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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

Enfranchisement of Cognitively Impaired in India

-Pranav Kumar S

Research Question

1. Whether cognitively impaired persons can be enfranchised?
2. What are the mechanisms to be implemented to enfranchise cognitively impaired in India?

Abstract

In India, the legislations to protect the interest of cognitively impaired are seldom effective. To substantiate the same the author will be envisaging the rights conferred to the cognitively impaired are arbitrary and affects democracy of the country to an extent. According to the Election Commission of India, citizens who have disability which are extensively mentioned under Rights of persons with disability Act, 2016¹ are permitted to register and cast their vote in the Parliamentary and State Legislative Assembly Elections. Ironically, Election Commission of India contradicts themselves by stating that, if a competent court declares a person of unsound mind, they shall not be eligible for registering in the voter's list.² The research paper will deal with the legal lacuna and suggest effective mechanism which will enfranchise certain category of impaired citizens to vote by not affecting the political, economic and social interests of the common people.

Keywords – Cognitively Impaired, Election Commission of India, Enfranchisement, Voters

¹Rights of persons with disability Act, 2016

²[https://ecisveep.nic.in/pwd/faqs-for-voters-with-disabilities/faqs-for-voters-with-disabilities-r43/\(11/09/2018\)](https://ecisveep.nic.in/pwd/faqs-for-voters-with-disabilities/faqs-for-voters-with-disabilities-r43/(11/09/2018))

Introduction

India being a democratic country follows parliamentary form of government where the citizens are vested with the right to vote for a candidate or party that he or she thinks deem fit. Citizens are mandated to register themselves in the voter's list which is administered by the Election Commission of India. Election Commission of India is an independent body which is responsible for the administration and functioning of elections. Evidently, ECI is also responsible to decide who shall be conferred with right to vote. ECI permits people with disability to register themselves and cast their vote. According to ECI, the 21 disabilities mentioned under the Rights of people with disabilities Act,2016 can cast their vote and the list also includes Blindness, Low Vision, Leprosy Cured persons. Locomotor Disability, Dwarfism, Intellectual Disability, Mental Illness, Cerebral Palsy, Specific Learning Disabilities, Speech and Language disability, Hearing Impairment (Deaf and Hard of Hearing), Muscular Dystrophy, Acid Attack Victim, Parkinson's disease, Multiple Sclerosis, Thalassemia, Haemophilia, Sickle Cell disease, Autism Spectrum Disorder, Chronic Neurological conditions, Multiple Disabilities including Deaf Blindness. Ironically, ECI contradicts itself stating that, 'If a competent court declares a person of unsound mind, he or she shall not be eligible to be registered as a voter.' The paper will try to answer the conundrum and suggesting certain effective mechanism that are incorporated in other democratic countries to permit mentally challenged to cast their vote.

Representation of Peoples Act,1951

According to the Election Commission of India, a general voter is any Indian citizen residing within the country, who has attained the age of 18, can enroll himself or herself as a general voter. A person who is disqualified to be an elector cannot be enrolled in the registry³. The criteria to disqualify a person as an elector under Sections 11A of the Representation of Peoples Act, 1951 deals with the disqualification of voters which does not include insane or unsound mind voters and under section 62 of the Representation of Peoples Act, 1951 deals with the voting rights of citizens.

³<https://eci.gov.in/voter/voter/>

Defining Cognitively Impaired

Cognitive impairment is when a person has trouble remembering, learning new things, concentrating, or making decisions that affect their everyday life. Cognitive impairment ranges from mild to severe. With mild impairment, people may begin to notice changes in cognitive functions, but still be able to do their everyday activities. Severe levels of impairment can lead to losing the ability to understand the meaning or importance of something and the ability to talk or write, resulting in the inability to live independently.⁴

Enfranchisement of Cognitively Impaired by

United Nations

Most democratic countries either limit or deny altogether voting with cognitive impairments or mental health conditions. Against this practical exclusion, disability advocacy and developments in international increasingly push in the direction of full voting rights for people with Particularly influential has been the adoption by the UN of the Convention Persons with Disabilities in 2007. Article 29⁵ declares that states must 'ensure disabilities can effectively and fully participate in political and public life others, directly or through freely chosen representatives, including the right persons with disabilities to vote and be elected.'

Many international and state-based human rights organisations argue that Article 29 creates an obligation on all states that have ratified the Convention to ensure full voting rights for persons with cognitive impairments. As one example, the Mental Disability Advocacy Centre (MDAC)⁶an international organisation promoting the rights of people with mental disability that sponsors a campaign entitled 'Save the Vote' with the aim of ensuring the Council of Europe's constitutional advisory body recommends removing restrictions on the right of people with mental disability to vote. Many similar campaigns have been run in other parts of the world. These developments in defence of voting rights are in harmony with both the clear historical trend to progressively expand the franchise, and with more recent developments in disability rights advocacy and scholarship. Like earlier women's and civil rights movements, disability scholarship over the last 40 years or so has rejected long-standing assumptions that

⁴https://www.cdc.gov/aging/pdf/cognitive_impairment/cogimp_policy

⁵ UN of the Convention Persons with Disabilities in 2007

⁶ Mental Disability Advocacy Centre (MDAC)

disabled people have lesser entitlements because of false beliefs about their natural or personal 'deficiency'. The widely endorsed 'social model' of disability highlights the pervasive presence of prejudice, discrimination and social oppression in causing disadvantage. It therefore focuses attention on remedying social, legal, and political circumstances that deny disabled people the full range of entitlements and responsibilities enjoyed by others.

