

THE RELEVANCE OF VOTING RIGHTS IN MODERN DEMOCRACIES

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Modern democracies, unlike ancient democracies, are essentially representative democracies. They are forced to be representative, because, unlike the city-states of ancient Greece, the modern states are geographically bigger than the city-states and have demographically larger populations to govern. This being the case, people elect representatives through the instrumentality of periodic elections. Moreover, the problems of governance in modern states are becoming enormously complex and variegated in terms of managerial issues relating to economy, security, and society, necessitating the election of competent and committed representatives to address issues and challenges of modern governance. No wonder the rights and responsibilities of voters in modern democratic societies have increased significantly.

One of the essential features of modern democracy is to have periodic, free, and fair elections in which the maximum amount of people that are entitled to vote do in fact participate to elect their representatives. These elected representatives become members of the legislature and their roles depend upon the constitution of the country and the nature of the political system adopted by its people. Broadly, the constitution would indicate whether democracy is based on a parliamentary system or a presidential system. In either case, the representatives are elected by the people. Be that as it may, the parliamentary system envisages the supremacy of the parliament such as in the United

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Kingdom.¹ Under a presidential system such as the United States, the three branches of government function in a coordinated manner, with checks and balances providing for supremacy of the constitution.² Whether a parliamentary or a presidential system, the voting rights of the citizens taking part in the electoral process are significant, although the quality and content of voting rights may vary depending upon the political system of each country.

In India, the Constitution's founders tried to blend the best of both systems of democracy. The Indian Constitution, providing for essentially a quasi-federal political structure, makes Parliament supreme within its allotted sphere.³ However, the Supreme Court has the power to rule on the constitutionality of the legislation enacted by Parliament or the state legislatures.⁴ This makes the Supreme Court the sole arbiter of the constitutionality of all enactments.⁵ In one of its historic rulings, the Supreme Court went a step further and ruled that the basic structure of the Constitution cannot be altered by the legislatures of either the national government or the states.⁶ As a result, in India, the Constitution is supreme, and Parliament works within its constraints.

The Constitution of India amply makes clear this position in its Preamble:

1. See HERBERT J. SPIRO, GOVERNMENT BY CONSTITUTION: THE POLITICAL SYSTEMS OF DEMOCRACY 113 (1959).

2. *Id.* at 146-52.

3. See WILLIAM O. DOUGLAS, WE THE JUDGES: STUDIES IN AMERICAN AND INDIAN CONSTITUTIONAL LAW FROM MARSHALL TO MUKHERJEA 137-38 (1956).

4. *Id.* at 36. Article 13(2) of the Indian Constitution provides for the protection of the fundamental rights of the citizen. Parliament and the state legislatures are clearly prohibited from making laws that may take away or abridge the fundamental rights guaranteed to the citizen. Article 13(2) states, "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void." The term "Part" refers to Part III of the Constitution, which lists the fundamental rights of the citizen. INDIA CONST. art. 13, § 2.

5. DOUGLAS, *supra* note 3, at 36.

6. With the intention of preserving the original ideals envisioned by the constitution-makers, the highest court pronounced that Parliament could not distort, damage, or alter the basic features of the Constitution under the pretext of amending it. *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461. The phrase "basic structure" itself cannot be found in the Constitution. The Supreme Court recognized this concept for the first time in the historic *Kesavananda Bharati* case in 1973. *Id.* Ever since, the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by Parliament.

We, the People of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens:

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

In our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution.⁷

The Preamble also brings out the fact that the people have adopted and enacted this Constitution, thereby making it obvious that it is the people who are the ultimate masters. Apart from its unique Preamble, the Indian Constitution, which is perhaps the longest written constitution in the world, has certain special features such as the Directive Principles of State Policy (outlining the directions of state policy for good governance),⁸ Universal Franchise (equal voting rights),⁹ Fundamental Rights and Duties (specifying the rights and responsibilities of the citizens),¹⁰ independent judiciary (free from governmental interference),¹¹ and an autonomous Election Commission (for conducting free and fair elections).¹² The autonomous nature of the Election Commission includes non-interference by the judiciary from the date of election to the date the results are announced.¹³

7. INDIA CONST. pmb. & amend. XLII, § 2.

8. *Id.* at art. 36–51.

9. *Id.* at art. 326.

10. *Id.* at art. 12–35.

11. *Id.* at art. 50.

12. *Id.* at art. 324.

