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# Democracy's Backbone: Reflecting on the Right to Vote

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PARINDU KANAIYALAL BHAGAT<sup>1</sup>

## ABSTRACT

*Democracy constitutes the governance model wherein authority emanates from and is exercised by the citizenry following the principles of Representation. The administration is entrusted to a government duly elected by the state populace. The authentic and equitable expression of the citizens' 'Will' transpires through the electoral process, wherein eligible citizens participate by casting votes. To partake in voting, an individual must qualify as an enrolled voter listed in the electoral register for the relevant election. The entitlement to vote is contingent upon meeting constitutional and statutory eligibility criteria, constituting the Right to Vote.*

*This right is the paramount and exclusive instrument wielded by citizens within a democratic State. The prosperity and endurance of democracy hinge upon the conduct of fair and free elections, with voters serving as the lifeblood of the electoral process. Attaining and preserving the right to vote is imperative. This discourse aims to explore the intricacies of voting, the right to vote, the historical evolution of suffrage, and its reforms in diverse democratic States, precisely India (Bharat)—a detailed analysis to scrutinise the constitutional requisites, statutory qualifications, and constraints comprehensively. Judiciary interpretation pining to this right is appropriate to discuss for better understanding.*

**Keywords:** *Right, Vote, Democracy, Judiciary, India (Bharat).*

## I. INTRODUCTION

**"A government of laws, and not of men." —John Adams**

**Right: -**

- A "right" refers to a moral or legal entitlement or permission that individuals have in society. Rights are basic fundamental normative which owed to people, mostly duly protected and upheld by Statutes to impart justice, equality, and freedom. Rights include civil, political, social, economic, and cultural rights.

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<sup>1</sup> Author is a Research Scholar at Institute of Law, Nirma University, Ahmedabad, India.

"If we desire respect for the law, we must first make the law respectable." —

*Louis D. Brandeis*

*U.S. Supreme Court Justice ( 156-1941)*

### **Vote:**

The term "vote" generally refers to an act of expressing a will, a choice or an opinion.

**"Voting is a civic sacrament."**

- **Rev. Theodore Hesburgh, C.S.C.**

### **Right to Vote:**

Here, it is especially referred to in the context of an election. The election is the cornerstone of the democratic process. To Vote is a fundamental ingredient in any election; it varies with classification from general to restrictive as provided by rules under the law. In democratic systems where individuals can select candidates for public office, approve policies, or decide on important issues. Casting of vote includes different modes such as:

**Ballots:** Physical by marking on Ballot paper or nowadays, in the emerging era of technology, registering through electronic voting machines (EVMs) or even by digital online process. The crucial part is the secrecy of the vote cast is maintained in the democratic process.

**Show of Hands:** This method is often used in smaller meetings, where participants raise their hands to indicate their preference.

**Voice Vote:** Participants verbally express their support or opposition.

The "Right to vote", also known as suffrage, is the legal right of individuals to contribute to the electoral procedure by casting a vote in elections. In a Democratic system, the core essentiality is the participation of the people in ruling or making decisions; voting empowers citizens to have a say in governance and influence decisions that affect their lives and communities, allowing citizens to express their preferences for political leaders and policies. It ensures that the government is responsible to the people and represents the majority's desire.

"Everybody counts in applying democracy. And there will never be a true democracy until every responsible and law-abiding adult in it, without regard to race, sex, colour or creed, has their own inalienable and unpurchasable voice in government." - **Carrie Chapman Catt.**

## **II. HISTORY OF THE RIGHT TO VOTE IN GLOBALLY DEMOCRATIC REGIME**

Most democratic states establish their governing principles in a constitution outlining the

election process to obtain people's representative democracy. The right to vote with due process empowers the elector to vote, a crucial aspect governed by the Constitution and relevant statutory provisions specifying qualifications and restrictions. The judiciary interprets the Right to Vote in alignment with the Constitution and existing election statutes.

