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IMPERATIVE TO ELEVATE THE RIGHT TO VOTE **AS A FUNDAMENTAL RIGHT IN INDIA: A** **CRITICAL STUDY ON VOTERS THEFT AND** **SEVERE PENAL PUNISHMENT.**

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Abstract:

The integrity of India's electoral process is under threat from voter theft and other forms of electoral malpractices, undermining the democratic fabric of the country. This paper argues that elevating the right to vote to a fundamental right is imperative to safeguard the principles of democracy and ensure free, fair, and transparent elections. The current statutory framework governing elections in India is insufficient to prevent voter theft, and the consequences of such malpractices are severe, leading to disenfranchisement of citizens and erosion of trust in institutions.

This study critically examines the need to make the right to vote a fundamental right, with a focus on the impact of voter theft on electoral outcomes and the importance of severe penal punishment for offenders. The paper explores international best practices and constitutional provisions that can inform India's approach to protecting the right to vote. It also analyses the existing laws and regulations governing elections in India, identifying gaps and weaknesses that need to be addressed.

The study concludes that recognizing the right to vote as a fundamental right, coupled with stringent penalties for voter theft, is essential to ensure the integrity of the electoral process and uphold the principles of democracy. It recommends constitutional and legislative reforms to strengthen the framework governing elections in India which include right to vote into fundamental right to make power full democracy in election where vote of each citizen is protected and also including the introduction of severe penal punishment for voter theft and other electoral malpractices. The paper argues that this is imperative to protect the democratic rights of citizens and ensure that the electoral process reflects the true will of the people.

Keywords: Right to Vote, Fundamental Right, Voter Theft, Electoral Malpractices, Penal Punishment, Democracy, India

CHAPTER-I

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Democracy rests upon the active participation of citizens in the process of governance, and the right to vote is the most direct and effective means through which such participation is realized. In India, the world's largest democracy, the electoral process is considered the backbone of representative governance. Despite its immense significance, the right to vote is not recognized as a fundamental right under Part III of the Constitution of India but is treated as a statutory right under Article 326 and the Representation of the People Act, 1951.

In recent years, increasing incidents of voter theft, impersonation, bogus voting, and manipulation of electoral rolls have raised serious concerns regarding the integrity of elections. These electoral malpractices not only dilute the democratic mandate but also erode public trust in constitutional institutions. This study seeks to critically examine the necessity of elevating the right to vote to the status of a fundamental right, strengthening penal provisions for electoral offences and effective justice.

The framers of the Indian Constitution envisioned a democratic polity based on universal adult suffrage. Article 326 provides the constitutional foundation for elections, but the right to vote has consistently been interpreted by the judiciary as a statutory right rather than a fundamental one. Judicial pronouncements such as *Jyoti Basu v. Debi Ghosal*¹ reaffirm this position, while later cases like *AIR 1982 SC 983* have emphasized the importance of voter awareness and freedom of choice.

Despite the constitutional safeguards, electoral offences remain prevalent. The existing legal framework under the Representation of the People Act, 1951 prescribes penalties that are often inadequate to deter large-scale electoral fraud. Delayed trials and procedural complexities further weaken enforcement. Against this backdrop, there is a growing demand for constitutional, legislative, and institutional reforms to protect the sanctity of elections.

¹AIR 1982 SC 983

India's electoral framework is primarily governed by the Representation of the People Act, 1950 and 1951. While these statutes regulate elections and voting procedures, they fail to provide constitutional protection against electoral malpractices such as voter impersonation, deletion of genuine voters from electoral rolls, and coercion. Voter theft undermines democratic legitimacy and erodes public trust in the electoral process. In light of rising concerns over electoral integrity, there is a pressing need to re-examine the constitutional position of voting rights and explore stronger legal safeguards through severe penal punishment.