13. See DURGA DAS BASU, 1 COMMENTARY OF THE CONSTITUTION OF INDIA 359–60 (4th ed. 1961). Perhaps it would be interesting to note that this is a distinct departure from the American system where, for example, the results of the 2000 presidential election in the state of Florida was ultimately decided by the judiciary. Such an

Another important feature of the Constitution is that at a time when literacy in the country was very low and when some western democracies had not yet provided universal franchise, the Constitution gave voting rights to all the people even though many citizens did not have voting rights prior to independence from British rule.¹⁴ Despite the apprehensions expressed by some—both within and outside the Constituent Assembly which drafted the Constitution of India—Jawaharlal Nehru, the first Prime Minister of India, proudly stated in that Constituent Assembly:

In other countries, . . . real full-blooded democracy came after a good deal of education had spread, because of the economic revolution and all that which had prepared the ground for it, which had added to the resources of the country and thereby made it easier to fulfill the demands made by the people in those countries. In most Asian countries, on the other hand, particularly in India, we have taken *a huge jump to hundred [sic] per cent political democracy, without the wherewithal to supply the demand which a politically conscious electorate makes.*¹⁵

It is doubtless that the grant of voting rights, by a stroke of the pen, to all citizens was a historic and monumental jump in India's political history. During British rule, voting rights were confined only to a select few such as those who owned property or paid taxes.¹⁶ In that period, certain electoral districts were reserved on a communal basis.¹⁷ In a country affected by socio-economic divisions due to caste,¹⁸ community, creed, and wide

intervention by the judiciary is impossible in the Indian context, as per Article 329 of the Constitution of India. In India, the electoral result of any candidate to the Parliament or State Assembly can be challenged by an election petition only after the election result is officially announced by the Election Commission of India. INDIA CONST. art. 329.

14. M. V. PYLEE, INDIA'S CONSTITUTION 349 (1962).

15. S.A.H. HAQQI, INDIAN DEMOCRACY AT THE CROSSROADS 6 (1986).

16. KATHARINE ADENEY & ANDREW WYATT, CONTEMPORARY INDIA 33 (2010).

17. See DOUGLAS, *supra* note 3, at 20.

18. In a country like India, politics have been dominated by promoting communalism based on religion and caste-ism, a social division based on profession and birth. The social diversities and disparities are understood in terms of the existence of many groups linked to a caste or religion. Tensions have long prevailed among them due

economic disparities, universal voting rights provided a level playing field to all citizens, thereby bringing about significant social and economic change.¹⁹ Notwithstanding voting rights being given to all adults at the time of adoption, the Constitution provides for the reservation of constituencies for sectors of society that have been left behind by rapid development, including the Scheduled Tribes.²⁰ Granting voting rights to all citizens is one thing, but the effective exercise of those rights by the citizens is another. In almost every voting country in the world, voter turnout is a sad state of affairs, except in countries such as Australia, where voting is compulsory.²¹ In India, the average voter turnout has been fluctuating between 50 percent and 75 percent.²² Also in the Indian sub-continent, and perhaps to some extent in other Asian and African States, another unusual feature to be taken note of is the undue influence exercised by feudal leaders. People such as Idi Amin, later Yoweri Musaveni, of Uganda; Robert Mugabe of Zimbabwe; and Patrice Lumumba of Congo—to use examples from outside of India—tend to use money, religion, and the sheer strength of state apparatuses over economically and socially undeveloped people, thereby preventing them from exercising their votes without fear or favor.

Poor voter turnout is also the result of such things as

to suspicion, economic deprivation, and social discrimination. Playing up these factors and pitting one group against another describes the politics of communalism and casteism. These trends have vitiated not only the democratic process at the time of election, but have also become serious obstacles to good governance, economic development, and social harmony. For elevation of the backward and downtrodden classes, provision has been made for reservation. Further, the grant of universal franchise provided a level playing field to all persons without any discrimination. This is comparable to the grant of equal voting rights to blacks in Western democracies. There was initially apprehension and protest against such a move, but eventually the constitutional principle enforced by the courts was accepted. It can be said that in some places the discrimination is practiced in a subtle manner—by threats and undue influence in the exercise of voting rights. However, these subversive activities are not prevalent in most parts of the country. If at all, they exist only in a very insignificant measure, thanks to various social development measures, civil society organizations' strict enforcement of laws, the judiciary, and the Election Commission.

19. Even so, there are some who think that the grant of universal suffrage has had some negative impact on India's economic and political history.

20. INDIA CONST. art. 330, 332.

21. Jonathon Louth & Lisa Hill, *Compulsory Voting in Australia: Turnout With and Without It 1971–2004*, 6 AUSTL. REV. OF PUB. AFF. 25, 26 n.1 (2005).

