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COMPULSORY VOTING

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COMPULSORY VOTING

Introduction

India stands as a model for many emerging democracies around the world. Free and fair elections are the hallmark of a well functioning democracy. While we are justifiably proud of our democracy, there are a number of areas which need to be strengthened for us to realise the true potential of a well functioning democracy. Our election system, from the selection of candidates, to the manner in which funds are raised and spent in election campaigns, are in dire need of significant changes.

There has been a growing concern over the years in India about several aspects of our electoral system. The Election Commission has made changes in several areas to respond to some of the concerns. There have also been a number of committees which have examined the major issues pertaining to our electoral system and made a number of recommendations. But there remain some critical issues that might need legislative action to bring about the required changes¹.

Exercising Voting Rights

Voter is the central actor in democratic election. Voters' participation in the democratic and electoral processes is integral to the successful running of any democracy and the very basis of wholesome democratic elections. Thus, it becomes an integral part of election management. In India and across the world, the imperative of enhanced voters' participation in Elections is no more a matter of debate, but a serious assignment. In recent decades however, the world has seen a decline in Voter' participation in elections, which would inevitably point to a democracy deficit.

In India, the constitutional mandate of the Election Commission of India (ECI) for 'Superintendence, Direction and Control' of elections contains the in-built high responsibility to have every eligible Indian on the electoral roll and get everyone on the electoral roll to voluntarily vote. Several million voters not turning out at polling booth, elections to election,

¹ Election Commission of India, Background Paper on Electoral Reforms, December 2010

and large number of eligible citizens still missing from the Electoral Roll do not fetch credit to the great Indian democracy².

Our country is the largest democracy in the world having population of more than a billion. But it has been seen that only about fifty per cent of the eligible voters exercise their right to vote. During almost all the elections in the country, it has been observed that the number of actual voters is far below the number of eligible voters. Therefore, the average voting is very low. This type of electoral trend makes it clear to us that suitable steps are necessary to encourage the citizens to exercise their right to vote in order to elect their representative so that the results of the election show the will of all the electors and not just a segment of them³.

In our country, a candidate is declared as elected even if he secures one vote more than the votes polled to his nearest candidate. Though he has won the seat, yet he may not have the support of even half of the electors. In the true sense, he is not representing the constituency from which he has been elected.

The percentage of votes polled at every election is decreasing which shows that people are not willing to participate in the election process. Sometimes in some of the constituencies, as low as thirty per cent of the total votes are polled. Thus, an electoral reform often mooted now-a-day is compulsory voting in response to chronic voter apathy, especially in urban areas⁴.

Compulsory Voting

Compulsory voting is not a new concept. Some of the countries that introduced mandatory voting laws were Belgium in 1892, Argentina in 1914 and Australia in 1924. Compulsory voting is a system in which electors are obliged to votes in elections or attend a polling place on voting day. If an eligible voter does not attend a polling place, he or she may be subject to punitive measures such as fines or community service. In other words,

² Election Commission of India, Systematic Voters Education and Electoral Participation, March 2013

³ Lok Sabha, Private Member Bill No. 111, 2014, Statement of Objects and Reasons

⁴ Lok Sabha, Private Member Bill No. 83, 2014, Statement of Objects and Reasons

“Compulsory voting can be defined very simply as the legal obligation to attend the polls at the election time and platform whatever duties are required there of electors”⁵.

Compulsory Voting in India: History and Context

Compulsory voting was first considered by the Parliament in 1950 during the enactment of the Representation of the People Act. Nevertheless, citing practical difficulties in implementation, it was rejected (led by members such as Dr. B.R. Ambedkar).

Then the Dinesh Goswami Committee in 1990 considered the question of making “voting compulsory” to increase voter turnouts. However, the Committee rejected the idea based on “the practical difficulties involved in its implementation”.

Subsequently, in 2001, the Consultation Paper of the National Commission to Review the Working of the Constitution (NCRWC) on Electoral Reforms again considered, and rejected the proposal for compulsory voting, noting that it would *“not be feasible or advisable at present ... [given that] in our situation, there may be several management and legal enforceability problems and difficult questions of penalty for not voting.”*

The Tarkunde Committee, in its report on Election Expenses, noted that:

“We have seriously considered the desirability of making it compulsory for voters to cast their votes in these elections. It appears to us that compulsory voting may be resented by the voters and may on balance prove counter-productive. It is desirable that compliance with the duty to cast one’s vote should be brought about by persuasion and political education, rather than compulsion. Moreover, the implementation of a law of compulsory voting is likely to be very difficult and may lead to abuse”.