The Right to Vote is a fundamental tool of the election process and an essential element of democracy, with its history and development varying among democratic states. In ancient Greece, voting was initially limited to adult males, excluding women, enslaved people, and outsiders. The traditional method involved raising hands, especially when the number of voters was limited. This practice continues in some legislative houses.

#### **(A) The "Right to Vote" in Greece:<sup>2</sup>**

In Athens, the oldest democracy, the Greek city-state (508 BCE), voting was done through a system called sortitions. This system randomly selected wealthy and eminent people to vote for laws.

**Ancient Greece:** Early democracy around 508 BC involved "negative" elections; male landowners voted to exile unpopular leaders using pottery pieces called ostraka. A candidate needed over 6,000 votes for exile unless votes were too evenly spread.

**Medieval Venice:** In the 13th century, Venice's Great Council used "approval voting," in which voters selected all acceptable candidates, and the candidate with the most approval won.

**Voting Rights in America:** Originally, only white men over 21 could vote. Over time, rights expanded.

**Black Suffrage:** The 13th, 14th, and 15th Amendments extended civil rights and suffrage to formerly enslaved people post-Civil War, but real voting rights were hindered until the 1960s Voting Rights Act.

**Direct Election of Senators:** The 17th Amendment allowed direct election of Senators by popular vote starting in 1913; previously, they were appointed.

**Women's Suffrage:** The 19th Amendment (1920) granted US women voting rights, though women in many countries still faced voting restrictions.

**18-Year-Old Vote:** The 26th Amendment (1971) lowered the voting age to 18, driven by the Vietnam War context.

"The vote is the most powerful instrument ever devised by human beings for breaking down

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<sup>2</sup> Jerry Holland Supervisor of Elections Duval County, History of Elections, (April. 6, 2024) <https://www.duvalelections.com/general-information/learn-about-elections/history-of-elections>

injustice and destroying the terrible walls which imprison people because they are different from others". - **President Lyndon B. Johnson**

**(B) 'The Right to Vote' in U.S.A.<sup>3</sup>**

The United States, established in the late seventeenth century, is an old democratic federal state. While the Constitution explicitly mentions the Right to Vote, distinct frameworks regulate the national elections, wherein Congress is empowered to make or amend laws related to election procedures. Initially, voting rights were limited to white male landowners, and Southern states introduced discriminatory laws like poll taxes and literacy tests. After the Civil War, the 14th and 15th Amendments extended voting rights and prohibited racial discrimination of whites and blacks. All the blacks were not even granted the right to vote. Based on some proposition formula, certain blacks owe the right to vote after a great struggle.

However, the 19th Amendment, passed in 1920, granted voting rights to females, and in 1971, the voting age was raised to 18, making sure that language minorities and people with disabilities were protected.

Greater voter enfranchisement was met with fresh resistance. In 2013, the Supreme Court gutted the Voting Rights Act in its ruling on *Shelby County v. Holder*.<sup>4</sup>, allowing states and jurisdictions with a history of voter suppression to enact rigorous voter identification measures. According to the nonpartisan alliance Election Protection, twenty-three (23) states added new barriers to voting in the decade preceding the 2018 elections.

Finally, in June 2023, the Supreme Court, in the *Allen v. Milligan*<sup>5</sup> case, found that the Alabama court violated the VRA by creating one majority-Black voting right illegally. This SC directive opened the door of voting rights uniformly for blacks in Alabama and across the US<sup>6</sup>.

With its unwritten Constitution, the right to vote expanded gradually in United Korea. The Great Roman Act of 1832 broadened voting rights to more classes of men. In 1918, age discrimination was removed, allowing all men aged 21 or above to vote. Initially, in 1918, only females aged 30 and above were granted voting rights, but in 1928, this age criterion was aligned with men, set at 21 or above.<sup>7</sup>

France granted all men aged 21 or above the right to vote in 1948. Before 1944, females were not included in the criteria of eligible voters.

