

# Right to Vote: No Postal Ballot for NRI Voters in West Bengal Elections

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The rights of NRIs to be able to more meaningfully participate in the democratic electoral process has been a longstanding demand. The Election Commission had proposed electoral reforms to the government to extend the ETPBS facility, so far available only to service voters, to eligible overseas Indian voters as well. Last year EC said that it would roll out the facility in West Bengal, Tamil Nadu, Kerala, Assam and Puducherry elections.

**In news:** No Postal Ballots for NRIs in Upcoming State Elections: CEC

**Placing it in syllabus:** Law & Policy

**Dimensions**

- NRI:
- Proxy Voting
- Proposal of Postal Ballot and its advantages
- Right to Vote a Constitutional Right (Article 326)
- SC ruling on Right to Vote
- Forms of Voting and Persons it is given to

**Content:**

**NRI:**

- A large number of Indian citizens live abroad while studying, working or for other reasons.
- Until recently, these non-resident Indians (NRIs) were not registered to vote here due to the law, which required only an “ordinarily resident” citizen within

the territorial limits of a constituency is eligible to be registered as a voter.

- Presently, an overseas elector is not issued an EPIC .
- As of now, an NRI can vote in the constituency in which her place of residence, as mentioned in the passport, is located.
- NRI can **only vote in person** and will have to produce his/her passport in original at the polling station for establishing identity.

## **NRI Statistics**

- According to a UN report of 2015, India's diaspora population is the largest in the world at 16 million people.
- Registration of NRI voters, in comparison, has been very low: a little over one lakh overseas Indians registered as voters in India, according to the EC.
- In the 2019 Lok Sabha elections, roughly 25,000 of them flew to India to vote.

## **Proxy Voting**

- Proxy voting is a type of voting whereby a member can delegate his or her voting power to a representative, to enable a vote in their absence.
- In August 2017, the government approved changes in electoral laws allowing NRIs to cast their vote for assembly and Lok Sabha elections from overseas through a proxy, with one caveat – the proxy could be appointed for only one poll.
- The Representation of the People (Amendment) Bill, 2017 was introduced to amend Section 20A and also extend the facility of proxy voting to Indian voters living abroad.
- However, the bill has **lapsed**.

## Proposal of Postal Ballot and its advantages

- In December 2020, the Election Commission informed the government that it is “technically and administratively ready” to extend the **Electronically Transmitted Postal Ballot System (ETPBS)** to voters abroad for 2021 elections in Assam, West Bengal, Kerala, Tamil Nadu and Puducherry.
  - As per ECI’s proposal, any NRI interested in voting through the postal ballot in an election will have to inform the Returning Officer (RO) not later than five days after the notification of the election.
  - After receiving such information, the RO will dispatch the ballot paper electronically.
  - The Indian diaspora voters will download the ballot paper, mark their preference on the printout and send it back along with a declaration attested by an officer appointed by the diplomatic or consular representative of India in the country where the NRI is resident.
  - However, EC has now said that the ETPBS facility cannot be given to NRI voters yet.
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- ***The advantages include:***
    - It enables the voters to cast their vote on an **electronically received postal ballot from their preferred location**, which is outside their originally assigned voting constituency.
    - This system would be an **easier option of facilitating voting** by the electors as the time constraint for dispatch of postal ballot has been addressed using this system.
    - Voters can avail this **service from anywhere outside their constituency**.
    - System facilitates creation of voter electoral

roll data.

- Easy, Efficient and Hassle free
- It is a secure system, having two layer security
- Secrecy is maintained and no duplicate of casted ETPB is possible due to QR code.

## **Right to Vote a Constitutional Right (Article 326):**

- In India, the right to vote is provided by the Constitution and the Representation of People's Act, 1951, subject to certain disqualifications.
- **Article 326** of the Constitution guarantees the right to vote to every citizen above the age of 18.
- The elections to the House of the People and to the Legislative Assembly of every State shall be on the **basis of adult suffrage** .
- every person who is a citizen of India and who is not less than 18 of age
- Article 326 also provides that a person can be disqualified from voting under Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice
- Further, **Section 62 of the Representation of Peoples Act (RoPA), 1951** states that every person who is in the electoral roll of that constituency will be entitled to vote.
- Under Section 62(5) of the Representation of the People Act, 1951, individuals in lawful custody of the police and those serving a sentence of imprisonment after conviction cannot vote. Undertrial prisoners are also excluded from participating in elections even if their names are on electoral rolls.
- Thus, the Constitution and the RoPA make it clear that every individual above the age of 18, whose name is in the electoral rolls, and does not attract any of the

disqualifications under the Act, may cast his vote.

- This is a non discriminatory, voluntary system of voting.

## **SC ruling on Right to Vote:**

- In the **Peoples Union for Civil Liberties v. Union of India** case Supreme Court puts into perspective the status of the right to vote in India.
- The Apex Court struck down The Representation of the People (3rd Amendment) Act, 2002 on the ground of the violation of the fundamental right of the voters to know the antecedents of candidates contesting elections to legislatures under Article 19(1)(a) of the Constitution of India.
- It also gave citizens of India the right to reject all candidates in elections.
- The Apex Court further instructed the Election Commission to ensure that the Electronic Voting Machines and ballot papers should have a button that will allow the voters to choose none of the above option and the right to say none of the above should be kept secret.

The Court reaffirmed its earlier ruling in **Union of India v. Association for Democratic Reforms**

Forms of Voting and Persons it is given to:

### **Voting by Presence**

- In this, a voter can exercise his/her franchise by personally visiting the polling booth.
- This facility is available to all voters registered in the constituency, provided they are not disqualified from voting.
- Individuals in lawful custody of the police and those serving a sentence of imprisonment after conviction cannot vote.
- Undertrial prisoners are also excluded from

participating in elections even if their names are on electoral rolls.

## **Proxy Voting**

- In Proxy voting a voter can delegate his or her voting power to a representative, to enable a vote in their absence.
- The vote is registered at the voting booth but the voter is not physically present at the site of voting.
- The option of proxy voting is available only for armed forces, police, and government officials posted outside India.
- The person can authorise another residing in the same polling booth area to cast a vote on his/her behalf.
- This option is currently available for wives of the above mentioned personnel, but not for the husbands.

## **Postal Ballot**

- Through this facility, a voter can cast her vote remotely by recording her preference on the ballot paper and sending it back to the election officer before counting.
- Members of the armed forces like the Army, Navy and Air Force, members of the armed police force of a state (serving outside the state), government employees posted outside India and their spouses are entitled to vote only by post.
- Voters under preventive detention can also vote only by post.
- Special voters such as the President of India, Vice President, Governors, Union Cabinet ministers, Speaker of the House and government officers on poll duty have the option to vote by post.

## **Remote Voting**

- The Election Commission has collaborated with IIT-Madras

to work on a new technology which will allow electors to vote from faraway cities without going to designated polling stations of their constituencies.

- After a voter's identity is established by the system, a blockchain-enabled personalised e-ballot paper will be generated.
- When the vote is cast, the ballot will be securely encrypted and a blockchain hashtag generated.
- This hashtag notification will be sent to various stakeholders, in this case the candidates and political parties
- Mock trials for remote voting facility for electors would begin soon

**Mould your thought:** What is the Electronically Transmitted Postal Ballot System (ETPBS)? Evaluate its use in ensuring right of voting in India.

***Approach to the answer:***

- Introduction
- Define ETPBS
- Who can vote using this
- Mention its advantages
- Write about extending the facility to NRIs also
- Conclusion