



Making The Indian Electoral Process Inclusive: Challenges and Opportunities

Prepared by
Centre for Human Rights Studies

Revised Edition



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challenges of governance with a view to improving its efficiency drawing upon comparative and international perspectives in public policy. JSGP offers an M.A. in Public Policy, which is an interdisciplinary degree programme that teaches the students to delve into the contemporary issues in a coherent and holistic manner, to see the linkages among various aspects of public policy and governance. JSGP has developed academic and research collaborations with the School of Public and Environmental Affairs (SPEA) of Indiana University, USA and the National Institute of Administrative Research (NIAR), LBS National Academy of Administration, Mussoorie.

The Jindal School of Liberal Arts & Humanities (JSLH) will begin its first academic session in August 2014 and offers an interdisciplinary undergraduate degree programme leading to the award of B.A. (Hons.) (Liberal Arts & Humanities). An education in the liberal arts and humanities in our four year B.A. (Hons.) programme at Jindal School of Liberal Arts and Humanities (JSLH) in collaboration with Rollins College, Florida, is the ideal preparation for an intellect in action. JSLH offers a space for the expansion of young minds in a polyvalent education that mixes the classical and the contemporary in a new framework – the first of its kind in India. Our aim is to break down disciplinary boundaries and redefine what it means to study the arts and humanities in an international context. At JSLH, our distinguished faculty aims to create world-class thinkers who are simultaneously innovators; we train students for intellectual mastery, democratic participation, self-expression and advanced life-long learning. Our curriculum has been carefully crafted and has a global orientation. Within this global framework, the B.A. (Hons.) includes an exciting opportunity to solidify Jindal's liberal arts and humanities programme through an extended period of study at Rollins College, Florida, USA leading to the award of another undergraduate degree from the USA. JSLH seeks to become one of the places that will produce the next generation of leaders to confront our overarching problems.



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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 will 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 undertook 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 making it more participatory. The last few years have witnessed a great deal of initiatives for seeking electoral reforms largely led by civil society, but equally supported by courts and institutions.

In September 2010, a Report on “Making the Indian Electoral Process Inclusive: Challenges and Opportunities” was published by O.P. Jindal Global University. It was disseminated widely among concerned government departments, the Election Commission of India, Members of Parliament, academics, NGOs, media and the general public. It is a matter of great satisfaction that a number of recommendations made in that report have been implemented subsequently. An exercise was undertaken to review the earlier report and this revised edition is an outcome of that exercise.

Electoral reforms are fundamental to democratic governance. As Indian democracy evolves, there is a need for examining the laws, rules and regulations with a view to expanding the right to vote, but also to make the working of the government and its institutions more transparent and accountable. There is also a need to examine the best practices that prevail in other parts of the world and every effort needs to be made to ensure that whatever practices that are suitable to India may be adopted. The history of the growth and development of democracy as a form of government worldwide has been the ability of institutions to respond to the social expectations generated by civil society activism and the empowerment of the citizenry. Indian democracy is an evolving project and there is a continuous need to assess the working of democratic institutions in India and undertake systematic reforms for strengthening them.

I wish to compliment CHRS and its Executive Director, Professor Y.S.R. Murthy, all Research Associates of the Jindal Global Law School, Professor R. Sudarshan, Dean, Jindal School of Government and Public Policy, for their contribution to this research. I am particularly pleased that this revised edition has been brought out on the eve of the 2014 General Elections to the Lok Sabha when issues such as the right to reject candidates and transparency in the functioning of political parties are at the forefront of the national consciousness. 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, O.P. Jindal Global University

January 2014

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 exercising 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.

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 implemented either in India or in democracies abroad. The 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.

This revised edition also provides an overview of the reforms initiated by the Election Commission of India (EC) and the office of the Chief Information Commissioner (CIC) with attention also being paid to some landmark decisions of the Supreme Court of India (SC). The report concludes by making some concrete recommendations pertaining to electoral reforms in general and the right to vote in particular.

We are delighted to present this revised report that analyses drawbacks in the current electoral process and proposes suggestions on making it more 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 the national level. Through this report, we hope to contribute towards making India a more inclusive and a vibrant democracy.

Y.S.R. Murthy
Professor & Registrar
Executive Director,
Centre for Human Rights Studies
O.P. Jindal Global University

January 2014

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Abstract

The purpose of this study is to demystify the notion that enlarging the scope of the right to vote is logically and practically difficult.

Currently, unsound mind, criminality, corrupt or illegal practice and non-residence are the legal restrictions on voting for Indian citizenry.¹ 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 highlights the inclusiveness of the electoral system, with a particular focus on the ground of 'residence,' which has uniquely Indian implications. Much of this study is devoted to a discussion of the historical, comparative, constitutional, legislative and judicial aspects of the electoral process so as to highlight the difference between the right to vote and an opportunity to exercise this right

The study also analyses the relation between democracy and elections by showcasing unjust disenfranchisement in world democracies and their subsequent journey towards universal adult franchise. Further, the study criticises certain conflicting and outdated legislative provisions that restrict Indian citizens from exercising their right to vote owing to a limited interpretation of the term 'ordinary residence'. The study strongly supports the Representation of People (Amendment) Bill, 2006, which advocates for the voting rights of people migrating within the country who lose out on exercising this right due to absence from their constituency. It is a matter of deep regret that this progressive piece of legislation was withdrawn by the Government in August 2010.