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<sup>3</sup> Brain Duignan, Voting Rights, (Mar.24, 2024) <https://www.britannica.com/topic/voting-rights>

<sup>4</sup> *Shelby County vs. Holder* 570 U.S. 529(2013)

<sup>5</sup> *599 U. S. \_ (2023)*

<sup>6</sup> Brain Dunnigan, supra note 2

<sup>7</sup> CONSTITUTIONNET, <https://constitutionnet.org/country/republic-korea> (last visited Jul. 7, 2024).

**(C) 'The Right to Vote' in Germany:<sup>8</sup>**

1918-1933 was the first phase of federal democracy in Germany. In 1949, Germany became a federal republic democratic country. Germany has two main types of elections: central legislation elections (Bundestag) and state-level legislation elections (Landtagswahlen). In Bundestag elections, all German citizens over 18 can vote, with some regions allowing voting from age 16. State elections require voters to be at least 18 and hold German citizenship. Municipal/local elections (Kommunalwahlen) permit German and EU citizens residing in Germany for over three months to vote, with the minimum age varying by state 18 in Saxony, Saarland, Rhineland-Palatinate, Hesse, and Bavaria, and 16 in other states.

In South Africa, voting rights have undergone significant changes. Initially, the Union of South Africa, formed in 1910, had diverse qualifications for voting in its four colonies, with restrictions based on factors like race, gender, age, property, and literacy. While the 1930 Woman's Enfranchisement Act extended voting rights to white women over 21, non-white individuals still faced literacy and property criteria. In 1936, a separate electoral roll was created for native voters, and blacks lost the right to vote in general elections but could elect representatives in specific assemblies. The struggle for equal voting rights continued until 1996, when the final Constitution introduced universal suffrage on a non-racial basis, marking a transition from discriminatory practices to inclusive democratic principles in South Africa.

**(D) The Right to Vote in Brazil:<sup>9</sup>**

In the 1980s, Brazil and Nicaragua expanded voting rights to include 16-year-olds, a precedent later followed by Austria in 2007, marking the first European country to do so. The motivation behind this shift was to increase political engagement among young Austrians. However, critics argue that individuals aged 16 to 17 may lack the maturity to make informed and thoughtful political decisions. Austria's decision prompted several other nations to contemplate a similar change. Malta, in 2018, became the second EU state to allow 16-year-olds to vote, and recently, Scotland and Wales also lowered their voting age.

In 2015, Saudi Arabia granted women the right to vote, resulting in 130,000 women gaining the franchise.

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<sup>8</sup> J. Bokov, *The Development of the German Suffrage (1815-1819)*, EUROPEAN JOURNAL OF NATURAL HISTORY (Apr. 16, 2024, 10:30 PM), <https://world-science.ru/en/article/view?id=20926>

<sup>9</sup> WIKIPEDIA, [https://en.wikipedia.org/wiki/history\\_of\\_Brazilian\\_nationality#cite\\_note-Bethell-7](https://en.wikipedia.org/wiki/history_of_Brazilian_nationality#cite_note-Bethell-7) (last visited Jul. 7, 2024).

**(E) Right to Vote in India (Bharat):<sup>10</sup>**

The historical roots of the Right to Vote in India go back to its ancient past. The fundamental principle of making collective decisions for the governance of individual families or communities, with the consensus of all concerned, has been ingrained in the philosophy of Bhartiya culture. Ancient scriptures dating back to the Vedic age are filled with references to republics and democracies throughout India.

Even thousands of years ago, the annals of history documented that people were actively selecting leaders, such as the '*ganapaties*' of the great 'Vaishali gan rajya.' The 4th century BC saw the existence of a republican federation known as 'Kshdrak-Malla Sangh,' where every adult male member held the right to vote and participate in the general assembly that deliberated on public affairs. As societal structures became more complex with an increasing population, the transition to a representative government became necessary.

Evidence from the history of Hindu polity showcases references to elections, referendums, voting, and even the use of ballot papers. Voting, termed '*chhanda*,' expressed the voter's free will. The Mughal rule lacked institutionalised mechanisms for public opinion, but British colonial rule marked a transformative period, sparking independence movements led by influential leaders.

