

THE VOTER : QUALIFICATIONS AND DISQUALIFICATIONS UNDER ELECTION LAW AND THE NATURE OF RIGHT TO VOTE

DR. SEEMA NARGOTRA*

Abstract

A voter is the centre of any election. It is the voter who determines the formation of the government in the country. For participating in any election, a voter needs to fulfill the qualifications prescribed under the election law. At the same time, the election law also enumerates the disqualifications for registration as voter. This paper gives the account of such qualifications and disqualifications. It further throws light on various other aspects like the nature of the right to vote, whether it is constitutional, fundamental or statutory right; in how many constituencies does a voter have the right to vote and whether a prisoner has the right to vote.

1. Introduction

A voter/elector means a person whose name is entered in the electoral roll of the constituency for the time being in force.¹ The general bodies of electors or voters in a country constitute the electorate. The electorate is not the whole mass of citizens as under no system, however democratic, minors, persons of unsound mind and criminals are given the right to vote. The principle of universal suffrage is not absolute as it does not mean that every citizen irrespective of age, moral character and soundness of mind is entitled to vote. Thus, electorate is a smaller body carved out of the whole mass of citizens. It is the fraction of a State's population constitutionally and legally empowered to participate in the electoral

*Senior Assistant Professor, Department of Law, University of Jammu.

¹ Section 2 (e), the Representation of the People Act, 1951.

process by exercising the right to vote. The franchise in India is regulated by the Constitution and the statutory rules made there under

2. Qualifications for Registration as a Voter

The Constitution under Article 326 confers the right to vote at an election on every adult citizen² unless disqualified under the Constitution or law³ on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice.

The Representation of the People Act, 1950 provides that everyone who is not less than eighteen years of age on the qualifying date and is ordinarily resident in a constituency is entitled to be registered as a voter in the electoral roll of that constituency.⁴

Qualifying Date

Qualifying date is the 1st of January of the year in which the electoral roll is prepared or revised.⁵

Ordinarily Resident⁶

The qualification of ordinary residence means differently for following different categories of persons.:

- (i) *Actually resident*- The fact of actual residence is the determinant of the ordinary residence. Mere owning or possession of a dwelling house does not suffice. Temporary absence does not amount to his ceasing to be ordinarily resident therein.

²That is, citizens within the meaning of the provisions of the Constitution (Part II of the Constitution comprising Arts. 5 to 11) and the Citizenship Act, 1955 enacted by Parliament pursuant to Article 11 read with entry 17 of List 1 of Schedule VII of the Constitution.

³ The Representation of the People Act, 1950 and the Representation of the People Act, 1951 enacted under Article 327.

⁴ Section 19, the Representation of the People Act, 1950.

⁵ Section 14, *Ibid.*

⁶ Section 20, *Ibid.*

- (ii) *Member of Parliament or of State Legislature*-A member of Parliament or of a State Legislature will not, during the term of his office, cease to be ordinarily resident in the constituency where he is registered as a voter, by reason of his absence from that constituency in connection with his duties as such member.
- (iii) *A Patient*-A patient in a hospital will not for that reason be deemed to be ordinarily resident therein.
- (iv) *A Person Detained in Prison or other Legal Custody*- A person detained in prison or other legal custody will not for that reason be deemed to be ordinarily resident therein.
- (v) *Service Voter*- Any person having a service qualification (and his wife if residing with him) is a service voter.⁷

These include-⁸

- (a) Members of the armed forces of the Union''
- (b) Members of a force to which the Army Act, 1950 applies
- (c) Members of an armed police force of a State, serving outside the State.
- (d) Persons employed under the Govt. of India, in a post outside India.

A service voter has the right to be registered in the electoral roll of the constituency in which he would be ordinarily residing but for his service.⁹ The statement of a service voter specifying his ordinary residence in the absence of evidence to the contrary, shall be accepted as correct.¹⁰

- (vi) *Special Voters*¹¹- are the holders of certain offices declared by the President¹² in consultation with the Election Commission (and their wives if they reside with them).

