

# PARLIAMENT OF INDIA

## RAJYA SABHA

### DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

#### SIXTEENTH REPORT ON THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 2006.

(PRESENTED TO THE RAJYA SABHA ON THE 4<sup>th</sup> AUGUST, 2006)  
(LAID ON THE TABLE OF THE LOK SABHA ON THE 4<sup>th</sup> AUGUST, 2006)

RAJYA SABHA SECRETARIAT  
NEW DELHI  
AUGUST, 2006/ SRAVANA, 1928 (SAKA)

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#### COMPOSITION OF THE COMMITTEE (2005-06)

1. Shri E.M. Sudarsana Natchiappan — *Chairman*

#### RAJYA SABHA

2. Dr. Radhakant Nayak
3. Shri Tariq Anwar
4. Dr. P.C. Alexander
- \*5. Dr. Abhishek Manu Singhvi
- \*6. Shri Balavant *alias* Bal Apte
- \*7. Shri Krishan Lal Balmiki
- \*\*8. Shri Ram Jethmalani
9. Vacant
10. Vacant

#### LOK SABHA

11. Dr. Shafiqur Rahman Barq
12. Kumari Mamata Banerjee
13. Shri Chhattar Singh Darbar
14. Shri N.Y. Hanumanthappa
15. Shri S.K. Kharventhan
16. Shri Shailendra Kumar
17. Prof. Vijay Kumar Malhotra
18. Shri A.K. Moorthy
19. Shri Ram Chandra Paswan
20. Shri Dahyabhai Vallabhbhai Patel
21. Shri Brajesh Pathak
22. Shri Shriniwas Patil
23. Shri Harin Pathak
24. Shri Varkala Radhakrishnan
25. Smt. M.S.K. Bhavani Rajenthiran
26. Shri Vishvendra Singh
27. Shri Bhupendrasinh Solanki
28. Vacant
29. Vacant
30. Vacant
31. Vacant

#### **SECRETARIAT**

Shri Sham Sher Singh, Joint Secretary  
Shri Ram Behari Gupta, Deputy Secretary  
Smt. Sasilekha Nair, Under Secretary  
Shri Vinoy Kumar Pathak, Committee Officer

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\* Nominated on the 2<sup>nd</sup> June, 2006

\*\* Nominated on the 29<sup>th</sup> June, 2006

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### **INTRODUCTION**

I, the Chairman of the Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee to submit the Report on its behalf, do hereby present this Sixteenth Report of the Committee on the Representation of the People (Amendment) Bill, 2006.

2. In pursuance of rules relating to Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred<sup>\*\*</sup> the Bill on the 27<sup>th</sup> March, 2006, as introduced in the Rajya Sabha on the 17<sup>th</sup> February, 2006 and pending therein, to the Committee for examination and report.

3. The Committee considered the Bill in 5 sittings held on the 5<sup>th</sup> June and the 11<sup>th</sup>, 12<sup>th</sup>, 26<sup>th</sup> July and 2<sup>nd</sup> August, 2006.

3.1. In its sitting held on 5<sup>th</sup> June, 2006, the Committee heard the oral evidence of Secretary, Legislative Department, Ministry of Law and Justice on the Bill.

3.2. The Committee heard the views of the representatives of the Ministries of Home Affairs; External Affairs; Overseas Indian Affairs; Law and Justice; and Election Commission of India at its meeting held on 11<sup>th</sup> July, 2006.

3.3. The Committee took up clause-by-clause consideration of the Bill in its sitting held on 12<sup>th</sup> July, 2006.

3.4. The Committee further heard the views of the representative of Legislative Department and Department of Legal Affairs of Ministry of Law and Justice and the Election Commission of India on the clauses of the Bill in its meeting held on 26<sup>th</sup> July, 2006.

- 3.5. The Committee considered and adopted the draft Report on the Bill in its sitting held on the 2<sup>nd</sup> August, 2006.
4. In the course of its deliberations, the Committee has made use of the following papers/documents:-
- (i) Background note on the Bill received from the Legislative Department, Ministry of Law and Justice;
  - (ii) The Representation of People Act, 1950;
  - (iii) The Representation of People Act, 1951;
  - (iv) Written comments received from the Ministries of External Affairs, overseas Indian Affairs and Election Commission of India;
  - (v) Written Replies of the Legislative Department, Ministry of Law and Justice on the questionnaire on the Bill;
  - (vi) Memoranda received from a cross-section of the society;
  - (vii) Written comments of the Legislative Department, Ministry of Law and Justice on the views/suggestion on the provisions of the Bill submitted to the Committee in the form of memoranda; and
  - (viii) The comments/replies received from Ministry of External Affairs, Ministry of Overseas Indian Affairs, Election Commission of India and Ministry of Law and Justice(Legislative Department, Department of Legal Affairs), on the points raised by the Chairman and Members in the sittings of the Committee.
5. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

**New Delhi;**  
August 2, 2006

**E. M. SUDARSANA NATCHIAPPAN**  
Chairman  
Committee on Personnel, Public Grievances, Law and Justice

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## REPORT

The Representation of the People (Amendment) Bill, 2006 (**Annexure A**) seeks to amend section 20 of the Representation of the People Act, 1950 (43 of 1950) to make provision for enabling the Indian citizens, absenting from their place of ordinary residence in India owing to their employment, education or otherwise outside India, to get their names registered in the electoral rolls of the concerned constituency of their place of ordinary residence in India, had they been in India, so that they would be in a position to cast their votes in the elections to the Lok Sabha and to the State Legislatures in case they happen to be in their constituency at the time of the polls. The Bill seeks to make an enabling provision for these citizens to be able to contest the elections. The Bill has a legislative purpose so as to extend the right to vote to the Indian citizens residing abroad (colloquially known as “Non-resident Indians” *i.e.* NRI). The Government feels that conferring such a right will enable them to participate in the democratic process of elections in their motherland and will also boost their involvement in the nation-building. Accordingly, following the persistent demand of Indian citizens residing outside India and having considered all the aspects of their demand, the Government has proposed to make provision through this legislation by amending section 20 of the Representation of the People Act, 1950, as the Government considers that it is a legitimate right of the Indian citizens residing outside the country. In the opinion of the Government, it cannot be ignored that the contribution by way of foreign exchange by the citizens of India employed outside India is considerable and it is the duty of the Government to safeguard their interest and the sense of belonging and to protect their legitimate democratic rights.

2. In the Background note on the Bill, the Legislative Department, Ministry of Law and Justice has informed the Committee that:-

“the Legislative Department examined all aspects of the demand afresh in consultation with the other concerned administrative Ministries/Departments, namely, the Department of Legal Affairs, Ministry of External Affairs, Ministry of Home Affairs, Ministry of Overseas Indian Affairs and the Election Commission of India and decided to take steps to confer voting rights to the citizens of India absenting from their place of ordinary residence owing to their employment, education or otherwise outside India, by suitably amending the relevant law. It is, therefore, proposed to amend section 20 of the Representation of the People Act, 1950 (43 of 1950) so as to amplify the definition of ‘ordinarily resident’ contained therein for enabling non-resident Indian who have absented themselves from their place of ordinary residence owing to employment, education or otherwise to get their names registered in the electoral rolls of the concerned constituency of their place of ordinary residence in India had they been in India so that they would be in a position to cast their votes in elections to the Lok Sabha and to the State Legislatures in case they happen to be in their constituency at the time of polls.

