

RGICS



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RGICS LEGISLATIVE BRIEF

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**The Representation Of The People
(Amendment) Bill, 2017**

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KEY MESSAGES

- i. **Differentiates between citizens:** The proposed Bill violates the fundamental right to equality as it differentiates between internal and external migrants. The Government is planning to accord NRIs the right to vote when they are overseas. However, it is silent about any provision for the millions of migrant workers within India who are unable to exercise their franchise.
- ii. **Violates the concept of secret ballot and ‘free and fair’ elections:** Proxy voting violates the concept of secret ballot and ‘free and fair elections’¹ and may also create opportunities for the corrupt practice of purchasing of votes.
- iii. **Does not clearly define who can be a proxy voter nor is the process of proxy voting clearly defined:** The proposed amendment is silent on the overall process of proxy voting that will be implemented, including the eligibility criterion of a proxy voter, his/her voting powers, number of proxy voters to be nominated etc.
- iv. **In its current form the Bill fails to creates a secure mechanism that will not impact our faith in the electoral process and its democratic outcome.**

¹ The Conduct of Election Rules 1961 available online at <http://lawmin.nic.in/legislative/election/volume%202/conduct%20of%20election%20rules,%201961.pdf>

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PART I. BACKGROUND

**The Legislative Brief is based on the recent amendment introduced by the Cabinet under the Representation of the People Act, 1950 and the Representation of the People Act, 1951*.*

India has a large number of its citizens who live overseas, temporarily or permanently. According to the Ministry of External Affairs official website, as of December 2017, the total population of Overseas Indians consists of:

| Non-Resident Indians (NRIs) | Persons of Indian Origin (PIOs) | Overseas Indians ² |
|-----------------------------|---------------------------------|-------------------------------|
| 133,27,438 | 179,05,796 | 312,33,234 |

Following demands from various sections of NRIs with regard to participation in the Indian electoral process, **The Representation of the People Act, 1950** under section 20A, provided for registration and enrolment of overseas electors in their electoral rolls ("**The Representation of the People (Amendment) Act, 2010**).³ According to "**The Registration of Electors Rules, 1960**", the overseas electors can register themselves in the electoral rolls of their respective constituencies on the basis of self-attested copies of the passport and valid visa, and exercise their franchise in person on production of an original passport at the time of voting at the specified polling booths.

While this amendment allowed overseas voters to vote, the elections that followed this move by the government, saw a low voter turnout of overseas electors since the voters had to be physically present in the respective polling station in India on the day of polling, which was clearly not a feasible option for a large number of the population.

According to the Election Commission Report, during 2014 Lok Sabha Elections, the overall NRI registered elector list went up to 13,039 but only 8 of the total registered overseas voters actually voted.⁴

In view of the difficulties faced by the overseas electors in casting their vote, the Government considered the feasibility of facilitating voting by allowing voting by proxy, so that electors can exercise their franchise from their place of residence abroad. On August 3, 2017, based on a proposal by the Election Commission of India (ECI) the Modi government announced that it would permit proxy voting for registered NRIs.

² NRIs (Non-Resident Indians) are Indian Citizens who live in another country. PIO (Person of Indian Origin) means a foreign citizen (except a national of Pakistan, Afghanistan, Bangladesh, China, Iran, Bhutan, Sri Lanka and/or Nepal), who at any time held an Indian passport or either of their parents/ grand parents/ great grand parents was born and permanently resident in India as defined in Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the aforesaid countries (as referred above); or is a spouse of a citizen of India or a PIO. Whereas OCIs (Overseas Citizen of India) are non-Indian citizens who have a lifetime visa to live and work in India with fewer restrictions.

³ The Representation of People (Amendment) Act 2010 <http://pib.nic.in/newsite/PrintRelease.aspx?relid=69746>

⁴ Election Commission Report 2014 available at http://eci.nic.in/eci_main/archiveofge2014/11%20-%20State%20wise%20participation%20of%20overseas%20electors.pdf

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Since 2014, the total number of NRI's registered for voting has seen an increase and the total now stands at , 24, 348 (August 2017), which includes 23,556 from Kerala, 364 from Punjab and 14 from Gujarat.

