, 32-33 (1957).
20. Yash Ghai, *Public Participation and Minorities*, London, MRG, 2003, p. 5.

impoverished and illiterates had been repeatedly excluded from the exercise of their right to vote. Exclusion from voting based on race, colour, caste, creed, nationality and origin was a salient feature not just in India but prevailed equally in various parts of the world. This segment discusses some of the unjust grounds for disenfranchisement in both big and small nations around the globe.

Many democracies of the western world had property ownership as one of the qualifications in their electoral laws; for instance, only landowners could vote in the United States (US),<sup>21</sup> or the voting rights were weighed according to the amount of taxes paid in ancient Prussia. Roman Catholics were denied the right to vote in United Kingdom (UK) and Ireland until the eighteenth century.<sup>22</sup> In several British North American colonies, even after the Declaration of Independence, Jews and Catholics were denied voting rights and were even forbidden to run for office.<sup>23</sup> In Romania and the Republic of Maldives, only Christians and Muslims had voting rights respectively.<sup>24</sup> The right to vote has often been limited to people who had achieved a certain level of education or passed a certain test, such as 'literacy tests' in some states in US.<sup>25</sup> Until the mid twentieth century, France prohibited all army personnel from voting. Some countries with mixed population have historically denied the right to vote to people of particular races viz. South Africa under apartheid. Many countries restrict the voting rights of convicted criminals. France and Germany limit the deprivation of voting rights to certain crimes such as those against electoral system. In the Republic of Ireland, prisoners are not specifically denied the right to vote, but they are denied access to a ballot station and thus are effectively disenfranchised. Australia allows only prisoners serving a term of less than 3 years the right to vote. Under certain electoral systems, elections are held within state jurisdictions, preventing persons who would otherwise be eligible from voting because they do not reside within such a jurisdiction, or because they live in an area which cannot participate. In

21. Werner Haas, *Land Ownership & Voting Rights Before the Civil Wars*, available at [http://www.associatedcontent.com/article/80617/land\\_ownership\\_voting\\_rights\\_before.html?cat=37](http://www.associatedcontent.com/article/80617/land_ownership_voting_rights_before.html?cat=37).
22. The anti-Catholic policy was justified on the grounds that the loyalty of Catholics supposedly lay with the Pope rather than the national monarch.
23. *See generally*, CHILTON WILLIAMSON, *AMERICAN SUFFRAGE, FROM PROPERTY TO DEMOCRACY* (1960).
24. The situation in Romania changed after the Berlin Peace Conference.
25. Unfortunately, these tests are frequently manipulated to functionally limit the electorate on the basis of wealth or race. *See for instance*, *Voting Rights History: Two centuries of Struggle*, available at <http://www.crmvet.org/info/votehist.htm>.

the US, residents of Washington D.C. receive no voting representation in Congress, although they have (de facto) full representation in presidential elections. Sometimes, citizens become ineligible to vote because they are no longer resident in their country of citizenship. For example, Australian citizens who have been outside Australia for more than one and less than six years may excuse themselves from the requirement to vote in Australian elections while they remain outside Australia.<sup>26</sup>

In most countries like France, Italy, Greece, Austria, Belgium and Costa Rica, suffrage is limited to citizens. However, some members of supra-national organisations such as the Commonwealth of Nations and the European Union have given voting rights to citizens of all countries within that organisation.<sup>27</sup>

In France, naturalized citizens do not enjoy the right to vote and/or to contest, either permanently or for a determined period, whereas in Nicaragua,<sup>28</sup> Peru<sup>29</sup> and the Philippines,<sup>30</sup> only citizens by birth are eligible for being elected to Parliament; naturalized citizens enjoy only voting rights.

But then why is an opportunity to exercise the right to vote so important? What made the Blacks in America march from Selma to Montgomery in 1965, risking their lives to have a right to vote? After three marches, a 'Bloody Sunday' and many deaths, President Lyndon B. Johnson presented a Bill to a Joint Session of Congress on 15th March 1965. The Bill later became the Voting Rights Act on 6th August 1965. After prolonged mass agitation, the Blacks in America finally got their right to vote. Women also had to struggle to get voting rights. The US gave its women right to vote in 1920. In 1930, white women in Great Britain received political franchise. India gave its women the right to vote in 1949, the first amongst the third

26. It is interesting to note that voting in Australia is compulsory for resident citizens. See Australian Electoral Commission website, available at <http://www.aec.gov.au/>.

27. See CONVENTION ON THE PARTICIPATION OF FOREIGNERS IN PUBLIC LIFE AT LOCAL LEVEL, *Voting Rights and the Right to Stand for Public Office*, Strasbourg, 5.II.1992, available at <http://conventions.coe.int/Treaty/en/Treaties/html/144.htm>.

28. Inter Parliamentary Union (Electoral Information: Nicaragua), available at [http://www.ipu.org/parline-e/reports/2235\\_B.htm](http://www.ipu.org/parline-e/reports/2235_B.htm).

29. Inter Parliamentary Union (Electoral Information: Peru), available at [http://www.ipu.org/parline-e/reports/2251\\_B.htm](http://www.ipu.org/parline-e/reports/2251_B.htm).

30. Inter Parliamentary Union (Electoral Information: Philippines), available at [http://www.ipu.org/parline-e/reports/2253\\_B.htm](http://www.ipu.org/parline-e/reports/2253_B.htm).

world nations to take this step. Ghana followed six years later and Kenya ten years later.<sup>31</sup> Similarly, there were sustained campaigns against voting restrictions on poor citizens in South Africa.<sup>32</sup>

All the segments of societies left out from participating in the electoral process fought for their right to vote. They fought for it because this one right makes a huge difference. All the aforementioned grounds of disenfranchisement cannot be justified in any democracy. With such prohibitive laws, a society cannot be democratic. Right to vote is the most basic act of democratic participation. Though India has now adopted universal adult franchise and we do have a right to vote, the issue comes back to the same problem that we may not get an opportunity to exercise this right due to absence from constituency owing to travel, education or migration to other places. Giving citizens a right to vote but denying them an opportunity to exercise this right is equal to denying them the very right to vote. If voting is a right guaranteed by the Constitution and is at the same time limited by the idea of 'residence', does it and shall it still apply in the virtual world?

#### **IV. Constitutional Evolution and Perspective**

Social factors like illiteracy, the caste and class systems, the status of women, economic factors like poverty, political factors that were brought in by the British rule; and the turmoil caused due to unfair electoral systems had a great impact on the Indian society and its politics. Since the biased reforms of Morley-Minto and Montague-Chelmsford did not provide for a fair electoral process and excluded a vast majority of the Indian population, the urgency for a fair and inclusive electoral system was acutely felt. It was in this background that the drafters of the Constitution took a very bold step to adopt 'universal adult suffrage', notwithstanding the fact there were millions of illiterates in the country. It was a well thought over step to make democracy broad based. It was aimed at covering all those left out from the ambit of democratic participation, in order "to base the system of government on the ultimate sanction of the people".<sup>33</sup> If the Constitution makers had introduced property and educational

31. See generally, Lisiunia A. Romanienco, *Gender Differences in Adaptation Patterns among Scientists in Developing Nations: Exploring the Case Studies of Ghana, Kenya, and Kerala*, available at <http://www.scribd.com/doc/2198034/Gender-Differences-in-Adaptation-Patterns>.

32. Gradually by 1994 all adult South Africans have in principle possessed the franchise and the right to vote is entrenched in the Constitution, however various logistical challenges still exist as is common with all democracies.

33. M. P. JAIN, *OUTLINES OF INDIAN LEGAL AND CONSTITUTIONAL HISTORY* 604 (2009).



qualifications for exercising the franchise, it would have resulted in denial of the democratic principles, disenfranchising a large number of people like labourers and cultivators who have equal right of representation.<sup>34</sup> In this segment, the study will look into the emergence and evolution of broad based democracy in India. The segment will analyse the relation between democracy and elections and move on to discuss the emphasis the Constitution makers put on equality and how equality would stand meaningless without adult suffrage.

### **A. Democracy and Elections**

There is a difference between ‘democracy’ and ‘democratic participation’ and both the concepts are interestingly intertwined. Democracy entails the twin principles of popular control over collective decision making and equality of rights in the exercise of that control.<sup>35</sup> So, the extent of democracy depends on the extent of democratic participation, which is indicated by the control of people through universal suffrage system. But if a state fails to provide its citizens the equality of rights to use such control over decision making, how can that state be called democratic? A political system cannot be called democratic unless it incorporates the political instruments and institutions needed to give expression to this democratic culture.<sup>36</sup>

Elections are the most important and effective tool for political participation, as they allow ordinary people to choose their own representatives.<sup>37</sup> Thus, right to vote is just the most basic step towards public participation in building democracy. According to the International Institute for Democracy and Electoral Assistance (IDEA), the process of designing an electoral system may be enhanced by formulating a list of criteria that reflects what a particular society aims at achieving, what it aims to avoid and how it wants its democratic institutions to look like. Thus, the kind of electoral system a society chooses for itself impacts the manner in which its democratic institutions shape up.<sup>38</sup> India, while choosing the democratic set up and shaping up its electoral system, studied various other systems of the

34. Alladi K Ayyar, *Constitution and the Fundamental Rights* XI CAD 835.

35. David Beetham & KEVIN BOYLE, *INTRODUCING DEMOCRACY: 80 QUESTIONS AND ANSWERS* 27 (1995)

36. See generally, *BUILDING DEMOCRACY: ENHANCING DEMOCRATIC PARTICIPATION IN HONG KONG* (Christine Loh, ed., 2003), Hong Kong University Press (hereafter, “*BUILDING DEMOCRACY*”).

37. C.Raj Kumar, *Election and Voting System: Perspective on Democratic Governance in Hong Kong*, in *BUILDING DEMOCRACY* 44, 56 (2003).

38. *ELECTORAL SYSTEM DESIGN: THE NEW INTERNATIONAL IDEA HANDBOOK* 5 (Andrew Reynolds et al., eds. 2005).

world. Its own history demanded deep thought on governance mechanism and emphasis on equality. The contours of this deliberative exercise are elaborated below.