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The amendment proposed in the Bill will entitle the eligible citizens of India who are absenting from their place of ordinary residence in India owing to their employment, education or otherwise outside India to get themselves enrolled in the electoral rolls and cast their votes when they are in their constituency and thus fully participate in the democratic process of nation building and uphold their pride and prestige as citizens of India. This will give the NRIs a sense of belonging to their motherland.

The detailed modalities of enrolment of the new category of electors would be worked out in consultation with the Election Commission at the time of amending the Registration of Electors Rules, 1960 after the proposed law is passed by Parliament.”

3. To achieve these objectives, the proposed amendment seeks to insert a new clause under Section 20 *ibid* -

“(1AA) A person absenting himself from his place of ordinary residence owing to his employment, education, or otherwise, outside India, whether temporarily or not, shall not, by reason thereof, cease to be ordinarily resident in India.”

4. In the Statement of Objects and Reasons appended to the Bill it is stated as under :-

“Section 19 of the Representation of the People Act, 1950 provides that every person who is not less than eighteen years of age on the qualifying date and is ordinarily resident in a constituency shall be entitled to be registered in the electoral rolls for that constituency. The meaning of ‘ordinary resident’ is laid down in section 20 of the said Act. At present, a person who is absenting from his place of ordinary residence by reason of his employment, education or otherwise outside India is not qualified to get his name registered in the electoral rolls and thus cast his vote in elections to the Parliament and to the State Legislatures.

There are a large number of citizens of India residing outside India due to their employment, education, *etc.* They have been persistently demanding for conferring them voting rights. Though the issue of conferring voting rights to the citizens if they are absenting from their place of ordinary residence in India owing to their employment, education or otherwise outside India has been receiving the attention of the Government for quite some time, yet the same could not be acceded to owing to the practical difficulties in enrolling them in the electoral rolls of the concerned constituency and allowing them to cast their votes outside India within the short span of time

available in the election process.

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**The Government has considered all aspects of the demand and it has been decided to enable the Indian citizens absenting from their place of ordinary residence in India owing to their employment, education or otherwise outside India to get their names registered in the electoral rolls of the concerned constituency of their place of ordinary residence in India.....”**

5. In the light of the above, the Representation of People (Amendment) Bill, 2006 was introduced in the Rajya Sabha on the 17<sup>th</sup> February, 2006. It was referred to the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 27<sup>th</sup> March, 2006 for examination with instruction to report within three months.

6. However, while considering the Bill, the Committee felt that it would not be possible for it to complete the consideration of the Bill and Report thereon to Parliament within the stipulated time, keeping in view the importance of the Bill requiring the vast range of discussions, issues involved and the consideration of memoranda received from a cross-section of the society. Accordingly, the Committee sought an extension of time upto the last week of the 208<sup>th</sup> Session of Rajya Sabha or the Monsoon Session of the year 2006 from the Hon’ble Chairman, Rajya Sabha, which was acceded to.

7. Keeping in view the public importance of the Bill, the Committee decided to invite views/suggestions from various individuals/organisations thereon. It, accordingly, authorised the Secretariat to issue a press advertisement for inviting views/suggestions.

7.1. In response to the press advertisement issued on the 20<sup>th</sup> April, 2006 which was published in the major English and Hindi dailies and vernacular newspapers all over the country on the 25<sup>th</sup> April, 2006, a number of representations/memoranda were received. The list of individuals and organisations from whom memoranda were received is at **Annexure B**.

7.2. The major points raised in the memoranda are as follows :-

(i) The proposed amendment clause is of very wide amplitude having far reaching effects and may create non-resident representation if the NRIs are allowed to contest elections as well.

(ii) People who abandon their motherland and go to other countries for education and employment may not be able to cast their votes in favour of the most suitable candidate, thus, conferring of such right may prove to be counter productive and will only add to the election complexities.

(iii) The proposed amendment is unjustified as the NRIs do not pay any tax and they will get the right to elect the Government.

(iv) It is a wrong notion that the right to vote to the NRIs will boost their involvement in the nation building, rather this futile action may jeopardize the purpose of nation building as the NRIs will not be aware of the political climate of Indian states.

(v) Such a right if granted, may jeopardize the security and sovereignty of the country and may result in catastrophe.

(vi) The proposed amendment does not sound logical and is against the principle of equality. Presently, at the time of revision of electoral rolls, the names of the persons who are not residing at the place of their ordinary residence continuously for 6 months irrespective of the fact whether they live outside India or within India, is deleted from the

respective electoral rolls. This will create a legal privilege in favour of the non-resident Indians.

- (vii) Foreign funds will start playing a negative role in Government formation especially in case of split verdict.
- (viii) On the face of it, it appears to be a noble idea to give voting right to the Indians living abroad but to give them the right to contest elections too appears to be uncalled for. They will enjoy all the privileges without any accountability.
- (ix) Voting rights should be restricted to those NRIs who pay Income Tax in India and have valid PAN numbers in India to obviate the instances of fraud and electoral malpractice
- (x) The Bill will not create any new category of voters as once they are back in India they can get their names registered in India. Further, they have to be physically present at the time of election to be able to cast their vote.
- (xi) A person who is residing outside whether temporarily or permanently cannot understand the needs of the people of his constituency. Hence NRIs should not be allowed to contest elections.
- (xii) If the right to vote is allowed to the NRIs, then the cost of canvassing and electioneering for the contestants will go up. Some mechanism needs to be devised for regulation of the right.
- (xiii) Before according the right to vote to an NRI, his past record should be considered to find out whether he has clean antecedents as there is criminalization of politics and politicisation of criminals. Further, clear provisions for the procedure of casting votes by the NRIs should be envisaged well in advance. It would be appropriate if such voters are provided with I-cards. Related rights, if accruing to them in any form must clearly be specified.
- (xiv) Average NRI has a poor knowledge and understanding of the representatives and the economic, political and social problems of different regions of their native country, therefore focusing on their right would be futile, instead the target should be the optimization of local voter turnout rather than NRI turnout.

7.3. The Committee forwarded the memoranda so received to the Legislative Department, Ministry of Law and Justice for their comments. The comments of the Department were received on the 11<sup>th</sup> July, 2006.

7.4. The Legislative Department was also forwarded a Questionnaire on the Bill, the replies to which were also received on the 11<sup>th</sup> July, 2006.

7.5. The Legislative Department, Ministry of Law and Justice in their written reply/comments on the Questionnaire/memoranda mainly focussed on the following points :-

#### 1. Summary of comments on the Questionnaire:-

(i) In a democratic set up, the citizens participate in the governance and this is achieved mainly through their legitimate political right to cast their votes. Under Article 326 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 the Constitution shall be entitled to be registered as a voter.

(ii) The privilege, to be registered as a voter, to the citizens is conferred by virtue of being a citizen of our country and can be availed of by a person moving from one place of his ordinary residence in India to another place of ordinary residence in India.

