

# Defending or Defeating Democracy

Anamika Mishra\* and Anubhav Raj Shekhar\*\*

*The research paper is written with an objective of analyzing the present stature of Indian democracy on the standards of ensuring public participation. Proceeding with a quick analysis of the concept of democracy in India and the fronts on which it is incapacitated to incorporate the opinion of the masses, it delves into the crux of the issue. The research paper develops in two parts. The first part assesses the feasibility and practicality of implementing a provision of mandatory voting in India, after deciding its merits in proposing a more participatory model for governance in India. On this aspect, the workability of the provision of mandatory voting has been duly considered. The second part of the paper elaborates the change brought about by the recent Supreme Court judgments in its attempt of facilitating a more participatory model for governance. Giving an analysis of the following Supreme Court Judgments : Chief Election Commissioner v. Jan Chaukidar, (10 July 2013); Lily Thomas v. Union of India (10 July 2013); and PUCL v. Union of India (27 September, 2013), and thus determining how the year 2013 has been one of significance, both for the Indian judiciary and masses, given to the electoral reforms propounded in each of them. Right not to vote misrepresented as Right to reject and constitutionality of Section 8 (4) of the Representation of the People Act that allowed convicted lawmakers a three-month period for filing appeal to the higher court and to get a stay of the conviction and sentence, are the major issues that have been seen in the light of these judgments. Partial application of the None of the above option as per the judgement has been highlighted and its consonance with Mandatory Voting has been considered, thereby estimating its position as a pre condition for it.*

## Part I: Inclusive Democracy

- Mandatory Voting

Institutionalization of the idea of 'Democracy' as 'rule by people', has been well instilled in our minds while making preliminary attempts at understanding politics and society. However, simple as it may seem, making sense out of such abstractions has always been the fulcrum of all philosophical discourses. As one's rational faculties and legal acumen causes one to revert to the fundamentals and question the very basic premise of the intellectual scaffolding that one tries to construct, what entails 'rule by people'; who constitute these 'people'; how does their 'rule' find manifestation in the political arena, what is the 'modality' of such a rule, what constitutes the setbacks that cripples such modalities and functionalities, form the cynosure of one's quest in envisaging a more inclusive democracy.

From a more inclusive democracy, one is to understand that a system of governance and functionalities that offers better expression of the myriad of choices which the people may have, as it encapsulates the effort of both the 'governed' and the 'governor' in giving a good governance.<sup>1</sup> The object behind framing up of a better inclusive democracy traces more relevance in the wake of recent judicial pronouncements,<sup>2</sup> which have attempted at bringing in reforms to the system of electoral practices. To make voting mandatory without providing the voters with adequate tools to accommodate a range of expressions, would be a purposeless pursuit. It is for these 'tools' that one looks up to the judiciary. While making voting compulsory for citizens within a given frame or structure is to be taken care of by the legislature, it is the judiciary which is expected to provide for a fairer interpretation of how such a frame is to work in the best interests of the people. The judiciary in its attempt at reformation of election related practices has

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\* III year Student, B.A.LLB. (Honours), NLU, Delhi; Author can be reached at [anamika.mishra3@gmail.com](mailto:anamika.mishra3@gmail.com)

\*\* III year Student, B.A.LLB. (Honours), III year, NLU, Bhopal, Author can be reached at [anubhavraj92@gmail.com](mailto:anubhavraj92@gmail.com)

<sup>1</sup> Emerson Peter, *Designing an All-Inclusive Democracy: Consensual Voting Procedures for Use in Parliaments, Councils and Committees* (Newyork :Springer, 2007), 1-5.

<sup>2</sup> Hereinafter, cited as and when referred.

made out the case for inclusion of a greater number of people in the country's politics. The prospects and workability of such a model of inclusive democracy is thus, under consideration in terms of compulsory voting and recent judicial pronouncements.

- Democracy ensnared by a farcical majority rule?

