



Foundation for Critical Choices for India

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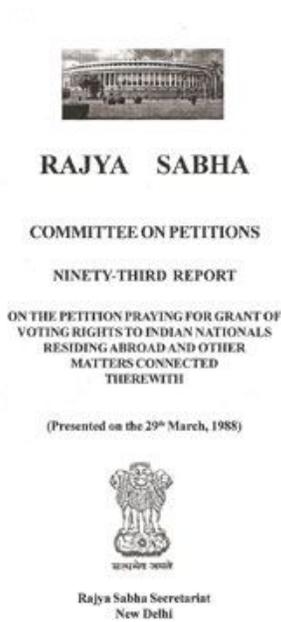
Foundation's Petition to Rajya Sabha on Voting Rights to NRIs and Their Representation in Indian Legislature A Summary

The Foundation for Critical Choices for India made a petition to the Petitions Committee of Rajya Sabha on 3rd March 1983, signed by its Office Bearers as well as 77 Indian Nationals

residing abroad, and supported by a background paper

requesting for the grant of voting rights to NRIs residing abroad, their representation in Indian legislature and other related matters. On the recommendations of the Committee's chairperson, Mrs. Margaret Alva, the Committee selected it for scrutiny, out of many petitions submitted to it.

The Foundation argued its case on the basis of analysis of then prevailing constitutional and legal position with regard to NRIs/PIOs, practice followed by some of the foreign countries and submitting the following specific proposals for Committee's consideration:



- (i) The Constitution of India be amended to provide for special representation of Indians abroad in the Lok Sabha, in recognition of the principle of special representation of particular groups, minorities in the legislature, enshrined in part XVI of the Constitution of India.

- (ii) Pending the amendment of the Constitution immediate relief to be provided through the appointment of a suitable number of members of Rajya Sabha, under Article 80(3) of the Constitution of India to represent the special interests of Indians resident abroad.
- (iii) The Election Rules be modified enabling Indians abroad to vote for national elections in India through postal ballot as is being done at present for the employees of Indian Missions abroad.
- (iv) Suitable provision should be made in the Constitution for the Indian residents abroad to be nominated to Rajya Sabha.
- (v) A Special Office/Wing be created for Affairs of Indians abroad, either in the Ministry of External Affairs or in the Prime Minister's Office, for coordinating policies and their execution with regard to problems of Indians resident abroad. Such an Office may deal with common problems of Indians abroad such as, special legal problems relating to inheritance of property in India, marriage, divorce, care of children born out of mixed marriages, questions of nationality, dual nationality, protection of Indian workers abroad, special provisions for education of children of Indians resident abroad as well as in India, special facilities for housing, investment, taxation on repatriation, allotment of land for housing and other purposes, etc.
- (vi) Keeping in view the increase in the number of Indians residing abroad for long period of time and the specific nature of the problems faced by them, an *Ambassador At Large* to be appointed to look after the special interests of Indians abroad. The Ambassadorial position and the Charge of Office in India could be combined in one and the same person. Such an officer would be responsible for coordinating policies on generic problems facing Indians resident abroad in different countries, and would act as a link between the

embassies of India in countries with high concentration of Indian population and the Office for the Affairs of Indians Abroad.

In order to consider the petition in its totality, The Committee discussed it with intellectuals and legal experts like Nani Palkhiwala, Distinguished Senior Advocate Akbar Ali Khan, Professor Rasheeduddin Khan, former Governor of UP, Eminent Professor and former MP, Mrs. Roda Mistry, Professor K.K. Nigam, Dean Faculty of Law, University of Delhi, Shri Navneethan Rao, Vice-Chancellor, Osmania University, Prof. R.V.R. Chandrasekhara Rao, Dean, Faculty of Social Sciences, University of Hyderabad, and Professor Mrs. Alice Jacob, Director, Indian Law Institute.

Mr. Palkhiwala strongly supported proposals of the Foundation. Stating that the arguments and the reasoning advanced by the petitioners were sound, he recommended the Committee to accept petitioners' prayers in toto. Shri Akbar Ali Khan was of the view that the NRIs should be given voting right with some conditions. Professor Rashiuddin opposed the idea of grant of voting rights to NRIs. On the other hand Shrimati Roda Mistry was of the opinion that, "submissions made by the petitioners were very valid and deserved sympathetic consideration." Prof. Nigam thought there was no need to change the existing laws. Prof. Navneetha Rao was of the opinion that, "NRIs must be given voting right, though some problems will be faced in implementation", but did not favour their representation in local bodies. Prof. Chandrasekhara Rao was in principle in favour of granting voting rights. Prof. Mrs. Alice Jacob, arguing that right of vote is not a *constitutional right* as argued by the Foundation, but is a *fundamental right*. She was apprehensive of NRIs being influenced by foreign countries where they are resident.