The Indian Act of 1935 was pivotal, granting fractional voting rights and fostering political participation. The culmination of the independence movement in 1947 resulted in India gaining independence. Post-independence, the Constitutional Assembly, drawing inspiration from global democratic experiences, framed and adopted the Constitution on November 26, 1949. A cornerstone of this Constitution was the explicit guarantee of the Right to Vote to all citizens based on adult suffrage.

The distinctive philosophy of the Right to Vote in our Constitution lies in its inclusiveness, a departure from other democratic countries that granted this right exclusively.

**III. RIGHT TO VOTE UNDER THE CONSTITUTION OF INDIA**

The constitutional provision on the Right to Vote is articulated in **Articles 325 & 326 of Part XV of the Indian Constitution.**

**Article 325<sup>11</sup>** Provides eligibility to enrol the name in the electoral roll as an enrolled voter. It states that "no person shall be ineligible for inclusion in a special electoral roll on the *ground of*

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<sup>10</sup> 3 V S RAMA DEVI AND S K MENDIRATTA, HOW INDIA VOTES, ELECTION LAWS, PRACTICE AND PROCEDURE 3 (LexisNexis India 2023).

<sup>11</sup> INDIA CONST. art 325

religion, race, caste or sex."

**Article 326**<sup>12</sup> Provides the parameters for exercising the Right to Vote in India (Bharat), emphasising citizenship, age, and the democratic process at the national and State levels. It states that *Elections to the House of the People and State Legislative Assemblies will be based on adult suffrage.*

Prima face these are:

- **Eligibility:** Every citizen is subject to enrol the name as electoral irrespective of caste, religion, race, sex, or language. Unless the name is duly enrolled and not reflected in the electoral list, though it has full qualifications, it can not vote in that election.

- **Right to Vote Guarantee:** Article 326 explicitly guarantees the Right to Vote to the citizens of India (Bharat) based on adult suffrage. In a way, the right guaranteed provided: -

(1) **Mandatory Citizenship:** Citizenship of India (Bharat) is essential for exercising the right.

(2) **Basis of Right –Adult Suffrage:** The citizen has attained the qualifying age for adult suffrage as fixed in this Article.

- **Qualifying Age:** The qualifying age for an individual to be considered an adult and, consequently, eligibility to exercise the Right to Vote is stipulated to be 18 years or above. Initially, it was 21. In 1988,<sup>13</sup> The sixty-first constitutional Amendment intending lowered the age limit to 18 to include younger people in the election process of their representatives, strengthening the roots of democracy, mentioning the objects and reasoning as: *"It has been found that many of the countries have specified 18 years as the voting age. In our country some of the State Governments have adopted 18 years of age for elections to the local authorities. The present-day youth are literate and enlightened, and the lowering of the voting age would provide the unrepresented youth of the country an opportunity to vent their feelings and help them become a part of the political process. The present-day youth are very much politically conscious. It is, therefore, proposed to reduce the voting age from 21 years to 18 years."*<sup>14</sup>.

- **Scope of the Right:** The right to vote, as per Article 326, is guaranteed for the election- of the House of the People (Lok Sabha) and the State Legislative Assembly of every State,

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<sup>12</sup> INDIA CONST. art 326

<sup>13</sup> INDIA CONST. art 326 Subs. by The Constitution (Sixty-first Amendment) Act, 1988, (w.e.f. 23-1-1989)

<sup>14</sup> Ibid.



underscoring the comprehensive nature of the electoral franchise.

"Democracy is not just the right to vote; it is the right to live in dignity." – **Naomi Klein.**

**(A) Right to Vote under the Statutes:**

The relevant statutes outline the statutory provisions, with the Representation of the People Act 1950 and Representation of the People Act 1951 serving as a critical legislative framework.

The Representation of the People Act of 1950 delineates the procedure for individuals to become enrolled voters and exercise their right to vote.