⁷ Section 20 (3) and (6), *Ibid*, read with Rule 17 (a) of the Conduct of Elections Rules, 1961 and Section 60 (a) and (b) of the Representation of the People Act, 1951.

⁸ Section 20 (8), the Representation of the People Act, 1950.

⁹ Section 20 (3), *Ibid*.

¹⁰ Section 20 (5), *Ibid*.

¹¹ Rule 17 (b) of the Conduct of Elections Rules, 1961.

They shall be deemed to be ordinarily resident in the constituencies in which, but for holding of any such office, they would have been ordinarily resident.¹³

Thus, the above said provisions establish two broad categories of voters- (a) those that are actually ordinarily resident in a constituency and (b) those that are deemed to be ordinarily resident in a constituency; the distinction lies only in that the latter are entitled to postal ballot in the constituency in which they are deemed to be ordinarily resident.

Though the detention in prison or other legal custody at any place does not deprive a person of his ordinary residence¹⁴ but a person confined in prison whether under a sentence of imprisonment or transportation or otherwise in the lawful custody of police is denied the right to vote.¹⁵ But this denial is not to those subjected to preventive detention under any law for the time being in force.¹⁶

In *Ankul Chandra Pradhan v. Union of India*,¹⁷ this provision was challenged in the Supreme Court wherein the 3-Bench Judge held that denial of right to vote to person confined in prison or police custody is not violative of Articles 14 or 21 of the Constitution. The object of S. 62 (5) of the R.P. Act, 1951, is to promote free and fair election, a basic feature of the Constitution. To prevent criminalization of politics, the legislature can make reasonable

¹² The following offices have been declared by the President by Notification No. S.O. 959, dated the 18th April, 1960:

- (i) The President of India
- (ii) The Vice-President of India
- (iii) The Governors of States
- (iv) The Cabinet Ministers of the Union or of any States
- (v) The Deputy Ministers of the Union or of any States
- (vi) The Deputy Chairman and Members of the Planning Commission
- (vii) The Ministers of the Union or of any States
- (viii) The Chairman of any State Legislative Council
- (ix) The Lieutenant Governor of Union Territories
- (x) The Deputy Speaker of the House of the People or of any State Legislative Assembly
- (xi) The Deputy Chairman of the Council of States or of any State Legislative Council
- (xiii) The Parliamentary Secretaries of the Union or of any State

¹³ Section 20 (4), the Representation of the People Act, 1950.

¹⁴ Section 20 (2), *Ibid.*

¹⁵ Section 62 (5), the Representation of the People Act, 1951.

¹⁶ Proviso to Section 62 (5) and Section 60 (d), the Representation of the People Act 1951.

¹⁷ AIR 1997 SC 2814.

classification. Separate classification of prisoners is reasonable as they cannot claim fundamental rights at par with others. Right to vote is a statutory right and is subject to statutory limitations. As such no fundamental right can be claimed in that respect.

This, however, creates an anomalous situation in view of the law that a person inside the prison cannot vote, while he can contest elections except that he is convicted for special offences¹⁸ mentioned in the Act.

2. Disqualifications for Registration as a Voter

The Representation of the People Act, 1950 enumerates the persons disqualified for registration as voters who include: persons who are not citizens of India, persons who are of unsound mind and stand so declared by a competent court, persons who for the time being are disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.¹⁹ No person shall vote at an election in any constituency if he is subject to any of the above said disqualifications.²⁰

The Representation of the People Act, 1951 lays down the provisions relating to disqualifications arising out of conviction and corrupt practices. The Act provides for following disqualifications arising out of conviction and corrupt practices:²¹

- (i) If any person, after the commencement of this Act is convicted of an offence punishable under Section 171 E or Section 171 F of the Indian Penal Code, or under Section 125 or Section 135 or Section 136 (2) (a), he shall, for a period of six years from the date of the conviction or from the date on which the order takes effect, be disqualified for voting at any election.

¹⁸ Section 8, the Representation of the People Act, 1951.

¹⁹ Section 16, the Representation of the People Act, 1950.

