

Your Right to Vote: Constitution and Beyond

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1. Background

Democracy and voting are inseparable phenomena. Citizens' right to vote is recognized as a democratic norm in international rights instruments including the countries' constitutions and statutes. Therefore, access to voting can be as significant as other substantive and fundamental rights of citizens. Thomas Jafferson affirmed in the 1776 Declaration of Independence, "Governments are instituted among men deriving their just powers from the consent of the governed"¹. However, at least who are recognized as citizens or 'the governed', has remained largely unsettled and under legal debates and legislative procedures². In this way, the right to vote is somewhat dependent on the status of an individual to be a full citizen³ of right granting country. Although, being full citizens of state requires more than the right to vote only, however, in the polity of nations, the right to vote is granted to individuals entitled to participate in state affairs to make sure the stipulation of citizens' other rights. This idea is taken from Aristotle's distinguishing between citizens from "aliens and slaves" by defining citizens as "[w]hoever is entitled to participate in an office involving deliberation or decision"⁴.

In case of full citizenship and inclusion, Judith Shklar persuasively argued that "the ballot has always been a certificate of full membership in society, and its value depends primarily on its capacity to confer a minimum of social dignity"⁵. Subsequently, denying right to vote is like denying the status of full citizenship and its fundamental rights. Further, accrediting citizens their right to vote entails citizens their full and equal citizenship with dignity. The dignity that is given through rights, inclusive of right to vote, grants citizens an equal and very high rank through privileges of participation into state affairs, because historically that honor was formerly reserved only for few privileged ones⁶. Now, this dignity of right to vote is recognized across the world based on "politics of universalism," where all sides agree in principle on "the equal dignity of all citizens"⁷. The right to vote is "fundamental political right" because it is "preservative of all rights" and therefore is the basis of democratic norms, values, and benefits that it owes⁸. Such democratic inclusion pertains to most powerful and successful social movements of this century because it was mobilized around demands for oppressed and marginalized people to be included as full and equal citizens, and because such inclusion accords them other rights, responsibilities, and privileges as being full citizen of state⁹.

Although the United Nations Charter does not include the word "democracy", nevertheless, the opening words of the Charter, "We the Peoples", reflect the fundamental principle of democracy, that the will of the people is the source of legitimacy of sovereign states and, therefore, of the United Nations as a whole. Approximately US \$1.5 billion each year are provided through UNDP alone to support democratic processes around the world, making United Nations one of the largest

providers of technical cooperation for democracy and governance globally¹⁰. Member States at the World Summit in September 2005 reaffirmed that “democracy is a universal value based on the freely expressed will of people to determine their political, economic, social, and cultural systems and their full participation in all aspects of their lives”¹¹.

World community widely recognized that representative democracy and civil liberties go hand in hand. However, representative democracies do not have inherent guarantees to protect civil liberties¹². In a representative democracy, citizens have the right to choose their representatives through vote, giving them the powers to legislate for the citizens. Generally, there are two forms of representative governments i.e parliamentary and presidential. In presidential form of democracy, the citizens vote for the presidents, and other chief executives directly, for example in countries such as France, and the United States. Moreover, in USA, France and Canada, citizens have a right to vote in referenda for important political decisions and legislation. In parliamentary form of democracy, citizens choose their representatives to be members of parliament directly, which then choose their chief executives indirectly such as Britain, India, and Pakistan etc. Simultaneously, in most representative democracies across the world, citizens are generally given the following democratic rights: the right to vote in elections and in referenda, the right to assemble and to speak on political issues and in some jurisdictions the right to vote for the executive and the judiciary. Despite all these rights, there is inherently no guarantees in democracy that the elected governments cannot curtail the rights and freedoms of its citizens. In fact, the concept of Western democracy evolved gradually. Earlier, there were limited rights given to only limited segments of society. For instance, the right to vote had not been accorded to women, slaves, Catholics and Jews in various countries across different times, and spaces¹³. In US, which is recognized as modern democratic country, women were granted their right to vote in 1920 in the 19th amendment to US constitution¹⁴.

Nonetheless, the governments elected on democratic norms are presumably obligated to protect citizens' rights and liberties. The reason being citizens' power to remove representatives from political offices. Democracy, through voting procedure, empowers citizens via their participation to choose representative for legislation and policy making to ensure their other guaranteed rights. In this way, citizens right to vote entails social accountability of elected representatives. Therefore, recognizing the significance of vote, the Inter-Parliamentary Union, which is the council of 151 members and works worldwide for parliamentary dialogue, peace and co-operation, and for the firm establishment of representative institutions¹⁵, adopted declaration in 1994 by devising the criteria of free and fair elections across member countries.

2. International & Regional Declarations and Treaties

Citizens' right to vote is recognized in several international treaties and declarations adopted by the United Nations and other regional countries, blocs or unions and treaty organizations such as The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the Council of Europe and the Organization of American States. One hundred and eight out of the 119 electoral democracies surveyed worldwide constitutionally provide guarantee to their citizens the right to elect their political representatives¹⁶. The analysis of some of these is as follows:

2.1 The Universal Declaration of Human Rights

The declaration adopted unanimously in UN General Assembly in 1948 on human rights is the 'Universal Declaration of Human Rights' (UDHR) and it carries the honor of being of utmost importance with regard to human rights efforts worldwide. The Article 21 of the UDHR provides the right of people to participate in government and enjoy universal suffrage¹⁷. It stipulates:

- 1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- 2) Everyone has the right to equal access to public service in his country.
- 3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

In this way, the article sets the base of democracy and by universal suffrage gives citizens their right of participation in democratic governments through voting in periodic and genuine elections held by secret vote or by equivalent free voting procedures. Due to non-binding nature of declaration, mainly its provisions are not accepted in *toto* as international law. However, some of the provisions of the UDHR are considered to have the status of binding international law due to these being also the components of international customary law¹⁸.

