

THE NEED FOR A POLITICAL ELIGIBILITY TEST FOR
ELECTED REPRESENTATIVES IN THE INDIAN POLITICAL
FRAMEWORK

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Article

THE NEED FOR A POLITICAL ELIGIBILITY TEST FOR ELECTED REPRESENTATIVES IN THE INDIAN POLITICAL FRAMEWORK

Jeevan Sarabeswaran Hari¹

Abstract : *The model of democracy has been universally accepted as the soundest, most people-oriented and efficient form of governance. It is currently the most widely employed administrative mechanism in the world, with nearly 167 countries currently making use of it. However, the ancient Athenian system presents a number of flaws that may provide different outcomes to different nations based on their economic and societal setup. This article seeks to provide a viable solution to counter these flaws and enhance the system of governance in countries across the world. The contours of this article deal with the functioning of a democracy, with special emphasis laid on the Indian administrative setup, and the various human traits that can serve as effective parameters for the proposed solution. This article primarily seeks to highlight the various fallacies of democracy and the need to counter such demerits in order to enhance the system of governance currently in practice. This article makes use of various analogies cited by different authors and makes use of comparative analyses between various nations to highlight the variance provided by a democratic setup and its outcome. The focal point of this article emphasizes on the need to implement a Political Eligibility Test (PET) to increase the efficiency of administration and quality of elected representatives in the Indian political arena. It shall also contain a basic framework of the suggested PET which shall function as a guiding model for its legislative implementation. The latent objective of this article is to alter and develop the current legal machinery to incorporate the changes necessary for improving the model of governance currently employed by various nations and to increase the quality of elected representatives capable of making better decisions, informed choices and sound laws for the benefit of the nation.*

Keywords : *Democracy, Fallacies, Political Eligibility Test, Voting Rights, Elections.*

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I. INTRODUCTION

The structure of the political framework of a country plays a critical role in the functioning of the state, its development and the status of its people. Over the efflux of time, various structures have been developed and tested, with many resulting in failure. Out of a plethora of governmental structures, the democratic form heralded as the most efficient and people-oriented structure. However, the age-old system suffers from a variety of shortcomings that are often ignored by the people – shortcomings that can affect the very efficiency of its functioning in a country’s political climate. Moreover, a fact often overlooked is that a democracy may not function in the best interests of the nation in every situation. It requires certain conditions that need to be actively fulfilled in continuous operation by the general public and the elected parties. In countries where this inherent necessity is absent, steps must be taken to cover up this potentially disastrous lacuna before the entire system is crippled and rendered unreliable. Focusing primarily on the Indian political framework, several instances highlighting the inefficient functioning of democracy can be cited. The prominent role played by caste, religion and other emotional allurements further disrupt the democratic system as it does not allow parties lacking such assets to ascend to positions of power and authority, even if they are capable of functioning at a better rate. The most appealing factor that a democracy has to offer is that it bestows people with great powers, such as that to choose who will attain a certain governmental

position. However, with great power comes great responsibility². Similar to that of entrusting an untrained person with a firearm, the vesting of such powers in the hands of people who are unable to ascertain its true value and make use of it effectively would be catastrophic³, causing more harm than good to everyone in their surroundings as well. The incorporation of a political eligibility test, with the aim to screen and select the best of all persons willing to contest in a democratic election can serve as a viable alternative to this specific problem. Candidates can be assessed based on their character, leadership skills, intelligence and problem-solving abilities. Further, background checks including their education, family ties, criminal records and CIBIL score can be assessed to monitor their actions in and contribution to society. However, the application of such a radical step must be done with extreme caution and precision. Even though it may render certain parties unable to contest in elections, such a restriction is necessary to ensure a high cadre of politicians and ministers effectively carrying out the functions required to be performed by them. This would also put an end to the prevailing monopoly held by a few established political parties that form the government, paving the way for new entrants in the political playfield.