1.2 STATEMENT OF THE PROBLEM

Electoral offences such as voter theft and impersonation continue to occur due to weak enforcement mechanisms, lenient punishments, and include delays in adjudication also a drawback for our Indian democracy. Despite being a democratic republic, India does not recognize the right to vote as a fundamental right, resulting in limited constitutional remedies against electoral malpractices such as voter theft. The persistence of voter theft and related electoral irregularities raises serious questions about the effectiveness of existing legal safeguards and the need for stronger constitutional protection to ensure free, fair, and inclusive elections.

1.3 REVIEW OF LITERATURE

The reviews of various e-sources, e-books have been taken to analyse the topic right to vote as fundamental right for getting the views of the various people and their psychologies view about it for better understanding of the topic which will helps to get the results of research.

Scholars have extensively debated the constitutional nature of the right to vote in India. Some constitutional experts argue that democratic participation should be inherent within the ambit of fundamental rights, while others support the existing statutory framework to preserve parliamentary supremacy. The right to vote has been extensively discussed by constitutional scholars, political theorists, and judicial bodies, both in India and internationally. Literature on this subject broadly focuses on the constitutional status of voting rights, voter theft, and the democratic implications of voter disenfranchisement.

H.M. Seervai, in *Constitutional Law of India*, critically examines judicial interpretations related to voting rights. He highlights landmark judgments such as *Jyoti Basu v. Debi Ghosal* (1982), where the Supreme Court held that the right to vote is a statutory right and not a

fundamental right. Seervai argues that this interpretation limits judicial intervention in cases of electoral injustice, thereby weakening voter protection.

Dr. K. Hussain(2023)- in their study which says about Vote, voter, voter rights in India, especially on right to vote forms an essential aspect of citizenship in democratic societies and election process.

Ajay Kumar Yadav (2022)- his study says about constitutional status of right to vote and the need to make it a fundamental right.

Aishwarya Agrawal (2025)- her study explains about right to vote under our Indian constitution with reasoning and history of women suffrage in voting rights.

Supreme Court Jurisprudence

ADR v. Union of India (2002), *PUCL* (2003/2013), and *Anoop Baranwal* (2023) demonstrate the Supreme Court's commitment to electoral integrity and transparency.

Gap Identified:

Debate continues on whether judicial classifications under Article 19(1)(a) are sufficient or whether formal constitutional recognition is essential i.e., Right to Vote to as fundamental rights in Indian constitution.

1.4 OBJECTIVES OF THE PRESENT STUDY

1. To examine the constitutional status of the right to vote in India.
2. To analyse the nature and impact of voter theft and electoral malpractices.
3. To evaluate the adequacy of existing penal provisions for electoral offences.
4. To assess the need for recognizing the right to vote as a fundamental right.
5. To suggest legal and constitutional reforms, including severe penal punishment and necessity and feasibility of establishing special courts to prevent voter theft.

1.5 RESEARCH QUESTIONS

1. Should the right to vote be elevated to the status of a fundamental right in India?
2. Are existing electoral laws such as penal provisions and RPA act 1952 is sufficient to deter voter theft and electoral fraud?
3. Can special courts ensure speedy and effective adjudication of electoral offences?
4. Why is the right to vote not recognized as a fundamental right in India?
5. How does voter theft affect the democratic structure of the country and What reforms can be proposed to enhance the protection of voters' rights?

6. Would constitutional recognition strengthen electoral integrity?

1.6 HYPOTHESIS

The study is based on the hypothesis that recognizing the right to vote as a fundamental right under the Constitution of India would provide stronger constitutional safeguards and judicial remedies by imposing severe penal punishment, thereby significantly reducing the incidence of voter theft and enhancing the integrity of the electoral process.

1.7 RESEARCH METHODOLOGY

The present study adopts a **doctrinal research methodology**. It is based on the analysis of constitutional provisions, statutes, judicial decisions, committee reports, scholarly writings and international conventions etc. Secondary sources such as books, journals, law reports, and official publications are extensively used. A comparative approach is also adopted where relevant to assess international perspectives on voting rights.