2.2 The International Covenant on Civil and Political Rights

Simultaneously, as against the UDHR, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) has a binding effect because there are 150 (to date) countries who have ratified this covenant¹⁹. The International Covenant on Civil and Political Rights, which was opened for signature on December 19, 1966, and entered

into force on March 23, 1976, incorporates almost all those civil and political rights proclaimed in the Universal Declaration of Human Rights 1948, including the right to non-discrimination. Therefore, a permanent treaty organ named 'The Human Rights Committee (HRC) was created by the ICCPR that monitors, studies, and reports on measures taken by member countries to give effect to the Covenant and interprets and clarifies the meaning of the covenant through consideration of "communications" from individuals claiming to be victims of violations of the covenant. Nonetheless, HRC does not retain practical power neither to enforce the covenant, nor of deterrence or of dispute-resolution. Article 25 of the ICCPR states²⁰:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country

One important restriction that covenant specifies is that it only provides citizens of state their right to vote. Although restricting the electorate only for citizens is lawful in many cases, nevertheless, the extended rule of restraining citizenship can be used as an intended means of social and political exclusion of people having distinct ethnicity and language²¹. Nonetheless, the HRC argues that the covenant not only protects the right of every citizen to vote, but also requires states and countries to take the measures necessary to ensure that citizens have an effective opportunity to enjoy the right to vote and particularly this guarantee ought to be assured by law²².

2.3 The European Convention on Human Rights and Fundamental Freedoms

In 1950, the members of the Council of Europe established the European Convention on Human Rights and Fundamental Freedoms²³, which is distinguished by its active international Court and is considered as effective complaints process for resolving of human rights matters²⁴. Currently, the Court is the final authority on human rights for the citizens of 47 member states and has power over 800 million people²⁵. Due to an effective enforcement mechanism, convention is the leading human rights and especially voting rights statute within the intra-European system.

In terms of the right to vote, the Court enforces Article 3 of Protocol 1 (P3-1) of the European Convention²⁶ states:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions, which will ensure the free expression of the opinion of the people in the choice of the legislature.

However, it has been claimed that the focus of Article (P3-1) has not been on individual rights and freedoms. Through its willingness to accept cases brought by individuals and in its judgments, the Court, however, has underscored that the right to vote is enjoyed by individuals. The Court ruled, in the case of *Mathieu-Mohin and Clerfayt v. Belgium*²⁷, that the particular language of P3-1 was not intended to exclude the right of the individual to vote, but:

To give greater solemnity to the commitment undertaken and in the fact that the primary obligation in the field concerned is not one of abstention or non-interference, as with the majority of the civil and political rights, but one of adoption by the State of positive measures to “hold” democratic elections.

In practice, it is noted that the Court takes relatively few cases regarding the violation of article (P3-1). The Court’s relative inactivity considers two interdependent matters related with universal suffrage: first, the Court provides opportunity to states to resolve issues on their own by giving rise to domestic remedies; second, the Court interprets that a “genuine” democratic system is a precondition to be a member of the Council, therefore Court actually has found only few cases of violations of suffrage disputes and where domestic remedies have been provided inadequate²⁸.

2.4 Organization of American States

The Organization of American States (OAS), founded in 1948 by the United States and 20 Latin American nations, is believed to be the oldest multilateral regional organization in the world²⁹. The aim of establishment was to serve as a platform for addressing issues of mutual concern among member states. In due course, the organization expanded to include all 35 independent countries of the Western Hemisphere (Cuba is currently excluded from participation). Simultaneously, organization has also shifted its areas of focus over time, and now, the OAS deliberates on four broad objectives: democracy promotion, human rights protection, economic and social development, and regional security cooperation³⁰.

With the spread of elected civilian governments during the 1980s, the Organization of American States (OAS) has become increasingly active in promoting representative democracy and the right to vote. Members' efforts to strengthen the OAS's mandate in this area culminated in 2001, when the OAS adopted the Inter-American Democratic Charter³¹. This Charter, a political document adopted by the 34 member states, affirms that the peoples of the Americas have a "right to democracy" and establishes that a fundamental element of democracy is "the holding of periodic free and fair elections based on secret balloting and universal suffrage"³². More importantly, the Charter creates a mechanism for a collective response to an unconstitutional interruption of the democratic order of a member state.

Many analysts assert that the OAS has played an important role in normalizing democratic governance in the region, while some scholars maintain that the organization is selective in its defense of democracy³³. The Charter empowers the OAS General Assembly to suspend the membership of the member state in question when there has been an "unconstitutional alteration" of the democratic legal order. The Charter also includes provisions for the OAS to observe elections in member states³⁴. In 2012, the OAS monitored electoral processes in six countries: the Bahamas, Belize, the Dominican Republic, El Salvador, Honduras, and Mexico³⁵. The objectives of OAS electoral observation missions include observing electoral processes; encouraging citizen participation; verifying compliance with election laws; ensuring that electoral processes are conducted in impartial, reliable, and transparent manner; and making recommendations to improve electoral systems³⁶.

