



ENFORCEMENT OF COMPULSORY VOTING IN INDIA

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CHAPTER I: INTRODUCTION TO THE RESEARCH PAPER

1.1 ABSTRACT

The term “democracy” has been derived from the Greek word “Demokratia” which was formed by combining the words “demos” meaning people and “kratos” meaning rule. A democratic government is a government where the supreme control is in the hands of the people directly or indirectly through their representatives. Representatives are elected by the people by voting. India is a democratic nation. Citizens of the nation elect their representatives through ballot. We are a developing country with rampant poverty. Due to this mostly people are busy earning for their two meals and they prefer to put their children to work instead of educating them. These generations grow up to become illiterate masses and they are unaware of the importance of voting. On the other hand, the educated prefer not to go for voting because of long queues, difficult climate and environment with their belief that what their single vote will make a difference. In absence of education and analytical skills people are not able to judge the candidates who are into the race for election. Also, religion plays a very important factor in deciding which candidate their community will vote. The percentage of voting varies, and the result is affected due to various reasons including that

less voting is done since it is not compulsory for any person to cast their vote according to law. It is their choice whether they want to vote or not. The reason and a way to address this problem is to make voting compulsory by law.

Compulsory voting is a practice which requires eligible citizens to register and vote in elections. It is enforced in several countries by imposing penalties on citizens who fail to do so. In this paper we will discuss enforcing of “Compulsory Voting” in India. It will also discuss the constitutionality of enforcing compulsory voting and the consequences of enforcing the same in India. Some examples of countries enforcing compulsory voting will also be incorporated in this paper.

1.2 LITERATURE REVIEW

In an article¹ compulsory voting was expressed as a compulsion i.e., people have to cast their vote and they do not have a choice. It was discussed how compulsory voting is against the basic principle of democracy. The article further stated how compulsory voting violates article 19 (1)(a)² of the Indian Constitution. The article provides citizens of India the right to freedom of speech and expression, this also includes the right to not express. Therefore, by obligating the citizens to vote, it is a violation of the right to freedom of speech and expression.

In the book “Working of the Constitution: Cheques and Balances”³, the author explained compulsory voting as a means to achieve higher polling in the elections. According to the author voting should be

¹ Yamini Kumar, *A Critical Analysis of Gujarat Local Authorities Law (Amendment) Act, 2009 – W.R.T. Compulsory Voting*, 6.1 NLIU LR 115 (2017).

² INDIA CONST. art. 19, § 1, cl. a.

³ V. SUDHISH PAI, *WORKING OF THE CONSTITUTION: CHEQUES AND BALANCES* 77 (2014).



made compulsory but subject to certain exceptions i.e., inevitable situations. A suggestion to provide incentive to the citizen for exercising his right to vote in India was also provided by the author.

In another article⁴, it was stated that in countries where voting is not compulsory only a small number of citizens are in favor of compulsory voting whereas majority of the citizens consider compulsory voting “objectionable”. There were some suggestions in the article other than compulsory voting to increase the percentage of voting which were “less coercive”. These suggestions included keeping the voting on a holiday or declaring the day as national holiday. The same is followed in India.

In another book “Dimensions of Justice”⁵, there was a mention of the constitution of Greece and Cyprus, and that voting is a fundamental duty under the same. Voting is compulsory as per their constitution and the person who fails to fulfill this fundamental duty has committed an offence and is punishable under law.

Further in the article titled “Indian Electoral Process and Negative Voting”⁶, causes of less percentage of votes in India were stated. These included the very often said statement for not voting which is lack of competent and suitable candidates. Another reason is that a single vote of an individual may not affect the end result etc. These causes can be considered as a motivation for the Indian

government to enforce compulsory voting. Since the option of “NOTA” (none of the above) is available to the citizens they will still have a choice to not vote for any of the candidates taking part in the election if they so wish.

In the journal article titled “Bill for Compulsory Voting”⁷, it was expressed that Gujrat Local Authorities Laws (Amendment) Bill 2009 made voting compulsory for its citizens in local elections such as gram panchayats and zilla parishads etc. and in urban local elections such as municipal corporations and nagar panchayat etc. The bill however was not accepted by the then Governor. The reasoning behind the same given was that compulsory voting is against the principle of “individual liberty”.