II. EVOLUTION OF DEMOCRACY

The term ‘democracy’ is derived from the Greek term ‘*Demokratia*’ which can be split into *Demos* (“people”) and *Kratos* (“rule”)⁴. The common understanding of the term signifies a “rule by the people”, where the government and its officials are chosen by the people of that nation. However, the original form of democracy is completely different from the form that it currently exists in. The first instance of a democratic structure can be traced back in history to ancient Athens in the 5th Century B.C⁵. Athenian pioneers devised an experiment to choose the next leader and the members of its legislature by bestowing such decisions in the hands of the people. They adopted a direct democracy, as opposed to the representative democracy that persists in modern-day countries. In this setup, the *Comitia Tributa* was made open to all male Athenians

² Columbia Pictures, *Spider Man* (2002).

³ Noëlle McAfee, *Democracy and The Political Unconscious* 147 (2008).

⁴ Robert Dahl, *Democracy*, Britannica Encyclopaedia (Nov. 22, 2019, 6:31 PM), www.britannica.com/topic/democracy/.

⁵ *Id.*

aged above 20. The pioneers envisaged that such a feat would require a community of a small size, where every individual was capable of significantly influencing the outcome, and also possessed the time to engage in such a political affair. Since Athens possessed both these features, they were able to execute this task with minimal hindrance. This idea was later “adopted” by the Romans at a later point of time, with significant changes being incorporated into it by them⁶. The Romans claimed themselves to be a ‘republic’ where the people as a whole could decide on who the next leader would be. The concept of democracy was so widely accepted that it even survived the fall of the Roman empire and managed to persist into various European nations of small sizes where it continued to be in force. The first major democratic dilemma also arose around this point of time. While a democracy was highly efficient in small societal setups, this institution was simply not suited to political associations significantly larger than the city-state. By limiting the size of a city-state, citizens can in principle, if not always in practice, directly influence the conduct of their government—e.g., by participating in an assembly⁷. But limiting size comes at a cost: important problems—notably defence against larger and more powerful states and the regulation of trade and finance—will remain beyond the capacity of the government to deal with effectively⁷. Alternatively, by increasing the size of the city-state—i.e., by enlarging its geographic area and population—citizens can increase the capacity of the government⁸ to deal with important problems, but only at the cost of reducing their opportunities to influence the government directly through assemblies or other means⁹.

III. DEMOCRACY: THE CHINK IN THE ARMOUR

The democratic form of governance has long been hailed as the most ideal form of rule; even perfect in some cases. However, it is a harsh reality that it suffers from various drawbacks that can have a multitude of different effects in different situations. While most developed nations are immune to such drawbacks causing failures in the system, the same does not apply

⁶ *Id.*

⁷ *Id.*

⁸ Robert Dahl, *Democracy*, Britannica Encyclopaedia (Nov. 22, 2019, 6:31 PM), www.britannica.com/topic/democracy/.

⁹ *Id.*

for developing/third-world nations. Perhaps one of democracy's prominent and unparalleled feature is also the cause for its critical failure in the Indian system. The makers of the constitution were so focused on adopting democracy for the good of the people that they did not analyze whether India was ready for such a system to persist. It is a well laid down right of every citizen to contest elections, this bringing forth numerous counter arguments to this ideology. However, it is to be noted that the concept of democracy was fundamentally a western ideology primarily suited to their style. Thus, to accept such a system without any sort of modification of adaptive methods could pose several problems. Despite evident failures present in various forms of democracy such as elections, governance and policy implementation, the general public does not wish to recognize these faults and work on resolving them. The ancient system of democracy was intended to be employed only for a limited society where the actions of each party could be actively monitored. However, its shift to a drastically large population would give rise to many unforeseen design flaws. A democratic election will not guarantee to yield the best results as every single citizen, irrespective of their age, education and other social parameters is granted a right to vote. While the educated masses are better equipped to make informed choices upon inspecting the character of the candidate and their manifesto, uneducated voters can often be misled using various negative societal traits such as caste, religion, etc. to cast their vote on a party undeserving of it.

A simple comparison struck between a developed nation such as Sweden and a developing nation such as India can serve as a working example to highlight the stark difference in the functioning of a democratic government. The Swedish system provides for a number of benefits which ease the process of obtaining the right to vote. In Sweden, eligible citizens are automatically registered onto the electoral roll¹⁰. The government also takes all required steps to actively promote the importance of voting prior to their elections. The success of this mechanism can be clearly seen in the September, 2018 elections conducted in Sweden where 83% of the total voting population showed up to cast their vote¹¹. India, on the other hand, is yet to display such results of a successful election. The process of applying for a voter's ID and

¹⁰ Alexander Polivanov, *10 Features of Democracy in Sweden*, Sweden Sverige (Jan. 13, 2020, 5:32 PM), sweden.se/society/10-features-of-democracy-in-sweden/.

