

THE CONSTITUTIONAL STATUS OF RIGHT TO VOTE AND THE NEED TO MAKE IT A FUNDAMENTAL RIGHT

Ajay Kumar Yadav, Student, Ramaiah College of Law, Bangaluru

Abstract

The study addresses the standpoint of right to vote in Indian legal framework. First, the paper addresses the status quo of the nature of right and legal protection accorded to right to vote, then the author opines in favour of making right to vote a fundamental right within the meaning of Part 3 of Indian Constitution.

The paper takes into account the multiple judicial precedents of concurring and conflicting nature with the conclusion it serves. Further, the paper takes a comprehensive outlook at the research question by also devoting a part of study to International instruments dealing with the right to vote.

The article is a classic attempt at harmonising the virtues of democracy, constitutional setup, judicial opinion and statutory enactments in favour of recognising right to vote as a fundamental right.

Keywords: Fundamental Rights, Right to Vote, Constitutional Status, Democratic Reform

Review of Literature

1. **Is the Right to Vote Really Fundamental**¹ by Joshua A. Douglas

The primary issue posed in this article is whether or not the constitutional right to vote is a fundamental right. Surprisingly, the response is "not usually."

2. **Right to Vote as a Fundamental Right: Mistaking the Woods for Trees P.U.C.L. v Union of India**² by Rajeev Kadambi

This case note examines two major issues raised by the Supreme Court's decision in People's Union of Civil Liberties (P.U.C.L.) v. Union of India: first, whether the right to vote is a fundamental protected right under Part III of the Indian Constitution in light of prior court decisions; and second, whether citizens have a right to a negative vote as a result of the foregoing.

3. **Constitution and the Unwritten Right to Vote**³ by K. Neelima

The main inquiry in this study is whether the Indian Constitution fundamentally upholds the freedom to vote. Furthermore, how has this unwritten right been understood by the legal system? The approach of investigation would include a qualitative examination of rulings and judicial interpretations of Indian people's right to vote.

4. **Citizen's right to vote: Role of the Supreme Court in Empowering Citizenry to bring about 'A Systemic Change'**⁴ by Virendra Kumar

The main goal of the essay is to demonstrate how the public may be given the capacity to purge our political system via a judicial examination of the scope and nature of their constitutional right to vote.

5. **The Rights to Vote Under State Constitutions**⁵ by Joshua A. Douglas

This article offers the first thorough analysis of state constitution clauses that expressly give the right to vote. Voting rights are described as "basic," "essential to a democratic society," and "preservative of all rights," respectively.

This article argues that courts should interpret state constitutions using a state-focused approach and shows why the lockstepping approach to voting rights is incorrect.

Research Question

The Constitutional Status of Right to Vote and the Need to make it a Fundamental Right

The study centres on ascertaining the current legal status of Right to vote amongst the wide Pandora of rights available in Indian legal framework, vis-a-vis statutory, constitutional & fundamental right.

¹ Pg. 143-201, Cornell Journal of Law and Public Policy, Volume 18, Issue 1 Fall 2018.

² Indian Journal of Constitutional Law, Vol. 3, p. 181, 2009.

³ Department of Political Science, Delhi University, available at <http://iclrq.in/editions/apr/2.pdf>.

⁴ Journal of Indian Law Institute, Vol. 56, No. 1 (January-March 2014), pp. 25-46 (22 pages).

⁵ Vanderbilt Law Review, Volume 67, Issue 1, 2014.

The next area of study shall be arguing for the importance of making right to vote as a fundamental right.

Hypothesis

After taking a careful perusal of the available literature, the author opines that Right to vote is a cardinal right in any democracy albeit not expressly recognised as fundamental right in constitution. Further, the author reserves his opinion in favour of making right to vote a fundamental right.

Introduction

Vote is an instrument by which an individual chooses his delegate to address him before the sovereign and the chosen delegate reflects and addresses individuals by whom he is chosen. Casting a ballot is one of the greatest resources that anyone could hope to find to individuals of a popularity based country. On the off chance that an individual is chosen through casting a ballot his responsibility towards the public increments because of which his exhibition and work for public government assistance becomes for precise which further outcomes in production of a government assistance state.

Vote is to offer one's viewpoint officially, as at an election. Casting a ballot essentially implies settling on a decision between two gatherings or two up-and-comers by projecting a polling form or by lifting your hand or by some other method for showing your decision and that picked competitor who got greatest votes will be the victor and the substance of individuals of the country.