In addition to the Charter, OAS member states have created an inter-American human rights system through adoption of the American Convention on Human Rights, which has been ratified by 25 of the 35 members of the OAS³⁷. The Convention establishes an Inter-American Court on Human Rights, based in Costa Rica, and an Inter-American Commission on Human Rights, based in Washington. In most respects, the voting rights language of the American Convention tracks with the language of the ICCPR³⁸. The American Convention, however, provides broader explanation of right to vote than ICCPR to which member states have adhered to. Article 23 of the Convention states that³⁹:

1. Every citizen shall enjoy the following rights and opportunities:
 - a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

- b) To vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and...
 - c) To have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only based on age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

In addition to the Convention, the member states of the OAS have adopted an aspirational document endorsing the right to vote: The American Declaration of the Rights and Duties of Man (1949) establishes the right to vote and also includes a duty to vote in the country in which one is a citizen. The article 20 of the declaration states⁴⁰:

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic, and free.

The Inter-American Commission on Human Rights play lead role in protecting the right to vote in the inter-American system⁴¹. In case of violations of citizens' right to participation, the Commission is empowered to accept individual cases, conduct on-site investigations, and prepare country reports. Assuming this role, during early 1990's, the Commission reported contraventions of the right of political participation in Mexican elections and the subsequent development taken by Mexican government in addressing these violations⁴². Nowadays, the commission is receiving roughly 1,500 such petitions annually and has instructed member countries to take precautionary measures to address the relevant issues⁴³.

2.5 Inter-parliamentary Union's Declaration

As described in first section, the Inter-Parliamentary Union is the council that comprises 151 member countries across the world and aims to work worldwide for parliamentary dialogue and for peace and cooperation among nations. For the firm establishment of representative institutions⁴⁴, the council adopted declaration in 1994 by devising the criteria of free and fair elections across member countries⁴⁵. The basic postulates of declaration union are analyzed as under:

The Inter-Parliamentary Council, *Welcoming* the expanding role of the United Nations, the Inter-Parliamentary Union, regional organizations and parliamentary assemblies,

and international and national non-governmental organizations in providing electoral assistance at the request of governments.

Therefore adopts the following Declaration on Free and fair Elections, and *urges* Governments and Parliaments throughout the world to be guided

1. Free and Fair Elections

In any State, the authority of the government can only derive from the will of the people as expressed in genuine, free, and fair elections held at regular intervals based on universal, equal, and secret suffrage.

2. Voting and Elections Rights

1. Every adult citizen has the right to vote in elections, on a nondiscriminatory basis.
2. Every adult citizen has the right to access to an effective, impartial, and non-discriminatory procedure for the registration of voters.
3. No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law.
4. Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.
5. Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.
6. Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.
7. The right to vote in secret is absolute and shall not be restricted in any manner whatsoever.

3. Candidature, Party and Campaign Rights and Responsibilities

1. Everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election. The criteria for participation in government shall be determined in accordance with national constitutions and laws and shall not be inconsistent with the State's international obligations.
2. Everyone has the right to join, or together with others to establish, a political party or organization for the purpose of competing in an election.
3. Everyone individually and together with others has the right:

- To express political opinions without interference;
 - To seek, receive and impart information and to make an informed choice;
 - To move freely within the country in order to campaign for election;
 - To campaign on an equal basis with other political parties, including the party forming the existing government.
4. Every candidate for election and every political party shall have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views.
 5. The right of candidates to security with respect to their lives and property shall be recognized and protected.
 6. Every individual and every political party has the right to the protection of the law and to a remedy for violation of political and electoral rights.
 7. The above rights may only be subject to such restrictions of an exceptional nature which are in accordance with law and reasonably necessary in a democratic society in the interests of national security or public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others and provided they are consistent with States' obligations under international law. Permissible restrictions on candidature, the creation, and activity of political parties and campaign rights shall not be applied to violate the principle of nondiscrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 8. Every individual or political party whose candidature, party, or campaign rights are denied or restricted shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.
 9. Candidature, party, and campaign rights carry responsibilities to the community. In particular, no candidate or political party shall engage in violence.
 10. Every candidate and political party competing in an election shall respect the rights and freedoms of others.
 11. Every candidate and political party competing in an election shall accept the outcome of a free and fair election.