Of all the defining attributes of democracy, its 'territorial operationalization' remains the most significant one, for that makes way for all the others. Thus, the people so concerned, are a part of a well defined geographically delimited territory, significantly differentiated from their surroundings on the basis of physicality, polity, culture and spirit.<sup>3</sup> To put it prosaically, democracy is understood in the backdrop of a geo-political entity and thus, should ideally be inclusive of citizens of that particular entity. So, the rule of all such people is going to constitute 'democracy' in the given region. Exclusion of even one from this cohesive group, except in accordance with procedure established by law, would be construed as violative of one's right to equality.<sup>4</sup> However, should such an exclusion take the form of assertion of one's free will to refrain from being a part of a democratic process, it leads to a normative debate of whether to allow such an exclusion, taking 'personal free will' of an individual as the basic tenet of democracy or whether to disallow such an act of indifference to protect the democracy itself. The right to cast one's vote is a statutory right, as a consequence of a legislation.<sup>5</sup> If democracy is supposed to be rule by the people, and due to differences in opinions existing as a natural outcome of the nation's enormity and diversity, 'rule by the people' has to take the form of 'rule by the majority of the people', how is THIS majority to be decided, when THAT majority doesn't vote at all, is a paradox which the legislature has not been able to resolve till date.<sup>6</sup>

- Why should the public be mandated to give a mandate?

If a person makes no use of public toilets offered by the government, this in no way implies that he is relieved of his duty to pay taxes for its maintenance. On similar lines, if we consider our government to be 'public good', of which all can make use and for the maintenance of which all contribute in some form, then the duty to protect such a public good is inherent in its very concept.<sup>7</sup> There may be citizens who will make 'use' of the government by means of welfare schemes or subsidiaries, and there may also be citizens who are not making use of any such welfare measures, but both of these factions, are jointly responsible for preserving their public good and impliedly consent to be governed by any rule to bring this into effect.<sup>8</sup>

Another flawed argument against making voting mandatory is the by and large assumption that low voter turnout may often mean satisfaction with the governance.<sup>9</sup> However, it is amply clear that the purpose of elections is as much to maintain continuum, as to bring about transition. People are as weighed down with an additional responsibility of preserving the existing 'good' government as they are obliged to remove a non performing government from power.

- Minority deciding the majority ?

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<sup>3</sup> Heywood Andrew, *Political Theory: An Introduction* (New York City: St. Martin's Press, 1999), 93.

<sup>4</sup> Constitution Of India. "Part III, Fundamental Rights." Accessed December 12, 2013. <http://www.constitution.org/cons/india/p03021.html>.

<sup>5</sup> Representation of People's Act, 1950, 1951.

<sup>6</sup> Pocklington T C, *Liberal Democracy in Canada and the United States: An Introduction to Politics and Government* (Toronto, Canada : Holt, Rinehart and Winston of Canada, Limited, 1985), 3.

<sup>7</sup> Varian, Hal R. *Microeconomic Analysis*. New York City: W. W. Norton & Company, 1992.

<sup>8</sup> Franklin Mark N, *Voter turnout and the Dynamics of Electoral Competition In Established Democracies Since 1945* (Cambridge, UK: Cambridge University Press, 2004) 37-38.

<sup>9</sup> Anonymous, "The Case for Compulsory Voting in the United States," *Harvard Law Review* 121(2007): 603.

As much as we as a nation, talk of being the front runners in development, we cannot escape the brunt of being as backward as ever, socially. We form a nation where intellect and merit is far outweighed by caste and religion based bias. A partisan group of people being clubbed together in a nation, was the take of many political experts on India becoming independent. Although India has succeeded in proving them wrong and sustaining its status, such sustenance has come at the cost of murky caste based politics. Contesting elections can be better understood as favourable arrangements of numbers. Parties, today, seldom have a nationalist agenda. Even if they are able to win the favour of X number of people, of 'A' religion/community, in a way that all X number are willing to register their vote in their favour, knowing that the rest of the Y number of people are likely to exercise their will of not voting, owing to a number of factors, the prospects of such a party securing a majority of the votes OF THE TOTAL VOTES POLLED, increases manifold. A compulsion on everyone to cast their votes will dilute the effect of any such politics played on regional or communal lines, by simple mathematics of increasing the total number of votes polled.<sup>10</sup> The political history of India is replete with examples galore to prove this point.