1.8 OPERATIONAL DEFINITIONS

Right to Vote: The legal entitlement of a citizen to participate in the electoral process by casting a vote.

Fundamental Right: Rights guaranteed under Part III of the Constitution of India, enforceable by courts through constitutional remedies.

Voter Theft: Any illegal practice that deprives a legitimate voter of their right to vote or allows unauthorized individuals to vote in their place, including impersonation and manipulation of electoral rolls.

Electoral Integrity: The conduct of elections in a manner that is free, fair, transparent, and credible.

Severe Penal Punishment: Enhanced criminal penalties aimed at deterring electoral offences.

1.9 ORGANISATION OF CHAPTERS

Chapter I: Introduction

[Overview of the study, scope, methodology, and significance].

Chapter II : Historical background

Chapter III: Concept and judiciary role

[Right to vote as fundamental RIGHT]

Chapter IV: Voter Theft and Electoral Malpractices: A Critical Analysis

Chapter V: Comparative and Critical Analysis
[Comparison with other democratic jurisdictions and evaluation of India's legal position].

Chapter VI: Conclusion and Suggestions
[Summary of findings and concluding observations.]

CHAPTER-II

HISTORICAL BACKGROUND

The history of voting rights in India is characterized by social and political progress. During British rule, voting rights were limited and largely granted to a privileged few. After Independence, the Indian Constitution (1950) granted universal adult suffrage, ensuring that all citizens were above the age of 18 years, regardless of their religion, caste, or gender, had the right to vote.

Right To Vote-Universal Adult Franchise Begin in India

The journey to universal voting rights in India was a landmark achievement, marking a sharp break from the restrictive practices of the colonial era.

The term **Universal Adult Suffrage** or **Franchise** refers to the principle that every adult citizen has the right to vote, without any discrimination. This principle is foundational to the Indian democracy, ensuring that everyone has an equal say in the selection of their representatives. The Constitution guarantees this right, making it a pivotal element in the Indian electoral process.

2.1 VOTING RIGHT-PRE-INDEPENDENCE ERA:

During British rule, the right to vote was extremely limited. The Indian Councils Act of 1909 (Morley-Minto Reforms) introduced an elective element but the franchise was very narrow. The Government of India Act of 1919 provided for direct elections but granted voting rights only to a small fraction of the population based on high qualifications like property ownership, payment of income tax, or land holdings.

2.2 VOTING RIGHT-POST-INDEPENDENCE ERA:

In a remarkable act of democratic faith, independent India adopted Universal Adult Franchise immediately upon independence in 1947.

This was a radical step, especially considering that India's literacy rate was less than 20% at the time. In contrast, many developed Western nations granted universal suffrage only after decades of struggle.

The principle was formally enshrined in the Constitution of India, adopted on November 26, 1949.

The first general elections held in 1951-52 were a massive exercise based on this principle, with every adult citizen having the right to vote regardless of caste, creed, race, or gender.

Initially, the voting age was 21 years. It was lowered to 18 years by the 61st Constitutional Amendment Act, 1988.

Since the first general elections in 1951-1952 (more than 170 million Indians exercised their right to vote), India has held regular elections, upheld the principles of free and fair elections and ensured that the right to vote remains a fundamental pillar of its democratic structure².

Right to Vote in India is guaranteed to all adult citizens by the Constitution of India under Article 326. Article 326 of the Indian constitution states that "**the elections to the House of the People and to the Legislative Assemblies of States shall be on the basis of adult suffrage**", that is, every citizen who is 18 years of age or older has the right to participate in the democratic process by casting their vote in elections.

The Election Commission of India conducts the elections to ensure they are free, fair, and transparent, upholding the principles of democracy. Voting in India is considered not just a right but a fundamental duty, as it plays an important role in shaping the nation's policies and decisions.