22. See Csaba Nikolenyi, *Concurrent Elections and Voter Turnout: The Effect of the De-linking of State Elections on Electoral Participation in India's Parliamentary Polls*, 58 POL. STUD. 214, 218 (2009).

illiteracy, ignorance, indifference, and poverty. Further, the increasing role of money, religion, and power in the emerging democracies leads to an important debate as to the desirability of compulsory voting in modern, representative democracies. Ideally, in a modern, representative democracy, all the voters should exercise their electoral rights in every election by visiting polling stations and casting their votes; however, the effective implementation of compulsory voting in emerging democracies, in the midst of enormous social and economic problems, draws a large question mark. The actual difficulty is in ascertaining from every non-voter the reason for their non-exercise of the franchise, and thereafter determining whether penal action has to be taken in light of the explanation given. Additionally, in a country like India, the number of voters in each constituency, especially in large parliamentary constituencies, poses administrative problems in ensuring voters exercise their votes compulsorily. Moreover, there is an argument that the right to vote includes the right not to vote as a form of democratic protest. Incidental to this is certain groups boycotting the elections in support of their protest against candidates or against a particular policy of the government.

No doubt, arguments can be advanced for and against the compulsory voting system. On a balance of consideration, it seems that it would be better to grant voters the freedom to exercise their vote, especially because of practical difficulties in implementing compulsory voting in emerging democracies where literacy is not high and problems relating to their safe access to polling stations may exist in violence-prone areas. This would also satisfy those arguing in favor of the right not to vote in keeping with the principle of freedom of expression. But this should not blind us to the fact that in any case, the Election Management Body is solely responsible for providing all basic conveniences and conditions, such as perfecting voters' registration, maintaining accessible and un-crowded polling stations, organizing security arrangements before and during the election process, preparing the declaration of election results for both voters and candidates, creating a reasonably effective electoral grievance redressal machinery during the election period, and managing a system of independent observers to report on election irregularities, which would be conducive for the voters to come *freely* and exercise their

voting right without fear or favor.²³

Be that as it may, concern about the gradual decline in voter participation in elections has been steadily growing in almost every democracy. This is due in part to the fact that low voter turnout is to some extent an indication of voters' apathy towards the electoral system, politicians, democratic institutions, and good governance. The International Institute of Democracy and Electoral Assistance has pointed out—in a study, the results of which are below, relating to data from elections in the 214 countries from 1945 to 2006 in both parliamentary and presidential elections—that the voter turnout percentages were generally declining during these years.

1947	71.2	1959	75.6	1971	78.0	1983	74.7	1995	67.3
1948	75.6	1960	73.7	1972	80.1	1984	78.0	1996	71.4
1949	82.8	1961	76.8	1973	77.5	1985	79.2	1997	69.0
1950	74.6	1962	79.2	1974	74.1	1986	72.8	1998	70.9
1951	79.1	1963	86.5	1975	75.7	1987	79.6	1999	72.7
1952	74.4	1964	74.9	1976	76.0	1988	73.4	2002	67.9
1953	81.2	1965	79.0	1977	79.8	1991	68.9	2003	67.5
1954	74.6	1966	76.3	1980	80.4	1992	72.0	2004	68.4
1955	74.1	1969	73.8	1981	79.7	1993	72.2	2005	66.3
1958	80.7	1970	74.3	1982	74.2	1994	73.6	2006	66.5

Elections in the years prior to the late 1980s show an average turnout which generally fluctuates in the mid-to-higher 70 per cent [sic] range. From 1945 to 1960, the average turn-out was 76.4 per cent. This increased slightly in the period 1961–75, to 77.1 per cent, but then declined somewhat, to 74.8 per cent, in the period 1976–90. Then, from 1990 to 2006, the average turnout declined substantially, to 69.7 percent. In the decade to 2006, it was less than 69 per cent. Furthermore, the standard deviation in these numbers has also declined, from over 3 per cent in the earlier time periods to about 2.5 per cent now. These numbers show not only that the overall world turn-out rate has declined, but that

23. See, e.g., *The Function (Electoral System)*, ELECTION COMM'N OF INDIA, http://eci.nic.in/eci_main1/the_function.aspx (last visited Feb. 20, 2012).

country turn-out rates are now more uniform, with less variation between the highs and the lows.²⁴

The quality of a modern representative democracy, especially among the emerging democracies, depends substantially on the extent of voter participation not only during the elections, but also during the intervening period between one election and another. The act of voting provides all citizens with an opportunity to show an interest—perhaps a direct interest—in the policies and performance of the government and also reveals their expectations for the future.²⁵ This being so, the declining percentage of voter turnout is indeed a cause for concern because such apathy will lead to voters not taking any interest in the day-to-day performance of the government. While voter apathy and fatigue can be offset by vibrant civil society organizations, one is not sure about the role of civil society, as its performance depends upon the political culture and civic awareness. There are also other instruments such as “referendum,” “recall,” and “negative voting” which can effectively tackle voter indifference and apathy.²⁶