The study also analyses the law preventing 'undertrials' from voting, in comparative experience with other jurisdictions as well as the practical impediments faced by the elderly and disabled when exercising their right to vote. In light of the Prime Minister's announcement on Non Resident Indians (NRIs) voting, this study examines pros and cons of extending voting rights to NRIs and its operationalisation. The study then proceeds to suggest solutions towards the goal of an 'inclusive electoral system.' The concept of 'compulsory voting' is analysed in depth, considering the novel legislation in Gujarat making voting mandatory at the local council elections. 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. In light of the recent Supreme Court judgment on the right to reject all candidates, the study assesses the scope of 'negative voting' in India and its effects on the electoral system. The study promotes 'voting beyond boundaries' by 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 with their applicability being analysed in the Indian context. Additionally, the pros and cons of these alternative methods are evaluated to understand their effectiveness, any possible loopholes and remedies.

The study concludes by highlighting the tension between the constitutional right to vote and the difficulty of implementing this right. However, it should be remembered that the stakes are high. Difficulties in implementation have resulted in the disenfranchisement of millions of Indians.² 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, makes some concrete recommendations for greater enfranchisement in Chapter X (pp.33-34) and concludes by chronicling some of the notable developments relating to electoral reforms that have taken place since the publication of the last edition.

Introduction

II

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 the People Act (RPA), 1951.³ 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.⁴ 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'.⁵ The Preamble to the Constitution of India equally emphasises concepts such as 'unity of the nation' and 'dignity of the individual',⁶ and 'equality of opportunity'. This equality of opportunity is unfortunately lacking as far as the denial of the right to vote on the ground of 'residence' is concerned. This prohibition is no longer relevant in today's increasingly globalised world.

The right to vote is a part of freedom of expression and thought. By casting a vote, a citizen expresses not only his choice but also his faith in representative democracy. Considering that general elections are a constitutional compulsion, how can it be just to deprive a large segment of the population an opportunity to exercise their right to vote? 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 promote 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. The study thus proposes certain amendments in the existing legal provisions to further the purpose. We also make suggestions on how existing legal provisions may be better utilised to make the electoral process more inclusive.

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

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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 under-trials. 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 – the possibility of absentee voting where personal voting is not feasible. 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, 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.

Under the concept of negative voting, a voter can express his distrust towards all candidates and cast his vote for none of the candidates, thereby registering a 'protest vote'. This has now become a reality for Indian voters following a landmark decision of the Supreme Court of India which gives the voters the option not to vote for any of the candidates. Also, empowering voters to recall non-performing representatives would build up people's trust in the system and shall increase participation. Three States of India currently provide for the right to recall at the local level elections, although experiences in these States have highlighted some of the obvious pitfalls associated with an insecure legislative tenure.

Alternate systems of voting proposed in this study need careful consideration with special attention being paid to issues relating to the security and integrity of the electoral process. Secrecy of ballot and proper implementation of alternate voting mechanisms have to be ensured; efforts have to be taken to reduce and progressively eliminate any possibility of these voting mechanisms being abused; 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.

“Democracy is government by the people; it is a continual participative operation, not a cataclysmic, periodic exercise... 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.

The Supreme Court of India has formulated the contours of a democratic polity in the following manner:

“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.”⁷

This emphasis on collective decision-making also prevailed in pre-colonial India, 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.⁸ 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 records⁹ reveal that in ancient India, in some of the republics, every adult male member had the right to vote and 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.”¹⁰ There is also a reference to absentee voting, through description of the methods of collection of votes of citizens who could not be present at the meeting of the assembly.¹¹ 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. A representative form of government evolved as a 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.¹² 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.¹³

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.¹⁴ 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.¹⁵ 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 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.¹⁶ For the first time, the elected members constituted the majority in each of the Houses.¹⁷

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.¹⁸ 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.¹⁹ 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.”²⁰

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Across the world, the right to vote was a privilege and for a long time was limited to the rich, with the impoverished and illiterate members of society as well as women being repeatedly denied the right to vote. Exclusion from voting based on race, colour, caste, creed, nationality and origin was a salient feature not just in India but also 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),²¹ 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.²² 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.²³ In Romania and the Republic of Maldives, only Christians and Muslims had voting rights respectively.²⁴ The right to vote has often been limited to people who have passed 'literacy tests' in some states in the US.²⁵ Until the mid twentieth century, France prohibited all army personnel from voting. Some countries with mixed ethnic populations 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 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.²⁶

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.²⁷

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,²⁸ Peru²⁹ and the Philippines,³⁰ 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 African-Americans march from Selma to Montgomery in 1965, risking their lives for the 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 a prolonged mass agitation, African-Americans finally got their right to vote. Women also had to struggle to get voting rights; the US gave its women the 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 world nations to take this step. Ghana followed six years later and Kenya ten years later.³¹ Similarly, there were sustained campaigns against voting restrictions on poor citizens in South Africa.³²

All those members of society in different parts of the world that have been barred from participating in the electoral process fought for their right to vote as this one right makes a huge difference. None of the aforementioned grounds of disenfranchisement can be justified in any democracy. With such prohibitive laws, a society cannot be democratic as voting is the most basic act of democratic participation.

