



CONSTITUTIONAL PERSPECTIVE OF 'RIGHT TO VOTE' IN INDIA: A CRITICAL STUDY

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ABSTRACT

The right to vote is one of the major foundational roots of democracy which is the legal right and human right in India. The people representatives are elected by vote of people in India. In this regard, several judgments delivered by the hon'ble Indian Judiciary to prevent the abuse of right to vote in India. But still many controversial issues are existent under some exceptions. The research article deals with the constitutional perspective of right to vote in India.

Introduction

The right to vote in Indian Constitution is not a fundamental right but a legal right which is specifically defined under Article 326 of the Representation of People Act, 1951. Article 326 shows that elections to Parliament and Legislative Assemblies would be conducted on the basis of adult franchise and every adult citizen could register in the electoral rolls to vote. However, there is a major difference; 'it is a right to be enrolled as a voter, but not to vote'. Therefore, the question remains the same on whether the fundamental ness of the right to vote has been upheld in the Constitution of India and how the judiciary has been working onto the same and interpreting this unwritten right. Part 15 of the Indian Constitution contains the establishment of the Electoral Commission and the general powers of the Commission to "supervise, direct and control" citizens and conduct elections in India. The electoral law is subject to special legislation. The monopoly right in this law was interpreted as a special right. Everything about civil exercise was considered a legal right.¹

The Supreme Court in **Mohan Lal Vs. District Magistrate**², Rai Bareilly, observed that democracy is a concept, a political philosophy, an ideal practiced by many nations culturally advanced and politically mature by resorting to governance by representative of the people elected directly or indirectly."

Constitutional Provisions as to Right to Vote

The Republic of India got independence on 15th August, 1947 and we got our Constitution on the date 26th January, 1950. With the enactment of the Indian Constitution, the 1st General Elections of India took place on 25th October, 1950 and the first Lok Sabha was formed by the victorious Indian National Congress.

The Right to Vote is the basic fundamental right which should be provided to every citizen of a Democratic country as the voting right is the foremost feature of a Democracy. India being a democratic country, which has the lengthiest Constitution in the World and which declares the Union of India being the Republic of India, through its wider interpretation and the Judicial Activism, provides for the "Right to vote" being the implied fundamental right of the people of India. Though the "Right to vote" is not expressly mentioned as the Fundamental Right, but surely it is a Constitutional Right which is equally and freely available to all without any discrimination on any basis.

Article 19(1) (a) of the Indian Constitution³ provides for the Right to Freedom of Speech and Expression. The Right to vote is also considered as a method of having your voice heard by having the right to choose

your representative.

When an individual goes to the polling booth in order to cast his vote freely and without any restriction or hindrance, then he exercises his right to Freedom of Expression as guaranteed under the Article 19(1)(a) of the Constitution. Further, under the same article, the voters also have the right to obtain information about the political parties. Thereby the voting right is not expressly but is impliedly guaranteed under the Article 19(1)(a) of the Constitution.⁴ The Article 324 of the Indian Constitution⁵ stipulates that the Elections must be conducted in the free, fair and just manner and the Superintendence to ensure fairness of elections shall be given to the Election Commission of India. It means that the responsibility to ensure that every citizen of India is able to exercise his/her vote in a free and fair manner lies in the hands of the Election Commission of India. Article 325 of the Indian Constitution⁶ provides that no one shall be excluded from the electoral rolls i.e., no person could be deprived of his/her right to vote merely on the grounds of religion, race, caste or sex. This provision further ensures that there would only be One Common electorate for every territorial constituency for all and this article also debar the creation of any separate electorates for any specific community or any of the minorities. This was done to prevent the division of Indian Union on the basis of Caste/Community which was done by the British during their era. Article 326 of the Indian Constitution⁷ ensures and provides for the Free Adult Suffrage for all the citizens of India who have achieved the age of 18 years. It means that all the adult citizens of the age of 18 years and above have the right to vote regardless of gender, wealth, income, property, education, social class, race, ethnicity etc. This provision of the Constitution further empowers the Parliament to set out some disqualifications under the law enacted by it which could debar a person to exercise his right to vote on the grounds of: Non-residence; Unsoundness of Mind; having committed a Crime; Being Corrupt; and Being have adopted Illegal practices. The Article 326 provides the above grounds to the Parliament to disqualify any person from exercising his/her right to vote.