Referendum is a methodology adopted by certain countries by which important policy issues of the government are referred to the people to ascertain their will on both the need for major policy change and the acceptability of the procedures for implementing the change.²⁷ If the majority of the people indicate their preferences either for or against the policy change, the government will take further action on the basis of the result of the referendum.²⁸ This system enables the voters to actively participate in policy making before the policy is enacted into the statute book. From the government point of view, the government is able to get feedback from the voters about the implementability

24. ANDREW ELLIS ET AL., *ENGAGING THE ELECTORATE: INITIATIVES TO PROMOTE VOTER TURNOUT FROM AROUND THE WORLD* 10 (2006) (showing worldwide figures).

25. Apathy is more pronounced among the urban and educated voters in a country such as India, while in certain other less developed countries in Asia and Africa, apathy can be among uneducated and rural voters.

26. Referendum is more common in older democracies such as Australia, Canada, Denmark, France, Ireland, New Zealand, Sweden, Switzerland, and the United Kingdom, whereas in Asian countries such as India, this has not gained popular acceptance, although as of late there is a demand for such an initiative.

27. ELLIS ET AL., *supra* note 24, at 12.

28. *Id.*

of the policy changes and the nuts and bolts of the policy at the implementation stage, which makes the implementation of change in policy smooth and easy.

Recall is a device which enables voters to recall an elected legislator from his position as parliamentary representative in the case of specified acts of misdemeanor, such as corruption or misuse of public office.²⁹ This is an initiative taken by the voters to register their dissatisfaction about the performance of the elected representative and also to elect another person in his place. Recall is a powerful instrument which induces elected representatives to perform better. If they do not, the voters in a constituency can invoke this instrument to undo their membership in the legislature, resulting in the elected member's loss of office and public shame. Although recall may not be frequent and its implementation is fraught with administrative problems, its existence provides a strong message to political parties and elected representatives that poor performance or misuse of office by those elected will not be tolerated by the people power.

The availability or non-availability of the above-mentioned powers to the voting citizens will determine the quality of voting rights available to the citizens. The type of electoral system adopted by each country will also, in some cases, determine the effectiveness of the voter turnout. For example, in a country where the "first-past-the-post" system is followed, voting rights get devalued when compared to other systems such as the "proportional representation" system³⁰ or the "list" system. Under

29. Jay M. Zitter, Annotation, *Constitutionality of State and Local Recall Provisions*, 13 A.L.R. 661, 674 (2006).

30. Proportional Representation ("PR") is a generic term describing the voting systems that try to reproduce into a representative body the proportions of the different parts of the constituents—generally in an assembly election. The basic principles underlying PR elections are that all voters deserve representation and that all political groups in society deserve to be represented in the legislatures in proportion to their strength in the electorate. They are meant to solve the inequalities of party representation that accompany plurality-voting systems. See *Electoral System: Equality of Votes, Government Stability and Confidence in the Electoral Process*, ACE PROJECT, <http://aceproject.org/ace-en/topics/ei/eif/eif02/?searchterm=%22proportional%20representation%22> (last visited Mar. 10, 2012).

The list system is a method of voting for several electoral candidates (based on the principle of proportional representation), usually members of the same political party, with one mark of the ballot. It is used to elect the parliaments of many western European countries, including Switzerland, Italy, Belgium, the Netherlands, Luxembourg, and Germany. Electors vote for one of several lists of candidates, usually prepared by the

the first-past-the-post system, candidates get elected on the basis of who gets the maximum number of votes. For example, assuming ten candidates contest an election and the votes are split almost equally among all ten, a person who gets 10 percent of the vote plus one more vote gets elected. As a result, 89 percent of voters in that constituency will not have any representation and their votes may have essentially no value. The voting rights of the majority of voters being valueless, the quality of representative democracy is damaged and distorted.³¹ This distortion is all the more noticeable in a multicultural society with many political parties contesting an election. This is exactly the position in India where persons with 20 to 25 percent of votes get elected in most of the constituencies.³² A defective electoral system such as the first-past-the-post system gets more distorted by poor voter turnout. In such a case, it is unfair to designate such elected assemblies as constituting representative democracy.³³ In order to make voters' rights more meaningful and effective, it is desirable to switch to an alternative system of voting by which the voting rights of at least 50 percent of the voters get necessary recognition.

political parties. Each party is granted seats in proportion to the number of popular votes it receives. Seats are usually awarded to candidates in the order in which their names appear on the lists. Although ordinarily the list system forced voters to cast their votes for parties rather than for individual candidates, a number of variations on the system permit voter preferences for individuals to be taken into account. See *Electoral Systems That Delimit Electoral Districts: Delimiting Districts: Proportional Representation*, ACE PROJECT, <http://aceproject.org/ace-en/topics/bd/bda/bda01/default/?searchterm=%22list%20system%22> (last visited Mar. 10, 2012).