Another article⁸ stated that forcing citizens to vote who are indifferent towards which candidate is chosen and those who do not have the political knowledge will probably work against the intent of the government i.e., to increase the voter turnout and political participation of the citizens. Voter turnout will increase however there will be no political participation, these citizens will vote for any candidate without any research. Voluntary voting is supported in this article. This is because the citizens who vote voluntarily do so because of their interests or to fulfill their civic duty and therefore they research before voting.

⁴ SHODHGANGA, <http://hdl.handle.net/10603/214194> (April. 15, 2021).

⁵ JUSTICE K. T. DESAI, DIMENSIONS OF JUSTICE 224, Eastern Book Company (2019).

⁶ Rahela Khorakiwala, *Indian Electoral Process and Negative Voting*, 8 LAW REV GLC 77, (2014).

⁷ Bhanu Joshi, *Bill for Compulsory Voting*, 49 ECONOMIC AND POLITICAL WEEKLY 22, 22-23 (2014).

⁸ Keith Jakee and Guang-Zhen Sun, *Is Compulsory Voting More Democratic*, 129 PUBLIC CHOICE 61, 61-62 (2006).



An Australian citizen in 2013 filed a suit⁹ in the Australian High Court contending that compulsory voting is “constitutionally invalid” as there exists a right of the citizens to not vote. The article “Does compulsory voting violate a right not to vote?”¹⁰, discussed certain cases related to the right not to vote. In *Judd v. McKeon*¹¹ it was expressed “effectively” that there does not exist a right not to vote. The author discussed certain other cases and concluded that the cases expressed directly or indirectly such a right to not vote does not exist.

In a Harvard Law Review article¹², it was mentioned that compulsory voting will improve the political system in America and will increase the voter turnout and political participation of citizens. However, there are certain challenges in introducing compulsory voting, the most prominent being the American citizen’s notion that compulsory voting infringes individual liberty. Nonetheless the author considered that this is not a “substantial” cause which bars implementation of compulsory. It was expressed that “voting is too important to be left as personal choice”.

CHAPTER II: COMPULSORY VOTING

2.1 WHAT IS COMPULSORY VOTING

In a democratic nation, citizens through elections and voting choose their representatives who will hold a public office and develop policies. Through elections we vote and choose our representatives who will

be present when important decisions are made and will represent our interests. Therefore, it is important that people vote so that representatives who share the same interests and have the same concerns are elected and help in decision making. However, only some people participate in voting whereas others do not. The part of the population which does not vote is either indifferent who is elected or considers that their one vote does not matter. These and certain other reasons make people not vote and lower the vote turnout in elections. Various countries to curb this situation of low turnout of votes enforced compulsory voting. Making voting compulsory transformed it from being a right to being a duty which if one fails to fulfil is penalized.

Compulsory voting is a system where the citizens of the country are “required” by law to vote in elections. If the citizens fail to fulfill this duty without any reasonable cause they may be punished to pay fine. An article¹³ from 2017 stated that almost 29 countries tested enforcing compulsory voting. However, only 11 of these enforced them at that time. If a citizen fails to vote in Belgium or Australia, fine is imposed on them whilst in countries like Peru and Brazil a citizen’s state benefits and social security are restricted. Certain countries like Fiji, Netherlands and Chile have abandoned compulsory voting.

⁹ *Holmdahl v Australian Electoral Commission*, HCATrans. 72, 2013.

¹⁰ Lisa Hill, *Does compulsory voting violate a right not to vote?*, 50 AUSTRALIAN JOURNAL OF POLITICAL SCIENCE 61, (2015).

¹¹ *Judd v McKeon* (1926) 38 CLR 380.

¹² *The Case of Compulsory Voting in United States*, 121 HARVARD LAW REVIEW 591(2007).

¹³ Arvind Jayaram, *All you wanted to know about: Compulsory Voting*, THE HINDU BUSINESS LINE (Nov. 30, 2017), <https://www.thehindubusinessline.com/opinion/columns/All-you-wanted-to-know-about-Compulsory-voting/article20918448.ece>.



In an article¹⁴ it was expressed that compulsory voting is a misleading term. The same is said about the term as it is usually not essential to actually vote but to attend a polling place on the day of the election. However, by making the attendance compulsory people actually end up voting thereby increasing the voting turnout.

