

# Proxy Voting

## Representation of the People (Amendment) Bill, 2017:

- The Representation of the People (Amendment) Bill, 2017 was introduced in Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad on December 18, 2017.
- The Bill seeks to amend the Representation of People Act, 1950 and the Representation of People Act, 1951 to allow for proxy voting and to make certain provisions of the Acts gender-neutral.
- The 1950 Act provides for allocation of seats and delimitation of constituencies for elections, qualifications of voters, and preparation of electoral rolls.
- The 1951 Act provides for the conduct of elections and offences and disputes related to elections.
- The 1950 Act permits the registration of persons in electoral rolls who are ordinarily resident in a constituency. These persons include: (i) persons holding a service qualification (such as member of armed forces, member of armed police force of a state, serving outside the state, or central government employees posted outside India); and (ii) persons holding certain offices in India declared by the President in consultation with Election Commission. Under the Act, the wives of such persons are also deemed to be ordinarily residing in India. The Bill replaces the term 'wife' with 'spouse'.
- The 1951 Act permits an overseas voter to vote only in person. An overseas voter is a citizen of India who is absent from his place of ordinary residence in India.
- The Bill seeks to amend the 1951 Act to permit an overseas voter to cast their vote in person or by proxy in the constituency where the poll is taken. The 1951 Act provides for the wife of a person holding a service qualification to vote. The Bill replaces the term 'wife' with 'spouse'.

## Origin of Idea:

- The idea of NRI voting goes back to 2013, when a sizeable group of Indians launched an initiative called the Bharatiya Pravasi Diwas.
- When their demand snowballed, then Prime Minister Manmohan Singh, in his address to the 8th Bharatiya Pravasi Diwas in 2010, said that NRIs would be able to vote from the following year.
- His announcement came out of the blue for the Election Commission (EC). Operational difficulties had neither been studied nor discussed. Just the thought of registering millions of voters and making arrangements for them to vote in the embassies and consulates was unnerving – not just for us at the EC but for the external affairs ministry as well.
- To implement this promise, the Representation of the People Act 1950 was amended and came into effect on February 10, 2011, with a new section, Section 20A. This section made special provisions for every citizen of India residing outside the country to enrol themselves as electors, provided they had not acquired the citizenship of any other country and were otherwise eligible to be registered as a voter.
- Elections to Kerala, Tamil Nadu and three other states were due within a month at that time. Only NRIs from Kerala registered – about 8500 people – and half of them turned up to vote as well. One NRI even contested the poll. The response in the other states, however, was less than desirable.

- Until now only armed forces personnel were allowed to appoint proxies – they could appoint any adult living in the constituency as permanent proxies for all polls.
- Approximately one crore Indians are settled abroad, of whom about 60 lakhs are adults and are eligible to vote.

#### **Who are Non-Resident Indian Electors?**

- A Non-Resident of India (NRI) is an Indian citizen who is not residing in India due to manifold reasons. Further, for tax purposes, a NRI is an individual who is citizen of India or Indian passport holder and lives outside India for more than total, not necessarily continuous, 182 days in a financial year is an NRI. Thus, persons posted in United Nations and its organizations/ office or deputed abroad by the central, state governments and public sector undertakings or on temporary assignments are also NRIs.
- A Non-Resident of India or an Overseas Elector is “a person who is a citizen of India and who has not acquired citizenship of any other country and is otherwise eligible to be registered as a voter and who is absenting from his place of ordinary residence in India owing to his employment, education or otherwise is eligible to be registered as a voter in the constituency in which his place of residence in India as mentioned in his passport is located. According to the provisions of Section 20A of the Representation of People Act, 1950, an NRI settled in foreign land can become an elector in electoral roll in India”.
- As per information compiled in May, 2012, there are approximately 10037761 NRIs across the world, out of which 11,846 overseas citizens are enrolled in the electoral rolls of India. To get registered one has to file an application (accompanied by duly self attested copy of the relevant documents like Visa etc) prescribed in Form 6A before the Electoral Registration Officer / Assistant Electoral Registration Officer of the constituency within which the place of ordinary residence of the applicant in India as given in his/her passport falls.