Though India has now adopted universal adult franchise and each citizen has the right to vote, yet in reality we may not get an opportunity to exercise this franchise due to factors such as being absent from the 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 restriction of 'residence' requirements, a question that arises for consideration is whether this is a valid restriction in the age of globalization.

Though India has now adopted universal adult franchise and each citizen has the right to vote, yet in reality we may not get an opportunity to exercise this franchise due to factors such as being absent from the 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.

Constitutional Evolution and Perspective

Social factors like illiteracy, the caste and class systems, the status of women, economic factors like poverty, political settlements that were ushered in by the British; and the turmoil caused due to unfair electoral systems has had a great impact on Indian society and its electoral 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 against 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. The drafters of the Constitution made a conscious decision aimed at covering all those, who in the past had been excluded from the ambit of democratic participation, thereby ensuring that the new system of government was based “on the ultimate sanction of the people”.³³ If the Constitution makers had introduced property and educational qualifications for exercising the franchise, it would have resulted in disenfranchising a large number of people like labourers and cultivators thereby denying them their equal right of representation.³⁴ In this section, the study will look at the emergence and evolution of broad based democracy in India. The section will also analyse the relation between democracy and elections, and then move on to discuss the emphasis the Constitution makers put on equality and how equality would stand meaningless without universal 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.³⁵ Thus, the extent of democracy depends on the extent of democratic participation, which is determined by the popular sanction of the people through universal adult suffrage. But if a state fails to empower its citizens as a result of which they cannot participate in the collective decision-making process, then that state cannot be called democratic. A political system is democratic only when it incorporates the political instruments and institutions the citizenry can utilise to participate in collective decision-making³⁶

Elections are the most important and effective tool for political participation as they allow ordinary people to choose their own representatives.³⁷ Thus, being given the right to vote is the first 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 has a significant impact on the structure of its democratic institutions.³⁸

India, while choosing the democratic set up and shaping up its electoral system, studied various other systems of the world. Its own history demanded deep thought on governance mechanisms and emphasis on equality.

The contours of this deliberative exercise are discussed 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 ensured that the Constitution did not discriminate on the grounds of religion, race, caste or sex.³⁹ Article 15 of the Constitution also extended the ambit of non-discrimination to cover place of birth, whereas Article 16 of the Constitution further covered descent and residence. However, it is pertinent to note that despite this clear prohibition, 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.⁴⁰

During the debates in the Constituent Assembly, a consensus of opinion emerged that the right to vote should be treated as a fundamental right of every 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 influence. 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.⁴¹ The Simon Commission then recommended the extension of franchise to further cover 10% of the 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.⁴²

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 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. 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.⁴³ On 16th June 1949, Dr. Ambedkar moved an amendment to this effect.⁴⁴

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 perspectives of this right with reference to today's needs.

India, while choosing the democratic set up and shaping up its electoral system, studied various other systems of the world. Its own history demanded deep thought on governance mechanisms and emphasis on equality.

... in the Constituent Assembly, a consensus emerged that the right to vote should be treated as a fundamental right of every 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 influence.

V

Legislative Perspective

“If you make anything rigid and permanent you stop a nation’s growth, the growth of a living, vital, organic people.”

In an increasingly globalized world, ...ideas of ‘permanent residence’ and ‘home constituency’ have little scope ...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 often than not led people to lose their right to vote....

The framers of the Constitution of India recognised that they could not bind future generations with their sovereign will and that each generation should enjoy the same sovereign power to decide by whom and how they should be governed. Proof of this can be seen in the largely flexible provisions for amending the Constitution. It is also evident from repeated assurances in the Constituent Assembly by Pandit Nehru, Dr. Ambedkar and others that they did not want to bind succeeding generations by giving them a rigid Constitution. To quote Pandit Nehru :

“If you make anything rigid and permanent you stop a nation’s growth, the growth of a living, vital, organic people.”⁴⁵

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, 1960.⁴⁶ 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.⁴⁷ 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 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 globalized 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 often than not led people to lose their right to vote, thereby making the electoral process less inclusive. And this holds true not just for 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 the census of 2001, 314.54 million people moved for various reasons within the country.⁴⁸ Out of these, 29.90 million migrated for reasons of employment.⁴⁹ It is noteworthy that approximately 43% of Bihar's population is below the poverty line, while in Orissa the figure ranges from 45 to 47%.⁵⁰ Migration from economically backward states to prosperous ones is only natural in such a scenario. 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 factories 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 urban areas. It is tragic that 60% of our cultivable land depends on rainfall. There has been a deceleration in the expansion of the irrigation infrastructure, especially since the 1980s. This has resulted in a majority of the population missing out on being a part of the nation's economic growth. In order to remedy this sad state of affairs, India's democracy needs to be more participatory. This will ensure greater inclusiveness which in turn will lead to economic growth. Migration has brought its own set of problems leading to discontent which in turn has led to discrimination. The 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, 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 towards changing the attitude of regional political parties towards migrants to attract their votes.