While the registered voters still remains small some interesting data points that must be kept in mind while discussing the government's proposal for proxy voting include:

1. Historically it was seen that the largest number of NRI's belonged to the three states, Kerala, Punjab and Gujarat, which meant that if proxy voting was allowed only for overseas voters, it would largely impact the outcome in these three states.
2. However according to recent data from the Ministry of Overseas Affairs, the number of emigrants from the state of Kerala have seen a major drop in numbers (figures show that Kerala is no longer the state sending the most number of workers to GCC countries), and the total emigrant population from Bihar has surged from 36,493 in 2006 to 71,438 in 2011 while Uttar Pradesh saw a bigger jump, from 66,131 in 2006 to 1,55,301 in 2011.)⁵ With proxy voting constituencies from these states, especially those that have a large number of NRI population and saw small winning margins in the last national or state elections, are likely to see some impact in the electoral outcome.
3. Some of the common issues that need to be taken into consideration for proxy voting are:
 - **Enrolment issues:** Since a large number of emigrants from states like UP, Bihar, West Bengal are poor and uneducated labourers, difficulties faced during the online registration process
 - **Corrupt practises:** The migrants could fall prey to corrupt practices while casting their votes such as bribery.

⁵ <http://www.livemint.com/Politics/M6oY3mT1s533PaWO6VOaSP/UP-Bihar-pip-Kerala-Tamil-Nadu-in-bluecollar-job-rush-to.html>

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PART II: THE POLITICS

Where do various Political Parties stand on the issue?⁶

| PARTY | VIEWS |
|----------|--|
| BJP | Favours ‘proxy voting’. Wants a special drive by embassies to ensure registration of NRIs in the electoral rolls. Supports online voting on a pilot basis. |
| CONGRESS | Not in favour of ‘proxy voting’. Wants to ensure increased enrolment of overseas electors in the electoral rolls. Supports free and fair elections without pressure, voting facility in embassies by employing all procedural formalities. |
| CPI | The matter should be looked from all angles before Implementation. Consultation with State Parties essential |
| CPI-M | The present system of voting in the polling stations in the native place should continue for the overseas electors. |

⁶ Election Commission Report 2015 available at http://eci.nic.in/eci_main1/current/NRI%20Voting_Final%20draft23012015.pdf

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PART III. THE BILL

The Representation of People (Amendment) Act 2017 that seeks to extend the facility of ‘proxy voting’ to overseas Indians, on the lines of service voters, has been introduced in the Lok Sabha during the Winter Session of the Parliament 2017.⁷

- According to the provisions of Representation of the People Act (Amendment) Bill, 2017 introduced by Union Law Minister, overseas Indians, who are entitled to vote in India, can now appoint a proxy voter to cast their votes instead of being physically present in their particular constituency during elections to vote. For this purpose, the Bill proposes to amend Section 60 of the Representation of the People Act, 1951 to enable the overseas electors to appoint a proxy to cast the vote in an election on their behalf, subject to certain conditions to be laid down in the Conduct of Election Rules, 1961.
- Another provision in the Amendment Bill relates to spouses of service voters. As of now, an army man’s wife is entitled to be enrolled as a service voter, but a woman army officer’s husband is not, according to the provisions in the electoral law. The draft Bill proposes to replace the term ‘wife’ with ‘spouse’, thus making the provision gender neutral. Members of the armed forces, central armed police forces, personnel of state police forces posted outside their state and employees of the centre posted outside India are eligible to be enrolled as service voters. The wife of a service voter, if she is residing with him, is also entitled to be enrolled as a service voter in the constituency specified by that person. However, children and other relatives residing with a service voter cannot be enrolled as service voters, according to the Election Commission website.

⁷ The Representation of People (Amendment) Bill 2017 available on the Lok Sabha website at http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/222_2017_LS_Eng.pdf

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PART IV. CRITIQUE OF THE BILL

The Bill violates the very essence of democracy by differentiating between internal and external migrants: The Government is planning to accord NRIs the right to vote without being directly present, but internal migrants are not being given this option. India has over 40 times more internal migrants than overseas ones. But most of them cannot participate in the world's biggest display of democracy. While the Government seems to be in favor of proxy voting for the NRIs, it is silent about any provision for the millions of migrant workers within India who are unable to exercise their franchise. If they too are allowed to vote in the same manner, it will certainly have a large impact on the election outcomes especially in the poorer states. The government is also silent on amendments to the Panchayati Raj Act to enable internal migrants to vote in Panchayat and ULB polls.

Violates the concept of secret ballot and 'free and fair' elections: Secret ballot, or the ability to vote without fear of reprisal, duress or coercion as per Article 21 of the Indian Constitution, is central aspect of Indian democracy. However, the provisions of the Bill propose to amend Section 60 of the Representation of the People Act, 1951 to enable the overseas electors (approx 25 million) to appoint a proxy to cast the vote in an election on their behalf, and as the proxy process is difficult to secure the proposed amendment could threaten fair elections.