#### **Legal Provisions regarding right to vote of NRIs**

- The Constitution of India recognises right of every citizen to vote. The statutory provisions are contained under the Representation of the People Act, 1950 and the Representation of the People Act, 1951 and rules include the Conduct of Elections Rules, 1961 and Registration of Electors Rules, 1960.
- “[R]ight to vote presupposes a right to be enrolled as an elector provided, of course, he has the requisite qualifications prescribed by the Constitution and the election laws and other statutes and has none of the disqualifications enumerated in those laws.
- Section 62 of the Representation of the People Act, 1951 recognizes ‘Right to vote’ and states that no person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.
- As per section 19 of the Representation of the People Act, 1950, every person who is not otherwise disqualified, is not less than eighteen years of age on the qualifying date i.e. 1st January and is ordinarily resident in a constituency; shall be entitled to be registered in the electoral roll for that constituency.
- Further he must not have been confined in prison or convicted of corrupt practice or otherwise disqualified under section 16 of the Representation of the People Act, 1950 by virtue of ceasing to be citizen of India; or declared by a competent Court as of unsound mind; or for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with election, as the name shall

forthwith be struck off the electoral roll on disqualification unless such disqualification is removed under any law authorizing such removal.

- Furthermore no person can be registered in more than one constituency or more than once in any constituency and so accordingly cannot vote more than once, if he does so than all his votes shall be null and void.
- It may be noted that the “Ordinary residence” in the constituency is a pre-condition to get enrolled as voter and thus vote.
- The phrase ‘ordinarily resident’ is defined in Section 20 of the Representation of the People Act, 1950. A person is not Ordinary resident of a place merely because he possesses a dwelling house or is staying as patient or is detained in prison or in police custody. However, a person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein. A wife of a person shall be deemed to be ordinary resident of place of residence of her husband. Persons holding Office of India as declared by the President shall be deemed to be ordinary resident of place they were ordinarily residing. The Central Government may determine and frame rules to decide if a person is ordinary resident of a place or not at a given time.
- the Supreme Court while interpreting the word ‘ordinarily resident’ stated that “...‘ordinarily resident’ in a constituency as mentioned in the Representation of the People Act, 1950 shall mean a habitual resident of that place or a resident as a matter of fact in regular, normal or usual course. It means an usual and normal resident of that place. The residence must be permanent in character and not temporary or casual. It must be as above for a considerable time, he must have the intention to dwell permanently. He must have a settled abode at that place for a considerable length of time for which a reasonable man will accept him as the resident of that State.”
- NRIs/Overseas Electors living aboard faced difficulty in establishing themselves as ‘ordinary resident’ of place they were residing before they left India. In 2010, the Representation of the People Act, 1950 was amended to insert section 20A for providing special provisions for citizens of India residing outside India. The section starts with a non-obstante clause that “Notwithstanding anything contained in this Act”, every citizen of India (a) whose name is not included in the electoral roll; (b) who has not acquired the citizenship of any other country; and (c) who is absenting from his place of ordinary residence in India owing to his employment, education or otherwise outside India (whether temporarily or not), shall be entitled to have his name registered in the electoral roll in the constituency in which his place of residence in India as mentioned in his passport is located and the time for such registration may be prescribed. Every person registered under this section shall, if otherwise eligible (for example not disqualified, is eighteen years old etc) to exercise his franchise, be allowed to vote at an election in the constituency.

### **Proxy voting**

- The issue of proxy voting for NRIs came up in a public interest litigation in the Supreme Court in 2014. The Supreme Court asked the EC to initiate a committee to examine the proposal, following which the Committee for Exploring Feasibility of Alternative Options for Voting by Overseas Electors was set up. The EC looked at existing systems across the world and shortlisted four possible ones: voting in embassies, online voting, postal or e-postal ballot and proxy voting.
- The EC then discussed the issue with all political parties. Based on the committee report, the BJP was of the view that voting through proxy could be considered as there would be no

logistical problem involved. The BSP, the Communist Party of India and the Congress were not in favour of proxy voting as they said it could never be guaranteed that the proxy voter would vote as per the wishes of the actual voter. They also said that proxy voting suffered from the inherent problem of 'trust deficiency' and violated the principles of 'secrecy of voting' and 'free and fair elections'.

- The committee observed that the proxy voting facility would be a "convenient, efficacious and doable method" of providing voting facility to overseas electors. Since the appointment of the proxy can be made at any point of time, the issue of time constraint, the logistical issues of voting in the embassies and the related issue of seeking the host country's permission were completely eliminated. The load on the returning officer and the election machinery would also be considerably less.
- The committee ruled out the first two possibilities – voting in embassies and online voting – for logistical and technical reasons and zeroed in on the last two – postal ballots and proxy voting. The committee conclude that providing the proxy voting facility was operationally the most simple and viable option for facilitating voting by overseas electors. Regarding the issue of trust in the proxy raised by political parties, it is important to note that this issue is also applicable in the case of service voters who appoint proxies. It is expected that a person will appoint a proxy only when there is trust in the proxy.

The Supreme Court then asked the government to examine the proposals of the committee. On August 3, the government approved changes to the law to allow NRIs to vote through proxies.