First-past-the-post ("FPTP") voting refers to the method of voting by which an election is won by the candidate(s) with the most votes, without any minimum or threshold requirement. For example, a person can be declared elected even if the difference between the first and the second candidate is only one vote. The winning candidate does not necessarily receive an absolute majority of all votes cast. *First Past the Post (FPTP)*, ACE PROJECT, <http://aceproject.org/main/english/es/esd01.htm/?searchterm=first%20past%20the%20post> (last visited Mar. 10, 2012).

31. Most of the Commonwealth countries, including India, have been following the FPTP system primarily because it is easy and simple for voters to understand, especially where the literacy rate of the population is not high. Under the FPTP system, the winning candidate can succeed even with a difference of one vote. As a result, political parties put up candidates depending upon their "winnability" in the dominant community based on religion, language, or any other social division. Since there is no threshold under this system, the votes of the dominant group will determine the winner contributing to conflicts among different sections of society.

32. See *India—First Past the Post on a Grand Scale*, ACE PROJECT, http://aceproject.org/ace-en/topics/es/esy/esy_in (last visited Feb. 20, 2012).

33. See *supra* note 31 and accompanying text.

Democracy is meant to be the people's rule for their liberty and welfare. Democracy does not stand still like a granite building; it is always evolving over a period of time, depending upon local conditions in each country. In a modern democracy, it is ultimately the will of the people expressed through periodic elections that decide the fate of the people. In practical terms, modern democracy has come to mean government based on majority rule. The leaders acquire political power and strength because the people's power is vested in them through elections. Very often, the political masters, when they are elected to form the government, are under the deluded impression that they represent the will of the people. If voter turnout is very poor and if votes are split by too many candidates contesting a seat, the government ceases to be majority rule. In such situations, it is the minority of voters who run the government. This goes counter to the principle of majority rule, which is an important ingredient of democracy. An effective remedy to meet this deficiency is to find an alternative to the first-past-the-post system. A number of alternatives are available such as proportional representation,³⁴ the list system,³⁵ and a mixed system.³⁶ The main purpose of these alternatives is to give weightage to a maximum number of votes, thereby making representative democracy more meaningful.³⁷

What history teaches us unambiguously is that the political power exercised by rulers is never to be equated with the people's power, which is the bedrock of any democracy. Unfortunately, as has been outlined earlier, in many countries the elected representatives³⁸ do not even represent the majority will of the people, since they are often elected under a limited mandate

34. See *supra* note 30 and accompanying text.

35. *Id.*

36. See *Mixed Electoral Systems*, ACE PROJECT, <http://aceproject.org/ace-en/topics/bd/bda/bda01/bda01c> (last visited Feb. 20, 2012).

37. Most of the dictatorial regimes in medieval times would amply demonstrate that political power exercised by those rulers was lost because of their failure to meet the needs and aspirations of the people. Louis XIV of France, Aurangzeb of India, Mao Zedong of China, Ho Chi Minh of Vietnam, and the military junta in Myanmar are all examples. Even now, the people's movement in Arab countries such as Egypt, Tunisia, Libya, and Syria, collectively known as the "Arab Spring," is an outcome of the conflict between the political power of the rulers and people power.

38. The electoral system, like the FPTP system, does not ensure the elected representative has the backing of the majority of the people voting, as has been explained above.

representing only a limited section of the people—which very often does not constitute the majority of the people. Such elected representatives do represent, at best, sectional interests and not the whole constituency or its majority interest. In fact, this led Edmund Burke to eloquently outline the role of parliament and its members representing the people as such:

Your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you if he sacrifices it to your opinion. . . . Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an Agent and Advocate, against other Agents and Advocates; but Parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local Purposes, not local Prejudices ought to guide, but the general Good, resulting from the general Reason of the whole. You choose a member indeed; but when you have chosen him, he is not a Member of Bristol, but he is a member of Parliament.³⁹

Moreover, elected representatives in modern legislatures have very little time to project the views of the people in the legislature. While the committee system of legislatures⁴⁰ has remedied this situation to some extent, it has been found to be totally inadequate. Thus, governments based on the principles of modern representative democracy cannot be said to be meeting the requirements and views of Abraham Lincoln in his famous Gettysburg Address, when he explained that democracy is “Government of the People, by the People, and for the People.”⁴¹

39. Edmund Burke, Speech to the Electors of Bristol (November 3, 1774), *available at* <http://www.econlib.org/library/LFBooks/Burke/brkSWv4c1.html>.