2.3 LEGAL FRAMEWORK TO PROTECT THE VOTING RIGHTS IN INDIAN CONSTITUTION AND OTHER LEGAL STATUTES:

The right to vote in India is primarily governed by **Article 326 of Indian constitution**, which stipulates that elections to the **Lok Sabha** (the Lower House of Parliament) and the **Legislative**

² <https://www.iasexpress.net/>

Assemblies of States shall be on the basis of **adult suffrage**. This means that every citizen of India who is at least 18 years of age has the right to vote in these elections, provided they meet the necessary criteria laid out in law.

Before 1988, the voting age in India was 21, but through the **61st Constitutional Amendment Act of 1988**³, the voting age was reduced to 18 years. This amendment marked a significant shift towards **inclusivity**, enabling a larger proportion of the population to exercise their democratic right. Today, all citizens who are 18 years or older, irrespective of their caste, religion, social class, or economic status, are entitled to vote.

2.3.1 INDIAN CONSTITUTION:

Article 326. 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 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 election⁴.

Article 326 sets the foundational principle of "one person, one vote" for all adults.

Election Commission: Election Commission performs the following functions:

- It prepares and maintains the electoral rolls that contain the names of eligible voters in each constituency and updates them regularly.
- It superintends, directs, and controls the entire electoral process in a transparent manner.
- Valid identification documents for voting are prescribed by the Election Commission.

2.3.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 21: Everyone has the right to take part in the government of his country, directly or

³ 61st Constitutional Amendment act-1988

⁴ Article 326, Constitution of India

through freely chosen representatives. 2. Everyone has the right of equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures⁵.

2.3.3 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country⁶.

2.3.4 BHARATIYA NYAYA SANHITA (BNS), 2023

Section 171 BNS - Undue influence at Elections:

- (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.
- (2) Without prejudice to the generality of the provisions of sub-section (1), whoever—
 - (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind; or
 - (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).
- (3) A declaration of public policy or a promise of public action or the mere exercise or a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

⁵ [Universal Declaration of Human Rights | United Nations](#)

⁶ [International Covenant on Civil and Political Rights | OHCHR](#)

Section 172 BNS - Personation at Elections:

Any individual who applies for a voting paper at an election in the name of another person - whether that person is living or deceased - or under a fictitious identity, or who votes once and then seeks another voting paper in their own name during the same election, is committing the offence of personation at an election. This also applies to anyone who aids, encourages, or attempts to facilitate voting by another person in such a manner.

Section 174 BNS - Punishment for undue influence or personation at an Election:

Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both⁷.

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:

2.3.5 REPRESENTATION OF THE PEOPLE ACT, 1950:

Section 16 disqualifies non-citizens from being enrolled in electoral rolls.

Section 16 of the RPA specifies the categories of people who are not allowed to vote, including:

1. Non-citizens of India.
2. People declared to be of unsound mind by a court.
3. People disqualified under a law due to corruption or other election-related offenses.

Section 8 of the Act lays down the offenses that can lead to disqualification from voting. These offenses typically relate to illegal practices, corrupt practices, and other election violations⁸.

Section 19 requires voters to be ordinarily resident and aged 18 or more on the qualifying date.

2.3.6 REPRESENTATION OF THE PEOPLE 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 qualifications⁹.

⁷ <https://indialawacts.in/bnsSections.php>

⁸ Representation of the People Act -1950 sec:8

⁹ Representation of the People Act, 1951, Section 62.

Section 135 – Removal of Ballot Papers / Voting Machines

Removal of ballot papers from polling station to be an offence.—(1) Any person who at any election [unauthorisedly] takes, or attempts to take, a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both. (2) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer: Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency. (3) Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody. (4) An offence punishable under sub-section (1) shall be cognizable.