¹¹ Polivanov, *supra*.

getting oneself registered onto the electoral roll was initially a very cumbersome process. Only in recent times has it been eased with the introduction of online registration and the use of an Aadhaar card as a viable substitute to a voter's ID. The next major hurdle the Indian political framework faces is the lack of active participation by the voting population of India. Compared to the Swedish attendance, India pales at a mere 67% registration of its total voting population, accounting for a mere 0.3% increase since its previous elections in 2014¹².

IV. FALLACIES IN THE INDIAN SETUP

An analysis of the functioning of a democratic setup in India by the author has led to the identification of the following drawbacks:

A. Informed People Make Informed Choices: It is a commonly accepted notion that an educated and civilized person is capable of making better and more informed choices than a person lacking those qualities in various factors such as finance, administration, etc. The same logic can also be applied to democratic elections, wherein an educated voter would cast his vote based on a logical foundation upon analysing the character of the contesting individual and the various promises enshrined within their manifesto. However, such a classification of voters is of a very low number in India. The currently perceived segment of the Indian population considered to be educated stands at 74.04%¹³. Though this may seem to project a high literacy rate, the data must be processed with the voters' turnout in elections. Various studies indicate that the educated populace account for the minority of the total actual voting population and in reality, the elections are being decided by the illiterate part of society. While this secures the right to vote granted to every citizen, the results can often be quite calamitous. This would imply that the majority of all decisions would essentially be made by the uninformed masses who do not comprehend the gravity of their actions. While on the one hand, the entire electoral process would be defeated in its essence by those who act in an irrational manner, curbing the rights of such people and allowing only the educated people to vote would result in a gross violation of

¹² Special Correspondent, *2019 poll records the highest-ever turnout of 67.47%*, The Hindu (Sep. 22, 2019, 12:52 PM), www.thehindu.com/elections/lok-sabha-2019/2019-poll-records-the-highest-ever-turnout-of6747/article27250281.ece

¹³ Government of India, Census Report (2011)

numerous constitutional provisions. The trade-off in this situation cannot possibly obtain a positive outcome out of the two choices faced by it.

B. Lack of Voter Turnout: Another major problem faced by the government in Indian elections is the adverse lack of turnout by the voting population during election times. A significant portion of the total voting population do not show up at their polling booths to register their votes for their preferred candidate. A wide array of reasons can be attributed to this absence, each hailing from different parts of society. The most commonly given reason for the absence of many voters is the simple lack of time to do so. This reason is commonly given by the working class, who state that they are often not granted permission or off-time to go to their respective polling booths. Since at least an hour of their time is required for this process, many employees simply avoid voting in order to save their pay-out. The United States faced a similar problem with the Congressmen objecting to the conversion of election day as a national holiday as an attempt to promote voting. Such a practice is almost non-existent in India, with very few organizations now pushing forward to encourage their employees to vote. Another reason stated by many is with regard to the lack of knowledge of their constituency and polling booth. Many people eligible to vote often do not do so as they are unaware of their polling station and sometimes, with the entire process itself. In order to combat this drawback, the Election Commission has launched many online forums to provide voters with information of their constituency, candidates and polling booths. While this has helped curb voter absence to a great extent, it has proved ineffective in cases where the voter is from a middle class/ lower-middle class background. The final reason arises due to the difference between the perceived and actual voting population. A large number of persons who would have just attained the age of 18 (required to vote in India) would not have registered themselves with the Election Commission of India as a voter. Thus, their name would not appear in the electoral ballot. Unlike many European countries, India does not automatically register all eligible persons as an identified voter. Hence, a major part of the youth population¹⁴ does not get to exercise their right to vote in the first instance where they are eligible to.

¹⁴ Jeffrey Haynes, *Religion and Politics* 188 (2010).