Quite possibly of the most basic way that people can impact administrative direction is through casting a ballot. Casting a ballot is a proper articulation of inclination for a possibility for office or for a proposed goal of an issue. Casting a ballot by and large happens with regards to a huge scope public or provincial election, nonetheless, nearby and limited scope local area elections can be similarly as basic to individual cooperation in government.

Given the immense importance accorded to right to vote in a democratic setup as the true barometer of citizenry aspirations and future prospects, it is imperative to ascertain the legal positioning of right to vote in Indian legal framework. It is curious to figure out whether the right is imbibed as constitutional right or a mere statutory right or it is accorded the highest of protection as Fundamental right.

Legal status of Right to vote in India

The first general elections in India were conducted between 25 August 1951 and 21 February 1952, which is the post-independence period. And regardless of caste or gender, everyone had the right to vote. No one should endure suffering due to their caste, religion, or sex, was the clear vision of India's constitutional founders. Every individual has the right to choose a representative of his will, and everyone is treated equally in the eyes of the law as a result.

Every citizen of a democratic nation has the legal right to vote thanks to a statute. This privilege is granted in India under The Representation of the People Act, which was passed in 1951. The Representation of the People Act, 1951's section 62 grants the right to vote.

Article 324 establishes the Election Commission of India, an independent constitutional body tasked with ensuring free and fair elections in India.

Section 62 of the Representation of People's Act (RPA) established the right to vote as a statutory right, which implies that it is subject to the RPA's rules and regulations. No one may vote, according to Section 62(5), if they are detained by the legitimate custody of the police or are otherwise imprisoned and cannot leave their current location. Persons subject to preventive detention under any currently in effect statute are the sole exemption contemplated.

A 3 judge bench comprising of CJI Bobde while deciding the maintainability of petition seeking direction to stop Election Commission from using Electronic Voting Machine refused to accept contention by the petitioner that right to vote is a fundamental right guaranteed under Part 3 of Constitution of India.

Judiciary and The Right to Vote

- I. Nature of the Statute: The Supreme Court of India (SCI) ruled in *N.P. Ponnuswami v. Returning Officer*⁶, Namakkal Constituency, Union of India, that the term "election" in Article 329(b)⁷ refers to the entire election process, from the announcement of the election to the declaration of the results. And therefore once the electoral process has begun, the judges cannot intervene. The right to vote or run for office is not a civil right, according to the Court, and must comply with any restrictions imposed by statute or other special legislation.⁸
- II. A Statutory Procedure and Right: The SCI decided in *Jaganath v. Jaswant Singh*,⁹ that an election was "*neither an action at law or a suit in equity but rather a wholly statutory proceeding unfamiliar to the common law.*"¹⁰ The SCI decided in *Jyoti Basu v. Debi Ghosal*,¹¹ that the freedom to vote, although being important to democracy, is paradoxically neither a basic right nor a Common Law right. It is a legislative right in its purest form.¹² The Court decided that there was no right to vote or run for office outside of the law. These were statutory inventions with time restrictions. The right to vote or be elected was deemed to be "*a pure and simple statutory right*" under the Representation of People's Act by the court in *C. Narayanaswamy v. Jaffer Sharief*¹³.
- III. An inherent right : The most valuable right in a democratic polity is the "little man's" little pencil-marking, assenting or dissenting, called his vote, Justice Krishna Iyer stated in *Mohinder Singh Gill v. The Chief Election Commissioner*¹⁴. He cited Winston Churchill's famous quote describing the "little man's" most important vote
If a democratic right is violated, there are legal repercussions. The obvious conclusion is that every Indian has the constitutional right to vote and be elected, which distinguishes it from common law rights and entitles it to judicial recognition under statutory control.¹⁵

Right to vote as Fundamental Right

During the hearing of the right to privacy case in *K.S. Puttaswamy v. Union of India*, the issue of whether the right to vote is a basic right came up. Among the nine judges in that case, Justice Jasti Chelameswar, had made reference to the need of a basic right to vote. The right to vote may be removed by amending the legislation since it is a legal right that is granted by a statute.

Given that parliamentary democracy is a core component of the Constitution, it is puzzling that one of its key components—the right to vote—is not regarded as a fundamental right that is protected by the Constitution and might be enforced by a citizen under Article 32. Voting rights that have been designated basic rights may only be restricted by Parliament under Article 19's "reasonable limits" criteria (2).