In reference to Annexure 1, that shows the Lok Sabha votes polled in the year 2004 by winners as percentage of electors from Uttar Pradesh.<sup>11</sup>

The table shows the total voter turnout at some of the **reasonably developed** constituencies of Uttar Pradesh . Thus, candidates won by claiming only ten to twenty percent of the total number of people who turned up to cast their votes. Hence, any successful candidate contesting elections from a constituency which has maintained a precedence of low voter turnouts, has to take only five to ten percent of the total population of the constituency into confidence.<sup>12</sup> Needless to say, most of the above constituencies had a literacy rate of more than thirty percent.

- Literacy rates : an end that can be achieved

More than often, low literacy rate is stated as one of the primary reasons that cripple the democracy. To have basic civic education is considered to be a pre requisite for forming an opinion and expressing the same. The fallacy lies in understanding the above premise as unidirectional, when in fact, it flows both ways. That is to say, when formation and expression of opinion becomes a must, one is expected to employ necessary resources for doing it, which in turn makes them more aware as a citizen. If the government is able to make people aware, if not educated, it increases their prospects of being a part of the democracy. Thus, awareness is the key variable for a more participative democracy, which is expected to be sought if one is compulsorily asked to voice one's opinion.<sup>13</sup>

Making voting mandatory has an obscure economic advantage, which finds supreme relevance in India where parties using up funds for appeasing their target group is a common phenomenon, right before the elections. In the wake of compulsory voting, an elementary cost benefit analysis would cause them to employ them on more pragmatic and less pejorative lines.<sup>14</sup>

Given that the 'end' of a democracy having maximum inclusion is going to be primarily secured by 'mean' of a compulsory voting system, it is no less important to take into account the sectional exclusions that jeopardize the above mentioned cause. A fairly logical way to attain inclusion is to deal with these very exclusions. The year 2013 has witnessed the judiciary taking an active stance on the issue of electoral

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<sup>10</sup> Hansaria B L, *Does India Need a New Constitution* (Kolkata: Eastern Law House, 1998) 56.

<sup>11</sup> Shourie Arun, *The Parliamentary System* (New Delhi: ASA Publications, 2007) 34.

<sup>12</sup> Ibid..

<sup>13</sup> Bettivia Rhiannon, *The middle schoolers' database: 75 current controversies for debaters* (New York: International Debate Education Association, 2011), 265.

<sup>14</sup> Brookie James Harrison, *The Effect of Compulsory Voting Laws on Government Spending* (Ann Arbor, United States: ProQuest, 2008) 4 -10.

reforms by three of its pronouncements : Chief Election Commissioner v. Jan Chaukidar<sup>15</sup>, (10 July 2013); Lily Thomas v. Union of India<sup>16</sup> (10 July 2013); and PUCL v. Union of India<sup>17</sup> (27 September, 2013). All of the above mentioned judgements have reforms with regards to the current electoral practices, but from the point of view of democracy to be made strong by a greater participation, they deserve a critical analysis.

- Chief Election Commissioner v. Jan Chaukidar

The case of Chief Election Commissioner v. Jan Chaukidar<sup>18</sup> propounds the forfeiture of a convict's right to contest elections. The reasoning of the court flows from the right and qualifications to vote. To be an elected member of either house of the parliament (or state legislature), the candidate must be an "elector" from any constituency.<sup>19</sup> Also, right to vote is forfeited even if one is in the lawful custody of the police.<sup>20</sup> The court, after establishing the incapacity of an arrested person as a voter, draws the incapacity of a candidate to contest, from it.