C. Role of Religion and Caste: Unlike western countries, Indian society is bound by a number of societal factors such as caste, creed and religion. These factors play an integral part in the life of every Indian and impact his/her life in manners unfathomable by western societies. The role played by these aspects have encroached onto the aspect of politics and governance ever since the inception of democracy in India. A voter's mind is heavily influenced by the caste and religion of a certain candidate¹⁴, which can often cloud his judgment. A large section of the population is easily swayed on the grounds of religion and caste. This sprouts from their misconceived notion that a person hailing from their same caste or sharing their religious beliefs would work to benefit them in a better manner and view them as a better leader¹⁵. The impact caused by these aspects are inevitable and cannot be curbed, which poses as a huge disadvantage to the Indian democracy. Its persistence into present times can still be viewed and backed by projecting the funding for political campaigns allotted by political parties. A large portion of their budget is diverted towards rural areas, where they are confident that they can influence the masses on these grounds and garner votes in higher numbers¹⁶. This trick would not work equally well in urban and developed areas and may also backfire in certain cases as the people would express dissatisfaction towards such practices employed by the contesting candidate.

V. THE SOLUTION

It is imperative to properly balance the situation before a feasible solution can be devised to counter this problem. Commonly suggested solutions indicate a simple change in the form of governance model for the country in question. While the suggestion may be put out without much thought, its execution in actuality is highly improbable. Democracy, despite its flaws, has proved itself to be one of the most efficient, people-oriented forms of governance. To shift from democracy to an alternative form of governance such as monarchy, aristocracy or oligarchy would not serve the best interests of the general public. To concentrate power onto the hands of a single person would give rise to a high degree of unpredictability, as no one can ascertain as

¹⁵ Pierre Rosanvallon, *Good Government* 129 (2018)

¹⁶ *Id.*

to the ruler bestowed with such powers would put them to good use or exploit them. Having a religious leader in charge of administration would also risk the integrity of the religious minorities owing to the inevitable imposition of the leader's religion upon the nation. It would be a much more efficient solution if one focused on tweaking democracy to suppress its flaws rather than overthrowing it as a whole. The example of King Carl has been quoted by various jurists as a suitable reasoning to prevent the centralization of administrative powers. However, one must consider as to the extent of damage that could potentially be caused if such powers were bestowed upon multiple persons of a similar nature. Moreover, it would be grossly inaccurate to state that a single ruler would only exploit the powers given to him. Jason Brennan has conceptualized the ruling by Elrond the Wise, a monarch fit to rule the people in an effective and loving manner¹⁷. Hence, it is imperative to find a good leader than to identify a good form of governance. There can exist both a great monarch and a tyrannical congress. This clearly suggests that the form of governance must work in synergy with the person appointed to administer and represent it. The current form of democracy allows for an open forum, where any person can come forward to contest in an election. From an economic perspective, this would reduce the maximum efficiency that can be achieved in terms of leadership. From an administrative point of view, this would imply that a person having no prior experience in management and decision-making can occupy the seat of heading an entire ministry. From a psychological point of view, this would imply that a person of slightly unstable character, possessing a derogatory view on women, children and sentiments can make laws on such matters. Just like coal, the best talent can often be identified in a position at the very bottom of the ladder in certain cases¹⁸. The Indian nation has always been highly accommodative of its leaders, where even a person owning a small tea stall near a railway station can move upwards to occupy the most powerful seat in the country. However, it is imperative to have a system of checks and balances to effectively monitor and assess the various types of people willing to contest in elections and form a part of the representative government of the world's largest democracy. In order to conceptualize this, the author proposes the introduction of a political eligibility test for all those who desire to compete in a democratic election. Since it is

¹⁷ Jason Brennan, *Against Democracy* 144-146 (1st ed. 2016).

¹⁸ Scharfenkamp et al., *The Higher the Better? A Comparative Analysis of Sociodemographic Characteristics and Human Capital*, 32 *German Politics and Society* 21, 33 (2014).

unconstitutional and in dissonance to civil and political rights to bar all uneducated people from voting for their nation's leader, it is the responsibility of the government to choose the best of the candidates for whom the people can vote for. A democracy is considered to be a government that is "by the people, for the people and of the people"¹⁹, and its essence as such cannot be stripped away. Hence, letting the Election Commission - a small segment of the people who are all functioning members of the society, decide the best possible candidates would still preserve such an ideology. The proposed system would consist of a number of tests, each to be conducted in pre-determined conditions, methods and environments and collectively referred to as the Political Eligibility Test (hereinafter referred to as PET).

