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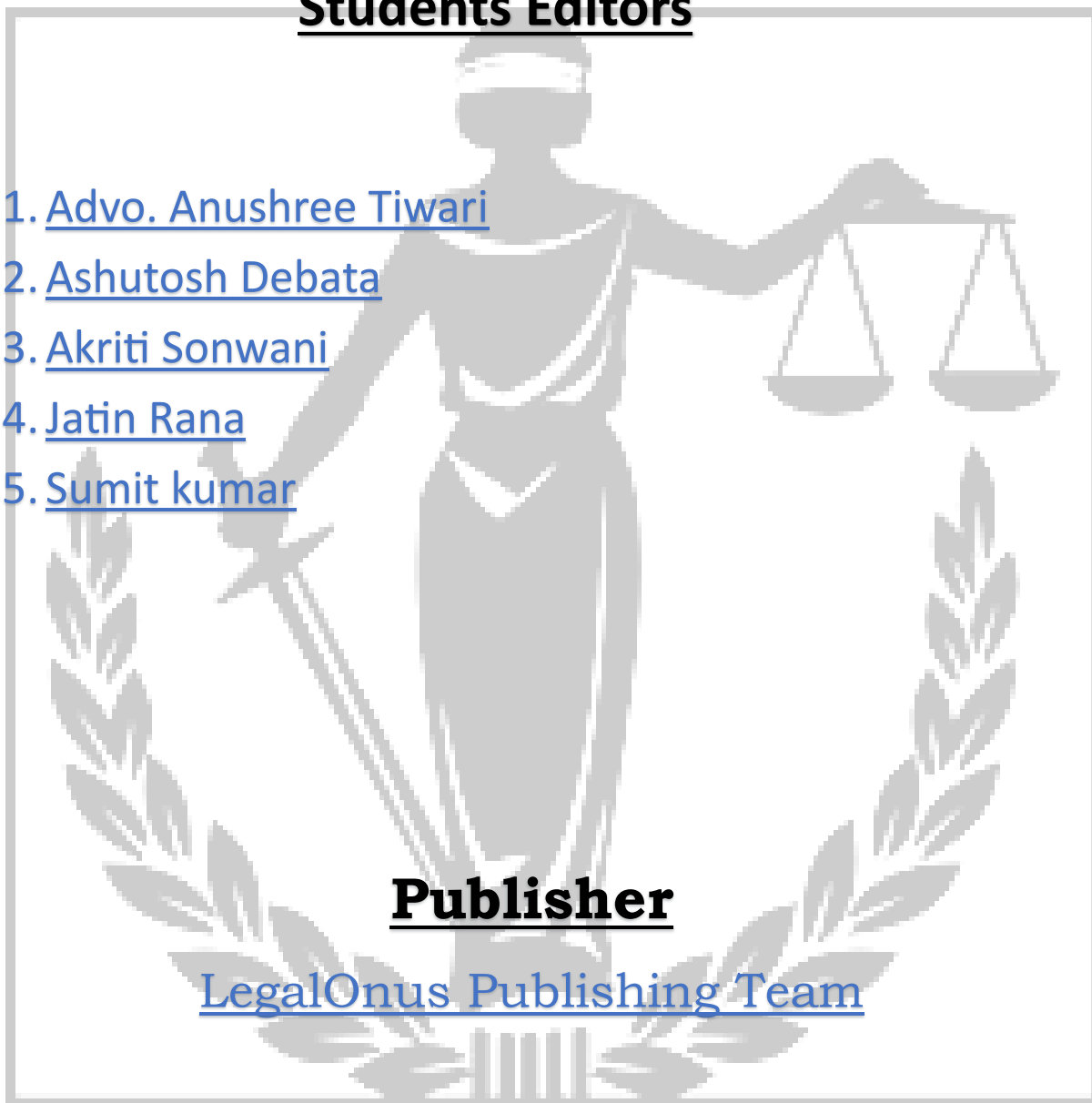
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RIGHT TO VOTE AS A CONSTITUTIONAL RIGHT

-Janani A,

Introduction

The right to vote is a fundamental aspect of democratic governance and is enshrined as a constitutional right in many jurisdictions worldwide. In India, this right is guaranteed under Article 326 of the Constitution, which stipulates that elections to the House of the People and the Legislative Assemblies of States shall be based on adult suffrage. This provision ensures that every citizen of India, who is 18 years of age or older and not otherwise disqualified under the Constitution or any law, has the right to vote in elections.