### ***B. Equality and Adult Franchise***

Before Independence, there were separate constituencies for Muslims who were registered on a special electoral roll and voted separately, while others were included on a general roll. This sowed the seeds of partition in India. The drafters at the time of framing the Constitution were mindful of the same and thus, emphasised on the non discrimination factor on grounds of religion, race, caste or sex.<sup>39</sup> Article 15 of the Constitution enhanced the principle by extending the scope to cover place of birth, whereas Article 16 of the Constitution further covered descent and residence. However, it is pertinent to mention that even though we have been ensured equality, Article 326 of the Constitution that deals with the elections to the House of the People and to the Legislative Assembly of every State permits disqualification on the ground of non-residence.<sup>40</sup>

During the debates in the Constituent Assembly, there emerged almost from the beginning a consensus of opinion that the right to vote should be treated as a fundamental right of the citizen and that in order to enable him/her to exercise this right freely, an independent machinery to control elections should be set up, free from local pressures and political influences. The discussion mostly revolved around the issue of whether Part III (The Fundamental Rights) is the appropriate place to incorporate the right to vote. Dr. Ambedkar promoted this thought and received unanimous support. Before Independence, the Legislatures in India were elected on a very restricted franchise, with only a small fraction of the population being eligible to exercise the right to vote.<sup>41</sup> The Simon Commission then recommended the extension of franchise to further cover 10% of the

39 Constitution of India, 1950, Art.325.

40 The text of Article 326 reads: "The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this constitution or any law made by the appropriate Legislature on the ground of non residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election."

41. The Joint Committee on Constitutional Reforms which reported in 1934 estimated that the provincial electorate under the Reforms of 1919 numbered just 3% of the population.

population. In 1928, the Nehru Report recommended complete democracy and adult franchise for the Lower House of the Central Legislature as well as for the Provincial Legislature. But the official opinion in India continued to be against any large scale extension of the franchise.<sup>42</sup>

This strong desire for adult franchise was considered again at the time of setting up of the Constituent Assembly, when Indians got an opportunity to frame their own Constitution. Both the Fundamental Rights Sub-Committee and the Minorities Sub-Committee recommended as a fundamental right that every Indian citizen above 21 years of age (later reduced to 18 years by the 61st Amendment), should have the right to vote at any election to the Legislature of the Union and of any unit thereof or in case of bicameral legislation, to its lower chamber subject to disqualifications on the ground of mental illness, crime or corrupt practice as may be imposed. The Advisory Committee agreed with this principle but recommended that it should not be included in the Fundamental Rights chapter. The Drafting Committee included these provisions in the chapter relating to the Parliament and the Legislative Assemblies of States. The Special Committee was of the view that the provisions relating to adult franchise shall be contained in a comprehensive article applicable to all elections to the Legislatures or where there are two Houses of the Legislature, to the Lower Houses of all States.<sup>43</sup> On 16th June 1949, Dr. Ambedkar moved an amendment to this effect.<sup>44</sup>

Having given the background of right to vote and its journey in finding a place in the Constitution of India, the study proceeds to discuss legislative perspective of this right with reference to the present day need.

## V. Legislative Perspective

The framers of the Constitution of India recognised that they could not bind the following generations with their sovereign will and that each generation shall enjoy the same sovereign power to decide by whom and how shall they be governed. Proof of this is our largely flexible provisions for amendment of the Constitution. It is also evident from repeated assurances in the Constituent

42 Reasons for this as explained by the Joint Committee on Indian Constitutional Reform was that there were administrative difficulties in implementing adult franchise owing to little literate population to carry on effective function as returning Officers. See Report of the Joint Select Committee on Indian Constitutional Reform, ¶¶ 123-28 (1934).

43 Comments and Suggestions on the draft Constitution, Select Documents IV, 1 (i), 141.

44 VIII CAD 932, Art. 289-B (now Art. 362).

Assembly by Nehru, Dr. Ambedkar and others that they did not want to bind the succeeding generations with a rigid Constitution. To put it in Nehru's words,

"If you make anything rigid and permanent you stop a nation's growth, the growth of a living, vital, organic people."<sup>45</sup>

### **A. Limits of Ordinary Residence**

While Article 326 of the Indian Constitution entitles citizens to voting rights, Article 327 empowers the Parliament to make provisions by law with respect to all matters relating to or in connection with elections to either House of the Parliament or either House of the Legislature of a State, including the preparation of electoral rolls. In exercise of such power, the Parliament has enacted the RPA, 1950. Section 28 of the RPA confers power on the Union Government to make rules for carrying out the purpose of the RPA in consultation with the Election Commission. In exercise of such power, the Union Government has promulgated the Registration of Election Rules, 1960.<sup>46</sup> Section 19 of the RPA prescribes the conditions of registration for voting: the first of which says, a citizen has to be of not less than 18 years of age on the qualifying date and the second being that he or she shall be the ordinary resident in a constituency. Section 20 of the RPA deals with the term 'ordinary resident'. A sub-section thereof stipulates that a person absenting himself temporarily from his place of ordinary residence shall not by the reason thereof cease to be ordinary resident therein. Thus, the Act only refers to the term 'ordinary residence' and exceptions thereto but it does not exactly define the term, which is left to be decided by the Central government in consultation with the Election Commission of India. The Election Commission of India has further left it upon the electoral registration officer.<sup>47</sup> With this background, Section 19 of the RPA, 1950, read with Article 326 of the Indian Constitution, prohibits a person from voting if he is not an 'ordinary resident' of India.

It is interesting to note that though the drafters emphasized on non-discrimination on the ground of residence, they themselves provided a disqualification on non-residence. So, a person should not be refused

45. Available at [http://parliamentmuseum.org/con\\_enclave.html](http://parliamentmuseum.org/con_enclave.html).

46. Rup Narayan Das, *Ensuring Voting Rights for Indian Diaspora*, (Tribune India, 20 January 2010), available at <http://www.tribuneindia.com/2010/20100120/edit.htm>.

47. *Id.*

to be included on the electoral roll in spite of the place of his residence, but if he absents himself from his residence for over six months, he shall lose the right to vote! In an increasingly globalizing world, the concept of domicile is changing tremendously. The ideas of 'permanent residence' and 'home constituency' have little scope in the mobile world. Today, people increasingly prefer to have multiple identities and move base often for varied reasons. The Constitution recognises this right to move too. But exercising this right has more than often led people to lose their right to vote, causing bigger loss to the democratic set up of the nation. And this holds true not just for the NRIs but also for those migrating within the country, with employment and education being the main drivers of migration.

At present, a person's name is struck off the voter's list if he/she is outside the country for more than six months. There are around 50 lakh NRIs with Kerala alone contributing to 45% of them. In addition to this, as per census 2001, 314.54 million people moved for various reasons within the country.<sup>48</sup> Out of these, 29.90 million migrated for reasons of employment.<sup>49</sup> It is noteworthy that approximately 43% of Bihar's population is below poverty line, while in Orissa the figure ranges from 45 to 47%.<sup>50</sup> In such a scenario, migration from economically backward states to prosperous ones is only natural. The second reason for migration is disparity in wage rates. In states like West Bengal, an unskilled worker gets paid much lower for working in farms or factory than what his counterpart would earn for similar jobs in states like Punjab, Delhi, Rajasthan and Haryana. The third reason for migration is better facilities in the urban areas. It is tragic that 60% of our cultivable land depends on rainfall. There has been deceleration in the expansion of the irrigation infrastructure, especially since the 1980s. This indicates that a majority of the population still needs to participate in the economic growth of the country. To do this, we should begin to include more public participation in the democracy. This step towards

48. Ministry of Labour & Employment, *Report on All Issues connected with Contractualisation of Labour*, available at <http://labour.nic.in/lc/42ilc/Agenda42ilc.pdf>.

49. See Press Release, Ministry of Labour & Employment (4 January 2007), available at [http://pib.nic.in/release/rel\\_print\\_page1.asp?relid=23797](http://pib.nic.in/release/rel_print_page1.asp?relid=23797). See also, Naveen Jindal, *Indians' Right and Opportunity to Vote*, (Asia Times, 3 April 2009), available at [http://www.atimes.com/atimes/South\\_Asia/KD03Dfo1.html](http://www.atimes.com/atimes/South_Asia/KD03Dfo1.html).

50. *Socioeconomic Constraints and Opportunities in Rainfed Rabi Cropping in Rice Fallow Areas of India*, May 2002, available at <http://www.fao.org/docs/eims/upload/agrotech/2031/FallowsIndia.pdf>.

greater inclusiveness is sure to bring economic growth. Migration has often come with its own set of problems of discontent that have also led to discrimination. The recent tragic political incidents of violence against North Indians in Mumbai are a serious matter. A migrant settled in another state should be able to easily get his name on the electoral rolls in his new constituency. This does seem complex and the logistical hurdles are not denied but if implemented, the proposal will have a far reaching effect on the people of both the states and the political party's campaign agenda. If states adopt such statutory principles, the migrants will have a choice of voting for the representative who assures to promote their welfare equally along with the people of that state. This will also contribute in changing the attitude of the political parties towards migrants to attract their votes.

Thus, the laws, specifically RPA, should be amended to suit the new global reality.

## ***B. Legislative Activism- Blasphemy or Piety?***

Recognizing the need for providing a stronger constitutional foundation to strengthen the right to vote, this study emphasises the need for amending the prevailing electoral provisions, allowing citizens to vote irrespective of their absence in their constituency on the election day. With this aim in mind, the study also proposes an amendment of the RPA. It is important to note here that this thought has already been put into words in the shape of the Representation of People (Amendment) Bill, 2006, which was introduced in the Rajya Sabha on February 17, 2006. The Bill proposes the amendment of Section 20 of the 1950 Act. An extract of the proposed bill is reproduced below:

### ***1. The Statement and Objects of the Bill***

“Section 19 of the Representation of the People Act, 1950 provides that every person who is not less than eighteen years of age on the qualifying date and is ordinarily resident in a constituency shall be entitled to be registered in the electoral rolls for that constituency. The meaning of “ordinary resident” is laid down in section 20 of the said Act. At present, a person who is absenting from his place of ordinary residence by reason of his employment, education or otherwise outside India is not qualified to get his name registered in the electoral rolls and thus cast his vote in elections to the Parliament and to the State Legislatures.

1. There are a large number of citizens of India residing outside India due to their employment, education, etc. They have been persistently demanding for conferring upon them voting rights. Though the issue of conferring voting rights to the citizens absenting from their place of ordinary residence in India owing to their employment, education or otherwise outside India has been receiving the attention of the Government for quite sometime, yet the same could not be acceded owing to the practical difficulties in enrolling them in the electoral rolls of the concerned

constituency and allowing them to cast their votes outside India within the short span of time available in the election process.

2. It is noted that the right to vote as demanded by the non-resident Indians is their legitimate right. Conferring such right will enable them to participate in the democratic process of elections in their motherland and will also boost their involvement in the nation building...Accordingly; it is proposed to amend section 20 of the Representation of the People Act, 1950.”