Sections 13D<sup>15</sup> and 14<sup>16</sup> The Act addresses the electoral rolls for constituencies conducting elections for the House of People (Lok Sabha) and the State Legislative Assembly. To be eligible to vote, individuals must adhere to the following criteria and register their names with the electoral roll in the prescribed manner and within the stipulated time limit for a particular election.: (Though the registration of the name is a continuous process. But to execute the right in an election, it is required to register the name at least a specific fixed day before the last day of the nomination as a part of the verifying/scrutiny procedure. Once the final electoral roll list is published, only those whose names are on it can use their right to vote in that particular election, and vice versa, whose names do not appear on the electoral list can not vote.

- a. Section 16<sup>17</sup> This Act mentions disqualification criteria for registration in the electoral list.

**They are:**

- (1) is not a citizen of India (Bharat)
- (2) is of unsound mind and stands, so declared by the competent Court,
- (3) is, For the time being, disqualified from voting under the terms of any law dealing with corrupt activities and other offences in connection with elections

If someone is rejected after registration, they will be promptly removed from the electoral roll. Furthermore, it also provided and took care of electoral rights when the name was struck off due to disqualification under clause (c) of subsection (a). It shall be re-instated if such disqualification occurred within the period such roll is in force,

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<sup>15</sup> Representation of the People Act, 1950, § 13, No. 43 Acts of Parliament (India).

<sup>16</sup> Representation of the People Act, 1950, § 14, No. 43 Acts of Parliament (India).

<sup>17</sup> Representation of the People Act, 1950, § 16, No. 43 Acts of Parliament (India).

b. Sections 17<sup>18</sup> & 18<sup>19</sup> restrict registration in one constituency only and only one time in any constituency.

Section 19 provides for the conditions for the age and residency.<sup>20</sup>

**(1) Age Requirement:**

The individual must be 18 or older on the qualification date<sup>21</sup>. It was on January 1 only. The same has been amended & enhanced to 4(four) dates as qualifying dates, January 1, April 1, July 1, and October 1, to provide more opportunities to new young voters, resulting in maximum participation in the election process and strengthening democracy.<sup>22</sup>

**(2) Residency Qualification:**

The individual must be an ordinary resident in a constituency, as defined by section 19<sup>23</sup> Of the Representation of the People Act, 1950.

**(3)** Section 20<sup>24</sup> of the Representation of the People Act of 1950 lays down the fundamental criteria and procedures for individuals to qualify as enrolled voters. This framework ensures that exercising the right to vote aligns with the stipulations delineated in the relevant legislation. It also introduces specific exceptions, designating circumstances under which individuals will be regarded as ordinary residents eligible to register their names in an electoral roll.

5. Furthermore, Section 20A<sup>25</sup> of the Act extends the right to vote to citizens of India (Bharat) residing outside the country. However, it is important to note that such citizens can cast their votes only in the constituency where their name is enrolled. This provision acknowledges and facilitates the participation of Indian citizens living abroad.

The R.P. Act,1951, wide section 62<sup>26</sup>, Provides for the circumstances that prevent voting. —

- (1) whose name does not duly appear on the electoral roll.
- (2) No person can vote to have disqualification referred to in section 16 of the R.P. Act,1950
- (3) No person can vote in more than one constituency

<sup>18</sup> Representation of the People Act,1950, § 17, No. 43 Acts of Parliament (India).

<sup>19</sup> Representation of the People Act,1950, § 18, No. 43 Acts of Parliament (India).

<sup>20</sup> Representation of the People Act,1950, § 19, No. 43 Acts of Parliament (India).

<sup>21</sup> Representation of the People Act,1950, § 14 (b), No. 43 Acts of Parliament (India).

<sup>22</sup> Ibid. *amended* by The Election Laws (Amendment) Act,2021 dated. 13<sup>th</sup> December 2021.

<sup>23</sup> Representation of the People Act,1950, § 19, No. 43 Acts of Parliament (India).

<sup>24</sup> Representation of the People Act,1950, § 20, No. 43 Acts of Parliament (India).

<sup>25</sup> Representation of the People Act,1950, § 20A, No. 43 Acts of Parliament (India).