The right to vote is pivotal in empowering citizens to participate in the democratic process, influence government policies, and hold public officials accountable. It serves as a mechanism for expressing political preferences and ensuring that the government reflects the will of the people. Furthermore, this right is intrinsically linked to other fundamental rights, such as the right to equality (Article 14), freedom of speech and expression (Article 19), and the right to constitutional remedies (Article 32).

Historically, the evolution of the right to vote in India has been marked by significant reforms aimed at broadening the franchise and enhancing electoral integrity. Landmark judicial pronouncements by the Supreme Court of India have reinforced the sanctity of the right to vote, underscoring its critical role in maintaining a vibrant and inclusive democracy. The court has emphasized that free and fair elections are a basic structure of the Constitution, thereby protecting the right to vote from any arbitrary or discriminatory practices.

Despite its constitutional guarantee, challenges such as voter disenfranchisement, electoral malpractices, and the need for robust electoral reforms persist. Addressing these issues is essential to ensure that the right to vote is exercised freely and fairly by all eligible citizens. The Election Commission of India, an autonomous constitutional authority, plays a crucial role in this regard by overseeing the conduct of elections and implementing measures to enhance transparency and accessibility in the electoral process.

Constitutional Provisions

The right to vote in India is governed by various constitutional provisions and legislative frameworks that ensure free, fair, and inclusive electoral processes. The primary constitutional provisions related to the right to vote include:

1. Article 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the Basis of Adult Suffrage

Article 326 stipulates that elections to the House of the People (Lok Sabha) and the Legislative Assemblies of States shall be based on adult suffrage. It specifies that every citizen of India who is 18 years of age or older and is not otherwise disqualified by the Constitution or any law is entitled to vote.

2. Article 325: No Person to be Ineligible for Inclusion in, or to Claim Inclusion in a Special, Electoral Roll on Grounds of Religion, Race, Caste, or Sex

Article 325 ensures that no person is excluded from the electoral rolls or discriminated against on grounds of religion, race, caste, or sex. This provision upholds the principle of universal suffrage and equality in the electoral process.

3. Article 324: Superintendence, Direction, and Control of Elections to be Vested in an Election Commission

Article 324 establishes the Election Commission of India, granting it the authority to oversee the conduct of elections to Parliament, state legislatures, and the offices of the President and Vice-President. The Election Commission is responsible for ensuring that elections are free, fair, and conducted in accordance with the law.

4. Article 327: Power of Parliament to Make Provision with Respect to Elections to Legislatures

Article 327 empowers Parliament to make laws regarding the preparation of electoral rolls, the delimitation of constituencies, and other matters necessary for the conduct of elections to Parliament and state legislatures. This provision allows for legislative frameworks that facilitate the electoral process.

5. Article 328: Power of Legislature of a State to Make Provision with Respect to Elections to Such Legislature

Article 328 grants state legislatures the power to make laws regarding elections to their respective legislative assemblies, provided they are consistent with the provisions of the Constitution.

6. Article 329: Bar to Interference by Courts in Electoral Matters

Article 329 provides that courts shall not interfere in matters relating to the validity of any law relating to the delimitation of constituencies or the allotment of seats made under Article 327 or 328. Challenges to the election process can only be addressed through an election petition presented to such authority and in such manner as provided by or under any law made by the appropriate legislature.

Legislative Framework

The legislative framework in India for ensuring free and fair elections is comprehensive, encompassing several key acts and rules that regulate the electoral process. Here is an in-depth look at these legislative provisions:

1. Representation of the People Act, 1950

This Act is foundational to the preparation and maintenance of electoral rolls:

- **Electoral Rolls:** Sections 13A to 28 cover the preparation and revision of electoral rolls. This includes:
 - **Section 13A:** Provides for the appointment of electoral registration officers.
 - **Section 21:** Mandates the preparation and periodic revision of electoral rolls.

- Section 23: Allows claims and objections related to entries in the electoral rolls.
- Section 24: Details the appeals process for decisions of electoral registration officers.
- Qualification of Voters: Outlines that a person must be a citizen of India and at least 18 years old to be enrolled as a voter.
- Correction of Entries: Sections 22 and 23 provide mechanisms for correcting, including, or deleting names in the electoral rolls to ensure accuracy.