At the time of printing this report, the Parliament has approved voting rights for NRIs in elections. The Lok Sabha adopted the Representation of the People (Amendment) Bill, 2010, on 31 August 2010, while Rajya Sabha passed it on 30 August 2010. The current Bill aims at providing rights to Indians who have gone abroad for employment or education, but have not obtained citizenship of the country where they are residing now, to get registered in the electoral rolls and to vote in elections to legislatures and Parliament. According to the Union Law Minister, Mr. Veerappa Moily, ‘the House had no “dispute” over the need for providing NRIs voting rights but members had views on the modalities of allowing that right, which would be addressed separately.’<sup>51</sup>

## **2. Out of Sight, Out of Mind- The NRI Plight**

The issue of making the electoral process in India inclusive has become urgent and important. Besides the proposed Amendment Bill,<sup>52</sup> there is an online petition filed by a group of NRIs urging the Government of India to act on the Bill.<sup>53</sup> The extracts from the Petition are as under:

“We strongly urge the Indian Government to act in ‘Letter and Spirit’ on the recommendations of The Representation of the People (Amendment) Bill, 2006 by adding the following clause:

(1AA) A person absenting himself from his place of ordinary residence owing to his employment, education, or otherwise, outside India, whether temporarily or not, shall not, by reason thereof, cease to be ordinarily resident in India.”

Through the introduction of amendment to RPA, 1950, the Parliament did discuss the lack of non residing Indians’ right to vote, but there has been almost no attention given to similar plight of people on the move within the country. Focusing on this issue, the petition also pushes for expanding the scope of the definition of ‘ordinary resident’ in Section 20 of the RPA, “to include those who might have relocated temporarily, regardless of the existing 6 month clause, for employment/education/

51. *Parliament Nod for NRI Voting Rights Bill*, The Hindu, New Delhi (1 September 2010).

52. *Id.*

53. Petition for Absentee Voting in Indian Elections, available at <http://www.petitiononline.com/abvindia/petition.htm>.

familial purposes.”

Further, the Prime Minister of India, Dr. Manmohan Singh, in his Inaugural Address at the 8th Pravasi Bharatiya Divas on 8th January 2010, said:

“I recognize the legitimate desire of Indians living abroad to exercise their franchise and to have a say in who governs India. We are working on this issue and I sincerely hope that they will get a chance to vote by the time of the next regular general elections..”

As observed by the Ministry of Law, the term ‘NRI’ is not defined. Furthermore, it was not clear if the Prime Minister in his address referred to the Non Resident Indians who are settled abroad or all those people who temporarily go abroad for work and education. Mr. Ravi, Minister for Overseas Indian Affairs, has thrown more light on the issue and it has now been clarified that the Bill<sup>54</sup> seeks to give voting rights to Indian citizens living abroad for work, education and other purposes. The proposal allows NRIs to get their names registered in the electoral roll of the concerned constituency of their place of ‘ordinary residence’ in India and cast their vote in the election if they are present in their constituencies at the time of election. The problem here is that if the PM’s reference was limited to the people settled abroad, it will be difficult to do justice to the intention of his address and to those who still miss out on voting due to inadequate interpretation and limits of this definition. The Ministry of Law is currently quizzing over the question whether the people of Indian origin who do not hold Indian passports could be added to the list and if so, how?<sup>55</sup> This is a big question in itself because, if the government proceeds in this direction, a completely new issue of dual citizenship will be opened for consideration. Voting rights and dual citizenship have been long-standing demands of the NRIs. Officials have, however, recently confirmed that Persons of Indian Origin will not be eligible to vote under the new law.

As and when this right to vote for NRIs materialises, it shall automatically give the NRIs a right to contest elections. But implementation of these rights is impossible unless they are present in person in India. With mere voting right, the question that needs to be answered is, how many NRIs

54. *Id.*

55. *Moily Wants to Know if PM has PIO Voters too in Mind*, (The Economic Times, 12 January 2010), available at <http://economictimes.indiatimes.com/news/politics/nation/Moily-wants-to-know-if-PM-has-PIO-voters-too-in-mind/articleshow/5435148.cms>.



will be eager to come back to India just to cast vote? The issue becomes more serious when one considers the fact that Gulf has a huge NRI population that hails mostly from the working class. The announcement by the Prime Minister will help the NRIs only to retain their names in the voters list in the absence of any mechanism to enable them to cast their votes in their place of work. The Office of Overseas Indian Affairs has done away with the possibility of setting up polling stations abroad, saying it was impractical, considering that in countries of the Gulf, there are more than a million Indians and getting them to voting stations will not be possible.<sup>56</sup> Enabling an ordinary Indian citizen living abroad to vote shall not be seen as a favour done but as a right.<sup>57</sup>

The proposed draft Bill may not work and will not be meaningful unless changed further to accommodate people living abroad, rather than making it contingent on them being in India. What we are left with is sheer hypothesis that legislators are concerned about possible frauds if such bills are passed or the alternative voting methods they would have to design, introduce and implement to allow non-residents to exercise their right to vote. It is lethargic to deny constitutional rights with such pleas to avoid any extra effort in defining few important terms and devising methods to deliver what the Constitution promises to its citizens. This study shall now emphasise on various alternative ways of ascertaining the right to vote in the Indian context because electoral frauds should be sincerely faced and solved rather than refusing citizens their exercise of the right to vote.<sup>58</sup>

It is interesting to note the efforts made by the US on enabling its expatriates to exercise franchise from abroad. The U.S. Embassy in Paris sent out a message with absentee voting guidelines to American residents abroad for 2010 election. It allowed people to vote in their 'legal state of residence' where one resided immediately before departure from the US, even though they may no longer own property or may have no other ties to their last state of residence, and even if their intent to return to that state may be uncertain. Further, sixteen states in the US allow those who have never resided in the US to register where a parent or spouse would

56. *Id.*

57. *Voting Beyond Borders*, (The Hindu, 11 Jan 2010), available at <http://beta.thehindu.com/opinion/editorial/article78674.ece>.

58. Available at <http://www.fvap.gov/resources/media/2010vag.pdf>.

be eligible to vote.

When Embassies of the US, Australia and several other countries could take steps to enable their respective citizens who happen to be outside the country on the election day to vote, why can't Indian embassies/ High Commissions do likewise? For Indian citizens who happen to be outside the country on the election day on account of education, business or any other reason, the Indian embassies must make arrangements to enable them to cast their vote.

## **VI. ALTERNATIVE WAYS OF ASCERTAINING RIGHT TO VOTE**

Through the ages, as has been discussed previously, rigorous efforts have been made by different strata of society in securing this right for themselves. The question is: Whether there can be any alternative ways or methods of securing it in this age of technological advancement.

This segment proposes to analyse the alternative ways that have been adopted to ascertain voting rights in India and abroad.

### **A. Compulsory Voting**

Compulsory voting has been considered in many countries but only a few implement the law and fewer provide for punitive action for failing to vote. Belgium was the first country to make voting mandatory in 1892. Current day examples include Australia, a vibrant democracy successfully implementing compulsory voting, as it enforces the compulsion to vote including the compulsion to enrol or register to vote. In New Zealand, on the contrary, although it is a voluntary voting system, it makes enrolment as a voter compulsory. The Netherlands and Venezuela, among others, once practised compulsory voting which stands abolished now.<sup>59</sup> According to the IDEA (Institute for Democracy and Electoral Assistance), voting turnout is 15% more in the countries that mandate voting compared to those where voters are not obliged to vote.<sup>60</sup>

The Australian experience will be considered later in this section and will be compared to the Indian scenario in this regard. In India, Gujarat has emerged as the first state in the country to make voting compulsory

59. *Compulsory Voting*, available at [http://www.idea.int/vt/compulsory\\_voting.cfm](http://www.idea.int/vt/compulsory_voting.cfm).

60 VOTER TURN-OUT SINCE 1945—A GLOBAL REPORT, 108 (Rafael Lopez Pintor & Maria Gratschew eds., 2002), available at <http://www.idea.int/publications/vt/index.cfm>.

in elections to local authorities. The Bill (Gujarat Local Authorities Laws (Amendment), 2009) was passed by the state Assembly on 19th December, 2009, and is termed by the government as a pioneering move at making democracy more representative and meaningful. It requires all registered voters in Gujarat to vote and those absent will be summoned by the local election officer and asked to submit a valid reason for failing to vote within a month. However, the Bill provides exemptions to those who cannot vote because of illness or due to absence from state or country. There is also an exemption for those who can provide valid and sufficient reasons-which are yet to be prescribed.<sup>61</sup> In case a voter feels he has been wrongly penalized, he can appeal to an Appellate Officer designated by the State Election Commission. Penalties have not yet been subscribed but some of them reportedly suggested by some ministers include such draconian measures as denial of driving license or passport, or concessional bank loan or even a government job.<sup>62</sup> In countries that mandate voting, the common penalties are fine<sup>63</sup>, imprisonment in case of failure to pay fine<sup>64</sup> and denial of goods and services provided by the public offices.<sup>65</sup> In Bolivia, a person failing to vote is prohibited from withdrawing salary for three months. In Australia, voting is compulsory both at federal elections and at elections for the state and territory legislatures. Enrolled voters, who fail to vote, are asked to explain their failure. In case of lack of satisfactory reason, for example, illness or religious prohibition, a relatively small fine of about \$20 to \$70 is imposed and failure to pay the fine may result in a court hearing.<sup>66</sup>

The Gujarat government justifies the Bill stating that in the countries that made voting compulsory, the voter turnout has shot up from 45 to 90%. The Statement of Objects and Reasons of the Gujarat Bill read as follows:

“It is observed that due to low turnout of voters to discharge *their duty* by exercising their right to vote, the true spirit of the will of the people is not reflected in the electoral mandate” (emphasis supplied).

There are certain aspects that may need consideration in case of Gujarat’s compulsory voting. Firstly, at any given time, a good number of people from rural and small town India are away in the bigger cities in search of

61. See Deepal Trivedi, *Must-Vote Bill Passed*, The Asian Age, New Delhi, 20 December 2009.

62. *In Gujarat, Voting Made Mandatory*, The Times of India, New Delhi, 20 December 2009.

63. Argentina, Australia, Belgium among others.

64. Egypt, Chile and Fiji among others.

65. Peru and Greece among others.

66. Australian Electoral History, available at [http://www.aec.gov.au/Elections/Australian\\_Electoral\\_History/](http://www.aec.gov.au/Elections/Australian_Electoral_History/)

livelihood or to pursue business options. If all these people have to justify their absence, a fair segment of registered voters will be facing penalties and punishments, not to mention the harassment one may face, before he/she manages to convince the officer that the reason for absence is genuine. Secondly, a large number of Muslims have fled their homes in the aftermath of communal riots following Godhra incident and are yet to return.<sup>67</sup> Thirdly, the Bill is ambiguously worded. It mandates registered voters to vote, but it does not specify if the process of registration is compulsory. So does it actually make registration compulsory or voting compulsory for those who are registered? If the latter is the case, a person not wishing to vote may simply not register. The new legislation needs to answer such queries. It has already attracted attention from many quarters and other states in India have begun to consider implementing compulsory voting. After Gujarat, the government of Himachal Pradesh expressed in favour of making voting compulsory in elections to local bodies including municipal councils. The Chief Minister of Himachal Pradesh, Prem Kumar Dhumal was reportedly keen to promote compulsory voting in Assembly and Parliamentary elections. He went on to further state that those who willingly refrain from exercising their franchise shall be stripped of various citizen benefits they get.<sup>68</sup>

Beyond increase in voter turnout, there are other arguments supporting compulsory voting. It is noted that the role of money may lose its importance as politicians won't need to spend on large campaigns for persuading people to come to polling booths. Mandatory voting will involve proactive participation from the voters, making them better informed. This would further reduce the risk of unstable government and related crisis.<sup>69</sup> There is a fair chance that implementing compulsory voting at local elections would still be achievable, as the execution of the electoral process is easier at lower administrative levels.