The committee had recommended that proxy voting facility be considered as an option to be provided to overseas electors under the following conditions:

- One person can act as the proxy for only one overseas elector.
- Only a person already enrolled in the same constituency in which the overseas elector is enrolled can be appointed as proxy for overseas elector.
- The appointment of a proxy shall be valid till the time it is revoked by the elector who can then make a fresh appointment of proxy.

The government, however, modified the proposal to proxy for one election only.

### **Arguments against proxy voting**

- Voting by proxy suffers from serious implementation challenges as overseas Indians live in different parts of the world. Indian embassies and high commissions are short in human resources and are not able to handle the consular services. The regular elections in India will further add to their workload. Moreover, while appointing proxies, a married woman has to appoint someone in in-laws' house, which will further force her to follow her husband's political ideology than her own. NRI employers and supervisors might also force their employees and juniors to select proxies according to their choices.
- However, many have raised arguments against allowing NRIs to vote through proxies.
- The basic argument in favour is that citizens have a democratic right to choose their legislators, wherever in the world they are. But those against the initiative argue that a provision of proxy threatens the very core of democracy. Eminent German political scientists Dieter Nohlen and Florian Grotz argue that "the notion of external voting ... goes against one

of the classic requirements... namely the residency inside the state territory. Furthermore the implementation of external voting poses heavy technical administrative problems that might interfere with other crucial features of universal franchise, mainly the principle of free elections.”

- The arguments against even the broader issue of voting rights for citizens abroad are numerous and strong.
- The fundamental right to equality is the prime argument. How can we give special privilege of distance voting to some people who have migrated abroad when there are many times more domestic migrants who also seek to have a voting right at their homes? It is patently discriminatory. If a person from Bihar moves to Delhi or Mumbai in search of a job or education, he loses his right to choose his legislator in his village but if he goes to London, he will be entitled to special privilege. Remember that right to vote is not a fundamental right whereas right to equality is.
- There are strict regulations including the model code for campaigning. Bribery and inducements of voters are strictly kept in check. These are impossible to implement abroad.
- There can be no guarantee of NRI voters exercising their vote in a free and fair manner as there can be no check on coercion or inducements by the employers and supervisors. Remember, a majority of foreign migrants are poor workers often at the mercy of their employers who even take their passports into custody.
- There is no guarantee that votes would not be sold to the so called proxy. Nor is it certain that the proxy will vote as per the wishes of the main voter. Secrecy of vote of course goes out of the window.
- The committee even recommended a safer alternative of e-postal ballots (sending ballots by email and receiving it back by post). It had also recommended first doing a pilot study and extending it only “if found feasible, practicable and meeting the objectives of free and fair and elections.” Remember a free and fair election is non negotiable and is the basic structure of the constitution as repeatedly asserted by the Supreme Court.

### **Conclusion and Suggestions**

- The Indian Diaspora residing abroad is entitled to basic human right that includes the most important political right to vote, as available to other citizens living in India. Migration/immigration cannot be considered a good ground to deny this right to vote or say in democratic process of country that is universally recognised as fundamental to life of human.
- Till date no such methods have been provided to the NRIs as yet, though alternate methods are made available to Defense Personnel by amendment dated 21 October 2016.
- It is suggested that a culmination of all methods can prove to be more effective measure along with online-registration which is already in place. Voters may be given option of proxy voting movement they plan to leave India and two substitute proxy voters in case main proxy is dead or ill or unavailable or the voter wishes to change. A declaration to that effect may be published on the Election Commission of India website or other places as to clarity of proxy nominated. Postal ballot/E-Postal Ballot method can be used from time when six months time is left in elections or from time of notification. A list of persons competent to attest such as government employer abroad, judge etc, who are available other than embassies etc may be made available. Also use of digital signatures to retransmit ballot can also be considered. For ensuing Online-Voting, research and development of technology needs to be encouraged. Software needs to be devised that can permit video-recording

method or biometric of giving votes also password secured gateways with one time passwords must be used to ensure safety and secrecy. Voting at Indian missions/embassies/consulates or E-kiosks may also be made available to ones who are unable to use either of above mentioned with assigning reasons this way pressure on staff etc will be less and will be easy to take permission of the host country. Accordingly, necessary amendments may have to be carried out in Section 60 of the Representation of the People Act, 1951

- Further, mandatory provision for spread of awareness regarding this right to vote to NRIs/OE must also be made so all NRIs can available any method as per their convenience.
- Thus, law needs to be amended to provide multiple methods of voting including by online, proxy or in Indian Missions abroad or postal ballot and adequate steps to safeguard the various methods needs to be done to make the NRIs/OE's right to vote a reality.