

THE COMPULSORY VOTING CONUNDRUM: EXPLORING THE LEGAL MAZE OF MANDATING THE INDIAN VOTE

SHRUTI BEDI

University Institute of Legal Studies, Panjab University, India

Email: dr.shrutibedi@gmail.com

Abstract

The Constitution of India bestows the right to vote on all its citizens who are above the age of 18 years and possess a sound mind, irrespective of class, caste, religion, or socio-economic status. Unfortunately, in today's times participation during elections is considered to be an unnecessary obligation or rather a chore that can be ignored. Effort has been made in the past to introduce compulsory voting in India albeit without success. The paper evaluates the arguments for and against compulsory electoral participation and attempts to situate its possibility and legality in the current context of India's constitutional democracy. The findings are based on comparative analysis on different cases and hold true for most democratic nations.

Keywords: compulsory voting, voting, voter, elections, democracy

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The Constitution gives us a multitude of rights as citizens but it also expects that each of us performs the duty, which is cast upon us. And one of the foremost duties of citizenship is to cast a vote in a constitutional democracy.¹

The right to vote is essential for ensuring that the people's voice is heard, sustaining and promoting democracy. In India, universal adult suffrage is guaranteed under Article 326 of the Constitution, granting every citizen over eighteen the right to vote unless disqualified by law due to non-residence, unsoundness of mind, crime, or corrupt practices. This ensures that elections to the House of the People and Legislative Assemblies are based on adult suffrage, deepening democracy's impact.

Democracy is stated to be the rule of the people. However, if the people do not have the will to rule and participate in the electoral process of a democracy, how will it sustain?² As a constitutional democracy, India recognizes the importance of voting and the electorate's power in shaping the nation. However, voter turnout remains low, especially among certain demographics. Despite voting being a constitutional right, India lacks

1 Chief justice of India DY Chandrachud in his address to the High Court Bar Association, Nagpur on the Centenary Year Celebration on 5 April 2024, urged the citizens of India to go and cast their vote in the upcoming national elections. See PTI (2024), 'CJI Chandrachud urges voters to not miss voting in 2024 general elections', *Business Standard*. Retrieved from: https://www.business-standard.com/elections/lok-sabha-election/cji-chandrachud-urges-voters-to-not-miss-voting-in-2024-general-elections-124042000186_1.html [accessed 23 April 2024].

2 Mariam, J. and Demetrashvili, S. (2023), 'The concept and main patterns of compulsory voting', *Constitutional and Legal Academic Studies*, p. 69. Retrieved from: <https://doi.org/10.24144/2663-5399.2023.1.09> [accessed 20 April 2024].

compulsory voting (CV) provisions. Past efforts to introduce CV have failed. Given increasing voter apathy, exploring CV's feasibility is crucial. This article assesses the debate and the legal framework needed for CV implementation.

1. Compulsory voting: The conundrum

The concept of CV has been implemented in many countries across the world like Australia, Belgium, and Brazil. It refers to a system where the citizens are required by law to cast their vote during elections. Failure to do so attracts fines or other legal sanctions.³ In India, CV as an option to increase voter turnout has been discussed in the past but has not resulted in its incorporation in the electoral process. India has a varied turnout of voters during elections. In the 2019 general elections, the national average voter turnout was 67.4% while in some states such as Bihar, the turnout was as low as 57.33%.⁴ In the world's largest democracy only half of its people exercise their right to vote. In a country where a candidate wins the election even if he gets one more vote than his nearest rival, the win is meaningless if half of the electors have not voted. He cannot be termed as a true representative of his constituency.⁵ In fact, in some constituencies, votes polled are as low as thirty percent.⁶

Voting is commonly accepted as an important form of political participation⁷ and voter turnout is the barometer to measure the health of democracy and citizen participation.⁸ Under a CV regime, the voter is free to use his discretion and even cast blank ballots or "None of the above" (NOTA). The voter is not compelled to vote in favour of a particular candidate.⁹ Therefore, CV is considered as an institutional remedy for the dilemma of low electoral turnout.

Electing representatives for the next five years is a significant responsibility for every voter in a democracy. Despite numerous elections in India over seven decades and appeals from the Election Commission, many still view voting as optional. Section 62 of the 1951 Representation of People Act emphasizes the

3 Sheppard, J. (2015), 'Compulsory voting and political knowledge: Testing a 'compelled engagement' hypothesis', *Electoral Studies*, Vol. 40, p. 301.