²⁰ Section 62 (2), the Representation of the People Act, 1951

²¹ Section 11-A of the Representation of the People Act, 1951.

- (ii) Any person disqualified by a decision of the President under Section 8A (1) for any period shall be disqualified for the same period for voting at any election.
- (iii) The decision of the President on a petition submitted by any person under Section 8A (2) in respect of any disqualification for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State shall, so far as may be, apply in respect of the disqualification for voting at any election incurred by him under Section 11A (b) as it stood immediately before the commencement of Election Laws (Amendment) Act, 1975²² as if such decision were a decision in respect of the said disqualification for voting also.

The Election Commission may, for reasons to be recorded, remove any of the disqualifications arising out of conviction and corrupt practices.²³

The name of a person who becomes disqualified after registration is struck off the electoral roll. The name of any person struck off the electoral roll for corrupt practice or other electoral offence is forthwith reinstated in that roll if the disqualification is removed under any law.²⁴

3. Single Registration Rule

No person is entitled to be registered in the electoral roll for more than one constituency and no one can be registered in the electoral roll for any constituency more than once.²⁵

Effect of Voting in violation of Single Registration Rule

²² Section 11A (b)- removed by the Election Laws (Amendment) Act of 1975 stood as under-
If any person after the commencement of this Act-is found guilty of a corrupt practice by an order under Section 99, he shall, for a period of six years from the date of conviction or from the date on which the order takes effect, be disqualified for voting at any election.

²³Section 11-B, the Representation of the People Act, 1951.

²⁴*Supra* note 19.

²⁵Sections 17 and 18, the Representation of the People Act, 1950.

No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.²⁶ No person shall vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for the constituency more than once, and if he does so vote, all his votes in that constituency shall be void.²⁷

Thus, the Single Registration rule establishes the principle of “one voter-one vote-one value”. This is in conformity with Articles 325²⁸ and 326²⁹ of the Constitution.

4. Nature of Right to Vote

Right to vote is not a constitutional or fundamental right. The contention that the right to freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution of India is wide enough to include the right to exercise franchise was rejected by the Supreme Court in *Kabool Singh v. Kundan Singh*,³⁰ wherein the Court held that the framers of the Constitution never intended to include the right to franchise within the ambit of Article 19 and therefore right to vote is not a fundamental right but is a statutory right.

²⁶Section 62 (3), the Representation of the People Act, 1951.

²⁷Section 62 (4), *Ibid*.

²⁸ Article 325 reads as follows:

No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.—There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

²⁹ Article 326 states as follows:

Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.—The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than 2 [eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

³⁰AIR 1970 SC 340. In *Mohan Lal Tripathi v. District Magistrate, Raibareilly*, AIR 1973 SC 2042 also, the Apex Court held that the right to vote is neither a fundamental right nor a common law right but a special right created by the statute or political right or privilege and not a natural, absolute or vested right. See also *Ankul Chandra Pradhan v Union of India*, *supra* note 17.

Further, right to cast vote does not impose a corresponding duty that the electors must exercise their franchise.³¹

5. Conclusion

The competency to vote arises from the fulfillment of qualifications, prescribed age requirement and ordinary residence in the constituency on the qualifying date. The law makes ample provision to facilitate exercise of voting rights by carving out the different categories of voters such as the MPs/ MLAs, service voters and the special voters. The right to vote is however denied to a prisoner. The constitutional validity of this provision has been upheld by the Supreme Court of India. The Apex Court has held it not to be This, however, remains a matter of controversy in view of the law that a person inside the prison cannot vote, while he can contest elections except that he is convicted for special offences³² mentioned in the Act. The right to vote is not a fundamental right but a statutory right. The Supreme Court of India has clarified in unequivocal terms that the right to vote does not fall within the ambit of freedom of speech and expression under Article 19 of the Constitution of India. The Indian electoral system strictly adheres to the single registration rule, i.e, one-voter-one vote-one-value. The violation of this rule renders a vote void.

³¹*Sushil Singh v. Prabhu Narain Yadav*, AIR 2007 All 187.

³²Section 8, the Representation of the People Act, 1951.