However, if increasing voter turnout is the 'object' of promoting mandatory voting, it is difficult to be convinced whether mere increase in number of voters is commensurate with democratic principles. Money may still have a major role to play as compulsory voting might invite extravagant campaigns

67. For general discussion on the issue, see *Modi Vote Idea Against Free Will*, The Asian Age, New Delhi, 22 December 2009.

68. See *State Mulls Making Voting Mandatory*, The Tribune, New Delhi, 21 December 2009.

69. Arend Lijphart, *Unequal Participation: Democracy's Unresolved Dilemma*, 91 AM. POL. SC. REV. 8-11(1997).

to attract a bigger population. For the implementation of such a legislative experiment at the national level, one must wait and see how it works at the local body elections.

Different approaches towards punishment for non-voting have been debated. The punishments proposed by the Gujarat and Himachal Pradesh governments are stringent. In Athens, around 509 BC, eligible voters who failed to vote were tied with a rope and herded from the Athenian marketplace to the Assembly. The robes of these voters would be stained red while they resisted facing the threat of penalty.<sup>70</sup> The system worked for Athens, but will it work for Gujarat? And is this what we should do to achieve the democratic set-up we dream of? Another critical question, in the current Indian scenario is: Can right to vote be called a 'duty' as stated in the 'Statement of Object and Reasons'?

Indeed, the idea behind the Bill is innovative in the Indian context and should not be criticized simply because it tries to strike a balance between a citizen's right and duty to ensure that the principle of majority rule that forms the foundation of our democracy is not weakened. Promoters of the new legislation argue that no fundamental right can be seen in isolation, nor can it be entirely divorced from the duty towards nation. However, there is a general notion that voting is a civic right rather than a civil duty.<sup>71</sup> Also, right to vote comes with the right not to vote. So, if people do not turn up to vote on election day, do they not exercise their right not to vote? It is true that candidates and parties with less than 25% of the total votes have been in power for over the years because large numbers of people have not exercised their franchise. In other words, the person representing a constituency at any level of governance, from a village panchayat to the Lok Sabha, is actually endorsed by 12 to 14% of the voters. This does not speak well of our democracy and raises serious questions about the representative nature of our 'elected' bodies. There has to be some reason for the remaining voters to abstain from voting. While some just do not care about exercising their franchise, others are often not in a position to exercise their franchise. These are two serious issues and the state governments sure have a reason to worry. But is compulsory voting an apt solution?

70. Abheek Bhattacharya, 'Revolution' in Gujarat, available at <http://www.livemint.com/2010/01/11212443/8216Revolution8217-in-Gu.html>.

71. Gujarat law: Not 'practical' to Make Voting Compulsory for All India, says EC, The Indian Express, New Delhi, 21 December 2009.

Today, governments have to provide security forces and carry out air surveillance at the voting booths in sensitive areas of the North East and Jammu-Kashmir. There have been many incidents of militants targeting voters, despite the army protection. Such being the plight, is it fair to force people to vote? Does the state take the responsibility of voters' life while it forces the voters to vote? These governments should also consider the fact that if, in spite of attacks on voters, the naxal-infested areas can show a big turnout, it is obvious that these people know their right and they desire to exercise it against all odds. Recent polling figures in Jharkhand underline the point.<sup>72</sup> This feeling should be strengthened rather than creating resentment by making voting compulsory. Another aspect of non-voting that the governments will have to address is the lack of awareness regarding importance of voting. There is some amount of indifference, if not cynicism, towards the political process. This change in attitude may hit the democracy hard in the long run. Making voting compulsory could not be the most accurate solution to this problem. Those who do not care about their role in governance may randomly vote without putting much thought; simply to complete one duty and evade penalty. Thus, voters should be 'persuaded' to vote, not 'coerced'. Forcing people to cast their ballots is at odds with the idea of free will, and therefore with the idea of democratic choice.

The study does not completely disapprove the notion of mandatory voting but there are other urgent demands glaring at the current system, seeking immediate attention. Governments keen on increasing voter turnout should first work on providing means to exercise the right. So, those who want to vote should be able to vote. Before making voting compulsory, facilities to cast vote should be given and guaranteed. The government should facilitate voting procedures which can boost the turnout rate further. Instruments like voter friendly registration process and easy voting procedures can also increase the turnout. The Belgian citizens eligible to vote need no registration. They automatically receive an invitation to cast their vote that mentions place and time for voting. A large number of voting booths are provided and elections are always conducted on a Sunday.<sup>73</sup>

72. 58% voting was reported in phase four of the Jharkhand Assembly elections in December 2009, despite Maoist threat and two incidents of firing in West Singhbhum District.

73. Sofie Marien, *Is Compulsory Voting a Good Idea? The Consequences of Compulsory Voting in Belgium*, 6 (PartiRep Working Paper, 2007), available at [http://soc.kuleuven.be/pol/docs/2007-10-30\\_CompulsoryVoting.pdf](http://soc.kuleuven.be/pol/docs/2007-10-30_CompulsoryVoting.pdf).

Despite the Supreme Court's dismissal of an earlier petition, it is not prima facie clear that a law requiring compulsory voting is unconstitutional.<sup>74</sup> In fact, that petition was dismissed more on practical and procedural grounds than on a due consideration of the constitutional issues.<sup>75</sup> Compulsory voting is not outside the bounds of constitutional permissibility; however, the only issue with making voting compulsory is that the first value at stake is choice. Though the aim is to require participation at the local level, the experiment may not necessarily improve the quality of civic engagement. The biggest argument against compulsory voting is that it tends to criminalise non-voting. It may also give the state immense power of harassment. It is a crucial democratic value to worry about state intrusion in public lives.

### **B. Voters' Right to Recall**

After making it compulsory to vote in the local body elections, the Gujarat government is now mulling another Bill that empowers the voters to recall non-performing local representatives. Once the Bill goes through the Assembly, the District Collector will have the power to remove any elected local body representative and order a repoll if one-third of the electorate lodges a complaint and the Collector finds substance in it. Elected representatives can, however, serve first two years of their five year term before they can be recalled.<sup>76</sup> The right to recall is already being implemented in Chhattisgarh at the level of Nagar Panchayats. In June 2008, electorate of three urban bodies casted their votes to decide on the recall of their Nagar Panchayat Presidents. Chhattisgarh Election Commissioner, Mr. Sushil Trivedi reported that in such an election, the President needs to poll more than half the total votes cast to remain in office. The Chhattisgarh recall ballot papers had only two symbols, both of which were chairs with one occupied and another empty. The electorate was required to vote on the empty chair if they wished to recall the elected representative.

### **C. Negative Voting- I Choose None**

In negative voting, voters are provided with an additional option that reads 'none of the above', appearing below the names of the candidates on the Electronic Voting Machines (EVMs). It can be an effective tool to let the

74. Atul Sarode's petition on compulsory voting was dismissed on 17 April 2009.

75. Pratap Bhanu Mehta, *Acts of Choice*, (Indian Express, 22 December 2009), available at <http://www.indianexpress.com/news/acts-of-choice/557550/>.

76. See Bashir Pathan, *After Must Vote, Modi Govt. Plans Right to Recall*, Indian Express, 24 December 2009. see also Joseph John, *For First Time Votes Cast to Recall Elected Leaders, Results to be Out Tomorrow*, Indian Express, 16 June, 2008.

voters express their lack of confidence in all the candidates on a ballot. Under the existing provisions of Sections 49(O) and 128 of the RPA, if a voter, after coming to a polling booth, does not want to cast his vote in favour of any candidate on the list, he/she has to inform the presiding officer about his/her intention of not voting. The presiding officer shall then make an entry in the relevant rule book after taking the signature of the said voter. Thus, though there is a provision for negative voting, it denies the voter to cast his negative vote in secrecy, which defeats the 'secret ballot' concept.

The Gujarat government's Bill on compulsory voting provides for negative voting for those who do not approve of any candidate.<sup>77</sup> Since voting has been made compulsory in Gujarat, it was important to look into the aspect of negative voting. Gujarat will thus have to modify the EVMs by adding 'none of the above' option so that voters cannot escape voting on the ground that they do not approve of any candidate. The Election Commission of India has also been advocating negative voting and has recommended that 'none of the above' option be included in EVMs.<sup>78</sup> Unfortunately, the Government of India has not approved of the proposal and has been objecting to the demand of negative voting before the Supreme Court.<sup>79</sup>

With significant legislative activism, a lot is still to be done to achieve the desired results on voting rights. However, proposing bills in the Parliament may not always bring in the aspired change in law and legal system. Judiciary often plays an effective alternative role when the Parliament fails. Considering this role of judiciary, the study discusses several judgments through which Indian courts have interpreted the right to vote.

## VII. Judicial Perspective

Judiciary is one of the three organs of the democratic dominion. Its strength lies in its independence from the Executive and the Legislature. If liberty and equality are continuously sustaining and thriving in India, major credit should go to the Indian judicial system. It has been protecting and promoting the legal rights of the masses, providing remedies and enforcing laws. It has played a proactive role in bringing about change in laws with changing time. This segment touches a few aspects of this right from the judicial point of view.

77. *Gujarat Makes Voting a Must*, The Mail Today, New Delhi, 20 December 2009.

78. Election Commission of India letters dated 10 December 2001 and 5 July 2004 to the Government of India, Ministry of Law, Justice and Company Affairs, available at [http://y4e.in/pdf/PROPOSED\\_ELECTORAL\\_REFORMS.pdf](http://y4e.in/pdf/PROPOSED_ELECTORAL_REFORMS.pdf).

79. *People's Union for Civil Liberties v. Union of India* (2009) 3 SCC 200.



Judicial activism on the right to vote is still lying low, but a movement has begun and the courts will have a crucial role in shaping the right. Following are a few judgments of the Indian judiciary on the right to vote.