- (iii) The Representation of the People Act, 1950, at present do not allow persons who are not ordinary resident in a constituency in India to register himself as a voter. To remove the discrimination meted out to the citizens of India solely on the ground of non-residence, it is proposed to confer the right to register their names in the electoral rolls of their constituency in India had they been in the respective constituencies but for their proceeding abroad owing to their employment, education or otherwise.
- (iv) The voters list are prepared on the basis of territorial constituencies in India, it has become necessary that the citizens of India residing abroad owing to their employment, education or otherwise are allowed to enroll themselves in the electoral rolls in their respective constituency. This could be done only at the place of their ordinary residence in India on the legal fiction that they would have continued to reside at the place of ordinary residence in India but for their proceeding abroad.
- (v) The proposed amendment seeks to allow all citizens of India living abroad to enroll themselves in the electoral rolls of their respective constituency in India irrespective of their period of residence abroad so long as they continue to be citizens of India.
- (vi) The expression “otherwise” as used in the proposed amendment covers the case of dependents of persons employed or otherwise staying outside India. The reasons for residence is only illustrative and not exhaustive.
- (vii) It is proposed to insist for the passport and the permanent address in India shown in the passport as the condition to identify the constituency where the person concerned could get himself enrolled in the voters’ list.
- (viii) The amending clause is intended to allow enrollment of their names in the electoral rolls of the concerned constituency of their place of ordinary residence in India, had they been in India.
- (ix) They would thus be in a position to cast their votes in the election to the Lok Sabha and to the State Legislatures in case they happen to be in their constituency at the time of polls.
- (x) They may also be able to contest the Parliamentary and Assembly elections if they are otherwise eligible as per law.
- (xi) Conferring such voting right will enable them to participate in the democratic process of elections in their motherland and will also boost their involvement in nation building.
- (xii) The citizens living abroad will come to India along with their travel documents and passport and in case such person is found involved in anti-national or subversive activities, the security agencies of the country will keep a watch on them.
- (xiii) The proposal is limited to allowing them to cast their votes in the concerned polling booth earmarked.
- (xiv) There is no proposal to lay down any additional condition for contesting election in respect of the citizens of India living abroad owing to their employment, education or otherwise.
- (xv) Ministry of Overseas Indian Affairs have stated that USA, UK, China and Italy are some countries giving voting rights to their non-resident nationals.

## 2. Summary of comments on the Memoranda: -

- (i) The proposal is to provide an enabling provision in the law so that a citizen of India living abroad in case he happens to be in India will have the opportunity to cast his vote.
- (ii) Whatever provisions of law are applicable to the resident Indians would be equally applicable to the citizens of India living abroad also.
- (iii) A Member of Parliament or of a State Legislature who remains absent without leave for more than a particular period may lose his membership.
- (iv) After addition of name in the voting roll, the Indian citizen residing outside can cast his/her vote and also contest the election if he/she is otherwise eligible.
- (v) The right of a citizen of India to vote is a political democratic right and the elector has a right to choose amongst the contesting candidate as per his conscience and judgment.
- (vi) The name of the spouse of the citizens of India living abroad will be allowed to be added in the electoral rolls only if such spouse is a citizen of India.
- (vii) Income-tax is assessed for an assessee as per the Income Tax Act, 1961. The citizens of India living abroad will exercise their voting right as per the provisions of the Constitution of India and the election laws.
- (viii) The proposal is to involve the citizens of India living abroad to contribute in the process of nation building.
- (ix) Indian citizens who are living abroad only will be given voting rights under the proposed legislation. Constitution of India does not recognise dual citizenship of Indian citizens for the purpose of voting right.
- (x) The resident Indians have the right to get themselves enrolled at the place of their ordinary residence which can be only at one place. The law does not allow to have the names enrolled in two different places at a time. The resident Indians can get their names changed from one constituency to another at their place of ordinary residence.
- (xi) The proposal is to remove the discrimination meted out to the citizens of India solely on the ground of place of residence.
- (xii) It is not correct to say that if an Indian citizen living abroad is conferred voting right, it would affect our sovereignty.
- (xiii) The name of the citizens of India living outside India will be included in the voters list in India only if he continues to be a citizen of India and fulfils other requirements as per law.
- (xiv) Once elected they will be governed by the rules made by the legislature for its Members.
- (xv) The existing law is strong enough to check use of money power in elections. There are ceiling on election expenses.
- (xvi) The right to cast vote could be considered as one of the primary privilege of a citizen of a sovereign democratic republic. The elected representatives enjoy privileges and are bound by duties as are provided under the law and prescribed by the Houses of which a person is a Member.

- (xvii) Only those persons will be allowed to vote who continue to hold Indian citizenship. There will be no change in the other legal requirements in respect of a resident Indian and a citizen of India living out of India.
- (xviii) After getting the right to vote during elections the citizens of India living abroad will be treated equally with the citizens of India living in their constituency.
- (xix) The voting right has to be exercised by the citizens of India living abroad in person by coming to his constituency. This way of casting of vote is no doubt difficult but it is very simple and clear. It is not practically possible to allow them to cast their votes by proxy or postal ballot. There is no proposal to allow the citizens of India living abroad to cast their votes outside India.
- (xx) Having regard to the number of days a person has to work as a legislator, there is no need of laying down any condition of residence in India.
- (xxi) The average NRI may keep knowledge of representatives after getting the right to vote.
- (xxii) The errors in voting list may not become hurdle in conferring on the voting right to citizens of India living abroad. They will have clear identity by way of their passports.
- (xxiii) There cannot be any time limit regarding the stay of NRIs abroad. It depends on what type of visa/permit such NRI is holding while staying abroad.
- (xxiv) There is no need of any separate list state wise. Only the name has to be added in the electoral rolls.
- (xxv) No defence or security point is touched by extending the voting right to citizens of India living abroad.
- (xxvi) The citizens of India are living in various parts of the world. It is only because of the practical difficulties in arranging polling booth outside India safely and within the time limit, that the voting right would be exercised only in India.
- (xxvii) The facility is not for dual citizens. It is only for the citizens of India living abroad owing to their employment, education or otherwise.

8. The Committee took up the consideration of the Bill in its meeting held on the 5<sup>th</sup> June, 2006. It heard the presentation of the Secretary, Legislative Department, Ministry of Law and Justice in the same meeting.

8.1. The Committee further heard the views of the Ministries of External Affairs, Overseas Indian Affairs and the Home Affairs in its meeting held on the 11<sup>th</sup> July, 2006.

8.2. The Committee also heard the views of the Legislative Department, Ministry of Law and Justice and the Election Commission of India in its meeting held on the 12<sup>th</sup> July, 2006. The Committee also took up clause- by-clause consideration on the Bill in the same meeting.

8.3. Having regard to the wide implications of the proposed amendment sought to be effected through the present legislation, the Committee further held discussions with the Secretaries of the Department of Legal Affairs and the Legislative Department of the Ministry of Law and Justice and the representatives of the Election Commission of India in its sitting held on the 26<sup>th</sup> July, 2006.

8.4. The Secretary, Legislative Department, Ministry of Law and Justice in his presentation briefly traced the background of

the present Bill, the main provisions of the Act of 1950 as they exist, the reasons for the proposed amendments and amendment required in the Bill.

8.5. He explained that at present, the Non-resident Indian (NRIs) are not entitled to get their names enrolled in the electoral rolls for the reason that they are not ordinarily resident in India. There has been persistent demand for enabling the Indian citizens who are residing outside India, whether on employment, education or otherwise, to exercise their voting rights and the matter has been receiving the attention of the Central Government for quite some time. In a Writ Petition, being O.P. No. 19774 of 1998D filed in the Hon'ble High Court of Kerala by Shri K. Balachandran Nair, Chairman, Non-resident Indian Welfare Association, Kochi, the Court in its judgment dated the 14<sup>th</sup> October, 1998 directed the Union of India to consider the request of the Non-Resident Indians for inclusion of their names in the voters list and to grant them right to vote, within three months from the date of receipt of the judgment. The issue has also been raised frequently in both the Houses of Parliament.