A basic framework of the test would include the following:

- Psychological Analysis
- Decision-making and Leadership test
- Criminal Background
- Knowledge of Constituency²⁰

The test would involve a series of questions and simulation tests to determine the efficiency of the candidate in handling grievances, executing ideas, framing solutions and passing competent laws. A series of background checks would also be carried out in order to determine his role as a citizen and a member of society, assessing their performance as a law-abiding citizen. Candidates would also be required to possess knowledge of their constituency, which would be tested either in an oral/written format. The reason for including such a generic, textbookbased examination operates on the common logic of all examinations. The author strongly advocates that a two-fold purpose would be achieved by way of this test. It would primarily prove that the candidate is well-equipped with all the knowledge required to effectively tackle the problems faced by the members of his constituency and be able to act accordingly. Moreover, it serves a secondary function wherein potential leaders would be made aware of the problems of the constituency and its demographic layout, thereby gaining an understanding of the needs of the constituency. Thus, the outcome would involve an inevitable training of the candidate, making

¹⁹ Abraham Lincoln, *Gettysburg Address* (1863).

²⁰ Galasso et al., *Competing on Good Politicians*, 105 *The American Political Science Rev.* 79, 82 (2011).

him a more suitable and efficient choice for the role assigned to him. However, it is vital to consider and overcome a multitude of legal and administrative issues in order to ensure the effective implementation of this provision.

VI. ISSUE I: WHETHER THE PROPOSED SYSTEM IS IN CONSONANCE WITH LEGAL PROVISIONS?

The fundamental issue that would arise with respect to this research question is with regard to the legal validity of this system in its entirety. Various constitutional provisions, statutes and international conventions lay heavy importance on the need to preserve a person's right to vote with full choice and in the absence of any form of duress. Any citizen can freely contest in a democratic election if he/she satisfies the conditions required to do so as set forth by the legal machinery. However, these criteria are very basic in nature and do not function as a system of checks on the participants. The implementation of a system of tests determining the eligibility of a candidate to take part in democratic elections would definitely bridge the gap between an efficient and inefficient government²¹. However, the cost of implementing such a system is high and has far-reaching consequences. To initiate such a policy would require curtailing the rights and freedoms of the people in certain set areas to a significant extent, which could be perceived as an unwarranted breach of the civil and political rights of the masses. Hence, there is a need to clearly lay down that the political eligibility test would be able to work in synergy with the Indian legal framework. The proposed system would need to accommodate for certain terms of certain Indian legislations such as the following:

- The Representation of Peoples Act, 1951 (A)
- Constitution of India – Articles 14, 19 and 21 (B)
- International Covenant on Civil and Political Rights (ICCPR) – Article 25 (C)

²¹ Galasso, *supra* at 85.

A. The Representation of Peoples Act, 1951:

With respect to the Representation of Peoples Act, 1951, the elements of the system in question and the statute have many common aspects. While the various qualifications laid down in Chapter II of the Act are highly rudimentary and serve only a basic function, Chapter III of the Act is much more composite and accommodating. It lays down several disqualifications of a person from becoming a member of the parliament. A majority of these aspects focus on criminal grounds, such as offences, disloyalty and corruption. This framework is in direct consonance with the third aspect of the system in question – criminal background checks. However, the PET would provide for a much more comprehensive analysis of the criminal activity and record of the person. The mere commission of a crime would not serve as a sufficient ground for disqualification. The Representation of Peoples Act, 1951 provides for the nature of the offence required for disqualification by providing a minimum sentence that would need to be served by the person. This can be directly adopted by the PET, while also looking into why the act was committed and as to whether any intention other than malice was present at the time of the said “offence”. It is of great importance to not curtail the candidate in question solely on the grounds of him/her holding a criminal record as this provision could be misused by opposing parties to hinder the political career of an aspiring citizen. The screening process of the PET would need to be thorough and objective, taking into account every single fact and circumstance involved in the paradigm of the legal charge.