### ***A. Right to Vote: a Statutory Right***

The right to vote or to stand as a candidate is not a civil right but a statutory right and is subject to the limitation created by the statute.<sup>80</sup>

The Supreme Court in Ponnuswami<sup>81</sup> case endorsed the principles laid down by the Privy Council in Joseph Theberge's case:<sup>82</sup>

- 1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitation imposed by it;
- 2) Strictly speaking, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests it in a Special Tribunal, an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

### ***B. Right to Vote: a Species of Freedom of Expression***

The Supreme Court has treated right to vote as a species of the fundamental right to speech and expression.<sup>83</sup> A fine distinction was drawn between the right to vote and the freedom of voting as a species of freedom of expression, while reiterating the view that a right to elect, fundamental though it is to democracy, is neither a fundamental right nor a common law right but a pure and simple statutory right.<sup>84</sup>

### ***C. Does right to register as a voter guarantee right to vote?***

There has been some disagreement among the courts on whether the right to vote under Article 326 is limited only to the right to register as a voter or necessarily guarantees the right to vote. The Kerala High Court has held

80. Chandan Kumar Sarkar v. Chief Election Commissioner AIR 1995 Gau 61.

81. Ponnuswami N.P. v. Returning Officer, Namkkal Constituency AIR 1952 SC 64.

82. Joseph Theberge v. Phillippe Laundry (1876) 2 AC 102.

83. People's Union for Civil Liberties v. Union of India (2003) 4 SCC 399. *See also*, Union of India v. Association for Democratic Reforms (2002) 5 SCC 294.

84. Kuldip Nayar v. Union of India AIR 2006 SC 3127.

that a limited interpretation and restrictive approach will be a mockery of the Constitution.<sup>85</sup> However, the Full Bench of Punjab High Court has dissented from this view and held that the phrase “that is to say” in Article 326 only refers to entitlement of a person to be registered as a voter. The Article does not stipulate that such a voter will have a right to vote at an election.<sup>86</sup> But such interpretation does no justice to Article 326, as it deprives the very meaning of it. For a right to be registered as a voter without having the right to vote is no right at all.

#### ***D. Voting for Undertrials***

The under-trial can contest but cannot vote. In India, where most undertrials come from the poorer sections, depriving them of their right to vote makes it appear as though the marginalized sections have ceased to be of concern. Undertrials are presumed to be innocent, i.e. they are not convicts and they are not criminals.<sup>87</sup>

Apart from the persons who miss out on their franchise, there is another group of voters that is ignored not just by the government but also by the Indian judiciary. Section 62(5) of RPA, 1951, denies to undertrials in prison or police custody the right to vote. The irony is that there is no such restriction on persons accused of heinous offences but who are out on bail. To address and remedy the issue, a writ petition on rights of the undertrials to vote was filed in the Supreme Court under Article 32 of the Constitution. Unfortunately, the Supreme Court rejected the plea and dismissed the petition on July 9, 1997.<sup>88</sup>

In this regard, the National Human Rights Commission (NHRC) recommended,

“As per Section 62(5) of the Representation of People’s Act, a person confined in a prison or a lawful custody of the Police except those under preventive detention under any law is not allowed to vote although except for convicts, they are eligible to contest election. The provisions related to right to vote in the Representation of People’s Act be suitably amended to ensure this right for under-trial prisoners.”<sup>89</sup>

85. Kunhiraman P v. Krishna Iyer AIR 1962 Ker 190, 192 (FB).

86. Roop Lal Mehta v. Dhan Singh AIR 1968 Punj 1, 4 (FB) .

87. S.N. CHAUDHARY, *Introduction, in III HUMAN RIGHTS AND POVERTY IN INDIA* (S.N. CHAUDHARY ed., 2005),

88. Anukul Chandra Pradhan v. Union of India AIR 1997 SC 2814.

89. S.N. CHAUDHARY, *supra* n. 87, at 27.

There is merit in the above recommendation. The authorities concerned need to take necessary steps in this regard.

### ***E. Apex Court on Negative Voting***

On February 23, 2009 a two-Judge bench of the Supreme Court looked into the matter of negative voting and found sufficient merit in it to recommend the matter to the Constitution Bench.<sup>90</sup> If the Constitutional Bench favours negative voting, people will be able to express their dissatisfaction and lack of confidence towards all the candidates. This shall help in the least to know the expectations of people from candidates. Negative voting will pass on a strong message of disenchantment and lack of faith in parties and their policies. This might exhort the parties to improve their performance. A person with limited or no choice at all can still make his/her vote count by voting for 'none of the above'.

## **VIII. Human Rights Perspective on Right to Vote**

Apart from the constitutional, legislative and judicial perspective, the current limitations in election law in India contradict the principles of human rights. Several international conventions have considered voting rights from the human rights perspective. India is a party to many such important conventions and shall abide by the guidelines provided therein. This segment considers a few relevant conventions and their approach towards right to vote.

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides as follows:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a. To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- c. To have access, on general terms of equality, to public service in his country.”

90. People's Union for Civil Liberties v. Union of India (2009) 3 SCC 200. See also Kannan Kasturi, *SC Keeps Door Open on Negative Voting*, available at <http://www.indiatogether.org/2009/mar/gov-negvote.htm>.

On Article 25 of ICCPR, the UN Committee on Human Rights says that “the article lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.”<sup>91</sup>

Many human rights treaty monitoring bodies of the United Nations have often expressed concern that Bolivian and Egyptian migrant workers, amongst other countries, are not able to exercise their right to vote. The Committees have also encouraged the State parties to take steps to facilitate the exercise of voting rights by migrant workers residing abroad.<sup>92</sup> These monitoring bodies have also observed that the right to participate in public affairs of their State of origin and to vote and to be elected, in accordance with Article 41, is not applied in practice.<sup>93</sup>

Some efforts have been made by the Indian government on these lines. In order to safeguard the economic and other interests of the migrant labourers, the Government has already enacted the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.<sup>94</sup> This Act provides for registration of all principal employers/contractors employing migrant labour, licensing of contracts, payment of minimum and equal wages, medical and several other facilities ranging from displacement allowance to protective clothing. It is unfortunate, however, that right to vote - the most basic right in a democracy is not in the list. The list denies many millions the essential right recognized by the Constitution, and the International Covenants to which India is a party. Migration has become a part and parcel of life and should be taken seriously. It should not stand as a limitation on the right to vote; nor must it be an excuse for denying facilities that provide the opportunity to exercise the right.

91. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, GENERAL COMMENT NO. 25: THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS, VOTING RIGHTS AND THE RIGHT OF EQUAL ACCESS TO PUBLIC SERVICE (ART. 25), 1, U.N.Doc. CCPR/C/21/Rev.1/Add.7 (7 December 1996), *available at* [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/dob7fo23e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/dob7fo23e8d6d9898025651e004bc0eb?Opendocument).
92. INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (BOLIVIA), ¶34, U.N.Doc. CMW/C/BOL/CO/1(2 May 2008), *available at* <http://www.universallhumanrightsindex.org/documents/830/1411/document/en/pdf/text.pdf>.
93. Ms. Gabriela Rodríguez Pizarro, *Migrant Workers Report*, UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL E/CN.4/2006/73/Add.2, (5 January 2006).
94. *Available at* [http://labour.delhigovt.nic.in/act/details\\_acts/interstatemigrnatworkmen/index.html](http://labour.delhigovt.nic.in/act/details_acts/interstatemigrnatworkmen/index.html).

## ***A. Voting Beyond Boundaries***

In the true spirit of Indian democracy, it is imperative that the country now explores and expands the alternative voting system to allow all Indian citizens to exercise their right to vote. The best practices that prevail in different parts of the world demonstrate that governments need to make substantial efforts to ensure greater participation of their citizenry in the electoral process.<sup>95</sup> The need for inclusive voting is felt around the world. The ideal situation has been observed in Hong Kong, which is reported to have highest overseas absentee voting registrants. In 2009, the Department of Foreign Affairs of the Government of Philippines confirmed that a total of 17,486 Filipinos in Hong Kong registered to vote in 2010 elections. This is considered as the highest turnout worldwide.<sup>96</sup> In Philippines, the Filipino Americans can vote in their homeland during the general elections and continuous efforts are taken by the Philippine American Press Club , in cooperation with the federation of Philippine American Chambers of Commerce, which confirms that 460,000 Filipino Americans have registered for absentee voting for the May 2010 Elections.<sup>97</sup> Similar progress has been seen in the Myanmar embassy in Singapore, where it was announced in April 2008, that it will hold absentee referendum voting at the end of April, and has reportedly sent out notices to Myanmar's citizens to come to the embassy premises to cast their votes.<sup>98</sup>

The first use of external voting is said to have taken place during the reign of Roman emperor Augustus, who is said to have invented a system of suffrage by which the local senate in 28 new colonies could cast their votes for candidates in Rome. Then, in 1862, during the Civil War, Wisconsin introduced absentee voting in the US for soldiers fighting in the Union army. Since registration was done at the state level, it was up to the states to take a decision on external voting in the US. The overseas postal vote was gradually extended to cover non-military personnel serving abroad in 1955, and finally in 1968 it was extended to all US citizens abroad. In response to

95. Naveen Jindal, *supra* n.49.

96. *See Hong Kong has Highest Overseas Absentee Voting Registrants*, available at <http://www.philstar.com/Article.aspx?articleId=496130&publicationSubCategoryId=202>.

97. *Press Club Kapihan Tackles Overseas Absentee Voting*, NORCAL ASIAN JOURNAL, June 26-July 2, 2009.

98. *Burmese Embassy to Conduct Absentee Voting in Singapore*, Mizzima News, available at <http://dassk.org/index.php?topic=2557.0>.

demand from its citizens abroad, the US finally enacted a law that made it mandatory for all its states to register external voters.<sup>99</sup>

A number of developed countries implement various forms of absentee voting, such as Internet voting (Switzerland, the US, France, etc.), proxy voting (the Netherlands) and postal voting, which has emerged as the most popular form of absentee voting.<sup>100</sup>

Discussed below are some alternative voting methods used worldwide and their applicability in the Indian scenario.

### **1. Postal Voting**

The electoral process of postal vote or vote by mail begins when ballots are mailed to the registered voters about three weeks prior to election day. After marking the ballot the voter puts it in a secret envelope and covers this secret envelope with a mailing envelope. The voter then signs the mailing envelope on the outside and has three weeks to mail the vote or drop it at a designated site. The voter's signature on the envelope is then compared with the signature on record at the time of registration and his vote is counted.

India does have a limited form of postal voting, but it is not accessed by enough people to create a meaningful impact towards making the electoral process more inclusive. For instance, special voters (the President of India, the Vice President, Governors amongst others); service voters (armed forces, members of a force to whom the Army Act applies); voters on election duty (polling agents, polling officers et al.); and electors subjected to preventive detention are entitled to vote by post in a parliamentary or assembly constituency.<sup>101</sup> This provision provides for the right to vote for certain specified categories of persons resident in India, but still leaves out a large number of people who have difficulties exercising their right to vote.

