



WE THE PEOPLE – NEWSLETTER

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Ability of the Differently Able to Exercise Secret Ballot: Participation and Indian Democracy

Amidst the debates of the right and the left this election season, we are constant witnesses to petty personal attacks that leave no room for any change in the political discourse. As citizens of one of the largest democracies in the world, even as we are attempting to revive the values in the Indian Constitution, there is one aspect of equality that is still in the fringes and waiting to enter the mainstream. This wait is significant for differently able people who are still struggling to be recognised as citizens with legitimate civil rights.

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<http://www.thehindu.com/opinion/op-ed/disabilities-of-our-democracy/article5944384.ece>

When an electoral system structurally discriminates against particular categories such as persons with disabilities, it is tantamount to a failure of the democracy as a whole

The citizens of India are in the process of casting their votes in what is being widely hailed as the largest election in human history. By sheer size, the 16th Lok Sabha elections signal a triumph not only for India, but for democratic exercises around the world.

However, more important than elections themselves are the principles of civil rights, equality, freedom of speech, and inclusivity that underpin any true democratic activity. When an electoral system structurally discriminates against particular categories of people, such as persons with disabilities, it is tantamount to a failure of democracy as a whole. While there have been Supreme Court orders to make electoral infrastructure more accessible for voters with disabilities, these measures do not go far enough. Looking beyond physical accessibility, substantive equality and full participation can only be achieved with a rights-based approach that values access to the public sphere and a robust protection of civil and voting rights for all citizens.

While the Census of India reported 21.9 million persons with disabilities in 2001, more recent estimates by the World Health Organization (WHO) and others put India's disabled population at more than 80 million persons, and possibly as high as 150 million.

Numerous hurdles prevent voters with disabilities from full participation in the electoral process. Barriers range from the obvious, such as lack of access ramps and unavailability of voting mechanism for the hearing or sight impaired; to the more obscure, such as lack of accessible campaign material which results in a difficulty in making an informed decision.

Mental illness and suffrage

Lack of voting rights for persons with intellectual and psycho-social disabilities represents a particularly insidious barrier to electoral participation.

The overarching framework, comprising qualifications and disqualifications for being a voter in the general and assembly elections, is outlined in Article 326 of the Constitution. It enshrines the value of universal adult suffrage and states that every person who is a citizen of India and of legal age has the right to vote, with a few exceptions.

One such exception is "unsoundness of mind." Additionally, the Representation of People's Act, 1951 ('RP Act') provides the procedural framework for elections in India and similarly disqualifies a person from being registered to vote if he or she is of "unsound mind", and is found to be so by a "competent court".

But what exactly is an "unsound mind"? The term is vague and undefined, and there is no objective criterion laid down to guide the "competent court" in determining what constitutes unsoundness of mind. Even if a person's disability in no way interferes with his ability to understand the positions of candidates and to make a choice, he can be deprived of the right to vote under this legal framework.

Secrecy of voting

Voting is a political act of free expression, and as such should be done independently and in secrecy. The over-reliance on the "companionship" model to provide access for persons with disabilities is an infringement of this right.

In practice, voters with disabilities are often allowed to take a "companion", with them, who is usually a family member, or a voting facility presiding officer, clerk, or agent, to physically assist them in voting.

This policy, while typically upheld as a means for making electoral participation possible for persons with disabilities, fails to give voters their full right to vote by crucially depriving them of autonomy and secrecy.

Section 128 of the RP Act provides for the “Maintenance of secrecy of voting” and stipulates that no other elector should be allowed inside when an elector is inside the voting compartment. Secrecy and autonomy are key elements of the free expression of the will of the electorship.

The Electoral Commission of India, however, still refers to the Conduct of Elections Rules, 1961, which provides for “permitting a companion to accompany a blind/infirm elector to assist him/her to cast the vote.”

These rules are outdated and stem from a charity model of understanding disability and not from a rights-based model. The presence of another person in the voting booth, even if he is a friend or family member, opens the door to questions of influence, which infringes on the right for voters with disabilities to vote independently and in secrecy.

Violation of rights

By disenfranchising voters with disabilities and thus violating their fundamental right to voting and citizenship, we are undermining the foundations of our democracy. This is not just an issue for persons with disabilities or senior citizens; this is an issue for us all.

We can begin to address these problems by scrapping the “unsoundness of mind” exception, and tying any voter registration disqualification to the lack of specific cognitive abilities in making an informed electoral choice only when declared so by a competent court. Indeed, in some U.S. States, persons with developmental or mental disabilities are presumed competent to vote unless a court specifically determines otherwise.