4 Election Commission of India (ECI) (2019), 'State wise voters turn out', *Lok Sabha Elections*. Retrieved from: <https://hindi.eci.gov.in/files/file/10092-12-state-wise-voters-turn-out/?do=download&r=24793&confirm=1&t=1&csrfKey=5dff1075adde3ba33d8c3c7ee110ce0a> [accessed 20 January 2024].

5 Secretariat, L. S. (2015), 'Compulsory Voting', Reference Note No. 36. Retrieved from: https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/CompulsoryVoting.pdf [accessed 18 January 2024].

6 *Ibid.*

7 Perea, E. A. (2002), 'Individual characteristics, institutional incentives and electoral abstention in Western Europe', *European Journal of Political Research*, Vol. 41, No. 5, p. 645.

8 Verba, S., Nie, N. H., & Kim, J. O. (1978), *Participation and political equality: A seven - nation comparison*, Cambridge University Press, p. 8.

9 Chauhan, N. (2019), 'Making the case for compulsory voting', *The Statesman*. Retrieved from: <https://www.thestatesman.com/opinion/making-case-compulsory-voting-1502755206.html> [accessed 2 February 2024].

right, not the duty, to vote, with Section 79(d) clarifying the “electoral right” includes the choice to vote or abstain. The 2015 Law Commission’s 255th Report also views voting as a right, not a duty.¹⁰

There are several countries that enforce CV in some form, either through their Constitutions or statutory legislations. Article 62 of the Belgian Constitution states that voting is mandatory and secret.¹¹ In Australia, the provisions pertaining to CV are contained in the 1918 Commonwealth Electoral Act wherein section 245 makes failure to vote at an election an offence.¹² Currently, CV is not present in any form in India, however, in 2014 in the state of Gujarat, it was made mandatory for all voters to vote in the Municipal, Nagarpalika and Panchayat elections.¹³ Earlier in 2004 and 2009, two Private Members Bills on CV were introduced in the Indian Parliament by Mr. B.S. Rawat and Mr. J.P. Aggarwal.¹⁴ These bills did not see the light of day and were defeated on various grounds. In 2022, the Parliament witnessed another failed attempt at its introduction through a private members bill by BJP MP Deepak Prakash in the Rajya Sabha.¹⁵ The bill, which provides for punishments for those who don’t vote and rewards those who do, was withdrawn “after the government made it clear that it was not practical to implement its provisions.”¹⁶ Most recently, in March 2023, the Delhi High Court refused to allow a public interest litigation seeking the Election Commission of India (ECI) to make voting compulsory for the elections to the Parliament and State Assemblies. In the matter of *Ashwini Kumar Upadhyay v. Union of India & Ors.*,¹⁷ the division bench stated that, “voting is a right and the choice of the people.”¹⁸

10 Law Commission of India (2015), ‘Report No. 255: Electoral Reforms’. Retrieved from: <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081635.pdf> [accessed 23 March 2024].

11 Kuźelewska, K. (2016), ‘Compulsory voting in Belgium: A few remarks on mandatory voting’, *Białostockie Studia Prawnicze 20/A*, p. 40. Retrieved from: 10.15290/bsp.2016.20A.03 [accessed 17 April 2024].

12 AEC (2019), ‘Electoral backgrounder: compulsory voting’, *Australian Election Commission*. Retrieved from: https://www.aec.gov.au/about_aec/publications/backgrounders/compulsory-voting.htm [accessed 8 April 2024].

13 Rao, P. (2014), ‘Compulsory voting in India’, *PRS Legislative Research*. Retrieved from: <https://prsindia.org/theprsblog/understanding-recent-amendments-to-the-arms-act-1959?page=51&per-page=1> [accessed 10 April 2024].

14 Law Commission of India (2015), *supra* note 10, p. 158.

15 PNS (2022), ‘Demand for compulsory voting gaining momentum: Prakash’, *The Pioneer*. Retrieved from: <https://www.dailypioneer.com/2022/state-editions/demand-for-compulsory-voting-gaining-momentum--prakash.html> [accessed 27 March 2024].

16 PTI (2022), ‘Compulsory voting is not practical in India: MoS Law and Justice Baghel’, *Deccan Herald*. Retrieved from: <https://www.deccanherald.com/india/compulsory-voting-is-not-practical-in-india-mos-law-and-justice-baghel-1133466.html> [accessed 22 May 2024].