40. In view of the non-availability of time for the legislature to devote a detailed examination of matters coming before the legislature, most of the modern legislatures follow the committee system based on party representation in the legislature, as decided by the Speaker of the House, to focus their attention on important issues. The committees devote adequate time in respect to these issues by frequently meeting outside the normal time of the legislature.

41. Abraham Lincoln prescribed norms for democracy to effectively represent the

This apart, most modern rulers do not seem to realize that their political power can be sustained only when it is fully backed by the people's power.⁴² Very often, these elected representatives are keen to promote selfish interests or the interests of their respective political parties rather than promoting and protecting the national interest. As a result, these elected representatives tend to become dictatorial and authoritarian with a sectarian outlook, ignoring the sentiments and aspirations of the people, thereby contributing to a lack of trust in democracy, if not democracy's complete collapse.⁴³ Therefore, it is not surprising that many disappointed people have taken to violence under these circumstances, as seen in some pockets of India,⁴⁴ Syria, Sri Lanka, Pakistan, Nepal, and Thailand.⁴⁵

This scenario is now occurring in many Arab countries, where the people's power has been suppressed for so long under the guise of monarchical rule.⁴⁶ People have even risen in revolt

will of the people, which was earlier highlighted by philosophers like John Stuart Mill, Jean-Jacques Rousseau, and Francois-Marie Arouet de Voltaire. Unfortunately, the elected representatives in later times seem to have lost the guiding principles of the democratic system of governance. In fact, modern democracy can be described satirically as "Government *off* the People, *far* the people, and *buy* the people," which sums up the change and the gap.

42. Common examples include African and Asian countries such as Zimbabwe, Uganda, Ethiopia, Egypt, Thailand, India, Pakistan, and Indonesia. *See, e.g.*, Editorial, *Uganda's Unrest*, WASH. POST, June 15, 2011, at A18 ("Ugandan President Yoweri Museveni . . . said that his country is 'one of the most democratic in the world.' His response to a recent series of popular protests suggests just the opposite."); Ashutosh Varshney, *India's Battle for Democracy Has Just Begun*, FIN. TIMES (Asia Ed. 1), Aug. 30, 2011, at 6 ("India's democracy has become Janus-faced.")

43. *See, e.g.*, Tim Johnston, *Thailand Fears Protest Violence*, FIN. TIMES (USA Ed. 1), Mar. 13, 2010, at 7 ("There are people on both sides of the country's deep political divide who believe that democratic institutions have failed and that the only remaining road to political progress lies through confrontation."); Amy Kazmin, *Fresh Kashmir Violence Kills 14*, FIN. TIMES (London Ed. 3), Sep. 14, 2010, at 8 ("The unrest . . . highlights New Delhi's difficulties in reaching out to its deeply-alienated Kashmiri population. . ."). It is therefore not surprising that many of the disappointed people in such circumstances take to violence as has been seen in some pockets of India and Thailand.

44. *See, e.g.*, Kazmin, *supra* note 43, at 6 ("[E]specially its angry youth, scarred by the legacy of an armed insurgency and New Delhi's brutal counter-measures, which have together claimed an estimated 68,000 lives.")

45. *See, e.g.*, Johnston, *supra* note 43, at 7 ("Tens of thousands of anti-government protesters started to converge on Bangkok yesterday for a rally that many fear could end in violence.")

46. *See, e.g.*, Roger Hardy, *Egypt Protests: An Arab Spring as Old Order Crumbles?*, BBC NEWS: MIDDLE EAST, Feb. 2, 2011, <http://www.bbc.co.uk/news/world-middle-east-12339521?print=true> ("Arab rulers . . . find themselves in essentially the same boat. Virtually without exception, they preside over corrupt autocracies with little or no

against autocratic heads of state in so-called democratic countries such as Egypt, Tunisia, Libya, Syria, and Yemen—events cumulatively known as the “Arab Spring.”⁴⁷ It is interesting to note that other autocratic regimes in the Middle East such as Jordan and Saudi Arabia are taking steps to democratize their political systems.⁴⁸ The recent announcement that Saudi Arabian women will have the power to vote and contest elections by 2015 is one such step towards fulfilling the aspirations of the people.⁴⁹ Additionally, the King of Jordan has constituted a committee of international experts to consider measures for democratization of his rule.⁵⁰ It is no wonder that the people’s power is becoming more and more asserted and recognized.