We should also pursue the use of assistive and new technologies that would make voting accessible for persons with disabilities, to ensure secrecy and independence in voting. Taking physical accessibility of the voting site seriously by making building entrances, rooms, voting tables and Electronic Voting Machines (EVM) accessible would do away with voters with disabilities needing assistance. Policies in other jurisdictions categorise companion-assisted voting as a measure of last resort, and even when utilised, stipulate detailed rules regarding the selection of the companion, giving priority to the preference of the voter.

After the people have spoken and the votes have been counted, we must not forget the tens of millions who could not make their voices heard.

Active Citizens at Work in Gurgaon and Bangalore

In the summer month of April, even as citizens across the country are expressing their right to vote, the We, the People (WTP) team has been building the capacities of more and more citizens to engage with governance structures effectively. At the School of Inspired Leadership (SOIL), Gurgaon, a Citizenship Programme (CP) was held with approximately 100 young people as part of their course at the Institute. Divided into two batches of 50 each, the CP was conducted over 15 hours with each batch.

This was the first time WTP was anchoring the citizenship programme as a formal course with management students. Our anchors, Balaji, Seema and Vinita enabled the participants to move from the personal to the social, political and the civic throughout the journey of the CP. While at the personal level, participants reflected upon their connections with the values enshrined in the preamble to the constitution, they gradually connected them to social and civic lives as well.

Discussions ranged from issues of giving and receiving bribes while dealing with governance structures to the need to understand the functioning of various offices, structures and spaces where the citizen can ensure accountability. While the groups spent time on understanding articles, sections and rules, they also engaged in discussions around Section 377, the Supreme Court judgement around the ‘third gender’ and so on. Some of the civic concerns on which smaller groups took up action projects are as follows:

- Ewaste management
- Garbage
- Street lights
- Domestic violence against men
- BPL cards
- Public transport in gurgaon
- Beggary
- Traffic rules
- Procedure for filing FIR
- Non-metered autos in Gurgaon
- Stray animals in Gurgaon
- Legal framework around prostitution

In Bangalore, WTP partnered with M&S to conduct a Citizen Cafe with their staff members. Anchored by Sanjay Dutt and Manoj Papisetty, the conversations that emerged during the cafe put the spot on the need to reflect on the values enshrined in the Preamble to the Indian Constitution. For most of the 30 participants at the Cafe, there were moments of realisation when each individual reiterated that “we will need to live up to each of these values to bring about any change at the collective level”.

An interesting discussion took place around the interconnectedness of the values in the Preamble. Participants observed that at any given time, absence or non-practice of a particular value in society leads to marginalisation of certain segments and thus poses a threat to the value itself.

While the participants were curious to know more about the effective use of the RTI Act, it emerged that, the group as a collective has very low levels of understanding about the functioning of governance structures and interlinkages between them. It was an interesting observation by the anchors that “Middle-class corporate employees are likely to be disconnected from larger social reality. They prefer to either stay in a dissociated state or externalize potential change”.

The need is to go deeper than a citizen cafe and introduce more complex topics related to citizenship action in order to sustain the interest generated after a Citizen Cafe.

It is worth recognising that as the general elections of 2014 have been unfolding, we have seen citizens coming out in thousands to exercise their right to vote across the length and breadth of the country. However, at the same time, the political discourse in many instances has not been able to inform people or build their perspective around real participation beyond voting. The rhetoric has been that of distributing services by a government that is voted to power.

Such a discourse largely takes away from the citizens’ responsibility to hold offices accountable and relegates the citizen to a beneficiary. There is an acute need to change the language of citizenship and effect a shift from being a beneficiary to reclaiming ownership for the functioning of this democracy.

While the Citizen Cafes trigger this thought, the Citizenship Programme is a module that feeds this spirit and equips citizens to becoming active in thought and action.

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Citizens’ Voice

The deep insights about our Constitution and the way we run the state. It is very simple if we understand the framework and structure, yet aptly distributed and disintegrated to various levels of hierarchy. The course teaches us our involvement with our Constitution and our role in effective implementation.

-Rahul Shekhar (SOIL)

It is about “Us” living the preamble and constitution

-CC Participant, Bangalore

Non metered auto rickshaw is an issue in my city (i.e. Jodhpur) also. Through our project on non-metered auto rickshaw in Gurgaon I got to know the process and the authority responsible for this issue. Hence I became more aware and can deal with this issue in my city also.

-Arpit jain (SOIL)