9. During the course of the deliberation in the Committee, apprehensions were raised by the Members of the Committee on the complexities in the nature of the amendment sought through the present legislation particularly concerning the issues of elections to the higher offices under the Constitution, mode of enrollment of the NRIs' names, modalities relating to the casting of votes by the NRIs and the position of the resident Indians *vis-à-vis* the non-residents in the matter of registration of names in the electoral rolls.

### **An overview of the Right to Vote-Significance**

10. One of the most sacrosanct of all the civil rights is the right to vote. In the democratic process the right to vote is a powerful tool in the hands of the citizens by which they elect their representatives for governance of the country. In a country like ours which has elected to be a direct participatory democracy, the right to vote acquires a special significance.

### **Constitutional Right Conferred to the Citizens**

11. Article 326 of the Constitution of India stipulates that:-

“The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, 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.”

Evidently, under Article 326 of the Constitution of India the right to vote has been accorded a Constitutional status. Article 326 stipulates that “every person who is a citizen of India and who is not less than eighteen years of age and is not otherwise disqualified under the Constitution or any law made by the appropriate legislature, is entitled to be registered as a voter.” As per the provisions of the Article, non-residence, unsoundness of mind, crime or corrupt or illegal practices have been listed as disqualifications for registration as a voter.

### **Provisions under Indian Penal Code, 1860(IPC)**

12. The IPC also defines the candidate and the “Electoral Right” under Section 171A as:-

- (a) “candidate” means a person who has been nominated as a candidate at any election;
- (b) “electoral right” means the right of a person to stand, or not to stand as, or to withdraw from being a candidate or to vote or refrain from voting at any election.

### **Provisions under the Representation of the People Act, 1950**

13. Apart from the above provisions, the registration of electors for the parliamentary constituencies and for the Assembly and Council Constituencies and the qualifications and disqualifications for such registration, have been provided for in the Representation of the People Act, 1950. The Act also contains provisions for preparation of electoral rolls and the period of currency and revision of such rolls from time to time. Section 16 of the Act deals with the disqualifications for registration in the electoral rolls on three grounds namely (i) not being a citizen of India, (ii) unsoundness of mind and (iii) disqualification from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections. Section 19 of the Act prescribes the conditions of registration *viz.* (a) not less than eighteen years of age on the qualifying date and (b) “ordinarily resident” in a constituency. Section 20 of the Act deals with the term “Ordinarily resident”. Sub-section 1 thereof provides that “A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns; or is in possession of, a dwelling house therein.” Sub-section 1A further stipulates that “a person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.” Sub-sections (1B) (2) (3) (4) (5) and (6) contain exceptions to the term “ordinarily resident” and clause (7) refers to that if in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made in this behalf by the Central Government in consultation with the Election Commission of India. Thus, the Act only refers to the term “Ordinarily resident” and exceptions thereto but it does not exactly define the term. The definition of the term has been left to be decided by the Central Government in consultation with the Election Commission of India under section 28 (2) (a) through notification in the official gazette. Presently, under the directions of the Election Commission of India it has been left to the discretion of the Electoral Registration Officers to decide about the ordinarily resident status of a person desiring to get his name enrolled in the electoral rolls.

13.1. Accordingly, as per the provisions of the Constitution and the Representation of the People Act, 1950, to be registered as a voter a person has to be an elector also. The definition of elector has been specified in the Representation of the People Act, 1951 in section 2(1)(e) as “a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950”. Evidently, to be an elector and a voter, a person has to be a citizen of India necessarily apart from being above 18 years of age and an “ordinarily resident” in a constituency. Who all will come under the category of the citizens of India has been specified in the Citizenship Act, 1955 which elaborates on the other modes of acquiring Indian citizenship. A plain reading of all the existing provisions conveys that a person who has not acquired the citizenship of any other country continues to be citizen of India irrespective of the fact whether he is residing in India or elsewhere or unless he is otherwise disqualified or debarred from being a citizen of India under any law for the time being in force.

### **Direction of the Election Commission of India.**

14. Under Article 324(1) of the Constitution of India, the superintendence, direction and control of preparation of the electoral rolls for all the elections to the Parliament and the Legislature of every State is vested in the Election Commission.

14.1. An independent Election Commission has been established under the Constitution in order to carry out and regulate the holding of elections in India.

14.2. The Election Commission was established in accordance with the Constitution on the 25<sup>th</sup> January 1950. Originally, the Commission was headed by a Chief Election Commissioner, but later in 1989, and again in 1993, two additional Election Commissioners were appointed.

14.3. The Election Commission is responsible for the conduct of elections to the Parliament and the State legislatures and to the offices of the President and the Vice-President.

14.4. The Election Commission prepares, maintains and periodically updates the Electoral Rolls, indicating who is entitled to vote, supervises nomination of the candidates, registers political parties, monitors the election campaign, including candidates funding. It also facilitates the coverage of the election process by the media, organises the polling booths where voting takes place, and looks after the counting of votes and the declaration of results. All this is done to ensure that elections can take place in an orderly and fair manner.

14.5. There is only one general electoral roll for every territorial constituency for election to the House of the People (Lok Sabha) and the State Legislatures and no separate roll for different religious or ethnic or other groups are provided for. No person is ineligible for inclusion in any such roll or can claim to be included in any special electoral roll for any such constituency on grounds of religion, race, caste, sex or any of them.

14.6. Every person who is a citizen of India and who is not less than 18 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 disqualified under the 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 (Article 326 of the Constitution).

14.7. Parliament has been authorized by Article 327 of the Constitution to make provisions by law with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls. In exercise of such power, the Parliament has enacted the Representation of the People Act, 1950. Section 28 of the Representation of the People Act, 1950 has conferred the power to make rules on the union Government after consulting the Election Commission for carrying out the purposes of the Act. In exercise of this power the union Government has promulgated the Registration of Electors Rules, 1960.

14.8. The Election Commission has issued various directions under the Representation of the People Act, 1950 and the Registration of Electors Rules, 1960 from time to time. In addition, the Commission has also issued different instructions and clarifications. All the above constitute the framework of law under which the preparation and revision of electoral roll is carried out.

### **Provisions dealing with Voters and Electoral Roll**

15. Articles 325 and 326 of the Constitution deals with adult suffrage for elections to the Lok Sabha and to the Legislative Assembly of every State and accordingly every citizen who is not less than 18 years of age, provided he is not otherwise disqualified, has a right to be registered as a voter.

15.1. Article 327 contemplates legislation by Parliament with respect to all matters relating to or in connection with elections to either House of Parliament or to the State Legislatures including law relating to the preparation of election rolls.

15.2. Article 328 stipulates that in the field unoccupied by Central legislation, the State Legislatures are given power to make laws with respect to all matters relating to, or in connection with the elections to the House or either House of the State Legislature including the preparation of electoral rolls and all other matters necessary for securing the due constitution of each

House or Houses.

15.3. *In view of the above it is evident that the power relating to enactment on the preparation of electoral rolls is vested with the Parliament.*

15.4. Following legislations passed by the Parliament deal with the voters and the electoral rolls :-

- (i) Sections 13 to 23 of the Representation of the People Act, 1950.
- (ii) Sections 2(e), 3 to 6 of the Representation of the People Act, 1951.