Because of this, Justice Chelameswar disputed that the right to vote is only a statutory right and supported the argument that it is a constitutional right. He did, however, admit that the competent legislation may limit a fundamental right.

In *Union of India v. Association for Democratic Reforms*¹⁶, The judges' divergent views on the constitutional parameters of the right to vote, as opposed to the voters' right to information, were a less-noticed aspect of the ruling. They had different opinions on how the right to vote was treated within the Indian constitutional framework, albeit agreeing on the judgment's practical application.

⁶ (1952) SCR 218

⁷ According to Article 329(b) of the Constitution, an election may only be challenged by filing an election petition with the appropriate body.

⁸ *N.P. Ponnuswami v. Returning Officer* (1952) SCR 218.

⁹ (1954) AIR 210

¹⁰ *Id.* at 3.

¹¹ (1982) 1 SCC 691.

¹² *Id.*

¹³ (1994) Supp. (3) SCC 170

¹⁴ (1978) 1 SCC 405.

¹⁵ *Mohinder Singh Gill v. The Chief Election Commissioner* (1978) 1 SCC 405.

¹⁶ (2002) 5 SCC 294.

MB Shah, J. observed (for himself and on behalf of DM Dharmadhikari, J.): *“there cannot be any dispute that the right to vote or stand as a candidate for election and decision with regard to violation of election law is not a civil right but is a creature of statute or special law and would be subject to the limitations envisaged therein.”*

In contrary, P Venkatarama Reddi, J., disagreed on the position of the right to vote in our constitutional framework while agreeing with the invalidation of the challenged amendments. He commented, *“The right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and in accordance with the constitutional mandate contained in Article 326”*

International Panorama

The International Covenant on Civil and Political Rights provides¹⁷ that every citizen shall be bestowed and enabled with right and opportunity to vote and in case of contrary, it must be rationally and reasonably be justified. Further, Human rights committee has provided¹⁸ an inherent relationship between the right to vote and right to self-determination, freedom of speech and expression amongst other things.

The basic right to participation governance is ensured through transparent and free elections, according to the Universal Declaration of Human Rights, which was unanimously ratified by the UN General Assembly in 1948. Everyone has the right to participate in the governance of his or her nation, either directly or via representatives selected at will, according to Article 21 of the Universal Declaration of Human Rights. The document identifies the right as fundamental human right.

Further, the EU Charter of Fundamental right recognises right to vote¹⁹ as intrinsic right guaranteed to the citizen class of member countries to the union.

Conclusion

Disenfranchisement is the result of restrictions on the right to vote, such as onerous registration requirements. Government authority may severely abuse this by failing to register certain groups as eligible voters and imposing many restrictions. Voting must not be prohibited by voter registration; registration must be a right.²⁰ Voting rights must be protected by the constitution against laws that restrict voting. As in America, voting limits have not yet become a political issue under Indian constitutional law. Limiting state involvement in this area is necessary to avoid impeding free and fair elections and preventing political marginalisation. The dedication to democracy necessitates the removal of irrational voting restrictions. Voting rights are essential to any civic activity. This right has been marginalised in constitutional debate and has so far persisted in an odd category. Surprisingly, the Supreme Court has not addressed the issue of disenfranchisement, and the court's ruling in this case has resurrected the discussion. This note has shown how inconsistently the court rulings have been used to interpret this right. It has proposed that negative voting be seen as fundamental to democracy and, as an alternative, that this right be viewed as part of the free expression guarantee. The court must give the matter a deeper look in order to overturn questionable early precedents on voting rights. The presumptions behind its being a legislative right are debatable. The omission of voting is shocking given that rights are often widely distributed in constitutional setting. The bigger Bench will need to balance the earlier rulings by considering the liberal theoretical viewpoints on the significance of this right and defending it as a cornerstone of democracy.

¹⁷ Article 25, United Nations (General Assembly). “International Covenant on Civil and Political Rights.” Treaty Series, vol. 999, Dec. 1966.

¹⁸ Human Rights Committee’s General Comment No. 25.

¹⁹ Article 40, Right to Vote and to stand as a candidate at municipal elections, Title V, Citizens’ rights.

²⁰ See Deborah James, A Restriction on the Fundamental Right to Vote, 96 Yale L.J. 1615, No. 7 (1987). According to the author, voter registration in America is a limitation on the right to vote per se since the right to cast a ballot is basic and the imposition of “prerequisites” is a restriction.