4. The Rights and Responsibilities of States

1. States should take the necessary legislative steps and other measures, in accordance with their constitutional processes, to guarantee the rights and institutional framework for periodic and genuine, free and fair elections, in accordance with their obligations under international law. In particular, States should:

- Establish an effective, impartial and non-discriminatory procedure for the registration of voters;
 - Establish clear criteria for the registration of voters, such as age, citizenship and residence, and ensure that such provisions are applied without distinction of any kind;
 - Provide for the formation and free functioning of political parties, possibly regulate the funding of political parties and electoral campaigns, ensure the separation of party and State, and establish the conditions for competition in legislative elections on an equitable basis;
 - Initiate or facilitate national programmes of civic education, to ensure that the population is familiar with election procedures and issues;
2. In addition, States should take the necessary policy and institutional steps to ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial, or balanced mechanism for the management of elections. In so doing, they should, among other matters:
- Ensure that those responsible for the various aspects of the election are trained and act impartially, and that coherent voting procedures are established and made known to the voting public;
 - Ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers as appropriate;
 - Encourage parties, candidates and the media to accept and adopt a Code of Conduct to govern the election campaign and the polling period;
 - Ensure the integrity of the ballot through appropriate measures to prevent multiple voting or voting by those not entitled thereto;
 - Ensure the integrity of the process for counting votes.
3. States shall respect and ensure the human rights of all individuals within their territory and subject to their jurisdiction. In time of elections, the State and its organs should therefore ensure :
- That freedom of movement, assembly, association and expression are respected, particularly in the context of political rallies and meetings;
 - That parties and candidates are free to communicate their views to the electorate, and that they enjoy equality of access to State and public-service media;
 - That the necessary steps are taken to guarantee non-partisan coverage in State and public service media.

4. In order that elections shall be fair, States should take the necessary measures to ensure that parties and candidates enjoy reasonable opportunities to present their electoral platform.
5. States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation.
6. Furthermore, State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification.
7. States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers.
8. States should take the necessary measures to ensure that parties, candidates, and supporters enjoy equal security, and that State authorities take the necessary steps to prevent electoral violence.
9. States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.

3. Voting As a Right under Constitution of Pakistan

Constitution is “a body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed”⁴⁶. Like everywhere in the world, constitution of Pakistan is the highest level of law, which stipulates the general principles with which all law in Pakistan must be consistent. In regards to the elections and voting, the 1973 Constitution of Pakistan⁴⁷ provides general direction including guidance on the appointment process, duties and tenure for all members of the Election Commission, along with a framework for the allocation of seats, the timing of elections, and the manner by which election-related disputes are to be settled.

With respect to right to vote and political participation, Article 17 of the 1973 Constitution of Pakistan gives right to every citizen “to form association or unions.” It further states, “Every citizen, not being in service of Pakistan, shall have a right to be a member of a political party.” Since vote is ‘an expression of opinion’ therefore, it is guaranteed under Article 19 of the Constitution of Pakistan, 1973. The Article states, “Every citizen shall have the right to freedom of speech and expression ...” . Moreover, article 106 (2) of the constitution states categorically that:

A person shall be entitled to vote if—

- a) he is a citizen of Pakistan;
- b) he is not less than [eighteen] years of age;
- c) his name appears on the electoral roll for any area in the Province; and
- d) he is not declared by a competent court to be of unsound mind

Rights and Responsibilities of Voters in Pakistan

Rights:

1. Right to vote - anyone who is properly registered may vote in any election
2. Right to secrecy of voting - A voter may keep his or her vote and political party preference secret. No one may look at or ask to see a voter's ballot
3. Right to special assistance - A voter who is disabled or unable to read and/or write, may receive special assistance
4. Right to time off for voting - A voter may take off from work in order to vote
5. Right to spoil the ballot - Any voter may spoil a ballot and obtain another upon returning the spoiled one. Before returning the spoiled ballot, the voter shall conform to the procedures in order to retain secrecy of the vote
6. Right to vote by absentee ballot - Any person registered to vote may cast an absentee ballot
7. Right to challenge - On Election Day, any registered voter who is at the rightful polling place may challenge another voter's right to vote. Grounds for challenge are the person's identity and residency
8. Right to appeal challenge decisions - Any challenged voter may appeal the decision of the authorities.

Responsibilities:

1. Report problems or violations of election laws.
2. Ensure your address is current on the voter registration list.
3. Treat precinct workers with courtesy.
4. Protect the privacy of others
5. Obtain proper ID to verify your identity.
6. Study and know candidates and issues.
7. Inspect your ballot for accuracy.
8. Be on time; know your precinct's hours of operation.
9. Learn how to use the voting equipment properly.

10. Enjoy your voting experience!

4. Right to Vote – Connection with Other Democratic Rights and Liberties

As discussed above, the right to vote is to some extent dependent on the status of individuals to be a full citizen⁴⁸ of the state. The very reason being that being full citizens of state requires not only the right to vote, but also other fundamental rights that are accorded to full citizens. Moreover, as the right to vote granted to individuals entitles them to participate in state affairs, therefore, individuals through this right can ensure the government of their choice to ensure continuity of their other democratic rights and liberties. In addition, democracy provides the natural environment for the protection and effective realization of human rights⁴⁹. Similarly, the UN Millennium Declaration⁵⁰ identified the following fundamental values as among those essential to international relations in the twenty-first century:

- **Freedom:** Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression, or injustice. Democratic and participatory governance based on the will of the people best assures these rights.
- **Equality:** No individual and no nation must be denied the opportunity to benefit from development. The equal rights and opportunities of women and men must be assured.
- **Solidarity:** Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.
- **Tolerance:** Human beings must respect one other, in all their diversity of belief, culture, and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted.

Based on a careful review of the full range of sources mentioned in UNHCR's compilation for human rights⁵¹, following fundamental rights and liberties are closely associated with citizens' right to vote:

1. **The State Must Ensure Realization Of Human Rights:** Different international, regional and national constitutions, covenants, declarations and treaties agreed and ratified by states provide legal framework for states to ensure realization of

human rights for their citizens and regulation of violations of human rights not only by states themselves, but also by non-state actors and private individuals. Further, states must educate the population and public officials on human rights; and that states must remove barriers for citizens to the electoral process as their basic human right.