Section 135A – Booth Capturing (*Most serious form*)

[(1)] Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which 4[shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine]. Explanation.—For the purposes of [this sub-section and section 20B] “booth capturing” includes, among other things, all or any of the following activities, namely:— (a) seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other Act which affects the orderly conduct of elections; (b) taking possession of a polling station or a place fixed for the poll by any person or persons, and allowing only his or their own supporters to exercise their right to vote and 4[prevent others from free exercise of their right to vote]; (c) [coercing or intimidating or threatening directly or indirectly,] any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote; (d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes; (e) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate. [(2) An offence

punishable under sub-section (1) shall be cognizable.]¹⁰

Section 136 – Other Electoral Offences

Disorderly conduct at polling stations

Misconduct interfering with voting

Punishment-Fine up to ₹500

COMPARATIVE SUMMARY TABLE			
Law	Provision	Nature of Offence	Punishment
BNS 2023	Sec 172	Personation (bogus voting)	Up to 1 year / fine / both
BNS 2023	Sec 171	Undue influence	Up to 1 year / fine / both
RPA 1951	Sec 135	Theft/destruction of ballots/EVM	Up to 1 year / fine / both
RPA 1951	Sec 135A	Booth capturing	Up to 3 years + fine

CHAPTER-III

CONCEPT AND JUDICIARY ROLE

(RIGHT TO VOTE AS FUNDAMENTAL RIGHT)

3.1 RIGHT TO VOTE:

The legal entitlement of a citizen to participate in the electoral process by casting a vote. A common misconception prevalent among many citizens is that the right to vote is a fundamental right under the Indian Constitution. However, this is not the case. Although voting is a crucial element of democracy, it is not classified as a fundamental right but as a constitutional right.

Rights of the Voters in India: The voters have certain rights that are bestowed on them by the Election Commission of India. These rights are safeguarded by the Constitution of the country and are provided to all the citizens of the country. Such Voter rights are discussed below. **Right to Know:** The voter has the right to know about the candidates contesting the elections. The

¹⁰ <https://www.indiacode.nic.in>

voters have the right to get the details of the past records of the candidate (criminal records, if any), financial position of the candidate, their election manifesto, etc. Voting rights of NRIs: The NRIs are those citizens of the country that are not present at their place of residence for reasons of employment or any other reasons but are still eligible to vote in the elections of the country. NRIs were not initially allowed to vote in the elections of the country. However, a subsequent amendment allowed the NRIs to vote for elections in India even if they are not residing in the country for a period of 6 months. Voting rights of Prisoners: The constitution of India and the guidelines of the Election Commission of India do not permit a person who is imprisoned to vote in the upcoming elections of the country. NOTA (Right Not to Vote): NOTA or the Right Not to Vote is another right of the voter where the voter participates in the electoral process but does not vote or choose any of the contesting candidates. This right is exercised when the voter feels that none of the contesting candidates are worthy of his/her vote. In such a case, the voter will choose or vote NOTA (None of The Above) which indicates that he/she does not wish to cast a vote for any of the candidates that are contesting the election. Tendered Voting Rights: This right can be exercised by a voter when he/she realizes that another person has wrongly voted on their behalf. Such a person will need to provide a valid identity proof to authenticate their voting right and vote on a separate ballot paper as per Election Commission. 6. Legal Framework and Protection of Voting Rights Voting rights of Disabled or Infirm Citizens: This right is to safeguard the voting right of the disabled and infirm citizens to ensure that their voice is also heard in democracy. When a person of disability is not able to cast his/her vote in the polling booth or through postal ballot, the Election Commission will provide assistance to such voters to cast their votes by taking their vote with the help of an Electoral Officer¹¹.

3.2 LEGAL BASIS -RIGHT TO VOTE NOT A FUNDAMENTAL RIGHT.

The key difference between fundamental rights and constitutional rights lies in their universality and the conditions attached to them. Fundamental Rights are unconditional and are available to every citizen, irrespective of any criteria, such as age, background, or citizenship status. On the other hand, constitutional rights may have certain conditions attached to their enjoyment.

The right to vote is conditional, as it is subject to certain restrictions, such as the minimum age

¹¹ <https://www.ijcrt.org/>

requirement of 18 years and disqualifications like unsoundness of mind or criminal offenses. This is why it is classified as a constitutional right and not as a fundamental right.

