
IMPLEMENTING A COMPULSORY VOTING SYSTEM IN INDIA: IS THIS THE SOLUTION TO A LOW VOTER TURNOUT?

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ABSTRACT

Mandatory Voting Systems are based on the principle that voting is the civic duty of every voter and hence, a non negotiable aspect of democracy. This theory doesn't view voting as a mere right of citizens but also as a responsibility, failure of fulfillment of which must be punished to promote deterrence. Decisions taken by democracies are far more legitimate when a higher percentage of the population participates, and this was recognized by the Belgium Government in 1892, becoming one of the first countries in the world to impose sanctions upon those who do not vote in elections. Today, more countries have joined this list, with the goal of increasing voter turnout and furthering the spirit of democracy. In India, too, discussions on the implementation of such a system have been in place in the Parliament since the enactment of The Representation of Peoples Act, 1950. While the initial position of statesmen in the country was clear regarding the impracticality of introducing such a system in India, the position of the country today is not as clear. Attempts have been made to implement the system in the country¹, more on which will be discussed in the paper.

Hypothesis: Implementing a Compulsory Voting System in India will guarantee high voter turnout, an issue the Indian Electoral System has been struggling with since independence. This will ensure that the citizens of the world's largest democracy are indeed responsible for electing their representatives in the government.

1. DEMOCRACY AND THE RIGHT TO VOTE

Elections have been defined as the instruments of modern democracy, on the foundation of which countries are built and governments are made. Without voters, the election process would be rendered meaningless and without elections, democracies are empty. The essence of voting can best be explained in the words of Joshua A. Douglas, who says “voting is the foundational concept of an entire democratic structure”.¹ The value of voting has been reiterated by the Supreme Court time and again, notably by stating that the right to participation in the governance of their country either directly or indirectly is a valued right of every adult citizen in the India.² While it has been established that the concept of the right to vote has been woven into the fabric of democracy, the ever impending question of whether there exists a duty on a voter to cast their vote or if the voter also possesses a right not to vote is one worthy of discussion. As has been held by the case of *Kuldip Nayar v. Union of India*³, representative democracy and parliamentary democracy are both integral parts of the basic structure of the Constitution on India.⁴ The essence of a representative democracy requires that all representatives of the government who form the Parliament accurately depict public opinion and depict it well. In such a scenario, would it not be a safe conclusion to arrive at that the importance of a citizen’s vote becomes more important than in any other form of government? Having arrived at such conclusion, a natural extension of this would be to make voting mandatory, imposing penalties on those voters who default to cast their vote. This concept forms the basis of this research paper- Compulsory Voting. Constitution Assembly debates from as early as 1950 have been rather silent on the topic of compulsory voting, barring the instance where the then Union Law Minister Dr. B.R. Ambedkar rejected the implementation of such idea in the Parliament stating practical difficulties. After this rejection in 1951, the idea was floated across again in 1978 before the Committee on Election Expenses headed by V.M. Tarkunde, only to be met with the same fate. The 1990s saw a shift in this stance taken by statesmen, with the constitution of the Dinesh Goswami Committee on Electoral Reforms. In subsequent chapters, the history of the discussion on compulsory voting in India will be traced with special reference to Gujarat Local Authorities (Amendment) Act, 2009 and the Compulsory Voting Bills of 2004 and 2017.

¹ J.A. Douglas, *The Foundational Importance of Voting: A Response to Professor Flanders*, 66 OKLAHOMA LAW REVIEW 81 (2013).

² *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman*, 1985 AIR 1233.

³ AIR 2006 SC 3127.