2. **The Rule of Law:** The rule of law is recognized as an essential condition for the fulfillment of human rights and representative democracy. Implicit in the international human rights treaties and instruments is the obligation of the states to uphold the rule of law to ensure other basic rights and liberties of citizens.
3. **Every Citizen has the Right to Participate in Public Affairs:** The right to vote gives rise to obligation for states to ensure citizens' participation in all public affairs of the government such as policymaking, legislation, budget, development, and international relations. The right of participation actually results from state's recognition of citizenship which is individuals' basic human right. Democratic governments are believed to best ensure citizens' fundamental human rights.
4. **Every Citizen has the Right to be Elected:** The right to vote accorded on being citizen of state also entails citizens' right to be elected. The right to be elected for governance may only be restricted based on an objective and reasonable criteria, which includes residency, age, mental incapacity, criminal conviction, conflicts of interest, minimum amount of support from potential voters, or a reasonable monetary fee.
5. **Freedom of Assembly:** Freedom of assembly is fundamental right of citizens in most constitutions of the countries, and also in ICCPR, UDHR, and other regional treaties and conventions. This basic citizen's right and liberty is recognized as essential to democratic elections, especially for candidates and political parties. Freedom of assembly may only be restricted under circumstances prescribed by law and necessary in a democratic society (e.g., in the interest of national security, public safety or for the protection of the rights of others).
6. **Freedom of Association:** 'Every citizen shall have the right to form associations or unions' is written in most constitutions and conventions. Freedom of association is critical in the context of political parties and campaign activities, and includes the ability to establish political parties freely. In a democratic society, freedom of association shall only be restricted by legal provisions.

7. **Freedom of Movement:** Freedom of movement is one of the basic citizens' rights and is an essential condition during the electoral process, in particular for political parties and voters, but also for political workers, and election observers. It includes the ability of citizens who are abroad to return (where the law allows) to their country to participate in elections. Any restriction on the right to freedom of movement must be proportionate to the interests it intends to protect.
8. **Right of Equality and avoidance of Discrimination:** Many treaties, conventions, and constitutions establish the right to equality and absence of discrimination in the exercise of human rights and fundamental freedoms for citizens. The right to vote on universal and equal suffrage establishes the citizenship which accords citizens the rights to enjoy equality before law and avoidance of any sort of discrimination against state services and opportunities of progress based on race, color, sex, language, religion, political or other opinion, national or social origin, and property⁵². This has been interpreted to mean that states cannot discriminate in the performance of public functions, and more broadly, that discrimination is prohibited in any field regulated and protected by the public authorities. In democratic countries, these rights give rise to equal opportunities to elect or to be elected independent of caste, color, creed and status. In addition, some treaties require states to take special temporary measures to ensure the *de facto* equality of men and women⁵³; to advance certain racial or ethnic groups; and in some cases to promote equality for groups that have been victims of previous discrimination⁵⁴.
9. **Freedom of Opinion and Expression:** The right to vote implicitly as well as explicitly determines ones' freedom of communication and information and ideas by voters, parties, and candidates. It may only be restricted under circumstances prescribed by law, and necessary in a democratic society, e.g., for the protection of the rights and reputations of others⁵⁵. Freedom of expression, therefore also protects the right to freely communicate ones ideas through speech, writing and vote. Moreover, as this freedom is for citizens and especially voters, they also have the right to criticize the policies of government for whom s/he might have voted.
10. **Right to Information:** Everyone has the right to seek and receive information⁵⁶. Constitutions of several countries also recognize this right of citizens⁵⁷. Although it is an important right itself, however, citizen's access to information is also a critical means of ensuring transparency and accountability throughout the electoral process. It can help electors to make accountable those that they elected. It also provides electors the opportunity to participate in the government.

11. Right to Security of the Person: The right to security of the person includes not only protection from arbitrary arrest, detention and exile, but in the context of the electoral process, includes the protection of voters, candidates and their agents, poll workers, and domestic and international observers from interference, coercion or intimidation⁵⁸.

5. International Best Practices Related to Right to Vote

This section is comprised of international best practices that ensure that the mechanism and other essentials of election system of democratic countries comply with the international law and with the international human rights guidance. Over 90% of the world's electoral democracies have included the right to vote in their constitutions⁵⁹. Depending upon the international conventions, covenants, declaration and treaties regarding human rights, following best practices are suggested to electoral democratic countries to follow in order to get best democratic governance.

1. System of Voting

First, there is need to chose the system of voting. The international best practice requires direct elections for the following legislative institutions⁶⁰:

- at least one chamber of the national parliament
- regional legislative bodies
- local legislative bodies
- any other body insufficiently involved in the legislative process so as to constitute part of the legislature

2. Districting

A cornerstone of democratic elections is to draw electoral units (voting constituencies) in a manner that ensures the equality among voters. This mechanism is essential keeping in mind the convenience and accessibility for voters, and administrative boundaries. However, following guidelines are provided for devising electoral units⁶¹.