In an amendment to the RPA, 1951, in 2003, Section 60(c) provided for enabling "any person belonging to a class of persons notified by the

99. *Learning with the Times: Roman Emperor First to Introduce External Voting*, (Times of India 11 January 2010), available at <http://timesofindia.indiatimes.com/india/LEARNING-WITH-THE-TIMES-Roman-emperor-first-to-introduce-external-voting/articleshow/5431685.cms>.

100. Naveen Jindal, *supra* n.49.

101. See The Conduct of Election Rules, 1961, §18(a).

Election Commission in consultation with the government to give his vote by postal ballot.” While this provision clearly provides scope for the recognition of a “class of persons” to be entitled to exercise their right to vote by way of postal ballot, it has been used in the past for a limited number of cases concerning migrants from Jammu and Kashmir and Bru and Reang tribal migrants from Mizoram and Tripura, allowing them to vote through postal ballot.

### ***Advantages of Postal Voting***

Postal voting will eliminate the pain of waiting in line at the poll booth for hours. It also eliminates the confusion of where to go to vote. It can reduce the election administration cost and the incidents of malfunctioning of voting machinery. The hassle free procedure can eventually result in increased voter turnout.<sup>102</sup>

In the US, the League of Women Voters succeeded in their petition drive to conduct the 1998 general elections in Oregon through postal voting. Oregon State also reported decrease in the cost of election by one-third to half compared to the polling election costs. A 2003 survey on postal voting in the Oregon State showed that since the adoption of postal voting methods, there was increase in the voter turnout, particularly among women, disabled persons, home makers and young professionals aged 26 to 38. This survey also shows that proxy voting is better for the groups that are likely to be vulnerable to abusive party workers forcing them to vote in a particular way.<sup>103</sup>

### ***Possible Abuse and Danger Involved***

Postal voting is very popular in the UK, which has witnessed explosive voting turnout since 2001, when postal voting was made available to anyone on demand without having to give reasons for making it to the poll booths on election day. However, there have been some alarming instances of vote rigging in the 2005 Birmingham local council elections. There are chances of voters being intimidated by the party workers threatening the voters to sign their way. Evidence indicates the possibility of forging application forms and postal ballots. There have been allegations in the Birmingham voting rigging case that the forgers

102. *Why Vote by Mail is Better?* available at <http://www.votebymailproject.org/whyvotebymail.html>.

103. Priscilla L. Southwell, *Five Years Later: A Re-Assessment Of Oregon's Vote By Mail Electoral Process*, 37 POLITICAL SCIENCE & POLITICS 89, 92 (2004).

applied for ballots at alternative addresses on the names of registered voters appearing on the publically available electoral roll.<sup>104</sup>

In the US, another set of issues have marred the postal voting system. The signature verification from the envelope with that on registration has often disfranchised thousands of voters.<sup>105</sup> Post offices have also been blamed to have lost the postal votes or delivering it after the counting.<sup>106</sup> Critics have opposed the system, claiming that, the postal voting lengthens the time to count the votes, as the delivery of postal ballots continues beyond election day.<sup>107</sup>

Thus, the system is prone to abuse but strict measures and effective control can help avoid similar incidents.

India is already implementing postal voting for limited sections of the society. With close analysis of the system, it can explore the option of extending the facility to a larger segment of population, may be on need basis and on account of absence for valid reasons. But again considering the poor image of government offices, the possibility of voter's harassment cannot be denied. Also, this method may work for those on temporary move, or persons with disability and old age, but it will be of little help to NRIs, for whom proxy voting and internet voting can be more suitable options. Both the alternatives are discussed below.

## **2.Proxy Voting**

Proxy voting also known as delegated voting is an alternative voting method by which a registered voter unable to vote on the election day can nominate another person to cast vote on his/her behalf. The person so appointed to vote in registered voter's absence is called a 'proxy'. Besides the UK and the Netherlands, many other countries in the European Union, Arab League and Africa provide for proxy voting.

104. Barnaby Mason, *Voting Scandal Mars UK Election*, (BBC News 5 April 2005), available at [http://news.bbc.co.uk/2/hi/uk\\_news/4410743.stm](http://news.bbc.co.uk/2/hi/uk_news/4410743.stm).

105. Mark D. Fefer, *Signed, Sealed and Dithered?* (Seattle Weekly News 7 February 2007), available at <http://www.seattleweekly.com/2007-02-07/news/signed-sealed-and-dithered/>.

106. The No Vote by Mail Project, *Post Office Loses Ballot in Florida Election Contest* (17 March 2008), available at <http://novbm.wordpress.com/2008/03/17/post-office-loses-ballots-in-florida-election-contest/>.

107. The No Vote by Mail Project, *What's Wrong With Voting by Mail or Absentee Voting?*, available at <http://novbm.wordpress.com/2008/02/20/whats-wrong-with-voting-by-mail-or-absentee-ballot/>.



Proxy voting was introduced in India in September 2003 after the postal voting system was realized to be time consuming and there were instances of the postal ballots reaching the services personnel after the elections. The soldiers now have both the options open. In India, the soldier wishing to opt for proxy voting has to fill in two forms and submit them to the Commanding Officer. The Commanding Officer gets them verified by the appropriate authority and sends one form back to the soldier and another to the proxy. Another form with proxy's details is again verified by the Commanding Officer and is sent to the proxy. A proxy so nominated has to get the form attested by a first class magistrate and can cast a vote for the soldier on producing the form for verification at the poll booth.

### ***Advantages of Proxy Voting***

This measure is limited to Indian soldiers and has proven helpful particularly to the soldiers posted in remote parts of the country. Though some servicemen have reported that the proxy voting procedure is too cumbersome,<sup>108</sup> the military authorities have confirmed positive response to the new voting system, with almost 68% soldiers applying to vote through proxy.<sup>109</sup>

### ***Possible Abuse and Danger Involved***

Proxy voting is often considered not in line with the international standards as it may not fit into the brackets of assured secrecy and trust, and thus could be violative of electoral rights. In some Arab countries, owing to the cultural context, proxy voting has often been turned into 'family voting', where a male member of the family votes as a proxy for the females of the house. It is difficult to say if such a proxy voter of the Arab family would vote for the same candidate that his wife/ sister/ mother/ daughter would have otherwise voted for, had she been given a chance to walk up to the booth and vote in secrecy. Thus, in a way, the practice disfranchises women.

It should, however, be noted that trust is the essential ingredient of proxy voting. One would not nominate a proxy if she/he does not trust the nominee or fears that proxy may not vote for the candidate desired by

108. *Servicemen Find Proxy Voting too Cumbersome*, available at <http://news.indiamart.com/news-analysis/servicemen-find-prox-2993.html>.

109. *What is Proxy Voting?* (26 March 2004), available at <http://www.rediff.com/election/2004/mar/26espec2.htm>.

the principal.<sup>110</sup> Further, proxy voting cannot simply be struck out for this reason, as we cannot deny that postal voting too may turn into family voting, where a dominant male member may make his family members cast their vote as per his wish.

### ***3. Internet Voting***

No ink shall be wasted on listing the role of internet in our everyday life. While we use internet from mere emailing to e-banking, it is unfortunate that we are hesitant to explore the option of e-voting. Internet voting has been in use in the US and France, among other nations. Recently, Estonia also joined the league. This can be considered a big achievement for a small country, while many bigger nations are pondering over the option and worrying about the complex process of electronic voting.<sup>111</sup> In Estonia, voters need to use their national identity (ID) cards which are infused with an electronic chip. Two sets of PINs are given to the voters in order to authenticate themselves. Once the card is inserted in the card reader, the voting application presents a list of parties and candidates in Internet Explorer. Once a vote is registered, it is encrypted and sent through a series of relay servers to an archive where it rests until all digital ballots are stripped of personally identifiable information and decoded. The good part of this process is that the digital vote is logged at each relay point, setting up a trail that can be used by auditors in case of any post-election concerns.<sup>112</sup>

#### ***Advantages of Internet Voting***

Without any doubt, internet voting is the quickest and efficient way of casting a vote. It will cut down the huge costs of maintaining poll booths, as the number of people crowding into them could drastically fall. Counting of votes can be quicker and faster and may also eliminate the need of recounting.

110. 'Principal' is a person who nominates a proxy to vote on her or his behalf.

111. SERVE- a high-profile United States Defence Department system aimed to allow overseas military personnel to vote. However, the proposal was cancelled after the computer security experts conducted a review in 2004 and expressed the fear of system being easy to hack.

112. John Borland, *Online Voting Clicks in Estonia* (3 February 2007), available at <http://www.wired.com/politics/security/news/2007/03/72846>.

## ***Possible Abuse and Danger Involved***

The internet is prone to hacking and this problem is here to stay. The biggest abuse in this method of voting is a Denial of Service (DOS) attack. This form of hacking “involves the use of one or more computers to interrupt communications between a client and a server by flooding the target with more requests than it can handle. This action effectively prevents the target machine from communicating until such time as the attack stops.”<sup>113</sup> This attack would disable the internet voting system, preventing voters from casting their ballot at their convenience, thus disenfranchising them. Another problem could be of ‘phantom sites.’ Problem with phantom sites is that it will direct the voter to a fake site, without the voter realizing it. “That was just what happened in late July 2000, when voters interested in First Lady Hillary Clinton’s possible run for the US Senate tried to log on to hillary2000.org. Instead they were rerouted to Hillaryno.com—a site set up by a rogue outfit that billed itself as ‘The Friends of Giuliani’.”<sup>114</sup> This hacking mode would be very dangerous in case a voter logs on to the election site to fill in the information and cast her/his vote, failing to realize that the vote would never be counted. On the other hand, the information entered into such fake site can be used by the hacker to cast a vote for other candidates.<sup>115</sup>

### ***4.Phone Voting***

Short Message Service (SMS) or telephone voting can also be looked at as an option to be explored. Experts, who are conversant with this system, need to carefully address the technical issues and problems that may be involved in this method. However, one often finds this method being promoted on dance, music and other reality shows on television. If the electronic media can effectively implement the method and declare winner on the shows, there should be no harm in exploring this option. One of the ways the system could work is that the phone holder may be given PINs to register a vote. Such PINs shall be randomly generated and buying or selling of the PINs shall be made a criminal offence. Also, in case the Unique Identification (UID) numbers are issued in future,

113. REPORT OF THE NATIONAL WORKSHOP ON INTERNET VOTING: ISSUES AND RESEARCH AGENDA, March 2001, 14.

114. *Id.*

115. *Pros and Cons of Internet Voting*, available at <http://cwilkoo.tripod.com/pros.html>.

the UID number can be used as PIN for this purpose. If the system is developed for telephone voting where a voter calls and registers his vote, the interactive voice system should be as user-friendly as possible. If the system is formatted in an effective way, either for SMS or telephone voting, it would reach more masses in many corners of India where internet has not yet penetrated.