17 *Ashwini Kumar Upadhyay v. Union of India* 2023 LiveLaw (Del) 247.

18 Thapliyal, N. (2023), ‘We are not lawmakers, it’s people’s choice’: Delhi High Court Refuses to Entertain, *Live Law*. Retrieved from: <https://www.livelaw.in/news-updates/delhi-high-court-voting-compulsory-elections-223992> [accessed 19 April 2024].

1.1. *The case in favour of compulsory voting*

To ensure that public policy is about the public, the public must have a substantial say in it.¹⁹ Dahl correctly understands this when he says that members of a democracy “must have equal and effective opportunities for making their views known to the other members as to what the policy should be.”²⁰ Voting is the most significant form of participation in a democracy. Through their votes, people express their penchant for the type of politicians and their policies. Such necessity of people’s participation is also reflected in the judgment delivered by the Kenyan Court of Appeal in *Kiambu County Government v. Robert N. Gakuru*²¹ where it held: “General elections, the foundation of representative democracy, would be meaningless without massive participation by the voters. The participation by the public on a continuous basis provides vitality to the functioning of representative democracy. It encourages citizens of the country to be actively involved in public affairs, identify themselves with the institutions of government and become familiar with the laws as they are made. It enhances the civic dignity of those who participate by enabling their voices to be heard and taken account of. It promotes a spirit of democratic and pluralistic accommodation calculated to produce laws that are likely to be widely accepted and effective in practice.”²²

1.1.1. *Promotes democratic legitimacy*

During the drafting of the Indian Constitution, in the Constituent Assembly, T. J. M. Wilson stated that: “The essence of democracy is not so much the existence of what are called political parties, etc., but the essence of democracy is the effective participation of the individual in the actual government of the country.”²³ In the matter of *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi*,²⁴ the court noted: “The little man, in his multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of his proxy. Although the full flower of participative Government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence.”²⁵ In such a background it has been a “constant endeavour to encourage wider public participation.”²⁶ In fact, the introduction of local self-governance through the 74th constitutional amendment in 1992 is evidence of such endeavour.

19 Engelen, B. (2007), ‘Why compulsory voting can enhance democracy’, *Acta Politica*, Vol. 42, p. 24.

20 Dahl, R. A. (1998), *On democracy*, Yale University Press, p. 37.

21 *Kiambu County Government v. Robert N. Gakuru* Civil Appeal No. 200 of 2014 decided on 30 June 2017 (Court of Appeal, Kenya).

22 *Ibid*, p. 115.

23 Constituent Assembly Debates (CAD). Vol. XI (14 November 1949 – 26 November 1949).

24 *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* (1978) 1 SCC 405.

25 *Ibid*, p. 24.

26 *Rajeev Suri v. Delhi Development Authority*, Transferred case (Civil) No. 230 of 2020, p. 180. Retrieved from: https://main.sci.gov.in/supremecourt/2020/8430/8430_2020_34_1501_25340_Judgement_05-Jan-2021.pdf [accessed 12 April 2024].

The declining voter turnout is a setback to the essence and legitimacy of democracy. If only a minority determine the outcome of the elections, it cannot be termed as the will of the majority²⁷ and consequently decisions by such government are questionable.²⁸ To tackle the problem of low turnout in democracies, the straightforward solution is CV.

1.1.2. Voters make an informed decision

Moreover, making voting mandatory will energise people to become better informed about the political parties and candidates to make a more informed decision.²⁹ CV could therefore have an educating influence on people in addition to increasing political participation.³⁰ When a voter undertakes the responsibility of casting his vote, there is an attempt made to gather adequate knowledge about the contesting candidates. This is a fundamental point made by Lijphart.³¹ The act of voting itself, as in physically visiting a polling place, receiving information about the candidates, and considering potential choices, inadvertently increases an individual's political awareness, as noted by Mackerras and McAllister.³²

1.1.3. Low turnout is equivalent to unequal turnout

While the voter turnout in the last general elections in India in 2019 was relatively high, with 67% voters casting their ballots, there are serious concerns about the declining turnout in the local and state elections. In some states like Bihar and Uttar Pradesh, the voter turnout has fallen below 60% in recent years.³³ Phase I of the 2024 Indian national elections saw only 62% voter turnout.³⁴ Phase II of the elections also saw a dip in the voter turnout at 64.2% which was lower than the 2019 elections.³⁵ This threatens the legitimacy of the ruling government in the country as it seemingly increases the “likelihood that governments will reflect a minority, rather than a majority.”³⁶ Ferdinand