1. Periodic redrawing or delimitation of electoral units considering population movements;
2. A high degree of public participation in the process of drawing boundaries;
3. Possible insurances of keeping uniform populations in electoral units; and

4. Review before every elections in order to minimize the effect of new boundaries on the election results and to avoid instability and voter confusion and disappointment.

3. Election Administration

The international best practice suggests that for conducting elections there is a need of permanent, independent, and impartial election administration such as election commissions/bodies. Established through a legal framework, the administrative structure should include a central or state election commissions with subsequent authority and responsibility over subordinate election commissions, if required. Accordingly, for each electoral unit (voting district), there should be a subordinate election commission. Furthermore, the need of intermediate election commissions depends on the electoral system and geographic and demographic factors unique to the country. Nonetheless, the lowest level structure of the election commission should be at the polling station level where process of voting occurs. There should be predefined legal relationship among the central election commission, lower election commissions, and executive government authorities.

The state or central election commissions are permanently active bodies and continually work to improve voter registers and take other actions that improve the election process. However, it is acceptable for lower election commissions/bodies, such as polling station committees, to be temporary bodies established before an election⁶². The method of selecting election commission members should be impartial, open, and transparent. The duties of election administration are:

- Trained staff for conduct of elections from voter registration to election procedure
- Updated registration of voters
- Voters education about the election processes, political parties, and candidates and coherent voting procedures
- Selection and maintenance of impartial election officials
- Ensures that the integrity of the ballot is safeguarded through appropriate measures to prevent unlawful and fraudulent voting
- Transparent process for counting and tabulating votes
- Fair certification of accurate final election results
- Addresses of complaints regarding conduct of elections and results

4. Suffrage Rights and Voter Registration

- 1) International human rights instruments clearly state that for providing right to vote to citizens, states must provide the guarantee of universal and equal suffrage to each citizen who reaches the age of majority, which should not be more than 18 years⁶³. However, the right to be elected may require an age beyond that of the age of majority as required by local law of the state.
- 2) Every person who has the right of suffrage must be allowed to exercise his/her suffrage right in a non-discriminatory manner irrespective of race, color, gender, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, disability, or other status.
- 3) Voter registration should be made easy and maintenance of registers should be conducted in a fully and completely transparent process. The procedure of establishing voter eligibility, required documentation should be clearly stated so that the process is fully transparent and easy approachable. Further, voters should be provided with unlimited time to submit requests for changes, entries, and deletions in the electoral rolls, except for the cases where it is necessary to finalize registers prior to an election.

5. Civic Education and Voter Information

Civic education and voter information is believed to be essential requirement for conducting free, fair and transparent elections. The election authorities are required to provide timely and correct information to voters concerning the election processes and also take necessary actions to educate voters prior to an election. The voter education and information should be regarding:

- 1) Candidates and political parties;
- 2) Voting procedures; and
- 3) Procedures for protecting electoral rights.

Moreover, the election authorities should ensure that the information should be provided in national as well as minorities' languages through local and national media.

6. Candidates, Political Parties, and Campaign Spending

- **Level playing field for all:** The election administration should ensure that all political parties and candidates are equal before law and, therefore, they should be given level playing field to contest elections in the electoral processes. Similarly, political parties and candidates seeking office must be permitted to run their offices irrespective of discrimination based on party affiliation or lack of party affiliation.
- **Ballot Access:** the best practice is to ensure the grounds for rejection of a registration application on objective criteria clearly stated in law. There should be sufficient monetary deposits to discourage frivolous political parties and independent candidates; however, it should not be so much as to prevent legitimate political parties or independent candidates from obtaining ballot access. There must be clear deadlines for the registering authority to approve or reject registration requests along with opportunities of correcting minor deficiencies within a reasonable amount of time after rejection; and for appeal to a court of law after final rejection of registration.
- **Public funding of political parties and campaigns:** Public funding should be provided to political parties and candidates based on equal treatment before the law. In addition, election administration should ensure that state resources should not be misused for campaign purposes of specific political party and all state resources used for voter information, education, media campaign, buildings, property, and other resources must be made available to all electoral participants based on equal treatment.
- **Private funding of political parties and campaigns:** As per the best practices, there is election authorities are permitted to impose reasonable limitations on the amount of private expenditures on election campaign by candidates depending upon the type of election and specific factors pertinent to geography and conditions of country. It is also believed that unreasonable restriction or limitation on private funding is a violation of a person's rights to free association and expression. It is also acceptable to limit the total amount of expenditures of the electoral contestants in a given campaign. However, electoral contestants should be permitted to expend sufficient resources to convey a political message.

7. Freedom of Expression and Media Access

- (a) In order to ensure level playing field for all political parties and candidates, they should be given equal access to state controlled media. In this way, voters can be better informed of political ideologies, manifestoes, views, and goals of competent parties and individuals in a fair and impartial manner. This covers all forms of the media, including radio, television newspapers, and evolving forms of media such as the internet.

- (b) Under the best practice, imposing restrictions and limitations on free expression during election campaigns are regarded as violating the international human rights law. Furthermore, such types of prohibitions also violate free speech guarantees provided in countries' constitutions. Nevertheless, this practice is not applicable to put bar on inflammatory speeches inciting another person to violence. Similarly, this standard also does not prohibit reasonable restrictions related to opinion polling, exit polling, or the reporting of results.