The court, however, fails to take into consideration that an analogy, if at all has to be drawn, must be done with respect to two entities which are similar to each other at some levels. The court attempts at comparing the qualifications of an elector and a candidate, but evidently, fails at understanding the distinction in discharge of their functions. The court, in its mechanical application of logic, attempts at comparing two entities, entirely disparate in their functions i.e., electors and voters. The discharge of function of voting, neither makes any alteration in one's stature nor endows one with a new responsibility. The exercise of contestation for votes in a public arena results into a verdict by the masses, which changes the very role of the person. When the consequences of an act are such that it confers authority in one case and maintains the status quo of stature in another, how can the two then be compared in a way to affect the former from the latter, should have been a matter of judicial probing.

On a different note, as per the celebrated principles of criminal jurisprudence, bail is a matter of right and arrest must only be made in the wake of extreme necessity. An accused is innocent until proven guilty. The Constitution allows taking away of fundamental rights only of a convict, for an accused, they remain suspended until their guilt has been ascertained. During the time of trial or investigation, arrest of a person is made only with an object of facilitating the process of the court. The object however is entirely different in a situation where the guilt has been decided. The aim then, is to deprive him of his fundamental and statutory rights as a form of punishment. It is thus a legislative flaw in the statute to deprive an accused of his right to vote.<sup>21</sup>

India is an official signatory to the ICCPR.<sup>22</sup> The coming into force of the ICCPR and its Optional Protocol has seen, in a number of instances, the introduction of amending legislation to provide the right to vote to those imprisoned by State.<sup>23</sup> In Canada, for example, the National Assembly of Quebec has made several amendments to the Quebec Election Act in order to bring the legislation in confirmation with the provisions of Article 25 of the Covenant. One of the amendments established, the right of every inmate to vote in general elections in Quebec and added special provisions relating to voting procedures for

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<sup>15</sup> MANU/SC/0689/2013.

<sup>16</sup> MANU/SC/0687/2013.

<sup>17</sup> MANU/SC/0987/2013.

<sup>18</sup> MANU/SC/0689/2013.

<sup>19</sup> Section 4, Representation Of People's Act (1951).

<sup>20</sup> Section 5, Representation Of People's Act (1951).

<sup>21</sup> Ashutosh, *Rights Of Accused*, (New Delhi: Universal Law Publishing Company Private Limited, 2009) 143-200.

<sup>22</sup> International Covenant on Civil and Political Rights, 1966, hereinafter referred to as ICCPR.

<sup>23</sup> India is not a signatory to any of the two Optional Protocols (1966 and 1989) of the ICCPR.

inmates. Article 64 of the Act provided in particular that 'to allow inmates to exercise their right to vote, the Director General of Elections may make any agreement he considers expedient with the warden of any house of detention established under an Act of Parliament of Canada or of the Legislature. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote. The right to vote imposes a positive duty upon the State to guarantee its enjoyment.<sup>24</sup>

Thus, the provisions of the ICCPR have been interpreted to allow the right to vote to a prisoner (convict). Extending it to preserve the rights of an accused only gives force to India's obligation as a signatory to the Convention. The judgement, clearly, hinders participation of a large section of masses in democratic process even without determination of guilt, thereby defeating the cause of an inclusive democracy.