B. Constitution of India:

Articles 14, 19 and 21 are commonly referred to as the “Golden Triangle” of the Indian Constitution²². It is imperative for any legal mechanism to abide by the rules of these provisions, which are of the highest sanctity in the legal order. With respect to Article 14, an initial understanding of the PET would impress upon the reader that the system is arbitrary and denies equal opportunity to every person to contest in an election. However, the facet of ‘intelligible differentia’ provides an exception to Article 14, where unequal treatment of two parties can be justified if the grounds for such difference is reasonable. In this case, the aspect in question is of forming the government, the highest and most important functioning body in the entire

²² *Minerva Mills v. Union of India* AIR 1980 SC 1789.

nation. In such a crucial matter, taking adequate steps to refine the contesting parties cannot be held as a gross violation of Article 14 as it is a matter of public policy, governance and political stability. Moreover, Article 14 only puts a bar on any form of class legislation, but not a bar on classification in itself. It is instrumental for a nation to have an efficient working government, equipped with the best minds of the free world to steer the country towards development and progress. Therefore, it is imperative for modern jurists to rethink the aspect of democracy as a means to progress, requiring the curtailing of certain political rights of the people.

Article 19, commonly referred to as the 'Right to Freedom', is a matter of crucial importance and cannot be contravened in any form or manner. It grants citizens the right to carry on any profession, occupation, trade or business of their choice. However, the realm of politics does not fall within the ambit of any of these terms. Since it does not require a specific skill set, does not involve the trade of any commodity nor does it involve an undertaking of risk, taking up the post of a government representative does not necessarily imply that it is the sole occupation of the person. Politics is commonly viewed as a service by a person towards the society. While it does include certain aspects of an occupation such as remuneration, the initial contention still holds true.

The pinnacle of the legal machinery is enshrined within the provisions of Article 21 of the Constitution of India. It provides for the right to life and livelihood of every person. While the phrase may seem simple, it encompasses a wide gamut of rights and freedoms that are to be made available to the people, thanks to judicial interpretations on several accounts. One such demand out of many is the right to freely contest in a democratic election. Since the right to vote and its counterpart have been provided for by a statute, the general interpretation is that it would qualify as a statutory right. However, reality is slightly different from such an understanding. In the case of *Jamuna Prasad v. Lachhi Ram*²³, the Supreme Court held that the right to contest in an election is not a common law right, but rather a special right created by a statute and is subject to the limitations imposed by such an act. The aspect of harmonious construction must also be applied in this matter, as the free right to contest in an election granted to an individual could affect the right to good governance and public benefit of the society.

²³ *Jamuna Prasad v. Lachhi Ram* AIR 1954 SC 686.

Wherein such a situation would exist, the rights of the society would outweigh the interests of the individual.

In the case of *Javed & Ors vs State of Haryana & Ors*²⁴, the Supreme Court laid down that the right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a Statute. Hence, imposing restrictions by way of the PET would not amount to an infringement of the fundamental rights of a person.

C. International Covenant on Civil and Political Rights (ICCPR):

In the case of international conventions, the application of the PET would be subject to a very different approach. Unlike local laws, the applicability of an international convention cannot be modified to suit the particular needs of the nation. It can also not be altered according to the legal climate of every nation, but rather follows a system of uniform applicability. Moreover, the Indian judiciary has always upheld the importance and vital role of these conventions in reshaping and developing the law. To completely override the provisions of the International Covenant on Civil and Political Rights (ICCPR) would be a matter of impossibility. However, Article 25 of the ICCPR contains a proviso allowing for certain reasonable restrictions not encompassed within Article 2 of the same international convention. The convention clearly lays down that no restriction shall be made to the political rights of a person on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status²⁵. The contours of the term 'other status' is open to interpretation and has no set meaning or definition attached to it. However, it can be reasonably ascertained that the educational qualification and criminal background of a person do not contradict the provisions of the Article. It can also be argued that the restriction imposed upon the public is of a reasonable kind, acting in public interest and national development. Moreover, these international laws do not directly form a part of Indian law. In most cases, they are exercised and relied upon in cases where the local law is silent upon the matter. Furthermore, where the

²⁴ *Javed & Ors vs State of Haryana & Ors* 2003 8 SCC 369.

²⁵ Art. 25, International Convention on Civil and Political Rights, (Dec. 19, 1966).

²⁶ (12) D.D. Basu, *Commentary on the Constitution of India* 13116 (9th ed. 2018).

²⁷ *ADM Jabalpur v. Shivkant Shukla* 1976 (2) SCC 521.