Judicial View of 'Right to Vote' In India

Early decisions of the Court clearly state that the right to vote or to stand as a candidate in an election is a product of a statute or special statute and is subject to the restrictions imposed by that special statute. It was a law perfect in itself, dealing with electoral squabbles and perfectly justifying the establishment of special tribunals to deal with electoral cases.

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In **N.P. Ponnuswami vs. Returning officer**⁸, The Supreme Court's chamber of six justices faced complaints from election commissioners who refused to nominate applicants. The court determined that the scope and importance of the "election" administrative power in the hands of the Electoral Commission was broad. As a result, the court refused to intervene in the Electoral Commission's decision and dismissed the appeal. Courts have held that if a right or duty is created by law providing a special remedy for its enforcement, the remedy provided by law must be used.

In **Jagan Nath vs. Jaswant Singh**⁹, Cases dealing with the filing of election petitions and non-attendance of required parties. In this case, the challenge was against the Electoral Court's decision to remedy the deficiencies in the defendant's application. The petitioners appealed to the Supreme Court, arguing that the High Court's decision to deny the court's order and petition was unlawful. It was argued that the court was not of general jurisdiction. The court dismissed the complaint on the grounds that the deficiencies in the application were not material. The Court ruled that electoral law was a statutory act, not an act of law or equity, and that the Court had no common law powers.

In **Jyoti Basu vs. Debi Ghosal**¹⁰, A complaint was filed by the first defendant challenging the selection of the second defendant. Petitioners were upset that the first respondent pushed through the first election call. The applicant filed that he did not stand for election and could not join the party. The Court discussed the powers vested in the Electoral Commission in conducting elections and the structure of the law relating to the prohibition of court interference in election matters. The nature of his voting rights was debated and he was ultimately sentenced to court in the N.P. case. The Ponnuswami and Jagan Nath cases repeatedly stated that the right to vote is neither a fundamental nor a common law right, but only a statutory right. He said he has no right to vote, be elected, or run for election. As it is a legal creation, it is subject to the statute of limitations.

Because of the landmark decision, the court's bigotry is questionable. The court's proportion in each of the above cases is beyond the scope of its decisions. The error appears to lie in the Court stating that the right to vote and the voter's right to vote exist simultaneously. This approach appears to have caused current courts great difficulty in overriding it.

In contrast to the right of citizens to participate in elections, a voter's right to vote is a natural right. The law explicitly recognizes rights, but these rights must be reassessed as fundamental and inalienable. The latter is a restrictive practice by law. A voter's right to vote is subject to minimum residency and age restrictions. Furthermore, the right to vote for adults is constitutionally protected, not the right to stand for election. The law recognizes the right to vote as a prerequisite for citizenship, and the peculiarity of the relationship between citizens and the state is established by the protected enjoyment of this fundamental right. The bulwark of democracy is the right to vote, and what courts must accept is an interpretation that promotes that right.

The trilogy of cases presents a fresh dimension to the problems for the court in the P.U.C.L. 2009 case to resolve. The first case, **Union of India vs. Association for Democratic Reforms**¹¹, a three-judge bench concerned the petitioners seeking the direction from the election commission to make available information to voters of the relevant particulars of the candidates appearing in an election. The court considered whether the voter has a fundamental right to know under A-19(1)(a). The court held that criminal convictions, financial details are important indicators and a voter has a right to know these particulars. The court in one of its conclusions summed up the extension of Right to know as a fundamental right:

"Article 19(1)(a) of the Constitution provides for freedom of speech and expression. A voter's speech or utterance at an election includes voting, and express themselves, and for that, information about the candidates being selected is essential." An Amendment Act was subsequently passed by Parliament in accordance with the above decision and the

Amendment Bill was challenged in the People's Coalition for Civil Liberties v. Indian Coalition case. Petitioners allege that the disputed amendments at issue are inconsistent with the court's decision in the Democratic Reform Association case. It argued that it did not fully capture the essence of the previous ruling, which revealed the background of the candidate for . A panel of three judges debated whether the amendment was valid and whether the right to vote was a statutory or other right. Approved fix turned out to be invalid. But as for the right to vote, many believed that the right to vote was a statutory right. Judge Shah, consistent with the precedent on this point, held that the right to vote is a statutory creation, not a citizenship. This view of Justice Shah was later used in the Kuldip Nayar case.