<sup>26</sup> Representation of the People Act,1950, § 62, No. 43 Acts of Parliament (India).

(4) No person can vote more than once, even though the name appears for more than one time.

(5) No person votes who is in prison other than a person subject to preventive detention

The restriction of conditions (3) & (4) does not apply to authorised proxy voters.

### **Judicial review and opinion of the Apex Court: -**

The judiciary dealt with and reviewed the ambiguity in the right to vote within its judicial power and issued landmark directions.

In *N.P. Ponnuswami v. Returning Officer*<sup>27</sup>, the Constitution Bench of the Apex Court held that the right to vote or be a candidate for election is not considered a civil right; instead, it is a right created by statute or special law and, as such, is subject to the limitations imposed by the relevant legislation.

Further, in the case of *Jyoti Basu v. Debi Ghosal & Others*<sup>28</sup> In paragraph 8, the Supreme Court, the Apex Court, reconfirmed and opined that the right to elect, however fundamental to democracy, is, rather paradoxically, neither a fundamental right nor a Common Law Right. Instead, it is distinctly a statutory right—a creation of a statute regarding the right to elect and be elected.

The Court clarified that beyond statutory provisions, there exists no inherent or common-law right to elect, to be elected, or to dispute an election. The rights and processes associated with elections are purely creatures of statute.

In *Ramakant Pandey V. Union of India*,<sup>29</sup> The Supreme Court affirmed and reinforced the legal opinions pronounced in the *Jyoti Basu* case. The Court reiterated that the right to vote, w, is unequivocally considered a statutory right. This reaffirmation emphasises the statutory nature of electoral rights in the Indian legal context.

In '*The People's Union for Civil Liberties v Union of India (Bharat)*<sup>30</sup>, ' Justice Reddi articulated a nuanced perspective on the nature of the right to vote. Contrary to the earlier characterisation of the right to vote as a statutory right in cases like *Jyoti Basu* and *Ramakant Pandey*, Justice Reddi asserted that while the right to vote is not precisely a fundamental right, it is indeed a constitutional right. According to Justice Reddi, the right to vote is integral to a democratic polity and finds recognition in the Constitution. The Representation of the People Act affects this constitutional right in a specific form. Reddy(j) added that the right to vote originated in

<sup>27</sup> Writ Petition (Civil) No 494 of 2012; (2017) 10 SCC 1; AIR 2017 SC 4161

<sup>28</sup> AIR 1982 SC983

<sup>29</sup> 1993 2SCC 438

<sup>30</sup> AIR 2003 SC 2363, (2003) 4SCC 399

the Constitution and is shaped & mandated by constitutional provisions, especially Article 326. This nuanced perspective recognises the constitutional foundation of the right to vote, acknowledging its complex interplay with statutory requirements as provided in Articles 327 & 328 of the Constitution.

- The case of *Kuldeep Nayar Vs. Union of India*<sup>31</sup> Highlighted a subtle but crucial distinction between the right to vote and the freedom of voting. The Court noted that while the freedom of voting is a form of freedom of expression, the right to vote is categorised as a statutory right. This distinction reflects a legal perspective that separates the Act of Voting, viewed as a form of expression, from the underlying right, which is contingent upon statutory provisions.
- Subsequently, in *People's Union for Civil Liberties v. Union of India*, the Court acknowledged the right not to vote as part of a voter's expression in a parliamentary democracy. The judgment introduced the "None of the Above" (NOTA) option in the ballot paper/Electronic Voting Machine (EVM) as a landmark electoral reform, recognising the right of voters to abstain from casting a vote as a valid expression.
- In a more recent development, in February 2023, in *Anoop Baranwal Vs. Union of India*<sup>32</sup>, the legal position of the right to vote is considered by the Supreme Court bench headed by Hon. Chief Justice of S.C. (CJI) DY Chandrachud, including Justices PS Narasimha and JB Pardiwala. The bench was handling a Public Interest Litigation (PIL) challenging the constitutionality of Section 33(7) of the Representation of Peoples Act 1951, which allowed a candidate to contest from two election seats. During the proceedings, the CJI stated reservations about treating the right to vote solely as a statutory right, indicating a potential re-examination of the legal characterisation of this right. It suggests an evolving judicial perspective on the nature and significance of the right to vote within the constitutional framework. CJI Chandrachud said, "*Of course, there are some judgments that say that the Right to Vote is only a statutory right and not a constitutional right. But no, it is a constitutional right because it's a part of Article 19(1)(a) – the right of expression, the right of people to elect, and for people to vote.*"<sup>33</sup> The CJI's limited elaboration on the issue further suggests that the nature of the right to vote did not constitute a crucial element of the legal dispute being addressed in that case.