2.2 COMPULSORY VOTING PROS AND CONS

ADVANTAGES FOR ENFORCING COMPULSORY VOTING:

1. Voter Turnout - The main reason most countries make voting compulsory is to increase the voter turnout. Voter turnout is the total number of eligible voters who actually vote on the day of the election. There are many people who are ignorant towards election and voting, they do not vote for the same reason. This lowers the voter turnout. Many people observe this trend of lower turnout with alarm and are keen to arrest it¹⁵. Others contend that low voter turnout is expected in a democracy as an expression of its "Democratic Values".
2. Against Political Apathy - There are many people who are indifferent or apathetic towards politics and voting. By enforcing compulsory voting in a country its citizens are forced to form their opinions towards various candidates and vote for the one they believe will represent their interests the best.
3. Civic and Moral Duty - Like other duties such as paying tax, voting is also a civic duty. Being a responsible citizen of a democratic nation and to elect representatives who will work for the betterment of the society is a moral and civil duty. Enforcing compulsory

voting will ensure that citizens realize the importance of voting and fulfil this duty.

4. Better Representative/Will of Electorate - If compulsory voting is enforced in a country, better candidate is chosen as a representative. Compulsory voting forces citizens to have their own political opinions and increases the voter turnout. Thus, a better candidate is elected who will represent the interests of the citizens in a better way.
5. Secret Ballot - Even when voting is made compulsory, citizens are not forced to disclose whom they vote as it is a secret ballot. No other person is present when a vote is cast therefore nobody can coerce another to vote for a particular candidate. If a person decides not to vote they can choose the NOTA (None of the above) option. Moreover, countries usually make attending a polling place compulsory rather than making voting compulsory. So, if a citizen wishes he/she can just attend the polling place and not vote.

DRAWBACKS OF ENFORCING COMPULSORY VOTING:

1. Infringement of Liberty - When a country enforces compulsory voting, it forces people to cast their vote thereby violating the liberty of its citizens. It is contended that making voting compulsory is against the democratic values of a democratic nation. These democratic values include the liberty of a citizen to choose whether he/she intends to vote or not.
2. Donkey Votes - Donkey votes are votes casted by citizens who consider themselves under compulsion of law and vote for random candidates without analysis and due consideration about the candidates. When

¹⁴ Shiv Kailash, *Compulsory Voting as measure of Electoral Reforms*, SHODHGANGA (Sept. 6, 2018), <http://hdl.handle.net/10603/214194>.

¹⁵ Shiv Kailash, *Compulsory Voting as measure of Electoral Reforms*, SHODHGANGA (Sept. 6, 2018), <http://hdl.handle.net/10603/214194>.



compulsory voting is enforced in a country, its citizens are forced to make their political views and decide who they want to vote for. However, generally countries require attendance at the polling place and do not put a compulsion on people to vote. But some citizens contend that they are being forced by law to vote which increases the number of “donkey votes”.

3. Resources for Enforcement - While it is easy to introduce rules and laws, it is difficult to enforce the same. When a country makes voting compulsory, it also needs to ensure that compulsory voting is enforced effectively as a symbolic enforcement is not beneficial. Citizens who fail to vote must be penalized. To determine the citizens who did not vote resources have to be allocated. After the citizens who failed to vote are found out, it will have to be decided whether the reason for their failure to vote is reasonable or not.

CHAPTER III: CONSTITUTIONALITY OF COMPULSORY VOTING

3.1 RIGHTS AFFECTED BY ENFORCING COMPULSORY VOTING

The system of Compulsory voting is opposed by many. It is believed by the opponents that forcing to vote violates the right to liberty of the citizens and is against the basic tenets of democracy. Whenever the concept of compulsory voting is brought forward to be implemented, it is opposed by the opposition that it violates “the right to not vote” and thus should not be enforced. In India article 326 of the constitution and section 62 of the Representation of the People Act, 1951 provides the right to vote. It is put forth by the politicians and citizens who do not support implementation of compulsory voting in India that it violates the right not to vote of a

citizen. It is considered that since the constitution provides for the right to vote, it also provides the citizen the right not to vote. Countries enforce compulsory voting so as to increase the voter turnout and to legitimize a candidate. The main purpose is that a better candidate is elected who will represent the interests of the citizens for the betterment of the society. However, the adversaries contend no matter the intent in enforcing compulsory voting, violating the right to liberty or the right not to vote is not the right choice.

It was stated in an article¹⁶ that citizens are provided with certain rights which prove as restriction against rules and regulations made without their consent to constrain them. According to the author if constraining or forcing a part of the populace is the only way to achieve a “better democratic system”, it is not just and moral. Thus, it is contended by the author if citizens have a right not to vote, it will be unfair to obligate and force them to vote nevertheless the objective of improving the democratic system. The article also expressed that the “right not to vote” is not accepted by the supporters of compulsory voting. Further, it is also mentioned that the right has not been defended justly or analyzed philosophically.