Voters’ rights assume tremendous importance in developing economies. When the representatives in legislatures are dominated by the elite, the educated, and the affluent, the character of legislative activity is often biased against the poor and the backward, as shown at different times in many African and Asian countries such as Zimbabwe, Uganda, Kenya, India, Pakistan, Bangladesh, and Myanmar.⁵¹ This has been possible because of the use of financial power and physical force by political parties and individual candidates, as well as flaws in the method of electing representatives. Money, power, and violence are indeed corrupting the quality of voting in many modern democracies. The incestuous relationship between money-power and muscle-power on one hand, and political-power on the other, poses a deadly and dangerous threat to modern democracies. Although anybody could contest an election under the law, the

legitimacy in the eyes of their people.”).

47. Bret Stephens, *The Arab Revolt in Retrospect*, WALL ST. J., Dec. 27, 2011, at A11 (“The term ‘Arab Spring’ became common parlance . . .”).

48. See, e.g., Tobias Buck, *King of Jordan Promises Reform*, FIN. TIMES (Asia Ed. 1), Feb. 2, 2011, at 3 (“[The King of Jordan] appointed a new prime minister . . . to take ‘practical, swift and tangible steps to launch a real political reform process.’”); Editorial, *Saudi Arabia’s Small Step*, WASH. POST, Sept. 27, 2011, at A20 (“The announcement by Saudi Arabia’s ruler, King Abdullah, of a small but potentially significant expansion of political rights for women on Sunday was consequentially a pleasant surprise.”).

49. See Editorial, *supra* note 48, at A20.

50. *Jordan’s King Bends, Promises Democratic Reforms*, CBS NEWS, June 12, 2011, http://www.cbsnews.com/2102-202_162-20070728.html?tag=contentMain;contentBody.

51. See, e.g., Jean Dreze & Amartya Sen, *Democratic Practice and Social Inequality in India*, J. ASIAN & AFR. STUD., Apr. 2002, at 9 (“In some states, the legislatures are packed with criminals. Village panchayats are often controlled by the local elite. There are many other failures of democratic practice.”).

poor may find it difficult to successfully contest an election because of the role of money and physical intimidation exerted by candidates from other strata of society. In such circumstances, the common people experience great difficulties in taking an active interest in the political activities of the state. These difficulties may even extend to the filing of nominations, because people in poorer sections of the country may be prevented from contesting by threat or undue influence. This is also possible because of the social “backwardness” present in certain sections of the voting population due to illiteracy, social stigma, and poverty, as in some sections of India, Pakistan, and parts of Africa. Of late, there has also been increasing violence surrounding emerging democracies due to unemployment and poverty, making it difficult to conduct free and fair elections.⁵² It is, therefore, essential that the Election Management Body be completely independent and able to provide equal opportunity to all classes of people.

Having regard for the need to protect the interests of various stakeholders in modern electoral democracy, a private initiative has led to the formulation of what is known as the Accra Principles on Electoral Justice.⁵³ The primary purpose of these principles is to protect the vital interests of voters and to reap the benefits of electoral democracy, while at the same time supporting institutional frameworks to preserve, nurture, and protect democratic institutions on a long-term basis.⁵⁴ These principles

52. See, e.g., Solomon Moore, *World News: Violence Hits Congo Elections—Killings, Organizational Problems Mar Planned Vote in Largest African Nation*, WALL ST. J., Nov. 28, 2011, at A13 (“In Africa this year, Ivory Coast, Uganda, and Nigeria have all held elections that were marred by violence.”).

53. The Principles of Electoral Justice were developed by the Electoral Integrity Group, consisting of senior judicial figures, former Election Commissioners, and officials who joined in the desire to enhance human rights and democratic practices around the world under the auspices of Tiri, a London-based organization supported by the UN Democracy Fund and the Open Society Foundations. This group has been meeting annually at Trinity College, Cambridge, United Kingdom. It became apparent in the various discussions held in Cambridge, United Kingdom (July 2010); Bali, Indonesia (January 2011); and Gaborone, Botswana (March 2011) that there is no set of generally agreed upon authoritative statements concerning the area of electoral justice. Recognizing the need for authoritative statements, the group drafted a broad statement of principles that will be internationally recognized as a useful tool for the achievement of electoral reform. ELECTORAL INTEGRITY GROUP, TOWARDS AN INTERNATIONAL STATEMENT OF THE PRINCIPLES OF ELECTORAL JUSTICE 2 (2011), available at <http://ebookbrowse.com/electoral-justice-principles-2011-the-accra-guiding-principles-pdf-d278525965> (last visited Feb. 18, 2012).