- Lily Thomas v. Union of India

The case of *Lily Thomas v. Union of India*<sup>25</sup> deals with the inequality in the treatment of the two similar groups of people: one, who are already a member of either houses of the Parliament or the State Legislature and the other, who wish to contest election to either houses of the parliament or the State Legislature. The court considered Article 102 and 192 of the Constitution to declare such an anomaly as ultra vires. The opening words of these two Articles are to be taken note of – 'A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State.'<sup>26</sup> Focus is to be placed on the words 'for being chosen as and for being', which clearly indicate the intent to include and subject the two classes of people to the same provisions that follow up further in the concerned Article of the Constitution. Any person who comes within any of the sub clauses of present article will not be fit to be a candidate for membership; further, if a sitting member of Parliament incurs any of the disqualifications mentioned in these sub clauses, his seat will become automatically vacant.<sup>27</sup> The Constitution provides equality before law<sup>28</sup>. However, this principle of equality, in no way means that there must be a universal application for every law over every person in general, disregarding the distinctions between various classes of people and the natural differentiation which they have been subjected to, often manifested by ways of position, status, geographical location, historical development and so on.<sup>29</sup> And it does not sanction any discrimination done to the same class of people, sharing a common object and hence, requiring a common criteria for judgment and treatment. The present case pertains to unequal standards of treatment to the present and prospective members of either houses of the Parliament or State Legislature. If being convicted of some specific offences disqualifies a person from contesting an election to either houses of the Parliament or the State Legislature, without allowing him the lease to contest an election during the pendency of an appeal or a revision petition, there is no reason why a sitting member, who is entitled to the same position, stature, salary and allowances and is expected to discharge same duties and responsibilities, should be allowed this grace period. The view here is different from the one taken in previous judgement because the Constitution, both in letter and in spirit, goes against the unequal treatment of equal class of people. The only substantial argument against the contention, from the side of the respondents was the feasibility and practicality of such a proposition. Their argument was backed by the high rate of acquittals at the stage of appeals.<sup>30</sup> However, this does not form a strong argument because as an immediate result of conviction, the person is imprisoned and deprived of a number of his fundamental and statutory rights. Thus, in effect, the house is not getting the

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<sup>24</sup> Alex Conte and Richard Burchill, *Defining Civil And Political Rights The Jurisprudence Of The United Nations Human Rights Committee* (Farnham, United Kingdom: Ashgate Publishing Limited, 2009) 101 -120.

<sup>25</sup> Supra note at 16.

<sup>26</sup> Article 191, Constitution Of India (1950).

<sup>27</sup> Y V Chandrachud, SS Subramani and B P Banerjee, *Commentary on the Constitution of India*, (Nagpur, India: Lexis Nexis Butterworths Wadhwa, 2008) 5077.

<sup>28</sup> Article 14, Constitution Of India (1950).

<sup>29</sup> Supra note at 14.

<sup>30</sup> Supra note at 16.

service of the member concerned and the strength of the house remains only for namesake i.e. to not to disrupt the ratio and constitution of the parties over the seats. This defeats the very purpose of having a representative democracy. 'Representation' is nothing but a method to attain and realize 'Democracy' as a system of governance for the people. It derives its existence from democracy, and not vice versa. A bye election is though a complicated process, yet not an impossibility and can always be resorted to give effect to a thriving democracy. Such a stringent provision shall also keep the ones' in office, on their toes and will directly determine their conduct. Being convicted at any level shall no longer be a penultimate stage for their membership in the legislature, but an end to their tenure. The *ICCPR* also justifies a ban on contestation of elections by convicts; however, such a ban is subjected to the test of reasonableness. Although Article 25<sup>31</sup> is devoid of a specific limitation clause, it does lay down that the rights within it are to be enjoyed by every citizen 'without unreasonable restrictions'<sup>32</sup>.

Thus, the Supreme Court judgement, which is under question, does not put any unreasonable restriction on the contestation of those convicted of the offences cited in the legislation<sup>33</sup> and only upholds the spirit of the Constitution. In this judgement, the court indirectly ensures inclusion of more people in the democracy. By rationally, weeding out those who are not qualified to be a member of the house, it is procuring the trust of the people of the country in the practices of governance. The judgement endeavours to bring in greater transparency in the system and in forms unexpressed, gives an answer to the skepticism that dwells deep in every rational mind of the nation.