Thus, the laws, specifically RPA, should be amended to keep pace with the new trends in human migration

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 and allowing citizens to vote irrespective of their absence in their constituency on election day. With this aim in mind, the Representation of People (Amendment) Bill, 2006, was introduced in the Rajya Sabha on February 17, 2006. The Bill proposed 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

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, 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 towards changing the attitude of regional political parties towards migrants to attract their votes.

Sadly the Bill has now been withdrawn and NRI's still cannot cast their vote from their country of domicile. That being said, Parliament has approved voting rights for NRIs in elections but they must cast their vote at a polling both in their home constituency.

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.”

Sadly the Bill has now been withdrawn and NRIs still cannot cast their vote from their country of domicile. That being said, Parliament has approved voting rights for NRIs in elections but they must cast their vote at a polling both in their home constituency. Parliament has However passed the Representation of the People (Amendment) Bill, 2010, which allows NRIs who have gone abroad for employment or education, but have not obtained citizenship of the country where they are currently residing in, to get registered in the electoral rolls and to vote in elections to legislatures and Parliament. According to then 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.’⁵¹

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

Given the huge number of Indian expatriates living in different parts of the world, extending the definition of ordinary residence to include NRIs is no longer up for debate. Besides the withdrawn Amendment Bill,⁵² there is an online petition filed by a group of NRIs urging the Government of India to redefine the ‘ordinary residence’ requirements.⁵³ 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/ 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. Vaylar Ravi, Minister for Overseas Indian Affairs, has thrown more light on the issue and it has now been clarified that the Bill⁵⁴ 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 in the past has contemplated over the question of whether the people of Indian origin who do not hold Indian passports could be added to the list and if so, how?⁵⁵ 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, confirmed that Persons of Indian Origin will not be eligible to vote under the new law.

The next question that logically arises for consideration is how many NRIs will be eager to come back to India just to cast their vote? The issue becomes more serious when one considers the fact that the 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 without any mechanism to enable them to cast their votes in their country of domicile.

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.⁵⁶ Enabling an ordinary Indian citizen living abroad to vote should not be seen as a favour done but as a right.⁵⁷

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

"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."

Enabling an ordinary Indian citizen living abroad to vote should not be seen as a favour done but as a right.

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.

It is suggested that the EC should first roll out a pilot scheme in countries...where the concentration of Indian migrants is high. If the costs of sending observers from India are too high, the EC could initiate a training program for Indian Foreign Service (IFS) officers on deputation at the selected missions whereby the officers are trained as 'awareness observers'.

them being in India. What we are left with is a 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 a 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.⁵⁸

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 the 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 be eligible to vote. When Embassies of the US, Australia and several other countries have taken steps to enable their respective citizens who happen to be outside the country on election day to vote, why can't Indian embassies and 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. There is a clear political will within the two largest political parties in India to pass the legislation necessary to facilitate external voting for non-residential Indians (NRIs). Therefore, the EC should allow for postal voting in addition to personal voting for NRI's. The EC should first establish registration centres in countries where there are diplomatic missions to promote and facilitate the registration of interested citizens. Then, the general rule of personal voting at the diplomatic missions should be applied with voters who are not within the vicinity of these missions being allowed to vote by post.

It is suggested that the EC should first roll out a pilot scheme in countries such as the United Kingdom, United States, Australia, South Africa and the United Arab Emirates where the concentration of Indian migrants is high. The EC can easily send observers to these diplomatic missions to ensure that the secrecy of the ballot is guaranteed by the presence of election staff so that their vote can be cast without undue influence or intimidation. If the costs of sending observers from India are too high, the EC could initiate a training program for Indian Foreign Service (IFS) officers on deputation at the selected missions whereby the officers are trained as 'awareness observers'.

The EC also needs to evolve a mechanism whereby migrant workers within India do not have to return to their permanent place of domicile to cast their vote. It is suggested that the EC allow migrant workers within India to cast their vote by postal ballot for the parliamentary and legislative assembly elections in their home states. Alternatively, the EC should also launch an awareness campaign whereby migrant workers are informed of their right to be given paid leave to cast their vote in their home constituency.

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.⁵⁹ 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.⁶⁰

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 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.⁶¹ 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.⁶² In countries that mandate voting, the common penalties are fine⁶³, imprisonment in case of failure to pay fine⁶⁴ and denial of goods and services provided by the public offices.⁶⁵ 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.⁶⁶

“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.”

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 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.⁶⁷ 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 declared that it was in favour of making voting compulsory in elections to local bodies including municipal councils.⁶⁸

In addition to higher voter turnout, there are other persuasive 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.⁶⁹ 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 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.⁷⁰ 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’?

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.⁷¹ 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 a low percentage 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? 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. The polling figures in the Jharkhand State Assembly Elections in 2009 underline the point.⁷² This feeling should be strengthened rather than creating resentment by making voting compulsory.