### ***B. Unique Identification Numbers***

India is working on having UID numbers for every citizen. If the plan is executed in time, the UIDs can be a major tool that would make verification much easier, eradicate the chances of fraud in voting and can be used as a voters' card. The UID project is said to be in the pipeline and the government is working out ways to make the project possible. The Demographic Data Standards and Verification Procedure (DDSVP) Committee headed by former Central Vigilance Commission Chairman N. Vittal in its report to the Unique Identification Number Authority of India (UIDAI) laid down certain guidelines mentioning that date or place of birth shall not be a part of UID for verification purposes. The intention of the guidelines was to ensure that demographic data is captured in a standardized manner so that the identity information works across all systems. Attributes like date, place of birth and residence are not embedded in the UID number as the number faces the risk of becoming invalid and may mislead the authenticator when people move from place to place. There is also a fear of such attributes leading to profiling or targeting based on region, district or state from where the person hails. Instead, the report suggests that there can be centralized database management systems which indexes the records for rapid search and access without having to search data by location or date of birth. Another important point discussed in the report is the promotion of phones. Given the rapid penetration of mobile phones and landlines across the country and across economic groups, the phone could become an enabling device used to authenticate a person, especially in villages where internet penetration is still low. The Committee also proposes 'introducer' concept for poor workers, who do not have any supporting documents to prove their identity. Through introducer concept, those Indians who have valid UID can validate another person; say for example the contractor can validate the identities of his labourers. This should

take care of poor migrants and shall enable them to cast their vote through UIDs.

### **C. Exchange Programmes**

The Election Commission of India (ECI) has recently received a request from Pakistan to share its experience in the conduct of free and fair elections in the country, to which the ECI has agreed to conduct bilateral talks. While ECI celebrated its Diamond Jubilee on the 25th of January 2010, nearly 40 heads of electoral bodies from across the globe, including the Commonwealth countries and South Asian neighbours, attended the function.

More of such bilateral talks and exchange programmes can be conducted to share the election experiences and discuss voting methods. Such talks and exchange programmes can also serve as a great medium to eradicate certain myths prevalent about the electoral methods. For example, in many European countries, there has been a controversy about EVMs. But Election Commissioner Mr. Y.S. Quraishi expressed at a report release on ‘Global Consultations on the EU’s Role in Democracy Building’<sup>116</sup> that EVMs are 100% secure and no one can manipulate them. It is a notable achievement for a developing country like India, while many European countries had stopped the use of EVMs due to its easy-to-manipulate flaw. Mr. Quraishi also explained that the Indian EVMs work on a simpler technique of a calculator and hence are foolproof.

On an international front, a lot of activity has begun. The Canada-Europe Trans-Atlantic Dialogue conducted a workshop under the heading ‘Internet Voting: What can Canada learn?’, in Carleton University, Ottawa, Ontario on 26th January 2010. The workshop considered the rationale for the implementation of Internet voting, various features and models of its application, advantages and disadvantages, public acceptance, effects on accessibility and voter turnout, and security issues. The workshop had experts sharing advice regarding technical considerations such as cost, legal requirements, software and security. The central purpose of the workshop was to examine existing experience and research to derive

116. The report has been brought out by inter-governmental group: International Institute for Democracy and Electoral Assistance under its EU Presidency Project. It presents a peer review of the EU’s role on democracy building around the world. (At the time of printing this report, Mr. Y.S. Quraishi has become the Chief Election Commissioner).

lessons for the possible wider use of internet voting in Canada. Speakers from UK, Europe, Switzerland and Estonia, among others, participated in the discussion.

Similarly, a German Research Group based in the Osnabrueck University conducted a project on set-up and evaluation of an internet voting system in the context of real elections. The report doesn't criticize remote internet elections in principle but argues on absolutely secure voting clients, the certification of voting software and voting systems, and the use of chip cards with digital signatures.<sup>117</sup> Such studies can serve as a guide to work out a system suitable for India. Discussions like these could also function as a platform for analysing other alternative ways like cumulative voting, where a voter is entitled to as many votes as the vacant posts for which elections are held. The concept of cumulative voting, promoted by Lani Guinier, attracted much attention as it would particularly help better representation by minorities.<sup>118</sup> However, the concept needs much study and exchange programmes would be an apt medium for scrutinizing it.

Alternative voting methods discussed above aren't proposed merely because there are more exciting technological developments that could be put to use. Such use will only make us fall prey to the fake technological determinations, whereas the greater aim is to achieve the democratic determination. The entire exercise of analysing these options is to look at it from the viewpoint of improving democratic participation and granting 'the right to opportunity to exercise the right to vote' to those who have been missing out on it.

117. Guido Schryen, *How Security Problems can Compromise Remote Internet Voting Systems*, available at <http://subs.emis.de/LNI/Proceedings/Proceedings47/Proceeding.GI.47-13.pdf>.

118. LANI GUINIER, *THE TYRANNY OF THE MAJORITY*, 1994, Free Press (Div. Simon & Schuster).

## IX. Analysis of Voting in India

The following table pertaining to voter turnout from the 1st to 14th Lok Sabha elections between 1952 and 2004 is revealing.

### Turnout in Lok Sabha Elections - 1952-2004<sup>119</sup> [in percentage]

General Election	Year	Male	Female	Total
1st	1952	-	-	61.2
2nd	1957	-	-	62.2
3rd	1962	63.31	46.63	55.42
4th	1967	66.73	55.48	61.33
5th	1971	60.90	49.11	55.29
6th	1977	65.63	54.91	60.49
7th	1980	62.16	51.22	56.92
8th	1984	68.18	58.60	63.56
9th	1989	66.13	57.32	61.95
10th	1991	61.58	51.35	56.93
11th	1996	62.06	53.41	57.94
12th	1998	65.72	57.88	61.97
13th	1999	63.97	55.64	59.99
14th	2004	61.66	53.30	57.65

The voting percentage hovered around 60% across general elections since Independence. Non-voting could be on account of several reasons. In India, a large number of citizens are unable to exercise their right to vote on account of, among other reasons, legal gaps, procedural hurdles and socio-cultural factors. In the absence of an enabling legal and policy framework to vote in an alternative manner, migrant workers within India, NRIs, students living abroad or within the country but outside the constituency where their vote is registered, travelling business professionals and senior or unwell citizens who may not be able to travel to the polling booth, miss out in their exercise of right to vote.

Let us now consider the case of migrant workers. For instance, person X, enrolled in Munger in Bihar as a voter but presently working in Ludhiana should enjoy his right to vote. If X is a permanent migrant, Election Commission rules permit him to enrol in the new place of his stay. His name is struck off from the election rolls in Munger and is added in the electoral rolls of Ludhiana. This

119. See Election Commission of India, Turnout in Lok Sabha Elections 1952-2004, available at [http://eci.gov.in/eci\\_main/miscellaneous\\_statistics/votingpercentage\\_loksabha.asp](http://eci.gov.in/eci_main/miscellaneous_statistics/votingpercentage_loksabha.asp).

looks simple and straight-forward but it is not so in practice, as politicians and political parties would still like him to be on the electoral rolls in Munger and perhaps X too desires the same since he belongs to Munger. In addition, though Election Commission rules permit a person to enrol at the new place of stay, how many daily wagers can afford to lose their wages and make repeated visits to the Election Commission offices to effect necessary change?

It is important for us to think through how temporary migrants can be enabled to exercise their right to vote. For a person like X, can the expression 'ordinary resident' be defined in a manner that he should be able to cast vote in Ludhiana? How this can be done has to be worked out by the Election Commission of India, Ministry of Law and Justice and other authorities concerned. Can the scope of "classes of persons" in Section 60(c) of RPA, 1951, be expanded as to include persons like X who may be allowed postal voting?

Thousands of Indian students migrate to cities to pursue higher education. According to the Election Commission, it has issued instructions to cover their cases, but many young students are not aware of such instructions, as a result of which, many of them miss out in their exercise of right to vote.

In addition, many students go abroad for higher studies. According to one estimate, around 80,000 students go to US alone every year.<sup>120</sup> In the age of globalization, there are many Indians who are outside the country on account of business, conferences etc. The Indian Embassies abroad can take steps to ensure that all such eligible Indian voters cast their vote.

People who require hospitalization and their care givers are often not in a position to enjoy their right to vote, along with doctors, nurses and associated staff. Senior citizens and persons with disabilities also face practical hurdles while exercising their right to vote. Though on account of the Supreme Court's orders, attempts have been made by the ECI to make the polling booths accessible, yet a significant percentage of elderly and disabled persons are unable to exercise their franchise.

The analogy of financial transactions based on credit card is instructive. A person travelling within or outside the country could swipe his personal debit or credit card and withdraw money from an ATM machine. When he could be trusted in as sensitive a matter as personal finance, what prevents the

120. Canada Wooing More Indian Students, (31 May 2009), Interview of Jagdeep Singh, Visa Expert at IEC Consultants, available at <http://www.merineews.com/article/canada-wooning-more-indian-students/15771328.shtml>.



Government from extending it to right to vote? The person concerned also reposes confidence in the ATM machine and the related system. Thus, a large number of Indians, who are outside the constituencies in which their vote is registered, should be enabled to cast their vote either through postal ballot, internet voting or through any other means evolved by the ECI.

When Embassies of the US, Australia and several other countries could take steps to enable their respective citizens who happened to be outside the country on the election day to vote, why can't Indian Embassies/ High Commissions do likewise? Human rights are not an optional add-on. They are binding obligations on the Government to fulfil its responsibility under the Constitution and laws. No argument, including resource constraints, can hold water in the matter of the Government fulfilling its responsibilities in this regard.

The issue is clear. How do we enable every eligible Indian voter to cast his or her vote? How do we ensure that electoral process is inclusive and that around 40% of our eligible voters who regularly fail to exercise their franchise do participate in the election and do not go under the radar on account of procedural hurdles or any other reason?

In addition to the above factors, voter apathy is another major factor for concern. Election data shows that, in urban areas, the voting percentage is much lower than the national average. In fact, in many cities it is around 50% or even less. Perhaps a section of the electorate comprising the rich and highly educated do not see any direct benefit from participation in the voting exercise, unlike the have-nots. Does it then leave us with compulsory voting as the only option? While the notion of compulsion inherent in compulsory voting is anathema to human rights, the authorities concerned must devise ways to enthuse all voters to turn up at the voting station on the polling day. In this regard, multi-media voter education campaign [involving Pappu] launched in Delhi sometime back has had a beneficial impact on voting percentage in recent elections. In addition, some private initiatives by *Jagore* and others drove home the message that if a person is not voting, he or she is sleeping. There is also a need to mount more such imaginative and creative multi-media campaigns across the country by the Election Commission and the State Governments to remind citizens about their duty on right to vote. Traditional media, mass media and electronic media offer many formats for spreading awareness amongst the general public regarding right to vote.