3.2 VIOLATION OF THE CITIZENS’ RIGHTS - JUSTIFICATION

Though proponents of compulsory voting do not consider or recognize the “right not to vote”, they have to consider that a citizens’ right to liberty is being infringed by making voting mandatory. It is possible that citizens contend the candidates in the elections are not suitable or worthy, they will be forced to

¹⁶ Ben Saunders, *A Further Defense of the Right Not to Vote*, 24 RES PUBLICA 93, (2018).



choose a particular candidate even though he/she is not their choice. For this, a remedy is provided in the form of NOTA i.e., None of the Above. Before the EVM system was introduced in 1998, ballot paper system was followed in elections. It was much easier and secretive to cast a negative or neutral vote. The voter without marking would drop the paper in the ballot box. However, there was no such button on the EVM machine through which the voter could cast a neutral or negative vote. Therefore, the petitioner in *PUCL v. Union of India*¹⁷ requested a button of NOTA thereby giving a chance to the citizens to express their disapproval of the candidates in the election. The Election Commission was in support of this addition. The hon'ble Supreme Court held that every citizen eligible to vote will have the right to cast a "negative" vote through NOTA and that such button be provided in the EVM machines. It was the contention of the hon'ble court that introducing NOTA will be beneficial as it will increase participation of the citizens in the democratic system of election and reduce "bogus" or "donkey" votes¹⁸. Further, the stand of Union of India that non-voters should not be granted secrecy of ballot was rejected. It was stated by the hon'ble Supreme Court that section 79 (d)¹⁹ of the Representation of the People Act, 1951 and Rules 41 (2), (3) and 49(O) of the Conduct of Election Rules recognize the right to vote and the right to not vote and also

provide for secrecy of ballot to be maintained in both cases.

Moreover, there are certain countries which do not require the citizens to cast vote, they require them to attend a polling place on the day of the election. Further, these countries also provide the option of NOTA. Therefore, the citizens are not forced to cast vote as a requirement under law, only their attendance at a polling place is made obligatory under law.

CHAPTER IV: COMPULSORY VOTING

41 COMPULSORY VOTING - WHY IT SHOULD NOT BE IMPLEMENTED IN INDIA

In 1950 when the Representation of the People Act was enacted, it was considered for the very first time to implement compulsory voting in India. However, due to "practical difficulties" it was not enforced. Time and again compulsory voting has been considered to be implemented in India and was rejected every time due to "practical difficulties"²⁰. In "Tarkunde Committee report on Election Expenses"²¹ one of the members suggested that compulsory voting should be introduced in India for increasing the voter turnout. However, after considering it was concluded that voters may resent compulsory voting and it may prove to be counterproductive and was therefore, rejected. It was rejected with the reasoning that compulsory voting can be seen

¹⁷ *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399.

¹⁸ Shiv Kailash, *Compulsory Voting as measure of Electoral Reforms*, SHODHGANGA (Sept. 6, 2018), <http://hdl.handle.net/10603/214194>.

¹⁹ Representation of the People Act, 1951, § 79 (d), No. 54, Acts of the Parliament, 1951 (India).

²⁰ *Why Compulsory Voting in India is a Bad Idea*, HINDUSTAN TIMES (Jul.10, 2017, 5:45 PM),

<https://www.hindustantimes.com/editorials/why-compulsory-voting-in-india-is-a-bad-idea/story-YPjMRRFvnr5GzILfxdodM.html>.

²¹ India, *Tarkunde Committee report on Election Expenses*,

<https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf>.



as a “compulsion”, it is appropriate if voting as a duty is introduced through political education. S.Y. Quraishi, the former Chief Election Commissioner (2010-12) expressed that the notion of compulsory voting is not well-matched with democracy²².

There was a petition filed in 2015 seeking implementation of compulsory voting in India. The NDA government in response stated that voting is a fundamental right every citizen has, it is not a duty that the citizens need to fulfill. The NDA government’s assertion was supported by the 255th Law Commission Report which mentions citizens’ “electoral right” which includes the right to vote and to refrain from voting in an election²³. The same is provided in the Representation of the People Act, 1951 under section 79(d)²⁴. Thus, if the right to vote is interpreted to also be a right to refrain from voting, compulsory voting in India would violate the constitutional right as provided under article 326²⁵ of the Constitution of India. It was stated in an article²⁶ that aside from legal disputes in implementation of compulsory voting there are political factors which express that it should not be enforced. It is said that “dissent” and “diversity in views” should be welcomed in a democratic system. Thus, compulsory voting should not be enforced in India. Further, proponents of compulsory voting contend that political participation will be improved with the introduction of compulsory voting. However, if empirical evidence of compulsory voting is

seen in other countries, it is observed that it is not necessary that political participation of the citizens is increased and improved. For e.g., in Australia when voting was made compulsory, it led to the emergence of “Donkey Votes”.