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. For example, Belgian citizens eligible to vote need not register. 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.⁷³ Despite the Supreme Court's dismissal of an earlier petition, it is not prima facie clear that a law requiring compulsory voting is unconstitutional.⁷⁴ In fact, that petition was dismissed more on practical and procedural grounds than on a due consideration of the constitutional issues.⁷⁵ 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

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 a low percentage of the voters. This does not speak well of our democracy and raises serious questions about the representative nature of our 'elected' bodies.

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 has rejected the idea of a voter's right to recall non-performing representatives. The right to recall is 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.

Giving voters the right to recall, as has been done in Chhattisgarh, no doubt empowers the electorate; however, the practical and financial implications of giving voters this right needs to be thought through carefully. For example, what will be the grounds for calling a recall election? In Chhattisgarh no such process of recall shall be initiated unless a proposal is signed by not less than three-fourth of the total number of elected councillors and presented to the District Collector. However, what if the people want to recall all the elected councilors? Will there be a process, like there is in some states in the U.S., wherein a recall petition is circulated and the signatures of a minimum number of voters will be sufficient? Also, how much time in office must an elected representative be given before he can face a recall election? Will there be a limit on the number of recall elections a representative must face in one single term? Is it feasible to recall candidates right from the local level to the national level in a large country such as India? While the study does not dismiss the idea of giving voters the right to recall, it suggests that a pilot scheme be initiated at local level elections in a few select States whereby some of the aforementioned questions can be addressed.

C. Negative Voting- I Choose None

In accordance with the order of the Supreme Court, the EC has ensured that 'none of the above' is printed on a separate panel on the Electronic Voting Mission (EVM) below the name of the last contesting candidate.⁷⁷ If the voter presses the 'none of the above' button his desire not to vote for any of the candidates in the fray is recorded in the ballot unit of the EVM in secrecy.⁷⁸ The EC has however clarified that even if the number of electors opting for NOTA option is more than the number of votes polled by any of the candidates, the candidate who secures the largest number of votes has to be declared elected. This is because the provisions of clause (a) of Rule 64 of the Conduct of Elections Rules, 1961, read with Section 65 of the Representation of the People Act, 1951, clearly state that the candidate who has polled the largest number of valid votes is to be declared elected by the Returning Officer.⁷⁹ 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 the judiciary, the study discusses several judgments through which Indian courts have interpreted the right to vote.

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, 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 times. This segment touches a few aspects of this right from the judicial point of view.

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 this 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.⁸⁰

The Supreme Court in Ponnuswami⁸¹ case endorsed the principles laid down by the Privy Council in Joseph Theberge's case.⁸²

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 decides to vest 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.⁸³ 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 a democracy, is neither a fundamental right nor a common law right but a pure and simple statutory right.⁸⁴

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 that a limited interpretation and restrictive approach will be a mockery of the Constitution.⁸⁵ 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 in an election.⁸⁶ 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

Undertrials can contest but cannot vote in India; as 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.⁸⁷

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, 1997.⁸⁸

In this regard, the National Human Rights Commission (NHRC) recommended that the RPA, 1951, be amended to give undertrials the right to vote; the time has come for Parliament to follow the NHRC's advice and remedy this unfair denial of the right to vote to individuals who are presumed to be innocent.

E. Apex Court on Negative Voting

Under the existing provisions of Rule 49(O) of the RPA, 1951, a voter who after coming to a polling booth does not want to cast his vote, has to inform the presiding officer of his intention not to vote, who in turn will make an entry in the relevant rule book after taking the signature of the said elector. The Supreme Court held that the provisions of Rule 49 (O) were ultra vires Article 19 of the Constitution and Section 128 of the RPA, 1951, as it violated the ‘secret ballot’ principle.⁸⁹ Accordingly, the Supreme Court ordered the Election Commission (EC) to provide for a ‘none of the above’ button on voting machines i.e. the right to reject.⁹⁰

Human Rights Perspective on Right to Vote

VIII

Several international conventions have considered voting rights from a human rights perspective. India is a party to many such important conventions and must abide by the guidelines provided therein. This segment considers some of the prescriptions contained in these conventions as far as voting rights are concerned.

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.”

On Article 25 of ICCPR, the UN Human Rights Committee 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.”⁹¹ The Committees have also encouraged Member States to take steps to facilitate the exercise of voting rights by migrant workers residing abroad.⁹² 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.⁹³ 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, 1979.⁹⁴ 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.

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

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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.⁹⁵ The need for inclusive voting is felt around the world. The ideal situation has been observed in Hong Kong, which is reported to have the highest overseas absentee voting registrants. India should take a cue from the Government of Philippines which confirmed that a total of 17,486 Filipinos in Hong Kong registered to vote in the 2010 elections.⁹⁶ Further, Filipino Americans can also vote in their homeland during the general elections and thanks to the continuous efforts made by the Philippine American Press Club, in cooperation with the Federation of Philippine American Chambers of Commerce, 460,000 Filipino Americans registered for absentee voting in the 2010 Elections.⁹⁷

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.⁹⁸ 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 demand from its citizens abroad, the US finally enacted a law that made it mandatory for all its states to register external voters.⁹⁹ 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.¹⁰⁰

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 in the U.S. 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.¹⁰¹ 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 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.