Pursuant to this, the issue of compulsory voting was discussed in Parliament in 2004 and 2009, when two Private Members introduced a bill to that effect. In 2004, Shri B.S. Rawat introduced the Compulsory Voting Bill, 2004 *“to provide for compulsory voting by the electorate in the country and for matters connected therewith, be taken into consideration.”* The Bill was defeated by citing various arguments, *inter alia*, the coercive nature of the provision; respecting the active decision of some voters to not engage with the democratic process; the inability to reach the polling booths; personal circumstances; and the difficulty of

⁵ <http://www.legalservicesindia.com>

implementation. In 2009, Shri J.P. Agarwal tabled another bill on Compulsory Voting, requiring the State to concomitantly provide polling booths at convenient locations and making special arrangements for elderly, disabled, and pregnant voters. However, the then Law Minister Shri M. Veerappa Moily cautioned against such a move observing that it was coercive; difficult for the government to implement; and ignorant of causes of non-voting such as illness, preoccupation, and use of force by political parties. The Bill was later withdrawn. Two more Bills introduced by Smt. Supriya Sule in 2009 and by Shri Chandrakant Khaire in 2012 were lapsed. In 2014, two Bills as introduced by Shri Feroze Varun Gandhi and Shri Chandrakant Khaire on Compulsory Voting is pending. Another Bill as introduced by Shri Janardan Singh 'sigriwal' on the subject in 2014, though debated widely in Lok Sabha in 2015, is still pending.

Finally, Mr. Atul Saronde petitioned the Supreme Court *vide* a Public Interest Litigation (PIL), urging the court make voting compulsory to counter low voter turnouts and to ensure the 'representativeness' of the elected governments. On the question of penalties for failure to vote, Mr. Saronde suggested that the Government disconnect electricity and water supplies and levy fines on the defaulting voters. Dismissing the petition in April, 2009, the two-judge bench of Chief Justice Balakrishnan and Justice Sathasivam said, "*We are not agreeable to your suggestion that electricity and water connection should be cut if anyone does not vote. These are inhuman methods to make a voter go to the polling booth.*"

Compulsory Voting in Gujarat: The Gujarat Local Authorities Laws (Amendment) Bill, 2009 was introduced and (now) passed introducing Compulsory Voting at local-level elections such as at the Municipality, Municipal Corporation, and Panchayat level, thus paving the way for introduction of Compulsory Voting in India. The Gujarat High Court recently stayed a legislation making voting compulsory in local body elections, observing that the 'right to vote' itself provided the right to refrain from voting. The Court issued notice to the Government and State Election Commission in this matter.

Compulsory Voting: A Comparative Perspective

Compulsory voting is currently present in the statute books in 28 countries, although such a figure does not give a true picture of the level of enforcement, which is even lower. Thus, most studies estimate that around 14 countries currently enforce compulsory voting

provisions. These include many small countries such as Belgium, Liechtenstein, Luxemburg, Nauru, and one canton in Switzerland; and others such as Australia, Brazil, Ecuador, Singapore, Peru, and Uruguay.

In fact, Dr. Lisa Hill and Jonathon Louth talk about how the list of countries currently enforcing compulsory voting is reduced to six, if limited to those with a “history of well-established democratic norms”.

Nor does the 28 countries figure indicate the trend towards which countries globally are moving. For instance, the fact that both Italy (1993) and the Netherlands (1967) have abolished Compulsory Voting; and others such as Liechtenstein and Greece have moved from a strict to a not-strict or non-enforcement of Compulsory Voting Laws respectively has lead Institute for Democracy and Electoral Assistance (IDEA) to question:

“Is Compulsory Voting a dying phenomenon” in Western Europe? Perhaps in a few years it will only be kept as a ‘ghost’ in countries’ constitutions, without any intention to enforce it.”

Most recently, Fiji abandoned Compulsory Voting in 2014, Chile in 2012, and Austria (the last remaining Tyrol district) abolished it in 2004. Others such as Egypt, Greece, Mexico, Paraguay and Thailand have stopped enforcing it. When Netherlands abolished Compulsory Voting in 1967, it did so citing three reasons – first, the Right to Vote was a Right, which every citizen could decide whether to exercise or not. Secondly, sanctions against defaulters were hard to effectively enforce in practice; and finally, tasking parties with the responsibility of attracting voters would ensure that the resultant turnout was a better reflection of voters’ interest and engagement with politics.

Amongst the countries still enforcing compulsory voting provisions, most (excluding Australia where defaulters pay a fine) impose strict penalties. Thus, in Peru, voters must carry their stamped voting card to obtain certain goods and social services from some public offices.

In Brazil, failure to vote results in the imposition of a fine. Failure to pay the fine however, entitles the State to impose a range of sanctions including being prohibited from applying for any public position; from receiving a salary from a public post; from sitting certain

professional exams; and from obtaining a passport, identity card, certain types of loans, and teaching licenses in public educational institutions

In Belgium, failure to vote in four elections within 15 years results in the disenfranchisement for ten years. But even apart from that, non-voters might find it difficult to get jobs in the public sector; or if they are civil servants, be disentitled to any promotion.