8. Balloting

1. **Secrecy of the Vote:** From all human rights' instruments, secrecy of ballot is viewed as essential and the best practice. It is desirable to keep secret the marked ballot of a specific voter during poll time until counting. However, this prohibition does not apply to a person legally authorized to assist a blind voter or a voter requiring assistance due to physical infirmity. It is the responsibility of election administration to ensure adequate facilities of security, space, and time necessary to cast their vote in secret.

2. **Voting Procedures:** The democratic states are required to ensure peaceful, easy, and smooth voting procedures aided with other mechanisms to prevent fraudulent or double voting. The election administration shall have the responsibility to safeguard the ballots before, during, and after voting.

3. **Mobile Voting:** The states can facilitate their voters who are abroad on business or an entire community such as refugees and/or displaced persons with mobile or postal ballots. Mobile voting is permissible to a single voter homebound due to physical incapacity, or to an entire community, such as a hospital or institution like military. Postal ballots can be provided to government servants.

4. **Counting of Ballots:** The election administrations of the states shall devise mechanism of counting ballots in tabulated form to determine the winner of elections in a transparent manner. Whether the counting is done manually, mechanically, or through electronic count, there must be procedures for audit and inspection to ensure accuracy and reliability. Further, there must also be procedures to allow objections to counting procedures. Simultaneously, the best practice is to allow observers to make or be given copies of all protocols, tabulation, and tally sheets of the results.

5. **Publication of Counting/Tabulation of Results:** The best practice is to make available publicly the published tabulated results of elections with all types of documents such as election protocols, tabulation and tally sheets, and decisions determining or affecting election results. Such electoral documents should be publicly posted at all levels of election administration, including polling stations, municipal, state and central election commissions levels. Complete tabulated form of overall results, including statement of counts of the voting at each polling station, should be posted at each election commission. These detailed tabulations should also be published in state owned or controlled print media as soon as the results are certified.

9. Election Observation

In democratic elections, transparency of the electoral process is recognized as most essential in order to have free and fair elections. Therefore, to ensure transparency in elections, the best practice is to provide full access to national and international elections observers, representatives of the media, political parties and candidates without any restrictions. Furthermore, observers should be allowed to observe the entire election process, election related documents and information and to publish report.

10. Complaint Mechanisms and Dispute Resolution

International human rights instruments and citizens right to vote require that there must be effective procedures related with remedies addressing the violations of citizens' electoral rights. The best practice requires that the complaint mechanism of elections include the following rights for a person complaining of violation of the suffrage right⁶⁴:

- The right to present evidence in support of a complaint
- The right to a public hearing on the complaint
- The right to a fair hearing on the complaint
- The right to an impartial tribunal to decide the complaint
- The right to transparent proceedings on the complaint

- The right to an effective remedy
- The right to a speedy remedy
- The right to appeal to an appellate court if a remedy is denied

6. Voting For Overseas and Prisoners

Voting Right for Overseas:

In the age of global world with ever-increasing migration, the spread of democratic norms, political ideas, and governance standards throughout the world have all contributed to an increasing interest in voting rights for individuals residing overseas such as workers, diplomats, armed forces, refugees, and other people who are temporarily or permanently absent from their own country. Although, many countries provide the constitutional guarantee to all citizens about their right to vote, however, simultaneously several countries are unable to provide their citizens with this right mainly because of a lack of procedures and facilities enabling them to exercise that right⁶⁵.

It is estimated that the international migrants have increased over the last decade from an estimated 150 million in 2000⁶⁶ to 214 million persons today and migrants would constitute the fifth most populous country in the world⁶⁷. Since World War II, different professional groups, like students, tourists and other potential external voters have also increased in great many numbers. Right to vote to people overseas has converted to a political agenda in many countries of the world. Historically, small number of countries had practiced this right for many years; for instance, Iceland allowed sailors and fishermen an external vote as early as the beginning of the 20th century⁶⁸. However, in other oldest established democracies, migrants were not granted the right to vote until the 1980s or the 1990s⁶⁹.

The right to vote is usually accorded to citizens. However, the exclusion or inclusion of people into citizenship varies in different countries. Even some countries, such as New Zealand and Sweden, extended the right to an external vote to residents who are not citizens by referring it as the 'franchise for foreigners'⁷⁰. The statistics shows that 115 countries and territories throughout the world currently allow voting abroad. Some two-thirds among these countries accord right to vote to all their citizens living overseas, however, one-third countries have imposed partial restrictions on the right to an external vote. Among these 115 countries, 28 countries belong to Africa, 16 countries to the Americas, 41 to Europe, 10 to Oceania and 20 to Asia⁷¹. On the other hand, the practical implementation of external voting has been experinece as quite complicated

due to different factors involved such as the number of electors, their locations, the distances involved and the complexity of the voting system in place⁷².

Countries have adopted different methods for voting abroad. Some options are more costly than others, while some offer a more secure or faster voting channel. Institute for Democracy and Electoral Assistance (IDEA, 2007) have identified the four main voting options described below⁷³.