3.3 LEGAL BASIS- STATUTORY RIGHT

- The Indian Constitution does not make voting a Fundamental Right.
- Articles 325 and 326 only provide the framework for elections (universal adult suffrage).
- The actual right to vote is created and governed by the Representation of the People Act, 1950 & 1951.

While the right to vote itself is statutory, the manner of exercising the vote is protected as a Fundamental Right.

PUCL v. Union of India (2003 & 2013)

- Secrecy of ballot
- Right to know candidate details
- Right to NOTA

These are part of **Article 19(1)(a)** (Freedom of expression).

The **right to vote in India is a statutory right**, but the **freedom of choice in voting** is protected as a **Fundamental Right under Article 19(1)(a)**¹².

Vote = Statutory Right | Voting choice = Fundamental Right

3.4 JUDICIAL INTERPRETATION OVER THE YEARS:

Several Supreme Court rulings have clarified the nature of the right to vote:

N.P. Ponnuswami vs Returning Officer (1952)¹³ => Supreme Court stated that the right to vote, and to challenge an election, is **not a fundamental right but a statutory one**.

The Court emphasized that election disputes should be handled only through specific election petitions after the election process concludes, not by courts interfering at earlier stages.

Jyoti Basu vs Debi Ghosal (1982) => Supreme Court stated that **"a right to elect, is neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right."**

Association of Democratic Reforms Case (2002)¹⁴: In this case, the Court recognised that the right to vote includes the **right to know** about the candidates contesting the elections. This

¹² Article 19(1)(a) The Indian Constitution

¹³ AIR 1952 SC 64

¹⁴ (2002) 5 SCC 294

ruling mandated that candidates disclose their **criminal backgrounds, financial status, and educational qualifications.**

People's Union for Civil Liberties (PUCL) vs Union of India (2003)¹⁵ => Linked Voter's right to information about candidates (criminal records, assets, education) to the fundamental right to freedom of speech and expression (Article 19(1)(a)).

Justice P.V. Reddi, in his dissenting opinion, stated that if not a fundamental right, the right to vote is "certainly a constitutional right" because it originates from Article 326.

Kuldip Nayar v. Union of India (2006)¹⁶: The Supreme Court reverted to viewing voting as a statutory right.

PUCL Case (2013) – Right to NOTA¹⁷: The Supreme Court also ruled that the right to vote includes the **Right to NOTA** (None of the Above). The Court directed the **Election Commission** to include the NOTA option on **Electronic Voting Machines (EVMs)**, enabling voters to reject all candidates.

Raj Bala v/s State of Haryana (2015)¹⁸ => Recognised it as a constitutional right based on earlier PUCL interpretation.

Supreme Court termed **both the right to vote and the right to contest elections as "constitutional rights."**

This judgment upheld the state's power to introduce reasonable restrictions for contesting local body elections to improve governance.

Anoop Baranwal v/s Union of India (2023)¹⁹ => Majority opinion once again concluded that the right to vote is statutory.

However, Justice Ajay Rastogi, in his dissenting opinion, linked the right to vote to the fundamental right of freedom of speech and expression (Article 19(1)(a)) and argued it formed part of the "Basic Structure" of the Constitution.

CHAPTER-IV

VOTER THEFT AND ELECTORAL MALPRACTICES: A CRITICAL ANALYSIS

“The concept of free and fair election is one which we are all familiar with but a comparative analysis of the theory and practice of electoral processes reveals clearly that the two may not function similarly (i.e.) prevalence of electoral malpractices. The most basic form of electoral

¹⁵ (2003) 4 SCC 399

¹⁶ AIR 2006 SC 3127

¹⁷ AIR 2014 SC 216

¹⁸ (2016) 2 SCC 445

¹⁹ (2023) 9 SCC 1

fraud is preventing eligible voters from casting their vote freely and secondly altering the results”.

4.1 VOTER THEFT:

Any illegal practice that deprives a legitimate voter of their right to vote or allows unauthorized individuals to vote in their place, including impersonation and manipulation of electoral rolls.

