



Elections in India

1 Introduction

India being the largest democracy of the world, elections in India have been the largest electoral exercise in the world since the 1st general elections of 1952. The cultural, linguistic, religious and ethnic diversity of the country make this event more complex.

Some of the salient features of elections in India are:

- The provisions related to elections are contained in the Articles 324 to 329 under the Part XV of the constitution.
- According to Article 324, the Election Commission (EC) of India is the only entity that has been given the authority to supervise, direct and control elections. The Election Commission should comprise the Chief Election Commissioner (CEC) and other Election Commissioners, who will be appointed by the President.
- India has been divided into single member territorial constituencies. Every constituency will have one electoral roll for both Parliamentary and Assembly elections and no person shall be included or excluded from the electoral roll on grounds of religion, race, caste and sex.
- Every individual who is a citizen of India and has attained the voting age shall be entitled to be registered as a voter. The exception can happen if the person is disqualified on the ground of “non residence, unsoundness of mind, crime or corrupt or illegal practice.”
- The Constitution empowers the Parliament to formulate laws regarding the preparation of electoral rolls, delimitation of constituencies and relevant processes.
- The Constitution also prohibits courts’ interference in electoral matters. No court can question the validity of any law related to the delimitation of constituencies or the allotment of seats.
- In India, First Past the Post system of elections is followed in elections to Lok Sabha and State Legislative Assemblies. The whole country is divided into constituencies. Voters select a single candidate by marking against the candidate of their choice through electronic voting machines. The candidate who secures the highest number of votes is declared elected.

The year 2014-15 has been an election year with General elections to elect the 16th Lok Sabha. Also, elections for the assemblies of Andhra Pradesh, Sikkim, Odisha, Maharashtra, Haryana, Jharkhand, Jammu and Kashmir and Delhi were held. Some of the important issues related to elections, which were in news, are discussed below.

2 NRI e-voting

According to the provisions of the Representation of the People (Amendment) Act, 2010, a Non Resident Indian, who is a citizen of India and who has not acquired the citizenship of any other country 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. **However, an NRI voter had to be present physically in his/her constituency to cast the vote.** There was no provision of postal ballot or any other method of proxy voting.

- Acting on several petitions that were filed, the Supreme Court had asked the Election Commission to look into the options for overseas voters.
- The EC examined several suggestions to enable NRIs to cast their vote and finally recommended to allow NRIs to vote through e-ballot system or through proxy.
- It rejected the idea of allowing NRIs to cast their votes at diplomatic missions abroad. It is also of the view that internet voting is not a feasible option until appropriate technology/information technology applications and all other vulnerabilities are addressed. It ruled out the option of postal ballot as well.
- E-postal ballot, where blank postal ballot paper is transferred electronically to NRI and returned by post by NRI can be considered to be employed after proofing, validation and pilot implementation.
- The committee also recommended that the option of voting through proxy appointed by the overseas electors can be considered to be provided to NRIs. The facility of voting through an appointed person — ordinarily from the same constituency as the voter — is currently available to service voters belonging to the armed forces and paramilitary forces.
- In order to cater to the needs of all categories of NRIs, both the options of e-postal ballot and proxy voting can be made available depending upon the preference exercised by the NRI voter.
- **In January 2015, the central government informed the Supreme Court that it had accepted the Election Commission's recommendation to allow NRIs to vote through e-ballot system or through proxy. It also said that a committee had been set up to devise the modalities of its implementation.**
- The Court gave the Centre eight weeks to effect necessary amendments in the law to implement the EC suggestion.

2.1 Impact of the Decision

The government's decision to allow NRIs to vote could set the stage for expatriates to emerge as a decisive force in the country's electoral politics. There are 10 million Indian citizens staying abroad, and with 543 Lok Sabha constituencies, an average of **18,000 votes per constituency** may get polled from abroad. These additional votes, if polled, will obviously play a crucial role in state and general elections.

The impact could be considerable in a state like Kerala, which has a huge diaspora in the Gulf region, whose numbers are often greater than the vote-margin of a victorious candidate -- and where the difference between the ruling coalition and the opposition amounts to just a handful of seats in the State Assembly.