As the above table shows, though the voting percentage of women increased slightly over the years, it always lagged behind the percentage of voting by male voters. This gender gap in voting patterns is unacceptable. This could be in part on account of social, economic and political status of women in the society and entrenched attitudes about their role. In the interests of inclusive voting, there is a need to keep gender dimension in focus in promotional campaigns.

Ever since Independence, there had been frequent allegations of use of money power and muscle power in the elections. Despite laws, caste has played an important factor in elections. There have been many media reports about persons belonging to Scheduled Castes, Scheduled Tribes, other backward classes and minorities being prevented from voting. It is necessary to identify impediments to the free and fair exercise of franchise of persons belonging to these communities, so that they can vote without fear of threat, intimidation and violence. Political participation of these historically disadvantaged and marginalized communities is imperative. Keeping their social vulnerability in view, there is a need to protect their right to vote. There is a need to identify, in advance, sensitive villages, blocks or other vulnerable areas where persons belonging to these communities had been facing threats, intimidation and violence from the so-called upper castes or majority community to prevent them from voting or to coerce them to vote in a manner against their choice, and increase the number of polling booths in such areas. This requires preventive efforts from the Election Commission, the Police and other authorities concerned.

## **X. Recommendations**

Throughout the study, the urgent need for change in voting rights has been emphasised and relevant recommendations have been proffered to achieve the goal of inclusive electorate. The following are the specific recommendations.

### **1. Amendment of RPA, 1950 to broaden the definition of ‘ordinary residence’**

The first and the most important recommendation that the study suggests is amending Section 20 of the RPA, 1950, to broaden the definition of ‘ordinary residence’ so as to include all those who are away from their constituencies for education, work or otherwise. As discussed earlier, the notion of ‘residence’ and restriction on it are age old and cannot be justified

in the present day. The right to vote irrespective of the 'residence clause' must be ensured to those migrating or moving within the country and those who are unable to move due to disability, old age etc. The study has already proposed some alternative voting methods that can be effectively used to implement the changes.

Poor migrant workers within India, Indian citizens travelling overseas, students living abroad or within the country but outside the constituency where their vote is registered, travelling business professionals and senior or unwell citizens who may not be able to travel to the polling booth, miss out in their exercise of right to vote. The Election Commission of India, Ministry of Law and Justice and other authorities concerned must devise ways to ensure that these sections enjoy their right to vote in practice.

## **2. Framing of rules under RPA (Amendment) Act, 2010 and issue of instructions to Indian Embassies**

For Indian citizens who happen to be outside the country on the election day on account of education, business or any other reason, the Indian embassies must make arrangements to enable them to cast their vote. NRIs must not be forced to come back to India to vote. Rules, if any, made under the Representation of the People (Amendment) Act, 2010, must have enabling provisions in this regard.

## **3. Improving the access to voting of persons belonging to SCs/STs/OBCs and minorities**

In order to improve access to voting of persons belonging to the Scheduled Castes, Scheduled Tribes, other backward classes and minorities, there is a need to increase the number of polling stations, particularly in areas where there were previous attempts to prevent these sections from exercising their right to vote through the use of muscle power. Vulnerability mapping must be done in advance by the Election Commission and the Police, and based on it, preventive efforts must be initiated.

## **4. Amendment of RPA to ensure voting rights to undertrial prisoners**

For the reasons mentioned in the study and as recommended by the NHRC, there is a need to amend the RPA to ensure right to vote for undertrial prisoners.

## **5. Bridge gender gap in voting and also mount imaginative multi-media campaigns to enthuse voters**

The authorities concerned must devise ways to enthuse all voters to turn up at the voting station on the polling day. There is a need to mount imaginative and creative multi-media campaigns across the country by the Election Commission and the State Governments to remind citizens about their duty on right to vote. There is a need to keep gender dimension in focus in these promotional campaigns in order to bridge the gender gap in voting.

## **6. Introducing the option of negative voting**

Negative voting is different from non-voting. The latter is far more serious and could be on account of indifference or plain laziness. If individuals distrust politicians and they wish to go to the polling station to exercise the option 'none of the above', they must be enabled to enjoy their freedom of expression. It is, therefore, recommended that it is worthwhile to introduce the option of 'negative voting'.

It is once again emphasised that the new methods aren't proposed with an intention of simply making voting easy. The thought advocated here is that voting should not just be convenient but also foolproof. India can opt for some of the above alternate methods or a combination of all.

India can adopt the methods used by Estonia as the Unique Identification (UID) Numbers for Indian nationals is in the pipeline. The UID Authority of India expressed in 2009 that it expects to issue at least 600 million UIDs in four to five years.

For proxy voting, care should be taken by updating proxy on voting time table, maintaining records and conducting checks for deceased electors, and making the proxy forms available to the principal voter much before election time, so that little time is wasted in verification procedures. In addition to these methods, there is another less popular and little tried option for voting- phone voting.

## XI. Conclusion

The proposed expansion will need to carefully consider the issues relating to the security and integrity of the electoral process, the need for ensuring secret ballot, availability of checks and balances to ensure the proper implementation of the various systems, efforts to reduce and progressively eliminate the abuse of those systems, complexity of the logistics and other manpower and resource requirements of the ECI and state electoral apparatuses.

Implementing the above methods will necessitate thorough preparation, in addition to many other legal and policy issues that crop up when an electorate of 700 million goes to the polls. But these challenges, formidable as they are, should not discourage India as a mature democracy from moving towards developing a wider framework for implementing the right to vote through one of the above or a combination of above proposed voting systems and other policies that will increase the political participation of people in the electoral process. As Mr. Naveen Jindal, the Chancellor of O. P. Jindal Global University, has argued, “the depth of democracy depends crucially on the dimension of participation. India already has robust competition among political parties, but it is the participation aspect where a lot more needs to be achieved.”

The problems with implementing a more inclusive electoral system and the potential abuse of absentee voting should not deter the Indian government from ensuring that the right to vote of every Indian citizen is duly enforced. The purpose of this study is to make the electoral process in India far more inclusive and far less cumbersome, such that each and every Indian is able to exercise not only the right to vote, but also have the opportunity to vote.

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## ANNEXURE - I

## **Indians' Right and Opportunity to Vote**

**by Naveen Jindal**

**Asia Times, Hong Kong, April 2009**

When some American friends from my alma mater, the University of Texas, visited India in November 2008, the conversation led to the US elections and the fervor with which the candidates were campaigning. I was eager to find out why my friends were in India on election day, missing the opportunity to vote. I was extremely surprised to learn that they had already voted, as absentee voting is widely prevalent in the US.

In India, a large number of citizens will not be able to exercise their right to vote in this month's polls. For instance, there are no provisions in Indian law to enable migrant workers within India (estimated to be over 100 million by the government), non-resident Indians living overseas (approximately 4 million), students studying abroad (more than 80,000 per annum go to the US alone), travelling business professionals and senior or unwell citizens who may not be able to travel to the polling booth to vote in an alternative manner.

The right to vote under Indian law flows from both the constitution and the Representation of the People Act of 1950 and 1951. A citizen of India, who is 18 years of age, has a right to be registered as a voter in a constituency irrespective of his or her race, religion, caste or sex. Given the democratic aspirations of the citizens of India and its global standing as the world's largest - and one of the most vibrant - democracies, there is a case for providing a stronger constitutional foundation to strengthen the right to vote.

The best practices that prevail in different parts of the world demonstrate that governments need to make substantial efforts to ensure greater participation of their citizenry in the electoral process. A number of developed countries implement various forms of absentee voting, such as Internet voting (Switzerland, the US, France, etc), proxy voting (the Netherlands) and postal voting, which has emerged as the most popular form of absentee voting. People in countries such as the US, Britain, Switzerland and Australia have benefited greatly by the implementation of postal voting.

India does have a limited form of postal voting, but it is not accessed by enough people to create a meaningful impact towards making the electoral process more inclusive. For instance, The Conduct of Election Rules 1961 in section 18(a) provides for the following list of persons entitled to vote by post in a parliamentary

or assembly constituency: special voters (the president of India, vice president, governors et al.); service voters (armed forces, members of a force to which the army act applies et al.); voters on election duty (polling agents, polling officers et al.); and electors subjected to preventive detention. This provision provides for the right to vote for certain specified categories of persons resident in India, but still leaves out a large number of people who have difficulties exercising their right to vote.

In an amendment to the Representation of People Act, 1951 in 2003, section 60(c) provided for enabling “any person belonging to a class of persons notified by the Election Commission in consultation with the government to give his vote by postal ballot”. While this provision clearly provides scope for the recognition of a “class of persons” to be entitled to exercise their right to vote by way of postal ballot, it has been used in the past for a limited number of cases concerning migrants from Jammu and Kashmir and Bru and Reang tribal migrants from Mizoram and Tripura, allowing them to vote through postal ballot.

For a variety of reasons, including travel, illness, disability and personal difficulties including education, employment etc a large number of Indians are not able to be physically present on the day of the elections in the constituencies where their vote is registered. In the true spirit of Indian democracy, it is imperative that the country now expands the postal ballot system to allow all Indian citizens to exercise their right to vote by post.

Of course, any such expansion will need to carefully consider the issues relating to the security and integrity of the electoral process, the need for ensuring secret ballot, availability of checks and balances to ensure the proper implementation of the postal ballot system, efforts to reduce and progressively eliminate the abuse of the postal ballot system, complexity of the logistics and other manpower and resource requirements of the Election Commission of India and state electoral apparatuses.

Implementing a larger postal ballot system will necessitate thorough preparation, in addition to many other legal and policy issues that crop up when an electorate of 700 million goes to the polls. But these challenges, formidable as they are, should not discourage India as a mature democracy from moving towards developing a wider framework for implementing the right to vote through the postal ballot system and other policies that will increase the political participation of people in the electoral process. The depth of democracy depends crucially on the dimension of participation. India already has robust competition among political parties, but



it is the participation aspect where a lot more needs to be achieved.

The problems with implementing a more inclusive postal ballot system and the potential abuse of absentee voting should not deter the Indian government from ensuring that the right to vote of every Indian citizen is duly enforced. The purpose of my call is to make the electoral process in India far more inclusive and far less cumbersome, such that each and every Indian is able to exercise not only the right to vote, but also have the opportunity to vote.

***Naveen Jindal** is a Member of Parliament (Lok Sabha - Lower House) from the Congress Party, representing the Kurukshetra constituency in the northern Indian state of Haryana.*

## ANNEXURE - II

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Photo Caption: The long queue of male and female voters at a polling booth in Sri Rampur Govt. High School in South Bangalore during Elections to the Legislative Assembly of Karnataka on May 10, 2008. P D Photo by Shivraj

Source: Photo Division, Ministry of Information & Broadcasting, Government of India.



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