Parliament has made any legislation which is in conflict with a ratified international law, then Indian courts are bound to give effect to the local law.²⁶ The Supreme Court of India has held that nothing which conflicts with the provisions of our constitution or legislative framework could be enforced under any disguise, be it in the form of a customary international law.²⁷ Hence, an effective way for the PET to harmoniously coexist with the ICCPR would be to establish the former as a set statute that is not in gross violation of any constitutional provisions. Upon becoming a local law, it would automatically gain an upper hand over ratified international conventions. The Supreme Court accepted the binding force of international law through the case of *Gramophone co. of India Ltd. v. Birendra Bahadur Pandey*²⁶, wherein it held that “the doctrine of incorporation recognizes the position of international law unless they are in conflict with an Act of Parliament. Therefore, courts are under an obligation within legitimate limits to interpret international laws with the municipal code. However, in cases where conflict is inevitable, the latter must prevail”²⁷. The ICCPR, while operating as a suggestive body, would not possess the ability/weightage to command an amendment to the PET set in law. The role of an international legislation is to bring uniformity in the application of law and justice across the world. However, it is vital to consider that such international legal tools lack the means of assessing and adapting its operation to specific socio-political climates offered by various countries. Therefore, it would be unwise to rely completely on the provisions of such conventions without considering the needs of the country on a higher pedestal. Since the Political Eligibility Test would be in consonance with Article 14 of the Constitution of India, the reasonable nexus would serve as a suitable defence to its contravention of Article 25 of the ICCPR.

26 *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, AIR 1984 SC 667.

27 Saurabh Chopra, *Public International Law Exam (includes relevant treaties)*, eSaurabhChopra (May 27, 2012, 1:04 PM), <https://esaurabhchopra.blogspot.com/2012/05/public-international-law-exam.html>.

VII. ISSUE II: WHETHER THE PROPOSED SYSTEM CAN BE IMPLEMENTED IN ACTUALITY IN THE INDIAN POLITICAL FRAMEWORK?

The next major problem that would inevitably occur with regard to the Political Eligibility Test system is the increased expenditure of time, money and manpower in implementing it. A system of such intricacies to be deployed on a scale of such magnitude would be extremely difficult without adequate resources and proper planning. Hence, it is of utmost importance to identify a governmental body capable of pulling off such a feat. This identified body would need to possess a large pool of resources, money and trained personnel to be able to carry out all required activities in specified time periods with proper record maintenance. The creation of a new department for the purpose of this idea would be out of the question as it would not be economically feasible. The government would need to allocate funds and other resources specifically for this newly-found body and also pass Acts as required to make this body powerful enough to handle and orchestrate such a large function. Rather, the most efficient solution would be to allot the function of implementing the PET to the existing Election Commission of India (ECI). While such an idea would be interpreted by many as ill-conceived at face value, it is the most logical and efficient option available to the Indian governance structure. The ECI possesses prior experience with regard to elections and also have all the prerequisite knowledge and tools required to effectively carry out and monitor all activities related to elections. Another aspect that would be needed to be taken into consideration is the financial aspect of the plan. Elections already incur a very huge burden on the economy as a significant portion of the taxpayers' money goes into organizing a democratic election on a national level, excluding the millions of rupees spent by political parties for their propaganda. This already expensive process is now bound to become even more burdensome, raising costs by an intermediate margin. The Election Commission would need to restructure their budget allocation to incorporate this facet into their planning stage in order to execute it at a later point of time. Forbes estimated that the Lok Sabha elections in 2019 incurred a staggering cost of \$7

Billion (approx. 5,000 Crores), spending nearly \$7 per voter²⁸. This cost would shoot up considerably upon incorporating the aspect of PET into the framework of a democratic election.