2. Representation of the People Act, 1951

This Act governs the conduct of elections and sets qualifications and disqualifications for candidates:

- Conduct of Elections: Sections 30 to 78A elaborate on the election process:
 - Section 30: Notification of elections.
 - Section 33: Filing of nominations, including the requirement for security deposits.
 - Section 36: Scrutiny of nominations.
 - Section 38: Withdrawal of candidacy.
 - Sections 58 and 59: Polling and counting of votes.
 - Section 66: Declaration of results.
 - Qualifications and Disqualifications:
- Sections 3 to 11B: Define who can contest elections, with details on disqualifications for reasons such as being an undischarged insolvent, holding an office of profit, or having a criminal conviction.
- Section 8: Disqualification on conviction for certain offenses, including corruption and serious crimes.
- Corrupt Practices and Electoral Offenses:

- Section 123: Defines corrupt practices such as bribery, undue influence, and booth capturing.
- Section 125: Penalty for promoting enmity between different groups.
- Section 136: Penalty for electoral offenses, including fraud and impersonation.
- Election Disputes:

Sections 80 to 122: Establish the framework for filing and adjudicating election petitions, with High Courts having jurisdiction over these disputes.

3. Delimitation Acts

Delimitation is the process of redrawing the boundaries of electoral constituencies to reflect changes in population:

- Delimitation Commission Act, 1952: Established the Delimitation Commission, responsible for redrawing the boundaries of parliamentary and assembly constituencies based on the census.
- Delimitation Act, 2002: Provides the current framework for delimitation, incorporating the latest population data from the 2001 census. This Act ensures constituencies are balanced in terms of population, providing fair representation.

4. Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991

This Act secures the independence of the Election Commission:

- Service Conditions: Ensures the security of tenure and service conditions for the Chief Election Commissioner and other Election Commissioners, making them immune from arbitrary removal.
- Transaction of Business: Outlines the procedures for the Election Commission to function smoothly and make decisions collectively.

5. Conduct of Election Rules, 1961

These rules detail the procedural aspects of elections:

- Nomination of Candidates: Rules regarding the format of nomination papers, security deposits, and the process of scrutiny and acceptance.
- Voting Procedures: Use of Electronic Voting Machines (EVMs) and detailed steps for conducting polls, including the handling of ballot papers and counting of votes.
- Declaration of Results: Procedures for counting votes and declaring results, including the resolution of any disputes or recounts.

6. Presidential and Vice-Presidential Elections Act, 1952

This Act governs the election process for the President and Vice-President of India:

- Electoral College: Defines the composition of the Electoral College, consisting of elected members of both Houses of Parliament and the Legislative Assemblies of States and Union territories.
- Voting and Counting: Procedures for the conduct of elections, including the use of secret ballots and counting methods.

7. Anti-Defection Law

Incorporated into the Constitution via the Tenth Schedule, the Anti-Defection Law aims to prevent political defections:

- Disqualification: Specifies conditions under which elected members can be disqualified for defection, such as voluntarily giving up membership of their party or voting against party directives.
- Authority: The Speaker of the House (or the Chairman in the case of the Rajya Sabha) decides on questions of disqualification.

Landmark Judgments

1. N.P. Ponnuswami v. Returning Officer, Namakkal Constituency (1952), AIR 1952 SC 64

N.P. Ponnuswami, a candidate for the Madras Legislative Assembly, was disqualified by the Returning Officer on the ground that his nomination papers were invalid. He approached the Madras High Court under Article 226, seeking a writ to quash the Returning Officer's

decision. The Supreme Court held that the term “election” encompasses the entire process from the issuance of the notification to the declaration of results. Judicial intervention during the election process is barred except through an election petition after the results are declared. This judgment underscores the importance of uninterrupted elections and respects the process laid down by the Constitution.

2. Kihoto Hollohan v. Zachillhu and Others 1992 Supp (2) SCC 651

This case involved the validity of the Tenth Schedule of the Indian Constitution, which deals with the disqualification of members on the ground of defection. Whether judicial review is permissible over the decisions of the Speaker/Chairman regarding disqualification under the Tenth Schedule. The Supreme Court held that while the decision of the Speaker/Chairman is final, it is subject to judicial review on grounds of jurisdictional errors, mala fides, and perversity. This case highlights the balance between the autonomy of legislative bodies and the role of the judiciary in safeguarding democratic processes.