The final case in the trilogy, Kuldip Nayar v. India Coalition, contains challenging changes made to the People's Representatives Act. Elections to state councils removed the "residence" requirement and introduced an "open electoral system" for each federal state. The issue of voting rights was raised. Is it a constitutional right or a fundamental right? The court responded by evaluating all precedents. "As types of freedom of expression, a fine line has been drawn between the right to vote and freedom of choice." is the right of Ration's understanding of this point is a consistent legal statement. The majority opinion in the Democratic Reform Association case affirms the legal character of the law.

It's been 71 years since the voting and election system has begun in India and the people of India have been exercising their Right to Vote in the system of Free Adult Suffrage as guaranteed under the Article 326 of the Indian Constitution. And, it's been 71 years since the Representation of the People Act, 1951 has been enacted to ensure the smooth and fair conduct of the elections in India.

Since these 7 decades, we've been gone through a lot of changes in our society, education, banking, medicine and other matters of public interest. With the change in the other societal aspects, our voting and elections system has also gone through some major significant changes like- shifting of ballot paper system to the EVMs, shifting to electronic counting of votes in the era of digitalization and technology. But other than these, there are many more things within the Indian voting system which needs to be analysed and addressed. For the General elections being held for the Parliament and the State Legislative assemblies, the issues like Defective electoral rolls, non- participation of voters into the elections, voting of PWDs (Persons with Disability), influence on voters, poll related violence, problem of domestic migrants and so many other problems. These problems should be addressed in the coming future as well.

Suggestions

- The required efforts should be taken for the prevention of the issue of defective electoral rolls. At every election, the electoral are being updated and revised, but still there is the problem of the existence of fake and bogus voters on the rolls. Hence, the measures should be taken to curb this problem from the ground.
- The people should be aware more to more by the participation of the volunteering agencies like NGOs, social activists, social workers etc. to exercise their own diligence and conscience while exercising their right to vote as many a times the political parties or their candidates try to manipulate the people by giving them some commodities or monetary favours to get the votes in their favour. Along with the strict action against those people, the people also need to be made aware of how to freely exercise their Right to vote without any outsider's influence and to not give vote to any specific person just by taking some favours from him/her.
- The problem of NRI voters should be resolved as required.
- The required measures should be taken for the Persons with Disability senior citizens.
- The violence should be prevented in the elections strictly as per laws.

Conclusion

In the light of all aforesaid, the Constitutional provisions, the Legislative views, the Responses of Judiciary and the opinion of public on the right to vote, we come to the conclusion that the Constitution and the Parliament have made endeavors for right to vote but still some very controversial issues are found which should be solved as early as possible by the coordination of government and society as per requirements.

Endnotes

¹ Article 324 vests in the Election Commission power of superintendence, direction, and control of preparation of electoral rolls and conduct of all elections to Parliament, and to the Legislature of States. Article 325 provides that there shall be one electoral roll for every territorial constituency and that no person shall be ineligible for exclusion in such rolls on grounds only of religion, race, caste, sex, or any of them. & Article 326 provides that elections to the House of People and to the Legislative Assemblies of States shall be on the basis of adult franchise. Article 327 enables Parliament to make laws with rest to all matters relating to the elections to either House of Parliament or to the Houses of State Legislatures.

² The Representation of Peoples Act, 1952. It provides for the delimitations of the constituencies for the purpose of elections to the House of People and the Legislature of States; qualifications of voters at such elections; preparation of electoral rolls; and other matters connected.

³ The Government of India Act, 1919, available at: <https://archive.org/details/in.ernet.dli.2015.505134/page/n5/mode/2up> (Last visited on March 20, 2022).

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⁵ Article 19 (1) (a) of the Constitution of India, 1949, available at: <https://indiankanoon.org/doc/1218090/> (Last visited on March 20, 2022).

⁶ People's Union for Civil Liberties vs. Union of India, Appeal (civil) 4294 of 1998.

⁷ Article 324 of the Constitution of India, 1949, available at: <https://indiankanoon.org/doc/950881/> (Last visited on March 20, 2022).

⁸ The Registration of Electors Rules, 1960, available at: <https://indiankanoon.org/doc/191541151/> (Last visited on March 21, 2022).

⁹ The conduct of Election Rules, 1961, available at: <https://indiankanoon.org/doc/45933417/> (Last visited on March 21, 2022).

¹⁰ A.I.R. 1952 S.C. 64

¹¹ A.I.R. 1954 S.C. 210

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