- PUCL v. Union of India

*PUCL v. Union Of India*<sup>34</sup> unfolds at two levels. It seeks to combine right to secrecy with right to freedom of speech and expression, by a liberal interpretation of the Constitution and establishes the former to be a precondition for the latter to take effect. At the second level, the judiciary proposes the method to realize such a right to secrecy, in close relevance with the rules laid down in Conduct of Election Rules, 1961 and provisions of Representation of the People Act, 1951. The court takes the leeway of interpreting the fundamental rights liberally, without strictly adhering to the letter of the provision and identifies 'voting' as an individual's expression of choice.<sup>35</sup>

The fundamental right to free speech and expression loses its value if it does not come with means to facilitate it and safeguards to protect it. Voting is seen as the right to freedom of expression, for the exercise of this freedom, one expresses one's willingness to see a person as a representative for the constituency. To give effect to this right to freedom of expression, the procedure or system of casting votes by means of a secret ballot to ensure the anonymity of the voter is used. However, the provisions which form loopholes in this system is the rule which requires the voter to submit the ballot paper to the presiding officer in the event of not casting a vote or spoiling the ballot paper. Needless to say, the Presiding Officer comes to know about the person to whom the vote was/was not delivered and that who has decided not to cast any vote at all. Even the use of Electronic Voting Machines<sup>36</sup> pose a similar threat to the voters' exercise of right to freedom of expression. If a voter decides to not to cast his/her vote, the machine makes it sufficiently clear by an indicative sound signal.<sup>37</sup> Thus, in order to counter such a threat to right to freedom of expression, the judiciary has allowed for a new button on the EVMs to be present which shall not register the vote of the individual, but his opinion in true sense of the term. The disclosure

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<sup>31</sup> Article 25, ICCPR (1966).

<sup>32</sup> Supra note at 24,98.

<sup>33</sup>Representation Of People Act Section 8 (1951).

<sup>34</sup> MANU/SC/0987/2013.

<sup>35</sup> Austin Granville, *The Indian Constitution: Cornerstone of a nation*, (New Delhi: Oxford University Press,1999) 320-329.

<sup>36</sup> Hereinafter referred as 'EVM'.

<sup>37</sup> Supra note at 34.

of the voter in case of not casting of vote was an assault to the idea of secrecy of a voter's vote and thus, a different option of 'None of The Above'<sup>38</sup> will henceforth be present on all EVMs.

As much as the stand of the judiciary and their clairvoyance is to be appreciated, such a positive development has come not in whole, but partially. The judiciary limited the function of NOTA to maintain secrecy and as per the Election Commission, such votes will not be counted.<sup>39</sup>

The glory in being the world's largest democracy suffers a setback when the same democracy is wrought with disinterest and indifference on part of a significant portion of the populace due to mistrust and non reliance on the government and the very institution of election. Even in this set, one can carve out a subset comprising of youth, forms an even bigger concern for the democracy. The ones who do not approve of any of the candidates standing for the election may give vent to their opinion by not voting at all. However, in a situation where they were to be made a part of the total votes polled, more people would have taken part in the election process. This would form a solution to indifference and distrust reigning over people regarding the present system. With an option of NOTA available to be exercised, they may express their opinion, with a fair possibility that it might be able to impact the results.<sup>40</sup> In fact, any democracy attempting to be participative by making voting compulsory, without NOTA option, is in effect asking to choose the lesser evil. In the event of fresh elections being organized, should 'NOTA' emerge as *vox populi*,<sup>41</sup> the parties will be forced to provide people with better candidates and cleaner political system.

We see here that, the judiciary does little with regards to better inclusion of citizens in democracy. The judgement, although promising, is only partial in its essence. The decision, at best, secures the interests of those who cast their votes, but does nothing to attain participation of those who do not. As of now, the judgement gives only RIGHT TO ABSTAIN,<sup>42</sup> and not RIGHT TO REJECT.

## **PART II : A Workable Model**

The problem of constituencies : Division of a region, into constituencies for the purpose of conducting elections, has flawed the system at many levels. A closer look at the data arranged in Annexure 2 will aid in understanding the point. The table puts out the votes polled out by two major political parties of the country in the general elections of three years and the visible trend shows an inconsistency with respect to the number of votes secured vis-à-vis the number of seats secured by each of the parties.