15.5. Articles 84(c) and 173(c) empower the Parliament to prescribe some additional qualifications for candidate for elections besides being a voter.

In support of Article 84(c), Dr. B.R. Ambedkar, Chairman, Drafting Committee observed as under :-

“The object of the Article is to prescribe qualifications for a person who wants to be a candidate at an election.

Generally, the rule is that a person who is a voter, becomes entitled to stand as a candidate for election. In this Article it is proposed that while being a voter is an essential qualification of a candidate, a voter who wishes to be a candidate must also satisfy some additional qualifications as laid down in this new article.

I think the house will agree that it is desirable that a candidate who actually wishes to serve in the legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the house require experience, certain amount of knowledge, and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the house better than a mere ordinary voter might be.”

**(Constituent Assembly Debates, Vol. VIII, Page 89)**

15.6. Representation of the People Act, 1950 and 1951 enables a voter to be a candidate if he is 25 years of age.

**Real issues before the Committee**

**15.7. The Committee takes note of the fact that through the proposed legislation, the Government, has sought to enlarge the scope of “ordinarily resident” as provided in Section 20 of the Representation of the People Act, 1950, which is one of the requirement for registration as a voter so as to include those citizens also who are residing out of the country for the reasons of education, employment or otherwise. The Bill appears to be an enabling provision seeking to give effect to two things namely creating exemption from the requirement of “ordinary residence” in the case of the Indian residents residing outside India for certain reasons and subsequently enabling them to be registered as voters in the electoral rolls while they are still outside India.**

**What is the definition of “ordinarily resident”**

15.8. Sub-Sections 1A and 7 of Section 20 of the Representation of the People Act, 1950 provide as under :-

- “1A A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

7 If, in any case, a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made in this behalf by the Central Government in consultation with the Election Commission.”

Beside, Section 23 provides for inclusion of names in the Electoral Rolls which reads as under : -

“(1) Any person whose name is not included in the electoral roll of a constituency, may apply to the Electoral Registration Officer for the inclusion of his name in that roll.

(2) The Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other constituency, the Electoral Registration Officer shall inform the Electoral Registration Officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant’s name from that roll.

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Further section 28 states that:-

“(1) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matter, namely:-

(a) the determination of ordinary residence under sub-section (7) of Section 20.

\*\* \*\* \* \* \* \* ”

15.9. Election Commission has issued direction to the Electoral Registration Officers regarding the definition of “ordinarily resident” as under:-

“A person is said to be ordinarily resident in a place if he uses that place for sleeping. He need not be eating in that place and may be eating from a place outside. Temporary periods of absence from this ordinary place of stay can be ignored. It is not necessary that the period of stay should be continuous for any particular length of time and should be without any break. Temporary absence on account of duty or employment or even for pleasure should not be considered to interrupt the concept of ordinary residence. It is purely a question of fact whether a person is ordinarily resident at a particular place or not. Mere absence for some time will not deprive a person of the qualification of ordinary residence if he possesses ability to return and has intention to return to that place. Persons who have gone out of the country for business or employment should be treated as having moved out of that place. Mere ownership or possession of a building or other immovable property will not bestow on the owner, the residential qualification. On the other hand even persons living in sheds, and persons living on pavements without any roof are eligible for enrolment provided they are ordinarily resident in the sheds or on pavements in a particular area, do not change the place of residence and are otherwise identifiable.

Members of Parliament and the State Legislatures are entitled to be registered in their home constituencies notwithstanding the fact that they are away from their normal place of residence in connection with their activities as legislators. Persons having service qualifications and persons holding declared offices are also entitled to be registered in their home constituencies. But

they have to file applications in the prescribed forms.

Inmates of jails, hospitals, beggar homes, asylums *etc.* should not be included in the electoral rolls of the constituency in which such institutions are located as they are staying in these institutions only for a temporary period. However, eligible inpatients of sanitarium, leprosy, *etc.*, where they undergo prolonged treatment may be taken as ordinary residents of these areas where such sanitarium *etc.* are located.

Care has to be taken in the case of students living in hostels as all such cases cannot be dealt with in an identical manner nor can any uniform rule be laid down to cover all such cases. Generally speaking, the principles are that a person should not be enrolled at an address where he is staying temporarily; but on the other hand, he is to be enrolled at his normal place of residence even though he may be temporarily absent from there. Where an eligible student lives in a hostel or mess or lodge more or less continuously, going back to his normal home or place of residence only for short periods, it can be held that he is ordinarily resident in the place where the hostel or mess or lodge is situated. On the other hand, if he lives in a hostel or mess or lodge for short periods, for example, during the term and vacates the accommodation whenever he goes back to his native place, it may be held that he is living in the hostel or mess or lodge only temporarily for the purpose of his study and is not ordinarily resident therein.” **(From the website of the Election Commission of India)**

15.10. It has been ascertained that since 1<sup>st</sup> January of each year has been taken as qualifying date for inclusion of names in the electoral rolls, the Election Commission of India takes into account the fraction of one year for deciding a candidate's residency. The Commission during the meeting of the Committee held on the 11<sup>th</sup> July, 2006 stated as under : -

“Section 20 deals with the meaning of ordinary resident. The definition of ordinarily resident has been debated in many legal forums and courts. The fact remains that an all inclusive interpretation or definition has not been given so far. It is basically left to the judgement of the Electoral Registration Officer on the facts and circumstances of individual case. However, there are judicial pronouncements that act as a guiding principle in taking appropriate decision in the matter.

In this connection we have written to the Ministry also about multiple registration as well as getting themselves enrolled in their native places and in such a situation the Commission's view is that if the proposed enrolment of the NRI is sought to be achieved through these means, then there would be immediate request or demand for a similar kind of accommodation to be provided for those people who migrated within the country and working in places other than the native place. That will create a lot of confusion and will lead to a lot of electoral malpractices also. The Commission is of the view that the same objective can be achieved by making certain legal provisions in the law and making the NRIs eligible to be enrolled. It can be done by putting a clause in Section 19 of the same Act or it can be done by making some other appropriate provision so that they can be directly enrolled. The Commission is not opposed to the idea of enrolling them as voters. But in the Commission, we would like to submit that while taking decision in this matter, it is likely to have implications with regard to the resident Indians particularly those who are working outside or are migrating from one city to another or from one metropolitan city to another, that will certainly come to picture .....

15.11. In the circumstances the main issue for treating Indians residing abroad as residents or non-residents lies in the definition of “ordinarily resident” (Sub-section 1A of Section 20 of Representation of the People Act, 1950).

In *Union of India Vs. Dudhnath Prasad* (AIR 2000 SC 525), it was held that the term “ordinarily resident” would mean that a person must have an **intention** to stay at that place for a considerable long time and does not mean to have a flying visit or a casual visit.