It is a matter of concern that the Government has not outlined a fool proof system which shall ensure that overseas voters will be exercising their vote in a free and fair manner so that there is no possibility of coercion or inducements by the employers and supervisors. (A majority of foreign migrants are poor workers often at the mercy of their employers who even take their passports into custody). Also, bribery and inducements of voters need to be strictly kept in check, and it may be difficult to do so with overseas voters. The table below lists the pro's and con's of proxy voting:

Pros and Cons of Proxy Voting

| PROS | CONS |
|---|--|
| NRI Citizens get to exercise their democratic right to choose their legislators | Overseas migrants being given the option to vote while internal migrants being denied this right is a matter of concern as the state seems to be differentiating between two types of citizens – internal and external migrants |
| Promotes democracy as it will not only improve voter participation but also allows citizens working in different countries to easily participate in the electoral process | The voting rights for poor migrant workers seem to have been overlooked as per the Election Commission report which rules out the rights for the poor interstate migrant workers to take part as voters in the electoral process of India, If a recent news article ⁸ on proxy voting is to be believed then women NRI voters' may have to choose a proxy from within their marital family. If the government does include this in the rules then it is alarmingly regressive step as it |

⁸ <https://www.outlookindia.com/website/story/proxy-voting-right-to-nris-will-help-modi-but-will-be-costly-for-india/300033>

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|---|--|
| | completely dilutes the right of every citizen to choose their representatives in the Parliament as per their choice |
| The Election Commission considers proxy voting as the most efficient and economically feasible voting process for overseas migrants | Risk of votes being sold and security of the proxy system are matters of great concern and may dilute the faith in the electoral process |
| It will bring a lot more focus on issues concerning the NRI community | |

Does not clearly define who is a proxy voter nor is the process of proxy voting clearly defined: The Bill needs to clearly define the criteria for a voter to be considered as a proxy on behalf of an overseas elector, whether there will be any change in the number of votes a proxy voter could cast and the total number of overseas electors, the proxy voter will be allowed to represent. The Bill also does not specify whether the proxy could be an immediate family member, kin, friend or representative of a political party.

Number of votes to be cast by the proxy voter: There is no mention on the number of votes a proxy could cast in an election which calls for a drastic amendment to the Representation of People Act. Currently the Act permits a person to cast only one vote and on introducing the new system, it would need to fix the number of votes a person could cast.

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PART V. CONCLUSION

The introduction of proxy voting might create a spate of problems in terms of implementation and increase the risk of malpractices in a democracy that currently prides itself on running the largest, most peaceful and secure electoral process in the world. While ensuring more citizens are able to participate in the process is something that the government must strive for, it is equally important that the government creates a secure mechanism that does not in any way reduce our faith in the electoral process and its democratic outcome. The Bill in its current form suffers from severe drawbacks and Members of Parliament must debate these issues and the government must address these lacunae urgently as each of them will impact the core of our democracy.

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PART VI. BACKGROUND INFORMATION/REFERENCE DOCUMENTS

- i. Representation of People (Amendment) Act 2010 http://eci.nic.in/eci_main/nri/rpa.pdf
- ii. REPORT of Committee for Exploring Feasibility Of Alternative Options for Voting By Overseas Electors
- iii. http://eci.nic.in/eci_main1/current/NRI%20Voting_Final%20draft23012015.pdf
- iv. Ministry of External Affairs, Government of India official website <http://www.mea.gov.in/overseas-indian-affairs.htm>
- v. Election Commission of India official website <http://eci.nic.in/eci/eci.html>
- vi. Government clears proxy vote move for NRIs” available at <http://indianexpress.com/article/india/government-clears-proxyvote-move-for-nris-4779759/> on 3 August 2017
- vii. PT, “Bill to extend proxy voting to overseas Indians in Lok Sabha”, available at *Livemint*, on 18 December 2017
- viii. TA Ameerudheen, “Proxy voting by non-resident Indians may not affect election results much in Kerala” available at <https://scroll.in/article/846429/proxy-voting-by-non-resident-indians-may-not-affect-election-results-much-in-kerala> on 9 August 2017
- ix. Ashok Swain, “Proxy Voting Right To NRIs Will Help Modi But Will Be Costly For India” available at <https://www.outlookindia.com/website/story/proxy-voting-right-to-nris-will-help-modi-but-will-be-costly-for-india/300033> on 10 August 2017
- x. SY QUARISHI “Why Allowing Proxy Voting for NRIs May Not Serve the Right Purpose” available at <https://thewire.in/165868/nri-proxy-voting/> on 10 August 2017
- xi.