3 The Representation of the People Act - Section 8(4)

The Representation of the People Act, 1951 lays down certain rules for disqualification of MPs and MLAs if they are convicted:

- Those convicted for crimes listed under Section 8 (1), (2) of the Act will be disqualified for a minimum period of six years, even if the punishment is just a fine. These crimes include rape, practicing untouchability, sati, Foreign Exchange Regulation Act violations, causing enmity over religion, language or region, electoral violations, taking drugs, importing banned goods, etc.
- Section 8 (3) says that if an MP or MLA is convicted for any other crime and is sent to jail for at least 2 years, he or she will be disqualified for six years from the time released.
- Section 8(4) allowed convicted MPs, MLAs and MLCs to continue in their posts, provided they appealed against their conviction/sentence in higher courts within three months of the date of judgment by the trial court.
- The Supreme Court in July 2013 ordered that Section 8 (4) is unconstitutional since it distinguishes between an electoral candidate and an elected representative. It says, since the Representation of People's Act does not allow people who are convicted to fight elections even if they have appealed against the conviction, it cannot allow MPs and MLAs who have been convicted to hold on to their seat.
- The Supreme Court, therefore, provided for automatic disqualification if an MP or MLA were to be convicted under sections 8 (1), 8 (2) and 8 (3). That implies that if an MLA or MP is convicted his/her seat will automatically become vacant.

4 Education as a Qualification for Contesting Polls

- The qualifications prescribed by the Indian Constitution for contesting elections in India are:
 - he must be a citizen of India, and must subscribe before the Election Commission of India an oath or affirmation
 - he should not be less than 25 years of age in case of Lok Sabha or State legislative assembly and not less than 30 years of age in case of Rajya Sabha or State legislative council
 - he must possess such other qualifications as may be prescribed by Parliament
- The Parliament has laid down the following additional qualifications in the Representation of People Act 1951:
 - he must be a registered as an elector for a parliamentary constituency
 - he must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them
- At the panchayat and municipality levels, the age limit for contesting elections is 21 years.
- Other than the above provisions, neither the Constitution nor the Parliament prescribe any educational qualification for contesting elections in India.
- **In December 2014, the Rajasthan government brought the Rajasthan Panchayati Raj (Second Amendment) Ordinance, 2014 fixing minimum educational qualifications for contesting polls for panchayat samiti and district councils.**
- The ordinance effecting an amendment to the Rajasthan Panchayati Raj Act 1994, made it mandatory for candidates contesting zila parishad and panchayat samiti polls to be Class X pass and those contesting sarpanch elections to be Class VIII pass. In scheduled areas the eligibility has been fixed at Class V pass.
- The move has come under sharp criticism from the opposition and civil society groups.
 - It is argued that that the move is discriminatory to a large section of the rural population, particularly women among whom the literacy rate is the lowest.
 - It will debar 80 per cent of the rural populace from contesting the elections. Census 2001 records that only 18 per cent of the State's population has studied beyond class five.
 - In rural Rajasthan, the literacy rate stands at 76.16 percent for males and 45.8 percent for females.
 - Such a criteria is discriminatory and it is unfair to implement it with a set of people like Dalits, tribals and the poor who have not got an opportunity to attend school.
- However, the Rajasthan government defends the ordinance saying that
 - It will check embezzlement of funds at the hands of illiterate panchayat level representatives.
 - Earlier the audits were managed by the state government so the accountability was not with the sarpanch but now with funds to the tune of crores coming in for projects like MNREGA and others, there has to be better accountability.
- Both the Supreme Court and the High Court of Rajasthan refused to stay the ordinance. The HC had said since the election process has commenced, it would not be fit for the court to interfere in the process.
- Rajasthan is the only state that has a minimum education requirement, though Odisha requires candidates to have the ability to read and write Oriya. Candidates with more than two children are disqualified in Andhra Pradesh, Rajasthan, Madhya Pradesh, Odisha and Maharashtra.
- Earlier, the Rajasthan government had brought another ordinance which made it mandatory for a candidate to have a functional sanitary toilet, which meant a water-sealed toilet system or a set-up surrounded by three walls, a door and a roof. Candidates were required to give an undertaking that neither they nor their family members defecated in the open.