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.¹⁰²

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.¹⁰³

Postal voting is very popular in the UK, which has witnessed an explosive voting turnout since 2001, when postal voting was made available to anyone on demand without having to give reasons for their inability to make it to the polling booth on election day. However, there have been some alarming instances of vote rigging in the U.K., most notably in the 2005 Birmingham local council elections where application forms and postal ballots were forged.¹⁰⁴ In the US, non-matching signatures from that on the envelope with that on registration form has often disenfranchised thousands of voters.¹⁰⁵ Post offices have also been blamed for having lost the postal votes while delivering them for counting.¹⁰⁶ 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.¹⁰⁷ 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 but it can nevertheless explore the option of extending the facility to a larger segment of the population on account of absence for valid reasons.

But again considering the poor image of government offices, the possibility of voter 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

India is already implementing postal voting for limited sections of the society but it can nevertheless explore the option of extending the facility to a larger segment of the population on account of absence for valid reasons.

In India, a member of the armed forces 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.

cast a 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.

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.

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This measure is 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,¹⁰⁸ the military authorities have confirmed that there has been a positive response to the new voting system, with almost 68% of all soldiers applying to vote through proxy.¹⁰⁹

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 and the weaker members of society.

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 the principal.¹¹⁰ 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 the 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 this select club. 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.¹¹¹ 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.¹¹² 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.

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.”¹¹³ 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 is 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, but they were rerouted to Hillaryno.com—a site set up by a rogue outfit that billed itself as ‘The Friends of Giuliani’.”¹¹⁴ 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.¹¹⁵

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, 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 designed in an effective way, either for SMS or telephone voting, it would reach the masses in many corners of India where the internet has yet to make its presence felt.

B. Unique Identification Numbers

India is currently in the process of assigning UID numbers for every citizen; UID cards would make identity verification much easier, eradicate the chances of voter fraud and can also act as a voter identity card. The UID initiative will ensure that

India is currently in the process of assigning UID numbers for every citizen; UID cards would make identity verification much easier, eradicate the chances of voter fraud and can also double up as a voter identity card. The UID initiative will ensure that demographic data is captured in a standardized manner so that the identity information works across all systems.

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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 voter profiling on the basis of region, district or state from where the person hails. Instead, there is a centralized database management system which indexes the records for rapid search and access without having to search data by location or date of birth. Additionally, given the rapid penetration of mobile phones and landlines across the country and across economic groups, the cell phones could become an enabling device used to authenticate a person, especially in villages where internet penetration is still low. There is also an 'introducer' concept for poor workers, who do not have any supporting documents to prove their identity. Through this concept, those Indians who have valid UID numbers can vouch for another person; thus, a contractor can vouch for the identities of his labourers. This will have the added benefit of enabling poor migrants and to cast their vote through UIDs.

C. Exchange Programmes

The Election Commission of India (EC) has shared its experience in the conduct of free and fair elections with Pakistan.

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 election experiences and discuss voting methods. Such 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'¹¹⁶ 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.

Internationally, 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 derive 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 does not 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.¹¹⁷ 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.¹¹⁸ However, the concept needs to be studied further and exchange programmes would be an apt medium for scrutinizing it.

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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 - 1952-2004¹¹⁹ [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 has hovered around 60% across general elections since Independence, with the 2009 election being no different. 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, traveling business professionals and senior or unwell citizens who may not be able to travel to the polling booth, miss out on exercising their 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 the right to vote. If X is a permanent migrant, Election Commission rules permit X to enrol in his new place of residence. X's name is struck off from the election rolls in Munger and is added to the electoral rolls of Ludhiana. This looks simple and straight-forward but it is not so in practice, as politicians and political parties would still like X 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

their new place of domicile, how many daily wagers can afford to lose their wages and make repeated visits to the Election Commission offices to effect the 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/she should be able to cast his/her 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.

That being said, it is obvious to all that “classes of persons” in Section 60(c) of the RPA, 1951, should be expanded to include persons like X to cast their vote by post.

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.¹²⁰

In this age of globalisation, it is incumbent upon Indian Embassies abroad to take steps to ensure that all eligible Indian voters in foreign countries 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 EC 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 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 EC.

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. 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?

That being said, it is obvious to all that “classes of persons” in Section 60(c) of the Representation of the People Act, 1951, should be expanded.

In this age of globalisation, it is incumbent upon Indian Embassies abroad to take steps to ensure that all eligible Indian voters in foreign countries cast their vote.

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.

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.

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, the 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 *Jago re* and others drove home the message that if a person is not voting, he or she is failing in performing their civic duty. There is also a need to mount many more imaginative and creative multi-media campaigns across the country by the Election Commission and the State Governments to remind citizens about their duty to vote.

As table reproduced earlier 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 have been frequent allegations of the 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.

Recommendations

Throughout this study, the urgent need for electoral reform has been emphasized with recommendations being proffered to make the electoral process more inclusive. Here is a recap of some of the main recommendations:

1. Amendment of the RPA, 1951 to broaden the definition of ‘ordinary residence’

The study recommends that the definition of ‘ordinary residence’ be broadened to include those citizens who are away from their constituencies for education, work or otherwise. This will ensure that those who are unable to return to their ‘home constituency’ to cast their vote will nevertheless be able to exercise their franchise. Further, the EC, Ministry of Law and Justice and other concerned authorities must implement some of the alternative voting methods discussed in the study which will make the electoral process more inclusive.