15.12. Recently, there have been instances where the Election Commission of India removed from the electoral roll the names

of persons against whom a Non-Bailable Warrants were pending implementation for six months considering that for most of the period of one year those person were not ordinarily resident. *Section 14 (b) of Representation of the People Act, 1950 defines the qualifying date for the preparation and revision of electoral roll to be the 1<sup>st</sup> day of January of the year in which it is so prepared or revised.*

15.13. In *Lakshmi Charn Sen Vs. A.K.M. Hassan Uzzaman* (AIR 1985 SC 1233), it has been held that the directions of the Election Commission is not a law. In this connection the Hon'ble Supreme Court in *A.C. Jose v. Sivan Pillai* (AIR 1984 S.C. 921) had observed that the power of the Election Commission is subject to Acts passed by the Parliament and Rules made thereunder. Summing up the legal and constitutional position it observed the following :-

- (a) when there is no Parliamentary legislation or rule made under the said legislation, the commission is free to pass any order in respect of the conduct of election.
- (b) where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Art. 324.
- (c) where the Act or the Rules are silent, the Commission has no doubt plenary power under Art. 324 to give any direction in respect of the conduct of election, and
- (d) where a particular direction by the commission is submitted to the Government for approval, as required by the Rules, it is not open to the Commission to go ahead with implementation of it at its own sweet will even if the approval, of the Government is not given.

15.14. In *Mohinder Singh Vs Chief Election Commissioner* (AIR 1978 SC 851), the Apex Court while construing Article 324 of the Constitution of India observed as under :-

“.....there are two limitations laid on the Election Commission's plenary character in exercise of its power. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fair play, in action, is a most important area of the Constitutional order, viz., elections laws.”

15.15. In view of the above, it is evident that since the present laws have not defined the term “temporary absence” under Section 20 of 1950 Act, the Election Commission has drawn inferences by clubbing Sections 14(b) and 21(2)(b) of 1950 Act which read as under:-

“14(b) ‘qualifying date’ in relation to the preparation or revision of every electoral roll under this part means the first day of January of the year in which it is so prepared or revised.”

“21(2) the said electoral roll

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(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission.”

In view of the foregoing it is understood that the Election Commission orders revision of the electoral rolls in January of every year so as to include the names of the eligible voters who attain majority. But by content or intent, the law did not envisage to give scope for defining the term ‘ordinarily resident’ by splitting the period of stay in terms of ‘months’ of one year and thereby concluding that if the Non-Bailable Warrants are pending implementation against a person for six months, that person is treated as ‘not ordinarily resident’ for the purpose of removal of his name from the electoral roll.

This state of things exists due to the fact that neither the term “ordinarily resident” nor the term “temporary absence” have been defined precisely under the existing laws therefore, it has been left to the total discretion of the Election Commission of India to decide about the ordinarily resident status of a person. As part of the practice and procedure, under the direction and instruction of the Election Commission it is the Electoral Registration officer who actually decides about both the issue as per his discretion. Thus, in the process of preparation and revision of rolls thousand of names are deleted without proper verifications of the facts or simply on account of counting of period of absence in term of the months in a year.

### **En-Masse Deletion of Names from the Electoral rolls**

**16.0. The Committee observes that the practice of the Election Commission to revise the rolls, taking into account the 1<sup>st</sup> day of January of the year in which the revision is carried out, has caused a large number of electors names being deleted from the electoral rolls without any prior information. Most of the times, the electors come to know about this fact only when they go to vote. The Committee notes that this has been happening continuously for quite some time in spite of the clear provisions/direction existing with regard to the inclusion and deletion of names in the electoral rolls.**

Section 22 of the Representation of the People Act, 1950 provides:-

**“22. Correction of entries in electoral rolls -** If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency :-

- (a) is erroneous or defective in any particular,
- (b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or
- (c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry :

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.”

16.1. Further Section 21A of the Registration of Electors Rules, 1960 provides that:-

**“21A. Deletion of names.**—If it appears to the electoral registration officer at any time before the final publication of the roll that owing to inadvertence or error or otherwise, the names of dead persons or of persons who have ceased to be, or are not, ordinarily residents in the constituency or of persons who are otherwise not entitled to be registered in that roll, have been included in the roll and that remedial action should be taken under this rule, the electoral registration officer, shall—

- (a) prepare a list of the names and other details of such electors;
- (b) exhibit on the notice board of his office a copy of the list together with a notice as to the time and place at which the question of deletion of these names from the roll will be considered, and also publish the list and the notice in such other manner as he may think fit; and
- (c) after considering any verbal or written objections that may be preferred, decide whether all or any of the names should be deleted from the roll:

Provided that before taking any action under this rule in respect of any person on the ground that he has ceased to be, or is not, ordinarily resident in the constituency, or is otherwise not entitled to be registered in that roll, the registration officer shall make every endeavour to give him a reasonable opportunity to show cause why the action proposed should not be taken in relation to him.”

16.2. Clearly, the provisions listed above provide for following a definite procedure before taking action for removal of names from the electoral rolls. It has been specified in the Representation of the People Act, 1950 and the Registration of Electors Rules, 1960 that in case a person’s name is to be deleted from the electoral rolls, a notice of the action contemplated along with an opportunity of reasonable hearing is supposed to be given to the person. However, in actual practice, in spite of the directions and provisions existing, this procedure is not followed and the names of the persons are deleted from the electoral rolls without any notice to the aggrieved person, *suo-motu*. There have been numerous instances, complaints by the persons whose names have been deleted on account of “ordinarily resident requirement” arbitrarily. This, in fact, is a breach of the statutory provisions contained in the Act and the rules framed thereunder and an infringement of the constitutional right of the people. It is to be noted that neither the act nor the rules so framed have conferred unfettered powers on the Election Commission to delete the names of the people from the electoral rolls as a matter of fact. The provisions rather appear to be inclusive than exclusive *i.e.* the emphasis is on to include and retain the names of the electors as far as possible rather than to exclude their names on one or the other ground. This fact is further fortified by another provision under section 23 of the Representation of the People Act, 1950. The proviso to Section 23 stipulates that:-

“Provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.”

16.3. Evidently, all the provisions indicate certain pre-requisites to be followed by the Electoral Registration Officers before striking off a person’s name from the electoral rolls.

**17. After taking into consideration the views/suggestions received from the interested persons and the proposed amendment to the Principal Act, the Committee finds it necessary to address the issues, that arise out of the proposed amendment, which have been dealt with in the succeeding paragraphs:-**

- (a) **Whether, the proposed amendment intends to place the NRIs at par with the resident Indians with regard to registration as a voter;**

**(b) Whether, the amendment as a necessary corollary to the right to vote will make the NRIs eligible to contest the elections also without any additional conditions/criteria especially with regard to continued residence for a specified period, being imposed or without any corresponding changes under Articles 84(C) and 173(C) of the constitution of India or other existing relevant provisions;**

**(c) What other allied/incidental rights will accrue to the NRIs in case they are allowed to register their names in the electoral rolls;**

**(d) How the claim of the resident Indians, whose names are struck off from the electoral rolls on the ground of not being ordinarily resident if they migrate from their native place to some other place within the country for education/job, etc. will be satisfied; and**

**(e) What modalities have been envisaged for enabling the Non-Resident Indians to get themselves enrolled as voters; what shall be the mode of casting of vote by the NRIs.**

**(A) The Status of Resident Citizens, Recognition and Protection of Civil Rights of the People residing abroad.**

18.0. In the current era of globalization, it is seen that the people of a country do go to other countries for education, employment or various other reasons. There has been a recent trend world over that the countries, whose citizens are residing in other countries, have been acknowledging the existence of their citizens and coming forward to protect their interests in the country of their origin. In the process they have gone to the extent of protecting their social, economic, cultural and political rights. Some of the countries have granted dual citizenship to their citizens, some have recognised their voting rights and some have even given them the right to represent *i.e.* to contest elections in the country of their origin. The United States of America, United Kingdom, Canada, Germany, France, Italy, South Africa, Australia *etc.* are the countries that have recognised political rights of their citizens residing in other countries. However, they follow different practices in this regard and have imposed different conditions or laid down different criteria while allowing them the right to vote and to contest elections in the country of their origin. The Government of India also in the year 2003 and thereafter in 2005, in order to recognize rights of the Indian citizens living abroad, amended the Citizenship Act 1955 to grant dual citizenship to the Overseas Indians residing in 16 specified countries. A number of other facilities including fiscal concessions have been extended to the Indian nationals residing abroad.

