The Right to Vote

Mains: *GS II – Polity*

Why in News?

The demand to recognise the right to vote as a Fundamental Right has recently resurfaced in public discourse after a Congress leader revived an old constitutional debate.

What is the right to vote?

- **Right to vote** – It is also known as suffrage, and it is right bestowed upon citizens to participate in the electoral process by casting their votes to elect representatives who will govern them.
- It ensures that every eligible citizen has a voice in shaping the destiny of the nation.
- **Present Status in India** – The Supreme Court of India has consistently held that the **right to vote is not a Fundamental Right but merely a statutory right.**

What are the cases where SC reiterated that voting as a statutory right?

- **N.P. Ponnuswami vs Returning Officer (1952)** – The Court held that the right to vote and the right to contest elections are not common law rights but rights created by statute.
- **Jyoti Basu & Others vs Debi Ghosal & Others (1982) –** The court observed that although the right to elect is fundamental to democracy, it is neither a Fundamental Right nor a common law right, but purely a statutory right.
- **Kuldip Nayar vs Union of India (2006)** – The Court held that although democracy forms part of the Constitution's basic structure, the individual right to vote flows from legislation, especially the Representation of the People Acts.
- The rationale behind this judicial approach is that the Constitution does not expressly include the right to vote among the Fundamental Rights contained in Part III.
- **Authority of parliament** – Consequently, Parliament possesses considerable authority to prescribe:
- Qualifications for voters, Disqualifications, Electoral procedures and Conduct of elections.
- Thus, the right to vote has traditionally been viewed as a statutory entitlement rather than a constitutional guarantee.

How courts pushed for the Constitutionalisation of the Electoral Process?

- **Right to Know –** In *Union of India Vs Association for Democratic Reforms (2002),* the court held that voters possess the right to know the, criminal antecedents, educational

qualifications, financial assets and liabilities of electoral candidates.

- The Court located this right within Article 19(1) (a), the Fundamental Right to freedom of speech and expression.
- It reasoned that meaningful democratic participation is impossible unless voters are adequately informed before casting their votes.
- Thus, access to information became constitutionally protected.
- **Freedom of Voting as a Fundamental Right –** A significant development came in *People's Union of Civil Liberties (PUCL) vs Union of India (2003).*
- The Court drew an important distinction between:
- The right to vote, which remains statutory; and
- The freedom of voting, which includes making an informed electoral choice.
- It held that while the act of voting is statutory, the freedom to make an informed choice is protected under Article 19(1) (a) as part of freedom of expression.
- This judgment marked the beginning of the constitutionalisation of voting rights.
- **Recognition of NOTA and Political Expression (2013) –** The constitutional journey continued with the landmark NOTA (None of the Above) judgment in 2013.
- The Supreme Court recognised that, Choosing **NOTA** is a legitimate form of political expression.
- The decision to reject all candidates is protected under Article 19(1) (a).
- The secrecy of the ballot extends equally to voters selecting NOTA.
- Consequently, the court recognised constitutional protection for right to know, freedom to make an informed choice, secrecy of the ballot, right to reject all candidates.
- Ironically, despite protecting these essential aspects, the Court continued to classify the actual act of voting as merely statutory.
- This creates an obvious constitutional anomaly.
- If the Constitution protects a citizen's right to reject every candidate, it is difficult to explain why it does not similarly protect the right to choose one.

What are the cases that supported for recognising voting as fundamental rights?

- **Anoop Baranwal vs Union of India (2023) –** Justice Ajay Rastogi, in his separate opinion, expressly supported recognising voting as a Fundamental Right.
- Although this view did not receive majority support, the Constitution Bench repeatedly referred to voting as a constitutional right rather than merely a statutory right.
- This represents a significant shift in judicial thinking.
- The Court may not yet have elevated voting to the status of a Fundamental Right, but it has clearly moved beyond the narrow statutory conception established in earlier decisions.
- **Kesavananda Bharati vs State of Kerala (1973)** – The Supreme Court held that democracy forms part of the Constitution's basic structure.
- **Indira Nehru Gandhi vs Shri Raj Narain (1975)** – The Court declared that free and fair elections are an essential feature of democracy.

The Constitutional mandate – Article 326

• A closer examination of Article 326 further strengthens the argument for constitutional recognition of voting rights.
• Article 326 mandates that elections to the Lok Sabha and State Legislative Assemblies shall be conducted on the basis of **universal adult suffrage.**
• Accordingly every citizen above the age of **18 years** is constitutionally entitled to be registered as an elector.
• Only constitutionally permissible disqualifications may restrict this entitlement.
• The source of this entitlement is the Constitution itself, not ordinary legislation.
• The Representation of the People Acts merely operationalise the constitutional mandate contained in Article 326 by prescribing procedures for registration and conduct of elections.
• Therefore the mechanics and procedures of voting may remain statutory.
• However, the core entitlement to be a voter flows directly from the Constitution.
• Consequently, arbitrary exclusion from electoral rolls, except under constitutionally permissible limitations, affects a constitutional guarantee rather than merely a statutory privilege.

- **Need for Judicial Reconsideration –** The distinction between statutory and constitutional rights may have served a useful purpose during the early years of the Republic when India's electoral jurisprudence was still evolving.
- However, subsequent judicial decisions have steadily blurred this distinction by progressively constitutionalising almost every significant aspect of voting.
- Today, the constitution protects, the voter's right to information, freedom to make an informed electoral choice, secrecy of the ballot, right to reject all candidates through nota and democratic participation through free and fair elections.
- Yet, paradoxically, the act of voting itself continues to be regarded as merely statutory.
- This inconsistency calls for reconsideration by a larger Constitution Bench.
- At the same time, recognising voting as a Fundamental Right does not imply that every aspect of elections should become immune from regulation.
- Parliament must continue to prescribe reasonable provisions regarding:
- Electoral rolls, age qualifications, residency requirements, disqualifications, corrupt practices, election procedures.
- Constitutional recognition would extend only to the core right of every eligible citizen to participate in the democratic process, while leaving procedural regulation to Parliament.

What lies ahead?

- The Supreme Court's own constitutional jurisprudence has gradually transformed the voter from a passive statutory beneficiary into an active constitutional participant.
- The right to know, the freedom to make an informed choice, the secrecy of the ballot and even the right to reject all candidates have all received constitutional protection under Article 19(1) (a).
- Nevertheless, the right to vote itself continues to be treated as merely statutory.
- In a constitutional order where democracy and free and fair elections constitute the basic structure of the Constitution, the citizen's vote cannot remain a constitutional orphan.
- The ballot is not merely a statutory privilege granted by Parliament; it is the very instrument through which popular sovereignty is expressed, governments derive

legitimacy and democratic accountability is ensured.

- Therefore, the time has come for the Supreme Court to revisit its earlier doctrine.
- If the Constitution protects the citizen's right to reject every candidate, it can scarcely deny constitutional protection to the citizen's equally fundamental right to choose one.

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Reference

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