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<sup>31</sup> 2006 7 SCC 1

<sup>32</sup> 2023 Live Law (SC)155

<sup>33</sup> 2023 Live Law (SC) 153 quote of CJI

Supreme Court Bar Association & Ors vs B.D. Kaushik<sup>34</sup> On September 26, 2011, Showing the context in which the right to vote appears in the document.

A citizen of India is only eligible to vote in a Legislative Assembly or MP election in the constituency in which his name appears on the voter list. Because of his work, service, or other circumstances, he is unable to exercise his right to vote in another location. Thus, "one person, one vote" has been legally accepted for a long time. In light of these considerations, the idea of voting established by the Amendment to Rule 18 of the SCBA's Rules and Regulations cannot be considered illegal or unconstitutional. It is well established by a chain of published decisions of this Court that the right to vote is not absolute. The right to vote or contest an election is not a fundamental right or a common law right; rather, it is a statutory right governed by statutes, rules, and regulations. The ability to contest and vote in an election can always be restricted or limited if statutes, rules, or regulations require it. Before the Amendment to Rule 18, voting rights limits existed under Rules 18 and 18A.

#### **IV. CONSTITUTIONAL OR JUST STATUTORY? YOUR RIGHT TO VOTE & WHY ITS STATUS IS CONTESTED<sup>35</sup>**

The Supreme Court found it contradictory in a Monday ruling that while democracy is a cornerstone of the Constitution, the ability to vote is not.

It is "paradoxical" that democracy is acknowledged as a basic component of the Indian Constitution, yet the right to vote is not, the Supreme Court said in a ruling Monday. Former Telangana Bharat Rashtra Samithi (BRS) lawmaker Bhim Rao Baswanth Rao Patil presented his case before a bench that included justices S. Ravindra Bhat and Aravind Kumar. The Telangana High Court had earlier in March denied Patil's request to dismiss an election petition against him without a trial, and he had subsequently challenged that decision. In the judgment, Voters have a right to know about candidates' backgrounds, and the Supreme Court affirmed the Telangana High Court's order in its ruling. A fundamental element of democracy, it argued, is the freedom to vote in an educated manner.

However, it added that "Democracy has been held to be a part of one of the essential features of the Constitution. Yet, somewhat paradoxically, the right to vote has not been recognised as a fundamental right; it was termed as a 'mere' statutory right."

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<sup>34</sup> INDIAN KANOON, <https://indiankanoon.org/search/?formInput=right%20to%20vote+doctypes:judgments> (last visited Jul.7, 2024)

<sup>35</sup> Apporva Mandhani, *Constitutional or Just Statutory? Your right to vote & why its status is contested* THE PRINT (Jul. 28, 2023) <https://theprint.in/theprint-essential/constitutional-or-just-statutory-your-right-to-vote-why-its-status-is-contested/1689924/>

The right to vote has been a subject of significant contention over the years. Although certain rulings have classified it as a statutory right, a more recent ruling determined that it should be regarded as a constitutional right.

