

Right to Vote - Understanding Its Legal Status and Constitutional Evolution in India

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Right to Vote Latest News

- The Supreme Court is hearing cases filed against the Special Intensive Revision (SIR) of electoral rolls in Bihar.

Introduction

- The Supreme Court of India is presently examining petitions related to the Special Intensive Revision (SIR) of electoral rolls in Bihar.
- This has reignited an important legal question: What is the true legal status of the right to vote in India?
- Although the right to vote is fundamental to the functioning of a democracy, Indian jurisprudence has oscillated between categorising it as a constitutional right and a statutory one.
- The debate has implications not just for electoral integrity but also for how citizen rights are interpreted and enforced.

Classifying Rights in the Indian Legal Framework

- India recognises different classes of rights under its constitutional and legal regime:
 - **Natural Rights:** Inherent and inalienable, such as the right to life and liberty. While not directly enforceable, courts may interpret these through fundamental rights.
 - **Fundamental Rights:** Enshrined in Part III of the Constitution, they include rights such as freedom of speech, equality before the law, and protection from discrimination. These are enforceable **under Article 32**.
 - **Constitutional Rights:** Located outside Part III but within the Constitution, such as the right to property and trade. These are enforceable through **Article 226** or relevant legal processes.
 - **Statutory Rights:** Derived from ordinary laws passed by Parliament or State legislatures, such as the right to work under MGNREGA or the right to food under the National Food Security Act.
- The status of the right to vote, though derived from the Constitution, has largely been interpreted as a statutory right, setting the stage for the ongoing debate.

Constitutional and Legal Provisions on Voting

- The **Constitution of India**, under **Article 326**, guarantees **universal adult franchise**, stating that every citizen aged 18 or above is entitled to vote, provided they are not disqualified under law. This mandate is operationalised through two key legislations:
 - **Representation of the People Act, 1950 (RP Act, 1950):**
 - *Section 16* disqualifies non-citizens from being enrolled in electoral rolls.
 - *Section 19* requires voters to be ordinarily resident and aged 18 or more on the qualifying date.
 - **Representation of the People Act, 1951 (RP Act, 1951):**
 - *Section 62* allows voting for all enrolled individuals unless disqualified by law or imprisoned.
- These laws form the statutory framework for voting, leading to the view that the right to vote is not absolute but subject to legislative qualifications.

Judicial Interpretation Over the Years

- The status of the right to vote has been clarified, and contested, across several landmark judgments:
 - **N.P. Ponnuswami (1952):** The Supreme Court held that the right to vote is purely statutory.
 - **Jyoti Basu (1982):** Reaffirmed that voting is neither a fundamental nor a common law right, but a statutory one.
 - **PUCL Case (2003):** Justice P.V. Reddy observed that even if not fundamental, the right to vote could be considered a **constitutional right**.
 - **Kuldip Nayar (2006):** The Supreme Court reverted to viewing voting as a statutory right.
 - **Raj Bala (2015):** Recognised it as a constitutional right based on earlier PUCL interpretation.
 - **Anoop Baranwal (2023):** Majority opinion once again concluded that the right to vote is statutory.
- These oscillations reflect the court's balancing act between textual interpretation and evolving democratic principles.

The Dissenting View and Future Possibility

- In the *Anoop Baranwal* case, one of the judges, in his dissent, presented a nuanced position. He argued that:
 - Voting is an expression of choice protected under **Article 19(1)(a)**, freedom of speech and expression.
 - Free and fair elections are intrinsic to the **basic structure** of the Constitution.
 - Although shaped by statutory law, the origin of this right lies in **Article 326** of the Constitution.
- His reasoning could lay the foundation for a future judicial reconsideration that may elevate voting to the status of a **constitutional right**, particularly as jurisprudence around electoral rights and democratic accountability deepens.

Implications of the Current Legal Status

- **Statutory Nature:** Being a statutory right means Parliament can impose reasonable restrictions, such as disqualifications or procedural changes.
- **Limited Enforcement:** The right cannot be enforced through Article 32 like fundamental rights; redressal is through regular legal channels.
- **Need for Clarity:** In an era of increasing voter suppression concerns, digital disenfranchisement, and electoral roll errors, the legal status of voting may impact how robustly the right is protected.

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