2. Framing of rules under RPA, 1951 to enable NRIs to cast their vote at Indian embassies abroad

The study recommends that the RPA, 1951 be amended to allow NRIs to cast their vote from their country of domicile. Further, for Indian citizens who happen to be abroad on Election Day, Indian embassies must make arrangements that enable NRIs to cast their vote. The study also recommends that the EC should initially roll out a pilot scheme in countries where the concentration of Indian citizens is high, with Indian Foreign Service (IFS) officers being trained as ‘observers’ to reduce costs.

3. Make voters aware of the option of negative voting and the NOTA button

It is incumbent upon the EC to make voters aware of the NOTA option on EVM’s ahead of the 2014 General Elections by carrying out a nationwide media campaign informing voters of their right to reject all candidates. It is imperative that the NOTA symbol is at the forefront of any such campaign.

4. Implementation of the ‘right to recall’ mechanism at the local level on an experimental basis

The study suggests that the implementation of the ‘right to recall’ mechanism is an option that is worth exploring at local level elections; its implementation at the national level is not just financially cumbersome, but also impractical.

5. Amendment of the RPA, 1951 to grant undertrial prisoners voting rights

As undertrials are allowed to contest elections, denying them the right to vote is not sound logically; the study recommends that the RPA, 1951 to remedy the situation and grant voting rights to undertrial prisoners.

6. 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.

7. Voter education and awareness campaigns targeted at female and first time voters

The EC has operationalized its 'Systematic Voters' Education and Electoral Participation' (SVEEP) wing which has launched initiatives like the launch of 'National Voters Day' to enthuse first time voters to turn up on polling day. There is a however a need to mount more imaginative and creative multi-media campaigns across the country to remind citizens that it is their civic duty to vote. There is also a need for there to be a gender focus in these promotional campaigns in order to bridge the gender gap in voting.

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.”



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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

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 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.

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

Notable Developments since the Publication of the 2010 Edition

The Representation of the People (Second Amendment and Validation) Bill, 2013

In the case of *Lily Thomas v. Union of India*¹²¹ Section 8(4) of the Representation of the People Act, 1951, was struck down by the Supreme Court for violating the Constitution as (i) it provided different grounds for disqualification of legislators and candidates, and (ii) deferred the date on which the disqualification of sitting legislators would take effect. The Supreme Court also held that a stay on conviction needed to be obtained in order to defer the disqualification of a convicted legislator.

In response, the Government introduced a Bill that provided a 90 day period for a convicted legislator to appeal and obtain a stay on his conviction or sentence. If a stay on the conviction or sentence was obtained within the 90 day period, the disqualification would not take effect under the provisions of the Bill. The Bill provided that until the appeal was decided by the court, the legislator could participate in the proceedings of Parliament or State Legislatures, but was not entitled to vote or draw a salary and allowances. In September 2013 the Cabinet approved an ordinance which sought to implement the provisions of the Bill, but both the Bill and the ordinance were subsequently withdrawn following public pressure.¹²²

The Right to Information (Amendment) Bill, 2013

The Right to Information (Amendment) Bill, 2013 was introduced in the Lok Sabha on August 12, 2013. The Bill amends the Right to Information Act, 2005 (RTI Act). In June 2013, the Central Information Commission held six political parties to be public authorities under the RTI Act and hence subject to the transparency and information requirements under the Act. The Amendment Bill removes political parties from the ambit of the definition of public authorities and hence from the purview of the RTI Act. The amendment will apply retrospectively, with effect from June 3, 2013. The Statement of Objects and Reasons of the Bill states that there are already provisions in the RPA, 1951, as well as in the Income Tax Act, 1961 which deal with transparency in the financial aspects of political parties and their candidates. It also adds that declaring a political party as public authority under the RTI Act would hamper its internal functioning and political rivals could misuse the provisions of the RTI Act, thus affecting the functioning of political parties.¹²³

The Bill was referred to the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. The Committee recommended that the Bill should be passed as they felt it would resolve the ambiguity surrounding the inclusion of political parties under the RTI. However, Ms. Anu Aga, a member of the Committee dissented stating that she considered political parties to be public authorities as they received substantial financial funding from the Government of India:

“For example, they get allotted land and bungalows in prime areas of the national and state capitals at highly subsidised rates. They also get free airtime on Doordarshan and All India Radio during Lok Sabha and State Assembly elections in addition to tax exemptions on donations. There is currently very little transparency about the financial affairs of political parties. They are only required to submit expense reports to the Election Commission during elections, and income tax statements to the tax authorities. But more than 80% of their income is from “unknown” sources, as was revealed in a recent RTI application. Their tax exempt status is contingent on their filing tax returns. But non-filing attracts no penalty or recovery of taxes. Most importantly if political parties are to play a critical role in improving governance, they themselves must submit to higher standards of transparency and accountability”.¹²⁴ Although the Bill is currently pending in Parliament, if passed it will be a fatal blow to the electoral reforms movement.