⁴ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

In India, the Right to Vote is a statutory right recognized by The Representation of the Peoples Act, 1951 while the casting of such a vote is an exercise of free speech⁵ and expression under Article 19(1)(a) of the Indian Constitution.⁶ The landmark judgment of PUCL v. Union of India⁷ addressed this, dealing with the key concept of a Right not to Vote. Although the judgment dealt with the secrecy question of the voter who chooses to go to the polling booth but does not wish to vote for any candidate present, it is also pertinent to the present discussion. In 2017, the Election Commission of India issued a clarification notice regarding the Presidential Elections with regard to defection under Schedule X. The ECI stressed on the importance of free will of the voters not to participate in the Presidential Elections stating that failure to vote will not amount to defection. The ECI clarified that the voting at election to the Office of President of India is not compulsory, just as the voting at elections to the House of the People and State Legislatures where also **there is no compulsion to vote**. At this juncture, it is beneficial to take reference to the definition of 'electoral right' under Section 171A(b) of the Indian Penal Code, 1860 to 'mean the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or **refrain from voting at election**'. Having made these references it seems as though much like casting a vote is right of every adult citizen of the country, not casting a vote is also a similar right. It then becomes questionable whether Indian law would permit for the implementation of a system such as compulsory voting, imposing penalty for what seems like the valid exercise of a statutory right.

⁵ INDIA CONST. art. 19, cl. 1.

⁶ Kuldip Nayar v. Union of India, AIR 2006 SC 3127; PUCL v. Union of India, (2013) 10 SCC 1; and Association for Democratic Reforms AIR 2001 Delhi 126.

⁷ (2013) 10 SCC 1.

2. COMPULSORY VOTING IN INDIA

As stated in the previous chapter, India has been dabbling around with the concept of Compulsory Voting for a few decades now however it has never been successfully implemented. In this chapter the researcher will be tracing the history of these discussions in the country while taking special reference to the Compulsory Voting Bills of 2004 and 2017 and the attempt of the state of Gujarat to make voting compulsory in their local body elections in 2019.

a. The Gujarat Local Authorities (Amendment) Act, 2009

The Act introduced an ‘obligation to vote’ at the municipal corporation, municipality and Panchayat levels in the state of Gujarat. In furtherance of this objective, the Act amended three legislations related to the concept of voting i.e. Bombay Provincial Municipal Corporation Act, 1949; the Gujarat Municipalities Act, 1963 and the Gujarat Panchayats Act, 1993. The Amendment recognized the Right to cast a vote in exercise of the NOTA option and empowered the election officer to serve a voter notice to anyone who fails to vote at the election. After such notice is rendered, the voter is to provide an explanation as to why he defaulted; failing which he is regarded as a “default voter”. This order may be challenged before an Appellate Officer whose decision is final. The Amendment received a lot of criticism for being unclear with regard to what being a “default voter” means. Further it was argued that making voting compulsory was violative of Article 21 and the concept of personal liberty, citing which even the then Governor of Gujarat, Kamla Beniwal did not provide assent on the Bill. The idea was first proposed in 2009 from the then Chief Minister, Narendra Modi and the Bill was passed in 2014 in the Assembly with Governor O.P. Kohli signing it.⁸ Finally in 2015, the Gujarat High Court Bench consisting of Chief Justice Jayant Patel and Justice V.N. Anjaria stayed the decision of the State Government and upheld that the Right to refrain from participating in elections is the choice of an individual voter and fines cannot be imposed for the valid exercise of this right.

b. The Compulsory Voting Bills of 2004 and 2009.

In 2004, a Member of the Parliament Shri B.S. Rawat introduced the Compulsory Voting Bill, 2004 as a Private Member Bill. The Bill was struck down in the Parliament stating that the

⁸ *Stay on Compulsory Voting in Gujarat*, THE TELEGRAPH ONLINE, (Aug. 21, 2015), <https://www.telegraphindia.com/india/stay-on-compulsory-voting-in-gujarat/cid/1512722>.

provision was coercive and that the decision taken by a voter not to participate in a democratic procedure is an exercise of their freedom that must be respected. Further it was also discussed that often voters face logistical difficulties that make it hard for them to cast their vote especially in the case of pregnant women, disabled persons or daily wage labourers and these must be taken into consideration. Lastly, much like the Dinesh Goswami Committee, the Parliament also held that this law would be difficult to implement, hence striking down the Bill. In 2009, a similar private member bill was passed by a Member of the Parliament Mr. JP Agarwal.⁹ Although the bill shared high similarity with the bill of 2004, this time reference was also made to the duty cast on the government to ensure that polling booths are placed so as to make arrangements for disabled persons or other persons with needs. The then Law Minister, Mr. Veerappa Moily recognised that if introduced, compulsory voting would ensure better representation of the electorate in the parliament but also stated that coercion is not the right way to ensure high voter turnout.¹⁰ The Bill was later withdrawn.¹¹ In 2017 and 2019, two other Private Member Bills was brought before the parliament on the same subject matter, but neither was passed citing similar reasons. Although there were some differences put forth in the 2017 Bill from the 2004 Bill with regard to forfeiture and term of imprisonment in the case of default voters, it still maintained high similarity to its older counterparts.