With reference to Annexure 2, thus, although the parties have not scored a majority of the total votes polled , yet they have been able to form government because of having won greater number of constituencies. This happens due to division of a region into a greater number of smaller constituencies. Due to the constituency system of polling, the results depend much upon the demography and distribution of people across the region. The question is, how can we justify such a pseudo democracy, where government can be formed by a party even when a larger majority of the people voting, disapproves of it. Smaller sizes of the constituencies, usually inhabited by similar communities build up a conducive environment for divisive politics. Having larger constituencies with greater diversity of people in each of

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<sup>38</sup> Hereinafter referred as 'NOTA'.

<sup>39</sup> Ojha Dharendra(Director, Election Commission of India), Press Note : Clarification on NOTA, October 28 2013. [http://eci.nic.in/eci\\_main1/current/PN\\_28102013.pdf](http://eci.nic.in/eci_main1/current/PN_28102013.pdf) .

<sup>40</sup>Katju Manjari. "The 'None Of the Above Option.'" Economic and Political Weekly, October 19, 2013.

<sup>41</sup> C. Gail Hepburn and Julian Barling Source, "To Vote or Not to Vote: Abstaining from Voting in Union Representation Election", *Journal of Organizational Behavior* 22 (2001): 569, 591.

<sup>42</sup> Special Correspondent. "Advani pitches for NOTA, compulsory voting." The Hindu, updated on October 6, 2013 at 8:36 pm. <http://www.thehindu.com/news/national/advani-pitches-for-nota-compulsory-voting/article5206593.ece#comments> accessed at 8:47 pm on December 21, 2013.

them would better equip the system to deal with the above anomaly, by decreasing the possibility of any smaller section of the masses being swayed by the divisive politics.<sup>43</sup>

Instead of issuing a Voter ID Card, which is a long, tedious and inefficient process, Biometrics of the voter must be used for verification.<sup>44</sup> This works at another level. Usually, on pretext of helping the voters out, the officials at the polling booth vote on their behalf by voting in their place. A biometric operative EVM, shall nullify any such prospects.

In wake of people failing to comply with mandatory voting laws, there should exist a provision to fine them.<sup>45</sup> However, the quantum of such a fine should be decided on the basis of their monthly income (half of the monthly income). In case of a non earning member of the family, such a fine might be incurred by one on whom such a person is directly dependent. For unemployed people, without anybody to depend on, community service might be considered as a preferred mode of punishment.

The above mentioned suggestion may work well for people belonging to the middle class and categories below it, however, it may make little difference to the elite section of the society, who may bank more upon large reserves of money, and less upon their monthly income. For them, fine will not form much of a deterrence. Instead, other measures such as forfeiture of passport for a year or cancellation or non issuance of a driving license would make a world of difference.<sup>46</sup> What can be used is a combination of both the provisions, keeping in mind their applicability to both the factions of the society.

Should an individual fail to vote more than once, his/her rights of citizenship may be suspended or extinguished all together.<sup>47</sup>

A separate tribunal may be setup to inquire into cases pertaining to the above mentioned provisions, appeal from which shall lie up to the level of the High Court of the state concerned.

Better mobilization of police forces to be on guard at the time of elections in the wake of voting made compulsory would be required. Compulsory display of all the qualifications of all the candidates at every polling booth.

A preferential system : By this, the voters are required to number their preferences in terms of candidates and in every round, the ones with least number of first preference can be eliminated and his votes can be distributed among the others in accordance with the second preferences that the voters for the eliminated candidate have indicated. This can be done till no party gets an absolute majority. This almost negates the prospect of a coalition government.<sup>48</sup>

In the present system, candidates from every constituency are fixed by the parties, thereby giving them a fair opportunity to play divisive politics. Either recurrent contestation of a member from the same constituency should be regulated or a lottery system can be adopted. According to this, the party is free to send in a list of candidates to the Election Commission of India, which in turn allots them constituencies

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<sup>43</sup> Ibid.

<sup>44</sup> Shourie Arun, *The Parliamentary System* (New Delhi: ASA Publications, 2007) 97.