**18.1. The Committee recognises the fact that the Indians living abroad take keen interest in the affairs of the country and are participating in the nation building through various methods and are also helping in mobilization of the resources for the country. The Legislative Department, Ministry of Law and Justice, while elaborating on the need for conferring the voting Rights to the NRIs, stated as under:-**

**“The Indian citizens living in foreign countries are taking keen interest in the affairs of the country. Their interests in various development schemes including their contribution in the mobilization of resources is commendable. The estimated number of persons absent outside India due to employment is 5 million and the conferment of voting rights will boost their involvement in nation building.”**

**18.2. However, the Committee feels that the proposed amendment, in its present form, seeks to create a very valuable political right in favour of the people living abroad. This has got far reaching consequences and may create some problems for a conservative society like India. During, the course of the deliberations on the Bill, the Committee came across the apprehension of, not only of the general public and other organisations but also of Hon’ble Members that**

such a right might create a privileged class of citizens vis-à-vis the resident citizens. As the Chairman of the Committee observed that "there is a strong feeling from certain sections saying that if you allow a person, who is all along living in a foreign country and coming here only at the time of election to vote, may create some disturbance in the environment of elections". Although, a citizen has been defined constitutionally and other categories of citizens in the Citizenship Act, 1955, the term NRI is not statutorily legally defined anywhere and is understood in common parlance. Though, the term Non-resident Indians has been referred to in the Income Tax Act, 1961 but only for the purposes of giving tax exemptions to them. Section 5 clause (6) of the said Act defines the term "not ordinarily resident" as under:-

**"an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or (b) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less."** However, the Committee opined for giving exemption which is of the political nature the term NRI needs to be defined precisely.

**18.3. The Committee takes note of the fact that the Government has amended the Representation of the People Act, 1950 frequently uptill now and all the amendments were necessitated by various circumstances. However in order to bring about an amendment as important as the Representation of the People (Amendment) Bill, 2006, it would have been more appropriate if its implications were comprehended beforehand. The Committee notes that Section 20 of the Representation of the People Act, 1950 already contains a number of exemptions to the term "ordinarily resident". The Chairman of the Committee observed on the issue as under:-**

**"I feel that we have to go through the entire exemptions which you have given. About seven exemptions were given in section 20. If one amendment can satisfy all other exemptions, why don't you bring a simple amendment by which you can carry out all the seven exemptions. Instead of increasing the number of exemptions and making the law complicated, you can make a simple amendment which can take care of the entire situation. This is one of the legal reforms we would like to suggest."**

**It would have been more appropriate if all the exemptions were provided at a single place in a single exemption clause.**

**18.4. Further, the Committee feels that the wording of the proposed amendment Bill would sound better in the following words:-**

**"A citizen of India, who has not acquired the citizenship of any other country, shall be deemed to be resident in India in any constituency of his choice notwithstanding his residence outside India whatever its duration."**

**18.5. Another Hon'ble Member observed if the proposed amendment clause is read along with the preceding sub-section of section 20 i.e. 20(1A) then, the proposed amendment clause appears to be anomalous to the previous sub-section as it appears to be a rider on the provisions of sub-section 20(1A) which itself stipulates temporary absence. The proposed clause is seeking to create a class of citizens amongst the temporarily absenting class itself without defining the term "temporarily absent" and by implication conveying that temporary absence can be of any duration.**

**18.6. The members of the Committee were of the view that the amendment appears to be creating a separate category of citizens rather than conferring voting rights to the Indian national residing abroad.**

**(B) Question of Contesting Elections by the NRIs**

**18.7. During the discussions, the question that came to be debated most, was the question of the NRIs contesting elections once being registered as a voter. The Members were of the opinion that the present Bill being a simple amendment would allow the NRI of any category to become an elector and in turn be eligible to contest elections for different posts in the legislatures. The words and phrases used in the amendment “otherwise” and temporarily or “not” were thought to be subject to wide interpretation enabling any NRI to have recourse to this route and automatically contest elections for any post in any legislature as under the existing constitutional and other provisions, a mere registration of NRI as an elector will make him automatically eligible to contest elections unless some criteria is laid down in their case by Parliament. The Committee notes that there are certain offices specifically mentioned in the constitution to which certain people are not entitled to contest viz post of the President, the Vice-President *etc.* Members observed that once the right to vote was granted, the NRI would automatically become entitled to the right to contest elections. Some of Members even made a distinction between the right to vote and the right to represent the people. The apprehensions of Members were not unfounded as the Chairman of the Committee observed that “allowing a person, who has been living in a foreign country for long, to come back and contest elections might lead to a situation where he is free to contest for the office of President or Vice President of India. This can lead to an extreme situation also and the other offices may become open for contest for which we need to find an answer”. The Committee desired the Ministry to take a stand on this particular issue and lay down some additional qualifications for contesting certain offices so that the extreme contingencies in future were prevented. The Committee further noted the fact that the citizenship Act, 1955 as amended in the years 2003 and 2005, has placed certain restrictions on the rights of the overseas Indians while granting dual Citizenship to them. Section 7B(2) of the citizenship Act, 1955 enumerates the rights to which an Overseas Indian citizen is entitled to. The section specifically excludes the rights under Articles 58, 66, 124 of the Constitution, section 16 of the Representation of the People Act, 1950 and sections 3, 4, 5, 5A and 6, of the Representation of the People Act, 1951. The above provisions clearly stipulate that an Overseas Indian citizen is not eligible for the posts of the President, Vice President, Judge of the Supreme Court and the High Courts and further he is not eligible to be registered as a voter or being a Member of the House of the people or the Council of States or be a Member of the Legislative Assembly or a Legislative Council. The Citizenship (Amendment) Acts of 2003 and 2005 specifically stated the rights of the overseas Indians and also the rights to which they shall not be entitled. The Representation of the People (Amendment) Bill, 2006 however does not appear to be specific in content even though it is specific in intent.**

**(C) The Question of incidental/allied rights accruing to the Non-Resident Indians**

**18.8. The Committee during the course of its deliberations on the Bill received divergent views from the people on the question of incidental/allied rights accruing to the Non-Resident Indian once they are allowed the right to vote. There cannot be any doubt that the Non-Resident Indians are one category of the people who are upwardly mobile in terms of financial and social strength. Even though, the Ministry of law and Justice (Legislative Department) categorically stated in their reply to the questionnaire on the subject that the proposed amending clause is intended to remove the disability arising on account of the requirement of ordinary residence so as to enable the Non-Resident Indians to get their names registered in the electoral rolls, the fact remains that the people in general are apprehensive of the social, financial and political influence of the Non-Resident Indians especially, the use of money power in the elections. As observed by the Chairman of the Committee that “so, you can see that in a particular territory, a voter can change the representative character of an individual or a territory, where lakhs of people are living. As a result of this provision, the choice of the territorial voters prevailed over the choice of the lakhs of**

permanent residents. So, a person sitting in Japan can change the fate of a particular constituency. A person who is living here with his electorate will not be elected but a person who is not living here will be elected”.