c. Other Discussions on Compulsory Voting

Apart from the Bills put forth before the Parliament and the Gujarat State Government's attempt to make voting compulsory, Compulsory Voting has still been spoken about in the past few decades in the Supreme Court, by the Law Commission and even by independent committees.

- In 2015, the Law Commission published its 255th Report on Electoral Reforms, Chapter IX of which dealt with the concept of Compulsory Voting in detail.¹² The Report recommended that Compulsory Voting should not be introduced into Indian law stating that a conducive environment had not been created yet to introduce such a law.

⁹ Prianka Rao, *Compulsory Voting in India*, PRS INDIA (Nov. 17, 2014) <https://www.prsindia.org/theprsblog/compulsory-voting-india>.

¹⁰ *Supra* note 8.

¹¹ *Government Expresses Inability to Enforce Compulsory voting*, THE HINDU, (Aug.13, 2010), <https://www.thehindu.com/news/national/Government-expresses-inability-to-enforce-compulsory-voting/article16130468.ece>

¹² *Electoral Reforms*, 255th Law Commission Report (2015).

- A PIL was also petitioned to the Supreme Court in 2009 by a Mr. Atul Sarode stating that compulsory voting must be introduced to curb the problem of low voter turnout and to ensure 'representativeness' of the governments in power. It was stated by him that the punishment for not voting must be the withdrawal of electricity and water supply. This petition was of course dismissed by the Supreme Court by a two member bench consisting of Chief Justice Balakrishnan and Justice Sathasivam stating that it was an inhumane way of ensuring high voter turnout.¹³
- In 2001, the Consultation Paper of the National Commission to Review the Working of the Constitution (NCRWC) on Electoral Reforms yet again addressed the question of compulsory voting only to reject it. The idea was rejected on the grounds that India was not ready for such law at that juncture since it would lead to various administrative and law enforcement issues when the matter of imposing penalties for defaulting voters would arise.¹⁴ The Dinesh Goswami Committee Report and the Tarkunde Committee Reports are also good examples of discussions on Compulsory Voting.

¹³ Dhananjay Mahapatra, *Supreme Court rejects plea to make voting compulsory*, THE TIMES OF INDIA (Apr. 18, 2009) <https://timesofindia.indiatimes.com/india/Supreme-Court-rejects-plea-to-make-voting-compulsory/articleshow/4415484.cms>

¹⁴ *Supra* note 13.

3. COMPULSORY VOTING: A COMPARITIVE ANALYSIS

India is not the first country to consider implementing Compulsory Voting. Across the globe, over 25 countries have made voting mandatory in their respective jurisdictions. Australia, a common law country like India with a federal system implemented compulsory voting in 1924 to address the problem of a low voter turnout.¹⁵ This move by the government proved to be extremely successful and has worked wonders to ensuring maximum participation in the elections. Australia, unlike most other countries with compulsory voting, doesn't impose extremely strict penalties, but ensures that defaulters pay a fine. The government also recognized that the right not to vote is an important feature of a democracy and hence only mandate that the voter shows up to the polling booth. The voter is then free to decide whether or not he wishes to cast his vote. A parallel may be drawn between this option available to an Australian voter and the option of a NOTA vote available to an Indian voter. Having seen the success of compulsory voting in a country whose legal system bears high similarity to India, it is questionable why India refrains from taking measures such as this to increase the voter turnout, which has never crossed 67% in a general election.¹⁶ It cannot be ignored however that the Australian move has not been free from criticism with accusations of curbing individual liberty and tarnishing the spirit of democracy.