27 Engelen, B. (2007), *supra* note 19, p. 25.

28 Johns, G. (1998), 'Does compulsory voting distort electoral outcomes', *Agenda*, Vol. 5, No. 3, pp. 368-369.

29 Lardy, H. (2004), 'Is there a right not to vote?', *Oxford Journal of Legal Studies*, Vol. 24, No. 2, pp. 314-315; Lijphart, A. (1997), 'Unequal participation: Democracy's unresolved dilemma', *American Political Science Review*, Vol. 19, No. 1, p. 10. Retrieved from: <http://dx.doi.org/10.2307/2952255> [accessed 12 April 2024].

30 Sheppard, J. (2015), *supra* note 3, pp. 301-301.

31 Lijphart, A. (1997), *supra* note 29, p. 10.

32 Mackerras, M., & McAllister, I. (1999), 'Compulsory voting, party stability and electoral advantage in Australia', *Electoral Studies*, Vol. 18, No. 2, p. 222. Retrieved from: [https://doi.org/10.1016/S0261-3794\(98\)00047-X](https://doi.org/10.1016/S0261-3794(98)00047-X) [accessed 13 April 2024].

33 Election Commission of India (ECI) (2019), *supra* note 4.

34 Nath, D. (20 April 2024), '62% voter turnout in 102 constituencies as Phase One of Decision 2024 ends', *The Indian Express*. Retrieved from: <https://indianexpress.com/elections/62-voter-turnout-in-102-constituencies-as-phase-one-of-decision-2024-ends-9280392/> [accessed 21 April 2024].

35 Express News Service (27 April 2024), 'LS Poll Phase 2: Another dip, 64%: Turnout sluggish in Maharashtra, Bihar, UP; voting ends in Kerala & Rajasthan', *The Indian Express*. Retrieved from: <https://indianexpress.com/elections/ls-poll-phase-2-another-dip-64-turnout-sluggish-in-maharashtra-bihar-up-voting-ends-in-kerala-rajasthan-9293003/> [accessed 27 April 2024].

36 Lever, A. (2009), 'Compulsory voting: A critical perspective', *LSE Research Online*. Retrieved from: http://eprints.lse.ac.uk/23098/1/Compulsory_voting%28LSERO%29.pdf [accessed 14 April 2024].

Mount says, “If only just over half of us bother to vote at all in national elections and scarcely a third in local elections, the bureaucracy begins to think of elections as a tiresome and increasingly insignificant interruption in its continuous exercise of power. What develops is... ‘executive democracy’ and... more rudely described... as ‘elective dictatorship’.”³⁷

The data from the previously held elections in India displays a tendency for unequal turnout. It is noticed that fewer people from the urban areas vote as compared to people from rural areas.

Table 1: Voter Turnout in the Lok Sabha Elections in 2009, 2014 and 2019

Lok Sabha Elections: Voter Turnout Pattern (%age)			
	2009	2014	2019
All India	58.4	66.44	67.4
Urban	51.5	61.09	60.95
Semi-Urban	61.2	68.66	68.85
Rural	58.5	66.5	68.09

Source: Kumar, S. (2022)³⁸

As is evident from the above table which displays the turnout of the last three Lok Sabha elections, the turnout in the urban areas is lower as compared to the semi-urban and rural constituencies. This shows that the more educated and wealthier people tend to abstain from voting as compared to the poorer and rural voters. This tends to skew the election outcome and results in governments that do not exactly represent the diversity of the population.

According to Hill, CV serves important democratic principles like representativeness, legitimacy, political equality, and minimisation of elite power.³⁹ CV leads to increase in voter turnout, ensuring that the opinions of the less privileged are considered, thereby reducing socioeconomic disparities in electoral participation.⁴⁰ Consequently, elections become more representative both in terms of socioeconomic status and political party preferences.

Representation is genuine only when the elected representatives truly reflect the entire electorate.⁴¹ For this, the majority of the members of the

37 Mount, F. (2006), ‘The power inquiry: making politics breathe’, *Open Democracy*. Retrieved from: https://www.opendemocracy.net/en/power_inquiry_3310jsp/ [accessed 17 April 2024].