**(D) The problem of removal of names of the resident Indians in cases of migration within the country**

18.9. Under the provisions of the Representation of the People Act, 1950 and the Registration of the Electors Rules, 1960, a person has to be registered as a voter in the electoral rolls at one place only *i.e.* at the place of his ordinary residence. In this system the citizens, who migrate from one place to another place, face difficulty in retaining their names in the electoral rolls of their native place. There have been persistent complaints/instances of removal of the names from the electoral rolls in large numbers at the time of revision of the rolls without any intimation to the people concerned on the ground of non-residency. This is done on the basis of the physical verification only. In such a scenario, the public perception that such a right, if granted, to the NRIs will amount to discrimination against those citizens who are resident of one State but have migrated from one place to another place for education, employment or otherwise, cannot be ignored. Even, though the Registration of Electors Rules, 1960 provides for a notice and a reasonable opportunity to be heard, before a person's name is deleted, but in actual practice, it is not followed and their names are deleted *suo-motu*. This situation places the resident Indians to disadvantageous position.

**18.10. The Committee feels that when the provisions are there to be followed before deleting a person's name, it should be strictly adhered to in order to obviate even a single instance of surprise deletion. The Committee feels concerned that from almost all the quarters the complaints of deletion of names were continuously coming. The Committee feels that a person's name should not be deleted from the electoral rolls till the time it is ensured that his name appears in some other place. This could be done under the existing provisions itself as the proviso to section 22 and 23 of the Representation of the People Act, 1950 clearly stipulate a mandatory responsibility on the part of the Electoral Registration Officer to take pre-cautionary action before deleting a name from the electoral rolls. The proviso to Section 21A of the Registration of Electors Rules, 1960 dealing with deletion of names also envisage the same responsibility on the part of the Electoral Registration Officer. Thus, the onus is on the officer to ensure that an eligible person's name is included and retained in the electoral rolls and even if his name is to be deleted, it should be after proper verification of the facts and not in a casual manner.**

**(E) Modalities for enrollment and the mode of voting by the NRIs**

18.11. Once an NRI is allowed to get his name registered in the electoral rolls the issues relating to the procedure to be followed in registering an NRI's name in the electoral rolls and the manner in which an NRI would be facilitated to vote would necessarily arise. The Committee notes that as per the present practice followed by the Election Commission, in registering the names of the voters in the electoral rolls, the enumerators go door to door for the purpose, take down the details of the people living in a particular area and then an electoral roll is prepared. This is the normal procedure followed in respect of the resident Indians. For the NRIs, evidently, a different procedure is to be followed. The Ministry of Law and Justice, Legislative Department, in their reply on the issue, informed the Committee as under:-

“It is proposed to insist for the passport and the permanent address in India shown in the passport as the condition to identify the constituency where the person concerned could get himself enrolled in the voter's list.”

18.12. Another issue that received consideration of the Committee at length was the issue relating to the mode of casting of votes by the NRIs. The proposed amendment Bill in its present form envisaged the physical presence of an NRI, at the time of voting, in India. The Committee feels that such a condition would only lead to a minimum number of votes being cast by the

NRIs. On this matter, the Ministry of External Affairs were requested by the Committee to inform it of the existing practices followed by different nations with regard to voting rights and contesting elections by their overseas nationals. As per the information made available (**Annexure – D**) to the Committee - Australia, Canada, Germany, Italy, France, UK and USA allow their overseas nationals to cast their votes through postal ballot or through their Embassies/Consulates. A Kuwaiti national can vote but has to come to Kuwait for voting. South African overseas citizens may not be able to vote if they are availing work permit or have emigrated. As regards contesting in elections, overseas nationals of USA, UK, Kuwait, Australia, Canada, Germany, Italy and France can contest elections. Italian overseas nationals have separate seats earmarked for them formed in four Districts *viz.* (a) Europe (b) South America (c) North and Central America and (d) Africa, Asia, Oceania and Antarctica. Bangladesh and South African overseas national cannot contest elections.

**The Committee would like the Ministry to explore various modes/options available in order to achieve the purpose for which the Bill is intended *i.e.* enabling the NRIs to participate in the democratic process of the country in a meaningful manner.**

**18.13. In the light of the facts mentioned in the preceding paras, the Committee observes that it agrees with the letter and spirit of the amendment.**

**“However, as listed in the foregoing paragraphs, there are certain ambiguities that need to be addressed. Section 20 of the Representation of the People Act, 1950 contains seven exemptions. The Committee feels that instead of amending the Act repeatedly and making the provision ambiguous and complicated, it would be more appropriate if a comprehensive amendment is brought about in the Act containing all the exemptions. The Committee would like the Ministry to take note of the following observation of the Chairman of the Committee “section 20 stipulates one condition, ‘where a person ordinarily resident...’; this need not be there. It says, ‘a person absenting himself from his place of ordinary residence owing to his employment, education, or otherwise, outside India’ - - we may include ‘outside the State’ along with ‘outside India’ - - ‘whether temporarily or not, shall not, by reason thereof, cease to be ordinarily resident in India’. That definition is sufficient to look after all the exemptions, which were given in the other respective clauses.”**

**18.14. Under the existing provisions there are already four categories of citizens who have been exempted from the requirement of ordinary residence. They include (i) the armed forces (ii) the para military forces (iii) the armed police forces serving outside and (iv) the officials posted in the foreign missions. Now, through the proposed amendment another category *viz* the Non-Resident Indians is sought to be added to the category of exemptions. The Committee is of the considered opinion that instead of adding on to the list of exemptions it would be appropriate that the terms “ordinarily resident” and “temporary absence” are defined appropriately and comprehensively. Further, the ambiguity regarding the mode of casting of votes needs to be resolved and made uniform in case of all the exempted categories. Presently, the armed forces and the paramilitary forces have been granted proxy voting whereas the forces deployed outside the States and the officials deployed in the foreign missions have been given postal ballot voting. For the Non-Resident Indians it has been proposed that they have to be physically present in their constituency to be able to vote.**

**19. In view of the above, the Committee recommends for a comprehensive Bill on the subject containing all the details regarding the manner of enrollment of the Non-Resident Indians, the mode of voting and the conditionalities for contesting elections.**

**20. The Committee further invites Ministry’s attention to the issue of mass deletion of the names of the resident Indian’s from the electoral rolls solely on the basis of physical verification of the persons and calls for immediate**

**corrective and remedial steps in the light of the provisos to sections 22 and 23 of the Representation of the People Act, 1950 and under section 21 A of the Registration of Electors Rules, 1960.**

**21. Finally the Committee proceeds to adopt the clauses of the Bill as under :-**

**Clause 2**

**21A. Clause 2 of the Bill was adopted subject to the recommendations made thereon in foregoing paras of this Report.**

**21B. Clause 1, the enacting formula and title of the Bill were adopted without suggesting any amendments.**

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\* To be appended at printing stage.

\* [Published in the Gazette of India, Extraordinary Part-II, Section 2, dated the 27<sup>th</sup> February, 2006.](#)

\*\* Published in the Rajya Sabha Parliamentary Bulletin Part-II (No. 42997) dated the 28<sup>th</sup> March, 2006.

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