5 Compulsory Voting

5.1 Right to Vote

- In India, the right to vote is provided by the Constitution and the Representation of People's Act, 1951, subject to certain disqualifications.
- Article 326 of the Constitution guarantees the right to vote to every citizen above the age of 18. Further, Section 62 of the Representation of Peoples Act (RoPA), 1951 states that every person who is in the electoral roll of that constituency will be entitled to vote.

- Thus, the Constitution and the RoPA make it clear that every individual above the age of 18, whose name is in the electoral rolls, and does not attract any of the disqualifications under the Act, may cast his vote. This is a non-discriminatory, voluntary system of voting.

5.2 Attempts toward Compulsory Voting in India

- In 1951, during the discussion on the People's Representation Bill in Parliament, the idea of including compulsory voting was mooted by a Member. However, it was rejected by Dr. B.R. Ambedkar on account of practical difficulties.
- Over the decades, of the various committees that have discussed electoral reforms, the Dinesh Goswami Committee (1990) briefly examined the issue of compulsory voting. One of the members of the committee had suggested that the only effective remedy for low voter turn outs was introducing the system of compulsory voting. This idea was rejected on the grounds that there were practical difficulties involved in its implementation.
- In July 2004, the Compulsory Voting Bill, 2004 was introduced as a Private Member Bill by Mr. Bachi Singh Rawat, a Member of Parliament in the Lok Sabha. The Bill proposed to make it compulsory for every eligible voter to vote and provided for exemption only in certain cases, like that of illness etc. Arguments mooted against the Bill included that of remoteness of polling booths, difficulties faced by certain classes of people like daily wage labourers, nomadic groups, disabled, pregnant women etc. in casting their vote. The Bill did not receive the support of the House and was not passed.
- Another Private Member Bill related to Compulsory Voting was introduced by Mr. JP Agarwal, Member of Parliament, in 2009. Besides making voting mandatory, this Bill also cast the duty upon the state to ensure large number of polling booths at convenient places, and special arrangements for senior citizens, persons with physical disability and pregnant women. The then Law Minister, Mr. Moily argued that if compulsory voting was introduced, Parliament would reflect, more accurately, the will of the electorate. However, he also stated that active participation in a democratic set up must be voluntary, and not coerced.

5.3 Gujarat Local Authorities Laws (Amendment) Act, 2009

- In November 2014, the Gujarat Local Authorities Laws (Amendment) Act, 2009 was enacted introducing the 'obligation to vote' at the municipal corporation, municipality and Panchayat levels in the state of Gujarat.
- Following the amendments, it shall now be the duty of a qualified voter to cast his vote at elections to each of these bodies. This includes the right to exercise the NOTA option.
- The Act empowers an election officer to serve a voter notice on the grounds that he appears to have failed to vote at the election.
- The voter is then required to provide sufficient reasons within a period of one month, failing which he is declared as a "default voter" by an order. The default voter has the option of challenging this order before a designated appellate officer, whose decision will be final.
- At this stage, it is unclear what the consequences for being a default voter may be, as the penalties for the same are to be prescribed in the Rules.
- The Act carves out exemptions for certain individuals from voting if:
 - he is rendered physically incapable due to illness etc.;
 - he is not present in the state of Gujarat on the date of election; or
 - for any other reasons to be laid down in the Rules.
- The previous Governor had withheld her assent on the Bill for several reasons. The Governor had stated that compulsory voting violated Article 21 of the Constitution and the principles of individual liberty that permits an individual not to vote.
- She had also pointed out that the Bill was silent on the government's duty to create an enabling environment for the voter to cast his vote. This included updating of electoral rolls, timely distribution of voter ID cards to all individuals and ensuring easy access to polling stations.