38 Kumar, S. ‘People as Voters’. Retrieved from: <https://www.india-seminar.com/2022/756/756-04%20SANJAY%20KUMAR.htm> [accessed 17 April 2024].

39 Hill, L. (2004), ‘Compulsory voting in australia: A basis for a ‘best practice’ regime’, *Federal Law Review*, Vol. 22. Retrieved from: <http://classic.austlii.edu.au/au/journals/FedLawRw/2004/22.html#Heading4> [accessed 18 April 2024].

40 Lijphart, A. (1998), ‘The problem of low and unequal voter turnout-and what we can do about it’, *Political Science Series*, Vol. 54, p. 3.

41 Pitkin, H. F. (1972), *The concept of representation*, University of California Press, p. 61.

electorate should take part, if not all. A healthy democracy depends on high voter turnout.⁴² Franchise, till the last century, was available only to the upper echelons of the society⁴³, and in today's times the low voter turnout is a consequence of the loss of trust in democracy.⁴⁴ In fact, the Supreme Court of India has observed that: "Non-participation causes frustration and disinterest, which is not a healthy sign of a growing democracy like India."⁴⁵

1.1.4. *Compulsion as the best alternative*

Many suggestions have been made to improve turnout like increasing awareness amongst voters, educating, motivating, and facilitating them.⁴⁶ However, such measures bring about a modicum of change in the long term and none of them are as effective or as immediate as compulsion. Making voting compulsory brings about a dramatic improvement in the turnout.⁴⁷

Australia and Belgium are the best examples of increase in voter turnout by compulsion. In the first federal election after introduction of CV in Australia in 1924, the turnout dramatically surged from 58.67% to 91.35%. In the elections between the period 1946–2001, the average turnout has been 94.5%.⁴⁸ For the period 1946–2003, Belgium has had a turnout rate of around 93%.⁴⁹

1.2. **Compulsory voting: Still not convincing enough**

Opponents of CV argue that it is undemocratic due to the attachment of compulsion that takes away the freedom of choice which includes the freedom not to choose.⁵⁰ This libertarian argument points out that a government should not compel its citizens to perform an act when they do not want to. The enhancement of representation does not justify the consequent violation of liberty.⁵¹ There are three arguments which refute this stance.

First, it is not 'freedom of choice' that particularly prevents voters from voting.⁵² The fact that people from the urban areas who are presumably better educated abstain from voting is indicative of the fact that there are other obstacles to participation than merely choice.

42 Jayadevan, V. R. (2022). 'Heracles cleansing the augean stables: A saga of judicial supervision over the democratic process in India', *Journal of Indian Law Institute*, Vol. 64, p. 64.

43 Manin, B. (1997), *The Principles of Representative Government*, Cambridge University Press, pp. 94-95.

44 Schmitter, P. (2011), 'Diagnosing and designing democracy in europe', in Alonso, S. et.al. (eds.), *The Future of Representative Democracy*, Cambridge, p. 191.

45 *PUCCL v. Union of India* (2013) 10 SCC 1, p. 52.

46 Kumar, Y. (2017), 'A critical analysis of the Gujarat Local Authorities Laws (Amendment) Act, 2009 – W.R.T. Compulsory Voting', *National Law Institute University Law Review*, Vol. 6, No. 1, pp. 127-128.

47 Lijphart, A. (1997), *supra* note 29, p. 8.

48 Hill, L., & Louth, J. (September 29, 2004), 'Compulsory voting laws and turnout: Efficacy and appropriateness', Refereed paper presented to the Australasian Political Studies Association Conference University of Adelaide, p. 5. Retrieved from: https://www.researchgate.net/publication/237134531_Compulsory_Voting_Laws_and_Turnout_Efficacy_and_Appropriateness [accessed 18 April 2024].

49 *Ibid*, p. 6.

50 Engelen, B. (2007), *supra* note 19, p. 29.

51 Lijphart, A. (1998), *supra* note 40, p. 10.

52 Engelen, B. (2007), *supra* note 19, pp. 29-30.

Second, governments enforce laws regularly, despite citizens not agreeing to them. Lijphart believes that CV is less onerous as compared to other legal obligations such as payment of taxes, mandatory education, or military service.⁵³ Further as per the European Commission for Human Rights, CV does not violate any human right.⁵⁴

Third, CV does not make the act of voting for a particular candidate compulsory, rather it is the attendance at polling stations that is made obligatory. With the introduction of the NOTA option, voters in India have the option of not voting in favour of candidates they do not believe in.