As discussed above, penalising non-voters by penalising their poverty (such as in Brazil for failure to pay the fine) or restricting their access to government services and benefits (such as in Belgium and Peru) are extremely harsh measures and will not work in the Indian context, with its vast poverty and unemployment. Conversely, if the fine is too low, then it will only affect the poor and not change the behaviour of the rich, who do constitute a sizeable mass of the non-voting qualified voter population. In both cases, however, the result will be many court cases and delays in an already creaking judicial system. For all these reasons, comparative examples do not provide any justification for the imposition of compulsory voting in India⁶.

Merits of Compulsory Voting

- Political journalist Jonathan Levine believes that Compulsory Voting System confer a higher degree of political legitimacy because they result in increased voter turnout. The victorious candidate represents a majority of the population, not just the politically motivated individuals who would vote without compulsion.
- Compulsory Voting prevents disenfranchisement of the socially disadvantaged. In a similar way that the secret ballot is designed to prevent interference with the votes actually cast, compelling voters to the polls for an election reduces the impact that external factors may have on an individual's capacity to vote such as the weather, transport, or restrictive employers.
- If everybody must vote, restrictions on voting are easily identified and steps are taken to remove them. Countries with compulsory voting generally hold elections on a Saturday or Sunday as evidenced in nations such as Australia, to ensure that working people can fulfill their duty to cast their vote. Postal and pre-poll voting is provided to people who cannot vote on polling day, and mobile voting booths may also be taken to old age homes and hospitals to cater for immobilized citizens.
- Compulsory voting may encourage voters to research the candidates' political positions more thoroughly. Since they are voting anyway, they may take more of an

⁶ India, Law Commission, Report No. 255: Electoral Reforms, March 2015

interest into the nature of the politicians they may vote for, rather than simply opting out. This means candidates need to appeal to a more general audience, rather than a small section of the community.

- Apart from the increased turnout as a value in itself, Lijphart lists other advantages to compulsory voting. Firstly, the increase in voting participation may stimulate stronger participation and interest in other political activities. Secondly, as smaller campaign funds are needed to goad voters to the polls, the role of money in politics decreases.

Demerits of Compulsory Voting

- Any compulsion affects the freedom of an individual, and the fining of recalcitrant non-voters is an additional impact on a potential recalcitrant voter. Voting may be seen as a civic right rather than a civic duty. While citizens may exercise their civil rights (free speech, marriage, etc.) they are not compelled to. Furthermore, compulsory voting may infringe other rights.
- Another argument against compulsory voting, prevalent among legal scholars in the United States is that it is essentially a compelled speech act, which violates freedom of speech because the freedom to speak necessarily includes the freedom not to speak.
- Some do not support the idea of compulsory voting, particularly if they have no interest in politics or no knowledge of the candidates. Others may be well-informed, but have no preference for any particular candidate, and have no wish to give support to the incumbent political system.
- They believe that the political process is inherently corrupt and violent, and prefer to minimize their personal involvement with it.
- Some suggest that it is undemocratic to force people to vote as it is an infringement of liberty.
- The ignorant and those with little interest in politics are forced to polls.

Measures to Enforce Compulsory Voting

Although voting in a country may be compulsory, penalties for failing to vote are not always strictly enforced. In Australia and Brazil, providing a legitimate reason for not voting (such as being sick or outside the country) is accepted. In Argentina, those who were ill on voting day are excused by requesting a doctor to prove their condition; those over 500 km (310 mi) away from their voting place are also excused by asking for a certificate at a police station near where they are. Belgian voters can vote in an Embassy if they are abroad or can empower another voter to cast the vote in their name; the voter must give a “permission to

vote” and carry a copy of the Electronic Identity Card (eID) card and their own on the actual elections.

States that sanction non-voters with fines generally impose small or nominal penalties. However, penalties for failing to vote are not limited to fines and legal sanctions. Belgian voters who repeatedly fail to vote in elections may be subject to disenfranchisement. Singapore voters who fail to vote in a general election or presidential election will be subjected to disenfranchisement until a valid reason is given or a fine is paid. Goods and services provided by public offices may be denied to those failing to vote in Peru and Greece. In Brazil, people who fail to vote in an election are barred from obtaining a passport and subject to other restrictions until settling their situation before an electoral court or after they have voted in the two most recent elections. If a Bolivian voter fails to participate in an election, the person may be denied withdrawal of the salary from the bank for three months. In Turkey, according to a law passed by the parliament in 1986, if eligible electors do not cast a vote in elections, they pay a fee of about 10 Turkish lira (about \$6 US)⁷.

Conclusion

After having a glance on both aspect of Compulsory Voting it can be said that the introduction of compulsory voting in India seems not practical for a variety of reasons such as being undemocratic, illegitimate, expensive, unable to improve quality political participation and awareness, and difficult to implement. As also stated by the former Election Commissioner, S.Y. Qureishi that Compulsory Voting does not go with the idea of democracy⁸.

⁷ <http://www.legalservicesindia.com>

⁸ India, Law Commission, Report No. 255: Electoral Reforms, March 2015