Belgium is a noteworthy example of compulsory voting since unlike Australia, Belgium's government structure is a constitutional monarchy and a highly successful one at that, bearing stark differences to the Indian government. Belgium was the first country to implement the system, in 1893. Since the implementation of this system the voter turnout in Belgium has never dipped below 90%, a near impossible feat in any other country.¹⁷ In the 1970s however, attempts were made to remove this obligation to vote, specifically stating that since Belgium identified as a representative democracy, having such provisions seemed to be detrimental to democratic interests, however this motion was not successful. Belgium also takes a stricter approach than Australia, withdrawing access to some public services to defaulters, while also restricting their employment opportunities.

¹⁵ Lisa Hill and Jonathon Louth, *Compulsory Voting Laws and Turnout: Efficacy and Appropriateness*, APSAC 31 (2004).

¹⁶ *Voter Turnout at Lok Sabha Elections*, STATISTA (Mar. 19, 2021) <https://www.statista.com/statistics/998981/india-voter-turnout-by-state/>.

¹⁷ *Electoral Assistance: Belgium*, COUNCIL OF EUROPE (May. 26, 2019) <https://www.coe.int/en/web/electoral-assistance/elecdata-belgium>.

A rather peculiar example of compulsory voting is the system in place in North Korea. While the North Korea is an authoritative state, elections nonetheless take place and voting in these elections is compulsory. North Korea is an isolated state and voting in the country is considered an expression of loyalty to the family in power i.e. the Kim family dynasty. The Parliamentary Elections have often been termed as no choice elections since there is only one candidate that stands for the election, making it mandatory for every citizen to vote for Supreme People's Assembly. Although in practice there is a choice to strike out the name of the single candidate contesting for the election, such a bold move would immediately result in the involvement of the secret police who keep close tabs on the voting process. In 2014, the voter turnout in the North Korean elections stood at a whopping 99.97%.¹⁸

While North Korea may not be a good example for India to work towards, the models of a successful compulsory voting system are many, with more countries joining the list as we speak. India has battled with low election literacy and as a result a low election turnout for decades now, with most voters casting their vote based on the promise of freebies and others dissociating themselves from the process altogether. In such a scenario it becomes imperative that some measure, if not compulsory voting, be taken to increase voter turnout increasing the legitimacy of the elected government. The concept of Online Voting has been considered to be rather successful to increase participation since the physical presence of voters is not required. Online voting is also a sought after amendment in the Post COVID era since it is ideal to maintain social distance during elections. Apart from online voting, providing incentives for voters who cast their votes is also a good way of increasing turnout. These incentives could range from ration supplies, discounts in essential commodities, or other government services, etc. Next, the government could attempt to make the voter registration and associated processes more seamless and easy to access so voters are not demotivated by the complicated procedure. Lastly, of course while all these suggestions may help increase the voter turnout marginally, the majority of voter default is caused by election illiteracy, i.e. the lack of knowledge regarding the election process, the candidates that contest, the political parties and their manifestos. The Election Commission must involve themselves more in increasing overall election literacy by conducting regular programs and camps and providing easy access to unbiased information to the voters during voting season. This becomes more

¹⁸ *North Koreans vote in 'no-choice' parliamentary elections*, BBC NEWS (Mar. 10, 2019), <https://www.bbc.com/news/world-asia-47492747> .

important in a country like India where elections happen multiple times a year, either for a local body, state assembly or the Parliament itself.

CONCLUSION AND AUTHOR'S OPINION

While the researcher is of the opinion that implementing a compulsory voting system in India, might be the solution required to deal with the issue of low voter turnout, the country must not resort to extreme measures like Belgium i.e. hampering employment opportunities or government services, or as suggested in the 2009 PIL before the Supreme Court. Imposing a minor fine on voters may be the right push needed for the Indian voters to participate in the elections. Since India has already provided each voter with the option of casting a NOTA vote, it is not unreasonable to expect that voters must show up to the polling booth, except in cases where practical difficulties like ill health or transport disallows them from doing so. In this paper, the researcher has attempted to highlight the history of compulsory voting in India, briefly analysis parliamentary discussions on the same from as early as the 1950 to as 2019. Ultimately, it is the duty of the Election Commission of India and the Government to work together and improve the voter turnout. Arguments exist from both sides and it is up to the representatives we have elected to answer the fundamental question that has plagued lawmakers for decades now, can a voter be compelled to cast his vote even when he wishes not to?