That political parties field candidates that are unacceptable to the electorate has led to loss of trust in the democratic process. To counter such practices, the concept of negative voting has been adopted.⁵⁵ The Law Commission of India in its 170th Report in 1999 had recommended under recommendation 9.29 that negative voting be included but no measures were undertaken.⁵⁶ In 2013 the matter of negative voting was dealt with by the apex court in *PUCCL v. Union of India*.⁵⁷ The court opined that introducing NOTA could increase the participation of voters and therefore it should be introduced.⁵⁸ The court directed the Election Commission to incorporate the right not to vote and maintain its secrecy as a constitutional right. It held, “Such an option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties.”⁵⁹

2. Compulsory voting: Enforcement options

There is no doubt that CV increases voter turnout. However, it is only a sanctioned CV that will have such an impact. Studies have shown that CV without sanctions is ineffective.⁶⁰ In instances where people lack a basic motivation to vote, the threat of being caught and sanctioned, tips the balance towards voter participation. The level of enforcement of penalties may vary from country to country depending on its administrative capacity. However, it has been seen that even if the penalties are not strictly enforced, the fear of being penalised increases the level of turnout. In Australia and

53 Kuzelewska, K. (2016), *supra* note 11, p. 38.

54 Vanmaercke, L. (1993), ‘De stemplicht in vraag gesteld’, *Nieuw Tijdschrift voor Politiek*, Vol. 9, No. 2, p. 73.

55 Khorakiwala, R. (2014), ‘The Indian electoral process and negative voting’, *The Law Review, Government Law College*, Vol. 8, p. 83.

56 Law Commission of India (May, 1999), ‘Report No. 170: Reform of the Electoral Laws’. Retrieved from: <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082424.pdf> [accessed 18 April 2024].

57 *PUCCL*, *supra* note 45.

58 *Ibid*, p. 52.

59 *Ibid*, p. 57.

60 Kostelka, F., Singh, S., & Blais, A. (2022), ‘Is compulsory voting a solution to low and declining turnout? Cross-national evidence since 1945’, *Political Science Research and Methods*, p. 2. Retrieved from: <https://doi.org/10.1017/psrm.2022.57> [accessed 17 April 2024].

Belgium, countries that are examples of strictly enforced mandatory voting, the enforcement mechanisms are rather lenient.⁶¹ In the study conducted by Kostelka et al., it was seen that “existence of enforced sanctions matters greatly for turnout, the fine amount has no impact.”⁶² Not only do countries differ on the type of sanctions imposed but also in the level of enforcement that they choose to adopt. Sanctions could take various forms like:

- *Reprimand/Explanation*: The voter who chooses to abstain must provide a reasonable explanation for failure to vote to avoid further sanctions. Initially in Belgium, a formal reprimand was issued to absentees.

- *Name and Shame (Affichage)*: A non-voter is listed in a public notification that he/she has failed to carry out her civic duty. The Italian Constitution under Article 48 prescribes voting as a civic duty. Light sanctions are applied wherein lists of non-voters are posted publicly.⁶³

- *Fine*: Different levels of monetary penalties may be imposed on non-voters. Switzerland imposes a fine of three Swiss francs; Austria is 300–3000 schillings; Cyprus 200 pounds; Argentina 20 pesos; Peru 20 soles.⁶⁴

- *Imprisonment*: A non-voter could be sent to prison, especially in case where he does not pay the fine imposed by the country. This option is rarely adopted.

- *Disenfranchisement*: A non-voter may be disenfranchised. In Belgium, if a voter has not voted in four elections over the course of 15 years, he or she is removed from the electoral rolls for ten years.⁶⁵

- *Prohibition of public employment*: Failure to attend polls may lead to restriction in the right to hold a post in a public office. In Belgium people who fail to turn up at successive elections are not hired or promoted to public offices, nor can they be awarded state honours.⁶⁶ In Argentina non-voters attract the penalty of not being entitled to hold public office for three years.⁶⁷

Besides these formal sanctions, there are other options. In Greece, it becomes difficult for a non-voter to obtain a new passport. The Indian Compulsory Voting Bill 2022 which was withdrawn provided that a non-voter would be ineligible for entitlement to any welfare scheme announced by

61 Lundell, K. (2012), ‘Civic participation and political trust: The impact of compulsory voting’, *Representation*, Vol. 48, No. 2, p. 224. Retrieved from: <https://doi.org/10.1080/00344893.2012.683488> [accessed 18 April 2024].