4.1.1 VOTERS PARTICIPATION AND CHALLENGE:

The various challenges and factors affecting voter participation are as follows:

1. Inaccurate and Defective Electoral Rolls

Incomplete or inaccurate voter registration data can lead to eligible voters being excluded from the electoral rolls.

2. Weak Legal Protection of Voting Rights

The right to vote is treated as a statutory right rather than a fundamental right. This limits constitutional remedies and weakens accountability when voters are illegally deprived of their franchise.

3. Political Interference and Electoral Manipulation

Political parties and candidates exploit loopholes in the electoral system through practices like voter impersonation, booth capturing, and misuse of local influence to alter electoral outcomes.

4. Poor Enforcement of Electoral Laws

Although electoral offences are punishable under the Representation of the People Act, 1951, weak implementation, slow investigation, and low conviction rates fail to deter voter theft.

5. Lack of Voter Awareness

Many voters are unaware of their rights, voter verification procedures, and complaint mechanisms. This allows voter theft to occur without detection or reporting.

These challenges require efforts to be made by both the government and civil society. Various steps can be taken, like voter awareness through campaigns, simplifying voter registration procedures, improving accessibility to centres in the hilly and rural areas, and targeted outreach to underrepresented groups and marginalized communities.

4.1.2 IMPACT OF VOTER THEFT ON INDIAN DEMOCRACY

1. Wrong Election Results

Voter theft can change the real result of an election, so the winning candidate may not truly represent the people's choice.

2. Genuine Voters Lose Their Right

When someone else votes in place of a real voter, the genuine voter loses their chance to vote.

3. People Lose Trust in Elections

If voter theft happens often, people stop trusting elections and may feel that voting is useless.

4. Less People Come to Vote

Because of mistrust and fear, many citizens may avoid voting, which weakens democracy.

5. Democracy Becomes Weak

Voter theft damages the fairness of elections and harms the democratic system of India.

4.2 Recent Reforms in Voting

Voting is a fundamental pillar of democracy, that ensures that the government remains responsive, representative, and accountable to the people. The voting process represents democracy's famous saying, "**government of the people, by the people, and for the people**". By casting their ballots, citizens express their political will and actively participate in the democratic process.

In recent years, India has witnessed several reforms in the voting process to improve the efficiency, accessibility, and transparency of elections. Various reforms are as follows:

- **Postal ballot** facilities were extended to senior citizens above 80 years of age and persons with disabilities that allow them to vote from home.
- **NOTA (None of the Above)** was introduced that allows voters not to choose any candidate if they find them unsuitable.
- The Election Commission of India launched an **online portal** to allow citizens to register as voters and update their information conveniently.
- **VVPAT machines** were introduced, that provide a printed verification of the vote cast by the voter. This increases the confidence of the voter in the election process.

- **Voter education campaigns** were started to raise awareness about voting rights and the electoral process. **13th National Voters' Day** on 25th January 2023 was celebrated by the election commission.
- To decriminalise the election, the election commission asks the candidates to declare their criminal records.
- Recent Supreme Court ruling that voting to base on informed choice, that is right to be informed fully about the candidates' backgrounds.

Despite significant progress, various challenges persist in the electoral process, like financing elections, the misuse of social media for propaganda, proxy voting issues for non-resident Indians, and entry of criminals into politics are some of the key concerns. To reinforce Indian democracy, all political parties, civil society, and other stakeholders should actively participate in electoral reform efforts²⁰.

4.2.1 REAFFIRMING RIGHT TO VOTE AS FUNDAMENTAL RIGHT

The Constitution should clearly say that the right to vote is a fundamental right of every citizen because of the following reasons:

1. Easy Court Protection

People should be able to go directly to court if their right to vote is taken away under article 32 and 226 of Indian constitution.

2. Prevents Voter Theft

Making voting a fundamental right helps stop vote stealing and impersonation.

3. Fair and Free Elections

Elections become more honest and transparent.