With a view to ascertaining reactions of the Trade and Industry sectors, the Committee interacted with their representatives in major cities like Mumbai, Bangalore and Madras. Similarly, the Committee visited the State Governments of Andhra Pradesh, Karnataka, Kerala and Tamilnadu, the states from where a large number of Indian

nationals had migrated abroad. Also, the Central Ministries concerned with different aspects of NRI Affairs, like External Affairs, Home Affairs, Law, Justice and Company Affairs and Finance, as well as institutions like Election Commission, Reserve Bank of India, etc were asked to provide their views either as witness or in writing.

The Petitions Committee also invited the Foundation to send its representative to appear before them and provide additional information and answer questions. **Drs. B.N. Madan**, then Vice-President of the Foundation and **Mr. S. J. Singh**, then Executive Secretary, India Chapter of Foundation, New Delhi attended the 5th Meeting of the Committee convened for this purpose on 11th July, 1988 and provided additional information in support of Foundation's proposals and answered specific questions raised in the meeting.

Committee on Petitions Conclusion and recommendations.

The Committee took Foundation's proposals seriously. The Ten Member Committee considered the petition in 47 sittings between 5th May 1983, when it decided to examine the petition thoroughly and 22nd March, 1988 when it adopted the 127 page report. It asked for written responses of relevant Central Government Ministries and 4 state governments from where most NRIs had migrated, heard oral submissions by their representatives and also consulted some of the well known intellectuals, legal and financial experts engaged in NRI Affairs. On the basis of this, the Committee, *after deliberating for nearly 5 years*, drew its conclusions and recommendations.

Considering the data and the arguments adduced by the Foundation, as well as the reactions to them from different individuals and organizations consulted by it, the Committee states that , "it is convinced that the petitioners have focused attention on a *matter which is unique in content and perception*" (93RD Report, p. 44.

Out of the three issues raised by the Foundation, on the *institutional issue* of a separate high level organization a Department or a Ministry of NRI Affairs, there was not much

comment or opposition and the Committee recommended its implementation both at the Centre as well as in the States.

In addition, it further recommended that

- (i) Indian Missions abroad should be provided with compilations both in English and Hindi of all government decisions, regulations, details of facilities and concessions, specific reservations of seats at universities for children of NRIs, etc.
- (ii) The work of India Investment Centre should be reorganized, monitored periodically and staff strengthened.
- (iii) State governments should keep a percentage of quota reserved in favour of returning Indian nationals in the matter of i. allotment of telephoned, allotment of houses and industrial sites, iii. admission in schools and colleges and other requirements of a reasonable living from out national point of view.

On the issues of *Voting Rights and representation of NRIs in Indian legislature*, the views of the respondents differed. Whereas the intellectuals, professionals and individuals in trade and commerce sector supported the grant of voting rights despite problems at implementation stage, on representation in parliament and state Assemblies, most respondents were not sure of political implications. Some thought this will tear NRI community abroad, that national political parties campaign abroad for votes and the foreign governments may try to influence NRIs in exercising their right to vote. The responses of the Central Ministries and the State Governments were not only articulated by the top bureaucrats (Secretaries and Chief Secretaries) but were also bureaucratic in nature, concentrating on difficulties of implementation, possible demands by resident Indians for similar facilities, rather than looking at the positive side of the picture, and experiences of many countries abroad which have practiced such measures for some time. The problems pointed out by the opponents of the proposals, namely that *the right of vote goes with residence in India, NRIs resident abroad cannot attend meetings of Rajya Sabha regularly, postal ballot will upset electoral balance, the*

cost of elections will increase, etc. are not insoluble. For example, one of the respondents suggested creation of a separate functional constituency for all NRIs, even in case of territorial constituency, the last place in India where the NRI lived can be considered his/her constituency.

On these two proposals of voting rights and representation, The Committee did not make a positive or negative recommendation but only restated some of the problems and difficulties in implementation.

The Committee adopted its report on 22nd March, 1988 and soon after that the elections to the Lok Sabha took place and the government was replaced. However, the importance of the NRI/PIO Community and appreciation of its potential for India's development increased considerably after the Economic Liberalization Policies of 1990s. Interaction between Indian government leadership and NRI/PIO community increased considerably and Foundation's views have been vindicated through the creation of a full fledged Ministry of Overseas Indian Affairs with a Cabinet rank Minister, amendment of the Indian Citizenship Act to incorporate the *Overseas Indian Citizenship* and finally *Late than be never, Prime Minister Man Mohan Singh announced Government's decision to grant voting rights to NRIs, thus acceding to Foundations request made in 1983!*