The Right to Reject

The Supreme Court observed in the People's Union for Civil Liberties case¹²⁵ that not allowing a person to cast a negative vote defeats the very freedom of expression guaranteed by Article 21 of the Constitution, namely, the right to liberty. According to the Court, the fundamental right under Article 19(1)(a) read with statutory right under Section 79(d) of the RPA 1951, is violated if the right not to vote for any of the candidates in the fray is effectively denied and secrecy is breached. Thus, the Court issued directions to the EC to make the necessary changes on the ballot papers/EVMs; following the SC's order the EC introduced the NOTA (none of the above) button for the assembly elections in five states that were held in December 2013. Over 1.5 million voters decided to vote for NOTA in Delhi, Madhya Pradesh, and Rajasthan.¹²⁶

The EC has however clarified that even if the number of electors opting for NOTA option is more than the number of votes polled by any of the candidates, the candidate who secures the largest number of votes has to be declared elected. This is because the provisions of clause (a) of Rule 64 of Conduct of Elections Rules, 1961, read with Section 65 of the Representation of the People Act, 1951, clearly state that the candidate who has polled the largest number of valid votes is to be declared elected by the Returning Officer.¹²⁷

Launch of National Voters' Day

Since 2011, the 25th of January has been observed as “National Voters' Day”, with newly eligible and registered voters being felicitated in over 8 lakh polling station areas during the national level launch. The newly enrolled electors were also given a badge with the slogan “Proud to be a Voter-Ready to Vote” during the felicitation ceremony along with their EPIC. The ECI expects the initiative to give the youth a sense of citizenship, empowerment, pride and participation and also inspire them to exercise their franchise, when the occasion comes. A large number of voters' education activities have been taken up at the State/UT level including a multi-media campaign to popularize electoral participation and democratic practices and

dissemination of information about electoral processes .¹²⁸

Grant of Paid Holiday to employees on the day of the Poll

The ECI has clarified that electors (including casual workers/daily wage labourers) working outside the constituency concerned would be entitled to the benefit of a paid holiday extended under Section 135B (1) of the RPA, 1951. For example, voters in the State of U.P. will be entitled to get a paid holiday from their employers, even if their location of employment is in Delhi or any other State .¹²⁹

Systematic Voters' Education and Electoral Participation (SVEEP)

The SVEEP Wing of the EC became operational in late 2009 with the stated aim of improving electoral participation in the country by engaging with the voting public, civil society groups and the media. SVEEP handles work related to all aspects of voters' awareness and education by formulating and monitoring the implementation of policy frameworks.¹³⁰

In November 2013, SVEEP came out with a comprehensive action plan to improve voter participation in the upcoming general elections in 2014. Some of the salient features of the action plan are as follows:

- Extension of the deadline for registering to vote to the last date for filing nominations under the provision of continuous updation.
- A significant increase in the number of polling stations.
- Setting up of voter registration and education centres in strategic locations around the country with these centres being well stocked with voter awareness reading material.
- Appropriate information dissemination on 'NOTA' option and EVM awareness.¹³¹

Annexure - III

Endnotes

1. See Constitution of India, 1950, Art.326.
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.
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).
7. Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851.
8. India has borrowed fundamental rights from the 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.
10. Id. at 14.
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. Mendiratta, 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).
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.
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.
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>
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.
29. Inter Parliamentary Union (Electoral Information: Peru), available at 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.
31. See generally, Lisiunia A. Romanienko, 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).
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 *Buidling Democracy* 44, 56 (2003).
38. *Electoral System Design: The New International Idea Handbook 5* (Andrew Reynolds et al., eds. 2005).
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.
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).
45. Available at 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.*
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. See also, Naveen Jindal, *Indians' Right and Opportunity to Vote*, (Asia Times, 3 April 2009), available at http://www.atimes.com/atimes/South_Asia/KD03Df01.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>.
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52. *Id.*
53. *Petition for Absentee Voting in Indian Elections*, available at <http://www.petitiononline.com/abvindia/petition.htm>.
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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>.
56. *Id.*
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58. Available at <http://www.fvap.gov/resources/media/2010vag.pdf>.
59. *Compulsory Voting*, available at 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>.

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.
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68. See State Mulls Making Voting Mandatory, *The Tribune*, New Delhi, 21 December 2009. The former 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.
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79. See Election Commission of India Notification, available at http://eci.nic.in/eci_main1/current/PN_28102013.pdf
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.
85. Kunhiraman P v. Krishna Iyer AIR 1962 Ker 190, 192 (FB).
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87. S.N. Chaudhary, Introduction, In *Human Rights and Poverty in India* (S.N. Chaudhary ed., 2005),
88. Anukul Chandra Pradhan v. Union of India AIR 1997 SC 2814.
89. *People's Union for Civil Liberties v. Union of India* (2013)10 SCC 1
90. Id.
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), I, U.N.Doc. CCPR/C/21/Rev.1/Add.7 (7 December 1996), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument).
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95. Naveen Jindal, *supra* n.49.
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Sonipat Narela Road, Sonipat, Haryana-131001 (NCR of Delhi), India
Tel: +91-130-3057800 / 801 / 802; Fax: +91-130-3057888
Email: info@jgu.edu.in; Website: www.jgu.edu.in

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