4.2 IMPACT OF ENFORCING COMPULSORY VOTING IN INDIA

India is the second most populated country in the world and also a developing country. It has a growing economy. Nevertheless, a substantial part of the population faces the problem of poverty and is not educated. Compulsory Voting has its merits such as increasing the voter turnout and political participation. However, before enforcing compulsory voting the social and political conditions of the country should be analyzed so that such enforcement does not have adverse effects. As mentioned above, significant part of the population in India is uneducated and poor therefore, their main focus is to earn sufficient amount of money to feed and provide necessities in their family. Some of this considerable part of the population is interested in elections and which political party is in power the rest are indifferent towards who is elected. Moreover, there are the educated citizens who consider that their single vote does not matter and therefore abstain from voting. Although compulsory voting will ensure that voter turnout is increased, it cannot ensure that these votes will be well thought and researched/considered.

²² Law Commission of India, Report No.255 (March, 2015) - Electoral Reforms.

²³ *Why Compulsory Voting in India is a Bad Idea*, HINDUSTAN TIMES (Jul.10, 2017, 5:45 PM), <https://www.hindustantimes.com/editorials/why-compulsory-voting-in-india-is-a-bad-idea/story-YPjMRRFvnr5GgzlLfxdodM.html>.

²⁴ Representation of the People Act, 1951, § 79 (d), No. 54, Acts of the Parliament, 1951 (India).

²⁵ INDIA CONST. art. 326.

²⁶ *Why Compulsory Voting in India is a Bad Idea*, HINDUSTAN TIMES (Jul.10, 2017, 5:45 PM), <https://www.hindustantimes.com/editorials/why-compulsory-voting-in-india-is-a-bad-idea/story-YPjMRRFvnr5GgzlLfxdodM.html>.



If voting is made compulsory in India the indifferent part of the population will cast “donkey” votes, in other words they will vote for any random candidate. The government’s intent is to encourage the citizen in political participation by casting well researched votes and elect a candidate who will represent the interests of the society and work for its progress. However, citizens who are apathetic towards politics and elections will not educate themselves in politics so as to cast an informed vote. Further, in India the right to vote is a fundamental right provided in the Constitution of India and the electoral right under section 79 (d)²⁷ of the Representation of the People Act, 1950 expresses that a voter has a right to vote as well as a right to refrain from voting. Thus, if compulsory voting is enforced in India, it will be violating a constitutional right of the citizens.

An article²⁸ stated that compulsory voting in India will be challenging to implement given the large number of voters. It mentioned that in Gujrat compulsory voting was introduced in the local elections however, it was difficult to enforce the law against the defaulters. Compulsory voting if not enforced against the citizens who did not vote will be redundant. It requires time and resources for efficient enforcement. Since India is a developing country with about two third of its population poor, the government officials utilize the time and resources towards their advancement. Thus, compulsory voting in India is not practical and will not prove to be efficient.

²⁷ Representation of the People Act, 1951, § 79 (d), No. 54, Acts of the Parliament, 1951 (India).

²⁸ *Compulsory Voting difficult to implement in India*, THE HINDU (Mar. 13, 2016, 5:45 PM),

CHAPTER V: CONCLUSION

Election is the pillar in a democratic nation. However, if citizens in a democracy are irresponsible and do not prefer to vote, the support a democratic system requires is not provided. At present the democratic set up of our nation does not permit to have a system or to implement compulsory voting with a view to ensure larger participation of the citizens in electing their representatives. Prior to that the priority should be to give education or for that matter free education to those who cannot afford the fees and also unwillingness to send their children to educate them. Before implementing compulsory voting, government should strictly implement compulsory education for all citizens and may also attract penal action against those who disobey. If the citizens are educated, they will be able to come out of the vicious cycle of poverty. So, it can be concluded that nation has other priorities than implementing compulsory voting.

<https://www.thehindu.com/news/national/andhra-pradesh/compulsory-voting-difficult-to-implement-in-india/article8347899.ece>.