<sup>45</sup> Elliot Frankal "Compulsory Voting around the world," *The Guardian*, updated on July 4, 2005 at 1:08 BST, accessed on December 19, 2013 at 10:10 pm IST.  
<http://www.theguardian.com/politics/2005/jul/04/voterapathy.uk#history-link-box>.

<sup>46</sup> Ibid., accessed at 9 : 04 pm.

<sup>47</sup> T.W., September 19, 2013 (11:50p.m.), "Where is it compulsory to vote," *The Economist* explains, December 21, 2013, <http://www.economist.com/blogs/economist-explains/2013/09/economist-explains-10>.

<sup>48</sup> Shourie Arun, *The Parliamentary System* (New Delhi: ASA Publications, 2007) 90.



on the basis of a draw of lots. This will cause the parties to come up with more secular and overall proficient candidates, not catering to sectional interests.<sup>49</sup>

The above mentioned suggestions for a workable model are only indicative and not exhaustive. Prima facie, these may come across as radical, but mild reforms and empty amendments within the same base have been tried, only to bring out their inadequacy.

The judgements that have been analyzed point towards a greater interest of the people and of the judiciary in the governance of the country. It is heartening to witness that as a country, India is willing to get rid of the inertia that has prevailed over years and both the people, as part of the system (as the judiciary acts in response to a petition by the people) and a major functionality of the governance has been observant of the past practices and zealous towards the idea of bringing forth reformation. At the same time, the inhibition of the decisive wing of our parliamentary democracy in taking a tougher stance cannot become any more apparent. As mentioned earlier, the judiciary maintained a somewhat ambiguous stand on the issue of the 'none of the above' option and restricted its purpose to only maintaining the secrecy of votes casted. Should NOTA option be implemented in effect, the possibility of obscure election results, with none acquiring a decisive majority, runs very high. The judiciary, in all probability, is not too amenable for such a state of flux, inconvenience and uncertainties. Judicial activism in India, still has its boundaries drawn in a very strict sense. The ever available option with the legislature to 'redo/undo' the efforts of the judiciary may be attributed to the part sensitized, part lackadaisical approach of the 'remedial wing' of our governance, but nevertheless, it succeeds to accentuate the need of a well developed system and not piece meal reforms.

The very idea of compulsory voting being actualized in India, may cause discomfiture of a superlative degree, to say the least. But so did the very first general elections. To this, there can be no legal authorities as answers, but only historical testimonies as assurances that discord has always been a precursor for concord. The stakes can't be low; not when this big a magnitude of lives is to be affected. The purpose of democracy can only be defended by understanding that its form is a direct reflection of the society that it caters to. And it entails logically, that when the society undergoes a state of flux, so should its reflection.

## ANNEXURES

### ANNEXURE 1

Uttar Pradesh, 2004 : Lok Sabha votes polled by winners as percentage of electors<sup>50</sup>

CONSTITUENCY	PERCENTAGE OF VOTES
Moradabad	16.1
Azamgarh	18.1
Bareilly	17.3
Pilibhit	19.9
Shahjahanpur	17.8
Aligarh	12.5
Hathras	14.4
Mathura	14.7
Kanpur	14.8
Meerut	19.0
Varanasi	13.9

<sup>49</sup> Ibid., 87.

<sup>50</sup> Shourie Arun, *The Parliamentary System* (New Delhi: ASA Publications, 2007) 34.

Allahabad	15.0
Jhansi	15.6
Lucknow	19.8
Agra	17.0

## ANNEXURE 2

Comparative view in reference to two major political parties<sup>51</sup>

YEAR of General Election	CONGRESS % of votes v. Seats obtained	BJP % of votes v. Seats obtained
1996	28.8% and 140	20.3% and 161
1998	25.8% and 141	25.6% and 182
1999	28.3% and 114	23.6% and 182

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<sup>51</sup> Shourie Arun, *The Parliamentary System* (New Delhi: ASA Publications, 2007) 56 - 57.