- On the issue of restriction to the right to vote of prisoners:
- In the case of *Praveen Kumar Chaudhary v. Election Commission of India*<sup>36</sup>, which was heard in the Delhi High Court, a public interest litigation was filed challenging the constitutionality of Section 62(5) of the Representation of the People Act, 1951.
- *Section 62(5) says, 'No person can vote who is in prison other than a person subject to preventive detention.'*

After considering the arguments, the Delhi High Court held that Section 62(5)<sup>37</sup> is constitutionally valid. The Court's reasoning was grounded in the settled principle established by the Supreme Court, which allows for reasonable classification as permissible under the fundamental right enshrined in Article 19(1)(a) of India's (Bharat) Constitution.

## V. CONCLUSION & REMARKS

The essence of democracy is encapsulated in the sacred right to vote. Across the annals of democratic history in various nations, this right has not been easily granted but fiercely fought for by citizens. Many democracies, rooted in conservatism, adhered to exclusive ideologies when bestowing this pivotal right upon their populace. In contrast, our Constitution, a testament to sagacity, champions universal adult suffrage, mirroring the all-encompassing spirit of Indian culture.

Despite India's grandeur as the largest democracy, adorned with diverse characteristics, an intriguing absence echoes through Part III, the repository of Fundamental Rights, where the right to vote finds no explicit mention. Instead, the Constitution deftly delegates the nuances of eligibility and disqualification for voting rights to the discernment of the legislature. In this framework, our legislative bodies and the venerable Election Commission of India (ECI) ardently pursue reforms, fortifying the bedrock of democracy and fostering heightened citizen participation.

After careful consideration, modifications such as lowering the voting age from 21 to 18 and increasing the qualifying dates from one to four in a calendar year have been implemented. Introducing the 'NOTA' (None of the Above) option in the ballot underscores the importance of

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<sup>36</sup> W.P.(C) 2336/2019

<sup>37</sup> Representation of the People Act, 1950, § 62(5), No. 43 Acts of Parliament (India).

expressing the voter's free will.

While the Constitution guarantees the right to vote under Article 325 of the Constitution of India, at the same time empowers the legislature to make Laws and corresponding rules under Articles 327 & 328 of the Constitution. Leading to lingering ambiguities about the nature of this right in our country. The judiciary has extensively deliberated on whether it constitutes a fundamental right, concluding that while integral to democracy, it is not categorised as a civil, common, or basic right. Instead, it is a constitutional right shaped and granted by legislation.

In response to evolving times, discussions within the judiciary have called for recognising the right to vote as a fundamental right. Yet, the final determination deems it a statutory right only. The Honourable Chief Justice of India aptly notes that it is time for legislators to reconsider and address this ambiguity.

A specific area of uncertainty pertains to the voting rights of prisoners, especially undertrials in police custody who have not been proven guilty. Anticipated reforms regarding Section 62(5) of the Representation of the People Act, 1951, concerning the voting rights of unproven undertrial prisoners, are expected to align with the principles of our liberal democracy.

Citizens must recognise that our Constitution has bestowed the right to vote upon all individuals without discrimination based on caste, creed, race, religion, or language, utilising the principle of adult suffrage. In contrast to many democratic nations, our legislature promptly expanded the participation base and reduced the qualifying age from 21 to 18. In 2021, it further improved the system by introducing four qualifying dates instead of one, providing more opportunities for new young voters.

As discussed earlier, the right to vote serves as the engine driving democracy. A state cannot be governed without a government; in a democracy, no government can be formed without elections. The unrestricted and active participation of people in politics is essential for maintaining free, fair, transparent, fearless, and fully participated elections—crucial factors for the success of democracy. Without voting, elections cannot proceed, and to vote, the right to vote is imperative; in short, the right to vote is the heartbeat of the election. This right is a source of pride and privilege for the citizens of a democratic state.

Possessing the right to vote is not enough; simultaneously, it is the moral and democratic duty of eligible electors to vote in every election, as voting expresses our commitment to democracy.

If responsible citizens abstain from voting, it paves the way for the election of less competent legislators.

The right to vote is the most potent tool citizens have to achieve the grand success of democracy—government of the people, by the people, and for the people. Prime Minister Narendra Modi aptly said, "First cast your vote, then enjoy a meal".

A mark on your finger on election day is a testament to your pride as a participant in the democratic process.

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