5.4 The Debate on Compulsory Voting

- Those in favour of compulsory voting assert that a high turnout is important for a proper democratic mandate and the functioning of democracy.
- They also argue that people who know they will have to vote will take politics more seriously and start to take a more active role.
- Further, citizens who live in a democratic state have a duty to vote, which is an essential part of that democracy.
- Compulsory voting may be in violation of the fundamental rights of liberty and expression that are guaranteed to citizens in a democratic state.
- In this context, it has been stated that every individual should be able to choose whether or not he or she wants to vote.
- It is unclear whether the constitutional right to vote may be interpreted to include the right to not vote.

5.5 Compulsory Voting in Other Countries

- A number of countries around the world make it mandatory for citizens to vote. For example, Australia mandates compulsory voting at the national level. The penalty for violation includes an explanation for not voting and a fine.
- It may be noted that the voter turnout in Australia has usually been above 90%, since 1924. Several countries in South America including Brazil, Argentina and Bolivia also have a provision for compulsory voting.
- Certain other countries like the Netherlands in 1970 and Austria more recently, repealed such legal requirements after they had been in force for decades.
- Other democracies like the UK, USA, Germany, Italy and France have a system of voluntary voting.

6 Criminalization of Politics in India

As per the survey of the Association of Democratic Reforms, in the 2014 General Elections for the 16th Lok Sabha, 186 (34%) out of the 541 winners had criminal cases filed against them. This is a jump from the numbers for the 2009 elections, when, out of the 521 winners, 158 (30%) had declared criminal cases.

6.1 Reasons behind Increasing Criminalisation of Politics

- **Muscle power:** The influence of muscle power in Indian politics has been a fact of life for a long time. The politicians are thriving today on the basis of muscle power provided by criminals. Many of politicians chose muscle power to gain vote bank in the country.
- **Money Power:** It is a widely accepted fact that huge election expenditure is the root cause for corruption in India. A candidate has to spend lakhs of rupees to get elected and even if he gets elected, the total salary he gets during his tenure as an MP/MLA will be meagre compared to his election expenses. Criminal activities help in generating such large money.
- **Loop Holes in the functioning of Election:** the voters are not usually aware of the history of the candidate, qualification and cases pending against him.
- **Weak Judicial System & Denial of Justice:** Thousands and thousands of cases are pending in District Courts, High Courts and Supreme Court against these criminal cum politicians.

6.2 Reform Measures

The Supreme Court and the Election Commission of India (ECI) have undertaken some commendable steps for reforming the electoral process.

- The ECI has achieved considerable success in containing the role of muscle power through measures such as the effective implementation of the model code of conduct and the setting up of the expense monitoring cell.
- Mandatory declaration of assets and existing criminal charges in self-sworn affidavits to the ECI prior to elections has brought in some transparency.

- The Supreme Court in 2002 ruled that every candidate, contesting an election to Parliament, State Legislatures or Municipal Corporation, has to declare the following along with the application for his/her candidature:
 - A candidate's criminal records (convictions, acquittals and charges etc.)
 - The candidate's financial records (assets & liabilities etc.)
 - The candidate's educational qualifications
 If the candidate fails to file any of the above three declarations, the Returning Officer will have the right to reject his nomination papers. The Supreme Court has ruled that all the three declarations will have to be truthful.
- The Supreme Court (Lily Thomas vs. Union of India, 2013) ordered that upon conviction, chargesheeted MPs and MLAs would be disqualified with immediate effect from holding membership of the House, without being given three months to appeal.
- The Law Commission recommended the disqualification of politicians from contesting elections charged with an offence punishable by imprisonment of five years or more. It also said that for cases against sitting MPs and MLAs, trials must be expedited through day-to-day hearings and completed within one year.
- The Supreme Court in March 2014 accepted the recommendations of the Law Commission and passed an order directing that trials against sitting MPs and MLAs must be concluded within a year of charges being framed and that they should be conducted on a day-to-day basis. The Court also said that if a lower court is unable to complete the trial within a year, it will have to submit an explanation in writing and seek an extension from the Chief Justice of the concerned High Court.
- Some other attempts by the judiciary are: barring those in jail from contesting (Chief Election Commissioner vs. Jan Chowkidar, 2013), directing the EC to bring the issue of election related freebies under the ambit of the Code of Conduct, the Allahabad High Court banning caste and religion based political rallies.

