

# Legislative Brief

## The Representation of the People (Amendment) Bill, 2006

The Bill was introduced in the Rajya Sabha on February 27, 2006.

The Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Shri E.M. Sudarsana Natchiappan) submitted its report on August 4, 2006.

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### Highlights of the Bill

- ◆ The Representation of the People (Amendment) Bill, 2006 seeks to amend the Representation of the People Act, 1950.
- ◆ The 1950 Act lays down the conditions for registering as a voter. One of the conditions require a citizen to be “ordinarily resident” in a constituency.
- ◆ The Bill expands the definition of “ordinarily resident” to include any person who is away from his residence, temporarily or otherwise, for employment, education or any other purpose.

### Key Issues and Analysis

- ◆ The 1950 Act allows Indian citizens temporarily living away from their residences to vote. However, “temporarily” has not been defined in the Bill or the Act.
- ◆ Unlike in the US, Indian citizens living abroad are not subject to the tax regime of India, but would get the right to vote.
- ◆ Extending the right to vote to Indian citizens living abroad would also allow them to stand for elections. This could lead to situations where political offices could be held by such individuals.

## PART A: HIGHLIGHTS OF THE BILL<sup>1</sup>

### Context

The Constitution of India states that elections would be on the basis of adult suffrage, i.e., “every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.”<sup>2</sup>

The Representation of the People Act, 1950 makes detailed provisions for elections and lays down the conditions required to register as a voter in a constituency. The conditions of registration include that a citizen should be “ordinarily resident” of a constituency.

The Representation of the People (Amendment) Bill, 2006 expands the definition of “ordinarily resident” to include citizens who are away from their residence for employment, education or any other purpose, and enable them to vote and stand for elections.

### Key Features

#### Condition of Registration

- The 1950 Act states that voters need to be registered in an electoral roll of a constituency. An individual can register if (a) he is a citizen of India; (b) he is not below 18 years on the qualifying date (as on January 1 of the year on which the electoral roll of a constituency is being prepared or revised); and (c) is ordinarily resident in a constituency. “Ordinarily resident” includes (a) a person who is away from his place of residence temporarily, (b) a person who is away from his residence because of service qualification (which means he is a member of the armed forces or an employee of the Government of India who is posted outside the country); and (c) a person who is away from his constituency because of his duties as a member of

Parliament or Legislature. A person shall not be deemed to be “ordinarily resident” only on the ground that he owns a house in a constituency.

- The Bill expands the definition of “ordinarily resident” to include any person who is away from his residence, temporarily or otherwise, for employment, education or any other purpose.

## PART B: KEY ISSUES AND ANALYSIS

### Definition of “ordinarily resident”

The 1950 Act provides for a number of exemptions to the term “ordinarily resident”, one of them being a person who is away from his place of residence temporarily. The Bill proposes to add another exemption to the term “ordinarily resident” by including any person who is away from his residence, temporarily or otherwise, for employment, education or any other purpose. The stated purpose of such an expansion is to allow Indian citizens residing abroad to vote.

However, neither the Act nor the Bill define the term “temporarily”, which implies that temporary absence can be of any duration. The Standing Committee recommended that instead of increasing the number of exemptions, it would be more appropriate if all the exemptions were provided in a single exemption clause.<sup>3</sup>

### Voting rights

There are two opposing views on the issue of allowing Indian citizens residing abroad to vote. One point of view favours it on the principle that individuals who retained their Indian citizenship while living abroad have a stake in the governance of the country.<sup>4</sup> Countries such as the U.S., U.K., Canada, Australia allow their overseas nationals to vote, subject to certain conditions. The other point of view does not favour such a move on the ground that since such persons are exempted from paying taxes in India, they should not be granted the right to vote.<sup>5</sup> In the U.S., while all citizens, irrespective of residency status, can vote, they are also subject to the U.S. tax regime.<sup>6</sup>

### Contesting elections

In order to stand for elections to the Parliament or the state legislatures, the candidate has to be registered as a voter in his constituency. Since the Bill proposes to allow Indian citizens who reside abroad to register as voters, they can also stand for elections. The Standing Committee made a distinction between the right to vote and the right to represent people and recommended that certain additional qualifications for contesting certain posts should be included to avoid extreme contingencies. The Citizenship Act, 1955 was amended in 2003 to allow for registration of persons of Indian origin holding foreign citizenship as “overseas citizens of India.” This registration entitles them to live and work in India, own property etc. However, the Act specifically denies these persons the right to vote. They are also excluded from holding positions of Members of Parliament or state legislatures, and the posts of the President, Vice President, Judge of the Supreme Court and the High Courts.<sup>7</sup>

#### Notes

1. This Brief has been developed on the basis of The Representation of the People (Amendment) Bill, 2006 introduced in Rajya Sabha on February 27, 2006. The Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Shri E. M. Sudarsana Natchiappan) submitted its report on August 4, 2006.
2. Article 326 of the Constitution of India.
3. 16<sup>th</sup> Standing Committee Report on the Representation of the People (Amendment) Bill, 2006, August 4, 2006.
4. Prime Minister Dr. Manmohan Singh’s speech at the Pravasi Bhartiya Divas, January 7, 2006.
5. “Indian Diaspora as a Strategic Asset,” Devesh Kapur, Economic and Political Weekly, February 1, 2003.
6. Internal Revenue Service, United States Department of the Treasury. (see <http://www.irs.gov/faqs/faq13-7.html>).
7. The Citizenship Act, 1955 as amended in 2003.

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