62 Kostelka, F., Singh, S., & Blais, A. (2022), *supra* note 60, p. 15.

63 Birch, S. (2009), ‘Full participation: A comparative study of compulsory voting’, United Nations University Press, p. 5. Retrieved from: https://archive.unu.edu/unupress/sample-chapters/full_participation_web.pdf [accessed 16 April 2024].

64 Kamath, N. A. (2016), “‘I Voted’”: Examining the impact of compulsory voting on voter turnout’, *CMC Senior Theses*, Paper 1286, p. 13. Retrieved from: http://scholarship.claremont.edu/cmc_theses/1286 [accessed 18 April 2024].

65 Birch, S. (2009), *supra* note 63, p. 8.

66 Article 210 of the 2014 Electoral Code of Belgium.

67 Appendix G—Countries with Compulsory Voting, Parliament of Australia. Retrieved from: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/em/elect04/appendixg [accessed 16 April 2024].

the appropriate government.⁶⁸ Further sanctions against non-voters prescribed are that he/she could be either fined 500 rupee; or two days imprisonment; or forfeiture of ration card. In addition, he would be rendered ineligible for contesting any election for a period of ten years from the date of his conviction. In cases of persons holding public offices, they would also be punished with forfeiture of ten days' salary; and delay in promotion for a period of two years.⁶⁹ However, punishing all non-voters regardless of personal difficulties is not ideal. Exemptions should be suggested for illness, travel, religious beliefs, and unforeseen circumstances. Retroactive exemptions or voluntary voting for illiterates (as in Brazil and Ecuador) are also recommended.

3. Compulsory voting: Mandating the Indian vote

CV in India faces strong opposition due to its large and complex electorate, with critics pointing out that countries with CV, such as Australia and Belgium, have much smaller populations. Despite practical difficulties, implementing CV could be easier than enforcing laws like taxes, education, and traffic regulations.⁷⁰ Another barrier is that the people of India believe the right to vote includes the right not to vote.

However, CV does not take away the right to vote as people can opt for NOTA if they want to express discontent with the quality of politics. In the *PUCCL* case the apex court observed that the discontentment could only be made effectual through NOTA. Consequently, the right not to vote means the right of the voter to reject the candidates contesting elections.⁷¹ The courts do not support abstaining from elections and regard voting as a preferred right.⁷² Lijphart also says, "Before we put the right not to vote on too high a pedestal, let us also remember that non-voting is a form of free riding – taking advantage of the benefits of democracy without contributing to it – and that free riding of any kind may be rational, but that it is also selfish and immoral."⁷³ Unfortunately, the introduction of NOTA has not led to increase in voter turnout. In such a scenario CV would not be an unjustified imposition, especially if the educated urban voter is compelled to cast his vote.

The Compulsory Voting Bill, 2022, is commendable but could be more acceptable with reduced penalties, particularly avoiding imprisonment. Options like reprimands, explanations, or public notifications for non-voters could be

68 Section 9 (c) of the Compulsory Voting Bill.

69 *Ibid*, section 9.

70 Kamath, N.A. (2016), *supra* note 64, p. 58.

71 Chauhan, N. (2019), 'Is compulsory voting the way forward? A comparative analysis', *Indian Law Institute Law Review*, Summer Issue, p. 151.

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effective. Sanctions, however lenient, encourage turnout. Exemptions for difficult situations and voluntary voting for the illiterate should be included. The legal framework can be adapted to make CV viable in India.

Conclusion

CV is ideal for addressing disengagement and underrepresentation, ensuring citizens' democratic rights and pressuring the state and political parties to improve governance. The key is the mandate itself, signaling that every vote and choice matters, motivating citizens to participate in democracy. India and other democracies should consider CV.⁷⁴ It is imperative that people voice their choice through voting for the most deserving candidate. After all, it is not every citizen's responsibility to elect the representatives. ●

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The author solely contributed to the study conception and design. The author read and approved the final manuscript.

Declarations

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