- (a) **Personal voting:** In this procedure, in order to cast his or her vote, the voter has to go to a particular place set as election booth in person. This can be a place in diplomatic mission and it is most widely used for casting an external vote in countries like Afghanistan, Argentina, Hungary, and South Africa.
- (b) **Postal voting:** Sometimes postal voting is the facility given to voters for casting vote within country as well as from abroad. In this procedure, the voter fills out the ballot paper at a place he or she chooses and then sends it by post to the home country. Sometimes the voter needs identification and witnesses to use this facility. Postal voting is the single voting method normally used in countries like Canada, Jersey, Norway, Mexico, and Switzerland.
- (c) **The proxy vote:** In this method, a citizen or voter living overseas is given right to choose a proxy who then casts the vote for the voter at a polling place in the home country, or abroad. All but four countries that provide this method provide it in combination with personal voting or postal voting.
- (d) **Electronic means:** Although currently world is passing cyber global world, where the use of internet and electronic devices has become ordinary fashion, however the electronic voting is new phenomenon through which the voter may use the Internet, personal digital assistants (PDAs), telephones or a mobile phone to cast his or her vote. Electronic voting from abroad is allowed in country like Estonia on pilot testing.
- (e) **By fax:** Two countries i.e., Australia and New Zealand allow their external voters to vote by fax, in certain circumstances and if specially required.

Voting Right for Minorities:

International human rights instruments recognize that all human beings are equal, and therefore they should be treated on the principles of the dignity and equality inherent in

all human beings. Similarly, the article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, requires the member states “to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, and ensure (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;”⁷⁴.

Similar type of guarantee is also available in article 2 (1) of International Covenant on Civil and Political Rights⁷⁵. According to which, “each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Before such guarantees came into force on international, regional and national levels, there has been a long history of disenfranchisement of minority races in some parts of the United States. In this context, providing voting right through the ‘Voting Rights Act 1965’ is recognized as a landmark in U.S. civil rights legislation⁷⁶. The 1965 act has been believed to help prevent discriminatory voting practices based on distinct identity. In this background, section 5 of the Voting Rights Act, requires that while framing new voting rules, discrimination against minority voters must not occur by purpose or in effect.

Framework Convention for the Protection of National Minorities stipulates and urges states to ensure that national minorities are effectively represented in political participation⁷⁷. The political participation includes the right to vote, right to be elected, right to participate in public affairs, and form political parties without discrimination⁷⁸. In the light of human rights instruments, taking care of minority groups is considered as necessary constituent of a system of democratic Elections. However, the political participation of national minorities can be ensured through active and passive means⁷⁹. Through passive mechanism, barriers to political participation of minority can be removed through constituency delimitations and quorum regulations. Similarly, essential representation of minorities may also be facilitated through active means by taking positive measures, such as:

- Printing ballots and other important public information in both the official language(s) and the language(s) of national minorities;
- Reserving or allocating positions in all the branches of government, including the legislative, judicial, executive, and administrative branches;

- Setting up single-member districts;
- Developing proportional representation systems;
- Allowing preference voting by letting voters rank candidates in order of choice; and
- Lowering numerical thresholds for representation in the legislature.

Votes for Prisoners:

The right to vote for prisoners has been a debateable topic because of the nature of this subject. In UK, great many people believe that giving criminals the right to have a say in how the nation is governed is 'morally wrong' policy, therefore, in UK, there is a complete ban on prisoners' voting right⁸⁰. Nevertheless, there are different approaches adopted by different democracies regarding the right to vote for prisoners. Currently, sixteen European countries including Denmark, Spain, Sweden and Switzerland permit all prisoners to vote without restriction⁸¹. On the other hand, some other countries determine the right to vote for prisoners depending upon either on the length of their sentence or the type of offence they have committed. For example, in France, judges under certain circumstances decide to allow or disallow prisoners their right to vote. Similarly, in Australia and New Zealand, the length of sentence determines voting rights. General Comment 25 to the ICCPR clarifies that "[i]f conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence"⁸².

In 2002, the Canadian Supreme Court in the significant ruling in *Sauve (2)*, stated that denying the vote to prisoners "countermands the message that everyone is equally worthy and entitled to respect under the law"⁸³. Similarly, in 1999 the South African Constitutional Court accorded all prisoners their voting rights declaring, "The vote of each and every citizen is a badge of dignity and personhood. Quite literally it says that everybody counts"⁸⁴.

In addition to the above-mentioned principled arguments by the courts about legal status and debates of the right to vote for prisoners, there are a number of important practical reasons why prisoners should be given the right to vote:

- First, providing prisoners with right to vote may be helpful for their rehabilitation. Voting also encourages an interest in current affairs and life beyond the prison, which serves to aid prisoners' reintegration into the community.
- The involvement of prisoners into political participation helps to ensure the wellbeing of prisoners. Moreover, it may also focus on prisoners' issues seriously

such as prison overcrowding and abuse by prison staff and other prisoners, health and hygiene conditions of the prisons.

- Mostly it is seen that minority ethnic groups are unreasonably affected for often being disenfranchised because sometimes they happened to be in prisons more than the majority groups of the nations. Recent figures show that black men are eight times more likely to be barred from voting than their white counterparts due to their overrepresentation in the prison population⁸⁵. Therefore, if prisoners are not allowed to participate in elections, this could result into significant damages to the political representation of minorities.
- Further, as one of the purposes of putting criminals into prisons is to rehabilitate them to live into normal life when their prison tenure is completed. Therefore, the loss of the right to vote is not an effective deterrent from crime. However, to get them involved through political participation may encourage them to undertake efforts to restore their full liberty with the concurrent social and political freedom of movement.

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