The Election Commission of India would need to begin the election process in advance in order to accommodate this new feature in its framework. The parties willing to contest in elections would need to submit in advance a memorandum of all the parties it wishes to enrol for this test. A separate application for each person should be submitted to the respective constituency in-charge containing all necessary information such as personal profile, criminal profile, assets and liabilities, tax records and other relevant information as required by the ECI. The next step would be to carry out an initial screening of the application of the candidates. At this point, unfit candidates can either be rejected completely or be considered for the entirety of the process. The tests shall consist of various aspects such as interviews, personality profiling, criminal profiling, decision-making skills, stress tests and constituency aptitude tests. An expert panel shall be constituted by the Election Commission of India, where each panel member shall be free from any bias or monetary interest in the process. All contesting candidates shall not reveal their name or their party affiliation at any point during the test, and shall instead be assigned a code for the purpose of their representation. The interview shall also provide for its live-streaming in a channel of the ECI's choice and an official, designed website for the purpose of enhancing and fostering transparency in the entire process. A cumulative scoresheet should be maintained for each person and every person deemed suitable to contest in their respective constituency shall be given the green light to start their propaganda. For expenditure and monitoring purposes, the ECI may impose a cap on the number of eligible candidates that can be allowed to contest in each constituency.

With regard to the handling of finances, there is now a need to identify new avenues of revenue for the ECI to meet the heightened expenditure of this new form of election. However, it is extremely difficult to match the increase in expenditure to the increase in revenue. Efforts can be made to bridge the gap between the two natures of transaction, providing a lesser degree of losses for the ECI. Digital rights for the broadcasting of the testing process can be sold to private players via bidding. This would serve a two-fold purpose: First, the Election Commission

²⁸ Kenneth Rapoza, *India's Crowded, Crazy Expensive, Monthlong Election Has Begun*, Forbes India (Dec. 29, 2019, 4:32 PM) www.forbes.com/sites/kenrapoza/2019/04/12/indias-crowded-crazy-expensive-month-longelection-has-begun/#37a096825c37/

receives a revenue source for funding the elections and secondly, it increases the chance of public participation in the electoral process as a majority of the population not interested in watching government-run media platforms (such as Doordarshan) can monitor the process from a multitude of channels. Streaming of ads in the online streaming platform during break points in the process can also generate some additional revenue for the ECI. The ECI may also consider levying a charge or application fee for every person applying for the electoral test, similar to that of deposits made by contesting candidates. While a significant portion of the expenditure may be covered, the Election Commission of India would still have to resort to other means of raising money for carrying out elections in an efficient and orderly manner. The Election Commission may also consider raising money by way of public deposits in order to cover costs for organizing elections in India.

VIII. CONCLUSION

A democratic election serves as a sanctuary for all thoughts and expressions of the government a free world. It encompasses the ideologies of many great leaders who believe in the spirit of democracy as a government run by the people themselves. However, it would be foolish to believe that a system is perfect in itself and self-sufficient, requiring no change or improvement to battle the efflux of time and changing political scenarios. A democratic form of government consists of certain flaws that prevent it from performing in a state of full efficiency. The author believes that the Indian democracy is far from perfection and that certain radical steps need to be taken in order to improve the nation as a whole. Ever since its attainment of independence (nearly 70 years ago), the Indian government has been unable to abolish many prominent social evils such as caste, poverty, illiteracy and rural neglect²⁹. The ruling government claims to be a “government of the poor” because it has hardly done anything in good faith to uplift them. Since the majority of the voting strength lies in the hands of the poor who can be easily influenced by money, caste and religion, the Election Commission must take upon itself to make informed choices for the benefit of the society. If a private company lays down rigorous testing for its candidates for the selection of a normal employee, then the implementation of a selection process for the person in charge of heading an entire nation and

²⁹ Atul Kolhi, *Democracy and Development in India* 141 (2009).

ministerial portfolios would in no way be unjustified. Granted, the implementation of such a provision would lead to substantial increase in the time and money expenditure of the nation along with the deployment of a large manpower force to carry out the activities of the plan. However, a good decision then would save 5 years of bad governance and millions of rupees lost in bad financial decisions. The framework of the suggested Political Eligibility Test has also been devised in a manner so as to incorporate all social, economic and political facets of a person's life, considering their CIBIL scores, criminal backgrounds, Educational strata, EQ and financial records. The author has also suggested the means through which the framework can be incorporated into the legal machinery by the legislature without any violation of the provisions of the Constitution of India and the Representation of Peoples Act, 1951. With the proper implementation of this scheme and its harmonious construction with other existing laws and conventions, the democratic framework of India can potentially undergo a sea change in its mark of efficiency, form of functioning and structure of implementation. The success of this enhanced system can also set a global precedent for other developing nations, providing them with a new, refined form of governance and development.