3. Union of India v. Association for Democratic Reforms (2002) 5 SCC 294

The Association for Democratic Reforms (ADR) sought directions from the Delhi High Court to compel the Election Commission to implement a system for mandatory disclosure of criminal, financial, and educational backgrounds of candidates contesting elections. The Supreme Court held that the right to know about the antecedents of candidates is a fundamental right under Article 19(1)(a) of the Constitution. The Court directed the Election Commission to secure disclosures from candidates regarding their criminal records, financial status, and educational qualifications. This judgment expanded the scope of the right to vote by emphasizing informed choice as a component of democratic participation.

4. Peoples Union for Civil Liberties (PUCL) v. Union of India (2003) 4 SCC 399

Following the ADR judgment, the Election Commission issued guidelines for candidate disclosure. The PUCL challenged the constitutional validity of these guidelines and the

amendments to the Representation of the People Act, 1951, which diluted the disclosures. The Supreme Court reaffirmed the right to information as a part of the fundamental right to freedom of speech and expression under Article 19(1)(a). The Court struck down the amendments as unconstitutional, reiterating the importance of transparency and accountability in elections.

5. Lily Thomas v. Union of India (2013) 7 SCC 653

This case involved the constitutionality of Section 8(4) of the Representation of the People Act, 1951, which allowed sitting MPs and MLAs to continue in office even after conviction in certain criminal cases, provided they filed an appeal within three months. The Supreme Court declared Section 8(4) unconstitutional, holding that convicted lawmakers should be disqualified immediately upon conviction. This judgment reinforced the principle that lawbreakers should not be lawmakers, ensuring the sanctity and integrity of legislative bodies.

6. Shyamdeo Pd. Singh v. Nawal Kishore Yadav (2000) AIR 2000 SC 3001

The appellant, Shyamdeo Pd. Singh, challenged the election of Nawal Kishore Yadav on the ground of corrupt practices. The Supreme Court laid down stringent standards for proving corrupt practices in election petitions. The judgment emphasized the need for concrete and cogent evidence, underscoring the importance of maintaining the purity of the electoral process.

7. Subramaniam Swamy v. Election Commission of India (2013) 10 SCC 500

Subramaniam Swamy filed a petition seeking the introduction of Voter Verified Paper Audit Trail (VVPAT) in Electronic Voting Machines (EVMs) to ensure transparency and accuracy in the voting process. The Supreme Court directed the Election Commission to introduce VVPAT in a phased manner. The Court held that VVPAT is an indispensable requirement for

free and fair elections, enhancing transparency and voter confidence in the electoral process.

8. S. Raghubir Singh Gill v. S. Gurcharan Singh Tohra (1980) 3 SCC 149

This case involved a challenge to the election of S. Gurcharan Singh Tohra on the ground of religious influence and communal appeal. The Supreme Court clarified the scope of corrupt practices, emphasizing that any appeal to caste or communal sentiments for votes constitutes a corrupt practice. The judgment strengthened the secular character of Indian elections, ensuring that electoral processes are free from divisive and prejudicial influences.

Implications of Landmark Judgments

- **Strengthening Democracy** - The judgments discussed above collectively strengthen the democratic fabric of India by ensuring free, fair, and transparent elections. They underscore the judiciary's role in safeguarding democratic values and maintaining the sanctity of the electoral process.
- **Promoting Accountability and Transparency** - Decisions such as those in the ADR and PUCL cases have significantly promoted transparency and accountability among candidates and elected representatives. Mandatory disclosures regarding candidates' backgrounds enable voters to make informed choices, enhancing the overall quality of democracy.
- **Ensuring Equality and Integrity** - Judgments like Lily Thomas and S. Raghubir Singh Gill emphasize the importance of equality and integrity in the electoral process. By disqualifying convicted representatives and prohibiting appeals to communal sentiments, these decisions uphold the principles of equality and secularism enshrined in the Constitution.

- Technological Advancements - The Subramaniam Swamy case highlights the judiciary's recognition of the need for technological advancements in the electoral process. The introduction of VVPAT ensures greater accuracy and transparency, bolstering public confidence in the electoral system.

Conclusion

The right to vote is a cornerstone of democracy, and its protection and enhancement are paramount for the functioning of a democratic system. The Indian judiciary, through its landmark judgments, has played a crucial role in shaping and safeguarding this right. By ensuring transparency, accountability, and integrity in the electoral process, these judgments have strengthened the democratic fabric of India. As the country continues to evolve, the judiciary's role in protecting and expanding the right to vote will remain vital in upholding the democratic ideals enshrined in the Constitution.

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