Competence standards in other countries

Britain

The voting rights of the mentally ill have been clarified and reformed by the legislation. The general right to vote is based on a residence qualification. The Representation of the People Act 1949, section 1, provides that the persons entitled to vote as electors at a parliamentary election in any constituency shall be those who are resident there on the qualifying date 10 October of each year in Great Britain. The 1949 Act has a subsection which refers to prisoners and patients at mental hospitals. Section 4(3)⁷ provides that: "A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or other form of mental disorder, or who is detained in legal custody at any place, shall not by reason thereof be treated ... as resident there." In other words, patients in mental hospitals are not resident there for electoral purposes. Someone who is not resident cannot be placed on the register of electors and cannot vote. But not all patients were disenfranchised by the 1949 Act. The 1949 Act has a subsection which refers to prisoners and patients at mental hospitals. Section 4(3) provides that: "A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or other form of mental disorder, or who is detained in legal custody at any place, shall not by reason thereof be treated as resident there." In other words, patients in mental hospitals are not resident there for electoral purposes. Someone who is not resident cannot be placed on the register of electors and cannot vote. But not all patients were disenfranchised by the 1949 Act. Section 4(3) did not cover voluntary patients in the psychiatric wing of a district general hospital, such hospitals not being "maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or other form of mental disorder." Any mental patient who was also resident in his home

⁷ The Representation of the People Act, 1949

constituency could be registered there and cast his vote, subject only to the old common law rule which denies the vote to those suffering from severe mental illness. People in this category can vote in lucid intervals as long as they are on the register, and it seems to be for the presiding officer to decide whether the voter is sufficiently *compos mentis* to discriminate between the candidates and answer the statutory questions.

The legislators brought in a declaration that states 'the voluntary patient in a mental hospital will be treated as resident at his home address or at the other address which he has given, and will further be treated, unless the contrary is proved, as qualified to be registered as an elector'. In addition, if he applies to be treated as an absent voter, he may vote by post.⁸

United States of America

Prior to 1973 almost 30 million Americans were deprived of various civil and personal rights because they were labelled mentally retarded. A new definition adopted by the American Association on Mental Deficiency reduced that number to six million. Approximately five of the six million are considered "mildly retarded" after completing their education, most of them live in the general community, work, and lead independent lives. The exclusion of the mentally retarded from the right to vote has come under increasing attack. Mental health professionals as well as advocates for the retarded oppose categorical disqualifications of the mentally retarded, insisting that the state needs compelling justification for the denial of fundamental rights to any citizen. The legal status of the mentally retarded has been changing rapidly in recent years, although state laws regulating their eligibility to vote vary widely. A study of voting regulations in the fifty states and Washington, D.C., has shown that twelve have no explicit limits on eligibility of the mentally retarded to vote; fifteen permit voting by all except those adjudicated incompetent; two deny the vote to anyone who is institutionalized; one denies the vote to those adjudicated incompetent or institutionalized. Nineteen deny the vote to those diagnosed as insane, non-*compos mentis* or idiots; and two, to both those adjudicated incompetent⁹ and those who fall in this last category⁹.

Convention on the Rights of Persons with Disabilities (CRPD)

⁸Voting and The Mentally Ill, *British Medical Journal (Clinical Research Edition)*, Vol. 286, No. 6368 (Mar. 12, 1983), pp. 899-900

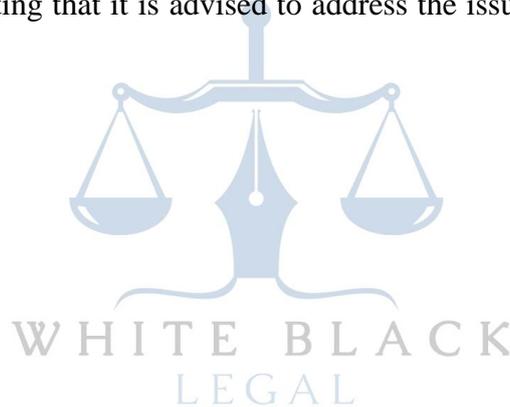
⁹ *The Mentally Retarded & the Right to Vote*, Barbara B. Green and Nancy K. Klein Source: *Polity*, Vol. 13, No. 2 (Winter, 1980), pp. 184-206

Under Article 29 declares that states must 'ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected'.¹⁰

Conclusion

To resolve the confusion and contradiction it is advised to address this issue is to redefine the term “mental illness” as a disease, instead of a disability. Since mental illness is usually unquantifiable, it should be treated separately from other disabilities listed in the Persons with Disability Act. The more loosely a term is defined in the Constitution, the higher the probability to work out loopholes in the process. Ideally, the “unsoundness of mind” clause should be dropped from the Representation of Peoples Act and replaced with very specific cognitive disabilities.¹¹

Hereby, I conclude by stating that it is advised to address the issue as a disease rather than a disability.



¹⁰Cognitive Impairment and the Right to Vote: A Strategic Approach Journal of Applied Philosophy, LINDA BARCLAY Vol. 30, No. 2 (May 2013), pp. 146-159

¹¹<https://nationalinterest.in/mental-illness-a-curious-case-in-adult-suffrage-bf15c4d15946>