BLOGS

Is the Right to Vote in India a Constitutional or a Statutory Right?

Ruchika Mohapatra · 18 Jan 2025

There is an ongoing debate about the constitutional status of the right to vote in India. Although it is not explicitly listed as a fundamental right in the Constitution, it plays a crucial role in the democratic process.

Edit TABLE OF CONTENTS Introduction Laws on Right to Vote in India Eligibility to Vote in India Disqualifications for Registration in an Electoral Roll Can Prisoners Give Votes in India? Is the Right to Vote in India a Constitutional or Statutory Right? Conclusion

Introduction

The right to vote in India is one of the most fundamental aspects of democratic governance, allowing citizens to participate in the selection of their representatives. In India, this right is a cornerstone of the democratic process and is enshrined in the Constitution and electoral laws of the country.

Laws on Right to Vote in India

The right to vote in India is grounded in the Constitution, which establishes the framework for the electoral process.

Article 326: Adult Suffrage

Article 326 of the Indian Constitution grants the right to vote to every citizen of India who is not less than 18 years of age. This provision is foundational to the democratic process in India, as it ensures that the right to vote is universal and not restricted by discriminatory criteria.

Originally, the minimum voting age was 21 years. However, the 61st Amendment Act of 1988 lowered it to 18 years, significantly broadening the electorate and empowering the youth to

participate in the electoral process. While the right to vote is broadly inclusive, it is subject to certain disqualifications, such as unsoundness of mind, criminal convictions, and other criteria as prescribed by law.

Article 324: Superintendence, Direction, and Control of Elections

Article 324 of the Indian Constitution establishes the Election Commission of India (ECI), an autonomous constitutional authority responsible for administering election processes in India at both the national and state levels.

The ECI is vested with the power to oversee, direct, and control the preparation of electoral rolls and the conduct of all elections to Parliament and State Legislatures, as well as the offices of the President and Vice-President.

The ECI has the authority to set guidelines and rules to ensure the free and fair conduct of elections. This includes the regulation of political parties, election campaigns, and voting procedures. The ECI can take necessary measures to prevent and address electoral malpractices, ensuring that elections are conducted impartially and transparently.

It operates independently of the executive branch of the government, ensuring that electoral processes are free from political interference. The Chief Election Commissioner and other Election Commissioners enjoy protection from arbitrary removal, reinforcing the Commission's independence.

While Article 326 guarantees the right to vote, Article 324 ensures that this right is exercised in a fair, free, and transparent manner. Together, these provisions form the backbone of India's democratic electoral system.

Eligibility to Vote in India

Section 62 of the Representation of the People Act, 1951, deals with the right to vote. It outlines the conditions under which a person can or cannot exercise their right to vote in elections.

1. Age: The minimum age for voting in India is 18 years. This was lowered from 21 years by the 61st Amendment Act of 1988, reflecting a commitment to greater youth participation in the democratic process.

2. Citizenship: Only citizens of India are eligible to vote. Non-citizens, even if they reside in the country, do not have the right to vote.

3. Enrollment in Electoral Roll: A person must be enrolled in the electoral roll of a constituency to exercise the right to vote. The electoral roll is prepared and maintained by the Election Commission, ensuring that only eligible voters are listed.

Disqualifications for Registration in an Electoral Roll

Section 16 of the Representation of the People Act, 1950 talks about specific disqualifications that can prevent an individual from exercising their right to vote in India.

- A person is disqualified if they are of unsound mind and declared so by a competent court.
- A person is disqualified if they are not a citizen of India.
- Any person disqualified by law from voting due to corrupt practices or other offenses in connection with elections.

Can Prisoners Give Votes in India?

Yes, prisoners in India have the right to vote under certain conditions. The Supreme Court of India has affirmed that the right to vote is a right guaranteed to all citizens, including prisoners, under Article 21 (Right to Life and Personal Liberty) of the Constitution. However, there are specific provisions and limitations regarding this right.

According to Section 62(5) of the Representation of the People Act, 1951 a person who is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police, is not entitled to vote. This disqualification does not apply to a person subjected to preventive detention or those imprisoned for reasons such as contempt of court.

Is the Right to Vote in India a Constitutional or Statutory Right?

The right to vote in India is a constitutional right. This right is explicitly granted and protected by the Constitution of India, primarily under Article 326. This article grants the right to vote to every citizen of India who is not less than 18 years of age, subject to certain disqualifications such as non-citizenship, unsoundness of mind, and disqualifications established by law.

The specific procedures, eligibility criteria, and regulations governing the right to vote are detailed in the Representation of the People Act, 1950 and the Representation of the People Act, 1951. These acts outline the preparation of electoral rolls, the conduct of elections, and the qualifications and disqualifications for voters.

The Supreme Court of India has, through various judgments, emphasized the significance of the right to vote as a constitutional right integral to the democratic process. For example, in the case of ***Union of India v. Association for Democratic Reforms***, the Court highlighted the importance of free and fair elections, which are foundational to the right to vote.

In the case of ***People's Union for Civil Liberties (P.U.C.L.) v. Union of India***, the Supreme Court held that the right to vote was merely a statutory right and not a constitutional right. The Court also recognized a distinction: while voting itself is a statutory right, the freedom to vote (or not vote) is part of the constitutionally protected right to freedom of expression. The Court concluded that choosing not to vote for any candidate is an aspect of the right to freedom of expression, protected under Article 19(1)(a) of India's Constitution.

In the case of ***Jyoti Basu v. Debi Ghoshal***, the Court stated, "A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election".

In ***Kuldip Nayar v. Union of India***, the Supreme Court examined the provisions of the Constitution, particularly Article 21, which guarantees the right to life and personal liberty, and Article 326, which guarantees the right to vote.

It also considered the statutory framework under the Representation of the People Act, 1951, which contained provisions restricting voting rights for certain categories of individuals, including prisoners.

The Supreme Court upheld the fundamental right of prisoners to vote under Article 21 of the Constitution. It ruled that the right to vote is a statutory right available to all citizens, including prisoners, unless specifically disqualified by law.

The Court clarified that **Section 62(5) of the Representation of the People Act, 1951**, which excludes persons confined in prisons from voting, applies only to individuals who are serving a sentence imposed by a court and not to those under preventive detention or imprisonment for

offenses like contempt of court.

The judgment emphasized that the right to vote is a crucial aspect of democracy and an expression of personal liberty and equality, which cannot be arbitrarily taken away.

Conclusion

The right to vote in India is a constitutional right that empowers citizens to shape their government and future. It ensures that citizens can participate in the democratic process, hold their representatives accountable, and influence the direction of government policies. Despite challenges such as voter turnout and electoral malpractices, ongoing reforms and technological advancements aim to strengthen the electoral process, ensuring that it remains free, fair, and inclusive.