54. *Id.* at 3.

were recently launched in Accra on September 15, 2011, with the active support of the Electoral Commission of Ghana.⁵⁵ Tiri, an international, non-governmental organization committed to eradicating all forms of corruption and promoting integrity in the world, developed many of its principles drawing from the experiences of different countries, including very small democracies such as Mauritius, large ones such as India, and old ones such as Australia and Canada.⁵⁶ The principles were piloted first in Ghana, to be followed in Sierra Leone⁵⁷ for their upcoming elections and before their full adoption by member states of the Association of African Electoral Authority (“AAEA”).⁵⁸ The Accra Principles on Electoral Justice can be broadly summarized in the following concepts: (a) integrity, (b) participation, (c) lawfulness (rule of law), (d) impartiality and fairness, (e) professionalism, (f) independence, (g) transparency, (h) timeliness, (i) non-violence (freedom from threats and violence), (j) regularity, and (k) acceptance.⁵⁹

These principles have been formulated with the Universal Declaration of Human Rights (1948)—a declaration formulated and adopted by the United Nations—kept close in mind.⁶⁰ They recognize that governmental authority can only derive from the will of the people, and that periodic, free, fair, and genuine elections are fundamental to any electoral democracy. Realization of electoral justice requires a set of institutions, norms, mechanisms, and procedures which are accountable, transparent, and fair to all citizens.⁶¹ Hopefully, these principles will gain

55. *Id.* at 12.

56. *Id.* at 13; *History*, TIRI: MAKING INTEGRITY WORK (Mar. 10, 2012), http://www.tiri.org/index.php?option=com_content&task=view&id=94&Itemid=

57. REPORT ON THE MEETING OF THE ELECTORAL INTEGRITY GROUP ON THE ACCRA PRINCIPLES FOR ELECTORAL JUSTICE: ACCRA, GHANA, 14–15 SEPTEMBER 2011, TIRI, available at <http://www.un.org/democracyfund/Docs/Report%20on%20Accra%20meeting%2020111114%20final.pdf> (last visited Feb. 18, 2012).

58. *Id.*

59. ELECTORAL INTEGRITY GROUP, *supra* note 53, at 4–11.

60. *Id.* at 2.

61. The Accra Principles are the result of an informal private initiative. Although electoral democracy can be practiced without implementing these principles, a formal recognition of the principles by the Electoral Management Body will enhance credibility. It is hoped that each country will accept these principles, formally, and that eventually the United Nations will be persuaded to accept these principles as a global standard for democracy. *See id.* at 12 (“[W]e express the sincere hope that those involved in aspects of Electoral Justice around the world may find it of interest and worthy of observance and

universal acceptance by all nations professing to practice democracy.

In conclusion, it can be said that the content and exercise of citizens' voting rights are crucial for the success of any electoral democracy. Although citizens are expected to exercise their right to vote in elections held periodically, in practice, many citizens do not exercise this right. It is debatable whether voting should be compulsory in order to make democratic rule meaningful, while it can also be argued that the right to vote includes the right not to vote in a free society. All the same, any vibrant democracy should adopt conditions that promote the citizens' ability to freely visit the polling station and exercise their vote.⁶² In some countries, this can be achieved simply by providing proper policing, including the deployment of police forces and the use of secret cameras and independent election observers.⁶³ Be that as it may, in the context of increasing populations and increasing governmental function in economic development, the mere exercise of voting rights during an election does not guarantee a vibrant democracy. It is, therefore, necessary that voting rights be supplemented by vigilant civic awareness, active civil societies, and other democratic instruments, like the negative vote,⁶⁴ recall of representatives for specified misconduct, referendum, sound electoral management bodies, and an independent judiciary to protect the free exercise of voting rights.

implementation.”).

62. India is the best example of a government's effort to protect voting rights. Many African countries feel the need to take formal steps to protect voting rights, but due to paucity of funds and administrative handicaps, they have been unable to implement these steps. *See generally* Dreze & Sen, *supra* note 52, at 7 (describing India's relative success in promoting democratic institutions).

63. *See, e.g.*, Arvind Verma, *Situational Prevention and Elections in India*, INT'L J. CRIM. JUST. SCI., July–Dec. 2009, at 88 (describing India's techniques for protecting voters' rights at polling stations).

64. One of the suggestions often made to improve the quality of elected representatives is the introduction of the “negative vote,” by which voters are authorized to reject all of the candidates, thereby contesting the election and implying that they would prefer a better candidate. This serves as a message to political parties. A system such as the negative vote is needed due to a flawed method of election wherein candidates are chosen by political parties based on considerations of financial strength, influence, and favoritism with influential leaders, rather than the general popularity of the candidate. In some countries, the negative vote is implemented with the condition that if the negative votes are more than 50 percent of the voters in the register, there will be a second round of polling with a fresh set of candidates.