7 Increasing Voter Turnout in Elections

The 2014 Lok Sabha election earned the distinction of recording the highest voter turnout ever at 66.4%. This surpassed the 64% polling witnessed in the 1984 polls, held in extraordinary circumstances following the assassination of the then Prime Minister Indira Gandhi. Even the voter turnout in absolute terms soared to 55.1 crore from 41.7 crore in the last parliamentary polls. This marks an increase of 32% in total votes cast compared to 2009.

- The extraordinary voter enthusiasm in these polls was evident from the fact that 15 of the 35 states and Union territories recorded their highest ever turnouts, while 32 witnessed higher turnouts than the last poll in 2009.
- In the 2014 General elections, the top performers in terms of turnouts were smaller states and UTs such as Nagaland (88.6%), Lakshadweep (86.8%), Tripura (84.3%), Dadra and Nagar Haveli (84.1%) and Puducherry (82.2%).
- Among the bigger states, West Bengal impressed with 81.8% turnout, Odisha (74.4%), Andhra Pradesh (74.2%), Kerala (74.0%) and Tamil Nadu (73.7%).

Election Year	Registered voters	Votes polled	Voter turnout
1999	61.9 crore	37.1 crore	60.0 %
2004	67.1 crore	38.9 crore	58.0 %
2009	71.7 crore	41.7 crore	58.2 %
2014	81.4 crore	55.3 crore	66.4 %

Voter turnout in recent national elections



- Militancy-hit Jammu & Kashmir recorded 50.1% polling, which though lower than the national average is a major improvement on the 39.7% turnout of 2009.
- Even during the assembly elections of Chhattisgarh, Madhya Pradesh, Rajasthan, Jharkhand, Jammu and Kashmir the voter turnout have been at higher levels.

If we look at the history of voter turnout since 1971 parliamentary election, highest change in voter turnout was observed in 1977 and 1984. The change between 1971 and 1977 could be attributed to the anger against the 1975 Emergency, while increase between 1980 and 1984 was largely considered as sympathy for the Congress party after the assassination of Indira Gandhi.

However, recent assembly elections in Rajasthan, Madhya Pradesh and Chhattisgarh have experienced unprecedented voter turnout of 75%, 72% and 77%, respectively. In two states, the incumbent regime was re-elected while in one the vote was for change.

Part of the reason for the increase in voter turnout could be attributed to the Election Commission revising the electoral rolls and engaging in outreach. In other words, high voter turnout in recent polls cannot be viewed as a vote of anti- or pro-incumbency. Instead, it is due to a combination of factors and hence more complex.

- EC has attributed the surge in turnouts to its targeted approach in meeting gaps in voter registration, its strategy to promote informed and fearless voting, **Systematic Voter Education and Electoral Participation (SVEEP) committees** at the state and district level, voter facilitation measures, central awareness observers and the nearly 25,000 campus ambassadors appointed by it to encourage the youth to participate in elections.
- With a dramatic shift in India's demography, the number of young voters, especially those voting for the first time, has risen. According to the census of 2011, this number is nearly 149.36 million, which is about one-fifth of the total electorate of 725 million estimated by the EC.
- These young adults would be anywhere between 18 and 23 years of age. Studies also show that nearly half of the country's voters are between the ages of 18 and 35.
- Political observers pointed to a change in the attitudes of the urban youth. Their approach to politics has changed since the launch of anti-corruption movements across the country and the emergence of social media, both of which created a sense of rights and led the youth to demand greater accountability from political leaders.
- Aggressive campaigning by the political parties and use of technology are also the reason for increasing voter turnouts. With political parties engaging in aggressive campaigning and mobilisation, voters are becoming more enthusiastic in politics.
- Rise in urban voter turn outs has also contributed to the change. Ads and campaigning in media and social networking sites have increased the awareness in urban population. There is an increased enthusiasm to participate in the democratic process.

Higher voter turnout is often linked with voters' belief in the political process and a desire for a change of government. A higher turnout can indeed be an indicator of many things. A leap of faith in elections in the world's largest democracy is undoubtedly one of them.

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