4. Protects Every Citizen

No eligible voter can be easily removed or stopped from voting.

5. Builds Trust in Democracy

People gain more confidence in elections and government.

6. Increases Voter Participation

More people will feel encouraged to vote.

7. Strengthens Democracy

The true voice of the people is reflected in governance.

²⁰ https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/CompulsoryVoting.pdf

8. Ensures Equality

Every citizen's vote gets equal value and respect.

4.3 REMEDIES FOR VOTERS' THEFT IN INDIA

(Voters' theft includes illegal deletion of names from electoral rolls, denial of voting facilities, administrative disenfranchisement, and systemic voter suppression.) Important remedy for voter theft is: stronger constitutional protection and effective judicial remedies.

At Present we have Special Intensive Revision (SIR) is carried out by the **Election Commission of India (ECI)** to ensure that electoral rolls are accurate and up to date before major elections.

- **Definition:** SIR is a systematic process aimed at reviewing, updating, and cleaning electoral rolls to remove errors and ensure only eligible voters are included.
- **Authority:** The process is overseen by the **Election Commission of India**, a constitutional authority under **Article 324**, responsible for ensuring free and fair elections.
- **Process:**
 1. The ECI issues official notifications for SIR in specific states or constituencies.
 2. **State Chief Electoral Officers (CEOs)** and **District Election Officers (DEOs)** supervise the process at the state and district levels.
 3. **Booth-level officers and volunteers** conduct door-to-door verification, collect relevant forms, and update voter information.
- **Public Participation:** Citizens can check, claim, or raise objections regarding entries in the electoral rolls.
- **Purpose:** SIR aims to eliminate **duplicate, fake, or ineligible entries**, include newly eligible voters, and correct errors in voter details such as name or address.
- **Implementation:** The process is carried out periodically and involves **door-to-door verification, public notifications, and inviting claims or objections** to ensure the rolls are accurate and reliable. It is a good remedy for temporary purpose alone but when right to vote implemented as fundamental rights in our Indian constitution it will to permanent and effective solution for voters' theft.

I. Constitutional Remedies

Elevating the Right to Vote to a Fundamental Right

Make voting justiciable under Articles 32 and 226.

Transform voting from a statutory privilege to a constitutional guarantee.

Constitutional Amendment with Penal Backing

Like: Article 17, provide:

“Any violation of the right to vote shall be an offence punishable by law.”

II. Legislative Remedies

Amendment to the Representation of the People Act, 1951

Insert a new chapter titled:

Include:

Criminalisation of arbitrary deletion of voter names

Penal liability for wilful denial of voting facilities

Punishment for electoral roll manipulation

Strict liability for public officials in grave cases

III. Judicial Remedies

Fast-Track Courts for Electoral Offences

Special courts at district level.

IV. Administrative & Institutional Remedies

Personal Accountability of Electoral Officials

Departmental action + criminal prosecution.

Disqualification from public service.

V. Technological Remedies

Transparent Electoral Roll Management System

Real-time tracking of deletions/additions.

Mandatory reason-recording for deletions.

SMS/email alerts to voters.

Voter Receipts & Confirmation

Confirmation of voter registration before polling day.

VII. Penal & Deterrent Remedies

Criminalisation of Voters' Theft
Proposed punishment:
Imprisonment for wilful disenfranchisement.
Enhanced punishment for:
Mass deletion
Targeted community exclusion
Repeat offenders

VIII. Political & Ethical Remedies

Code of Electoral Ethics
Binding on political parties.
Penal consequences for inducement or suppression.

IX. Awareness & Civil Society Remedies

X. International & Comparative Remedies

Adoption of International Best Practices
Compliance with ICCPR Article 25.

The inclusion of penal punishment for acts amounting to voters' theft is constitutionally justified, democratically necessary, and legally sustainable, particularly if the Right to Vote is elevated to the status of a Fundamental Right. Penal sanctions would transform electoral violations from mere administrative lapses into serious constitutional offences, thereby strengthening democratic accountability in India.

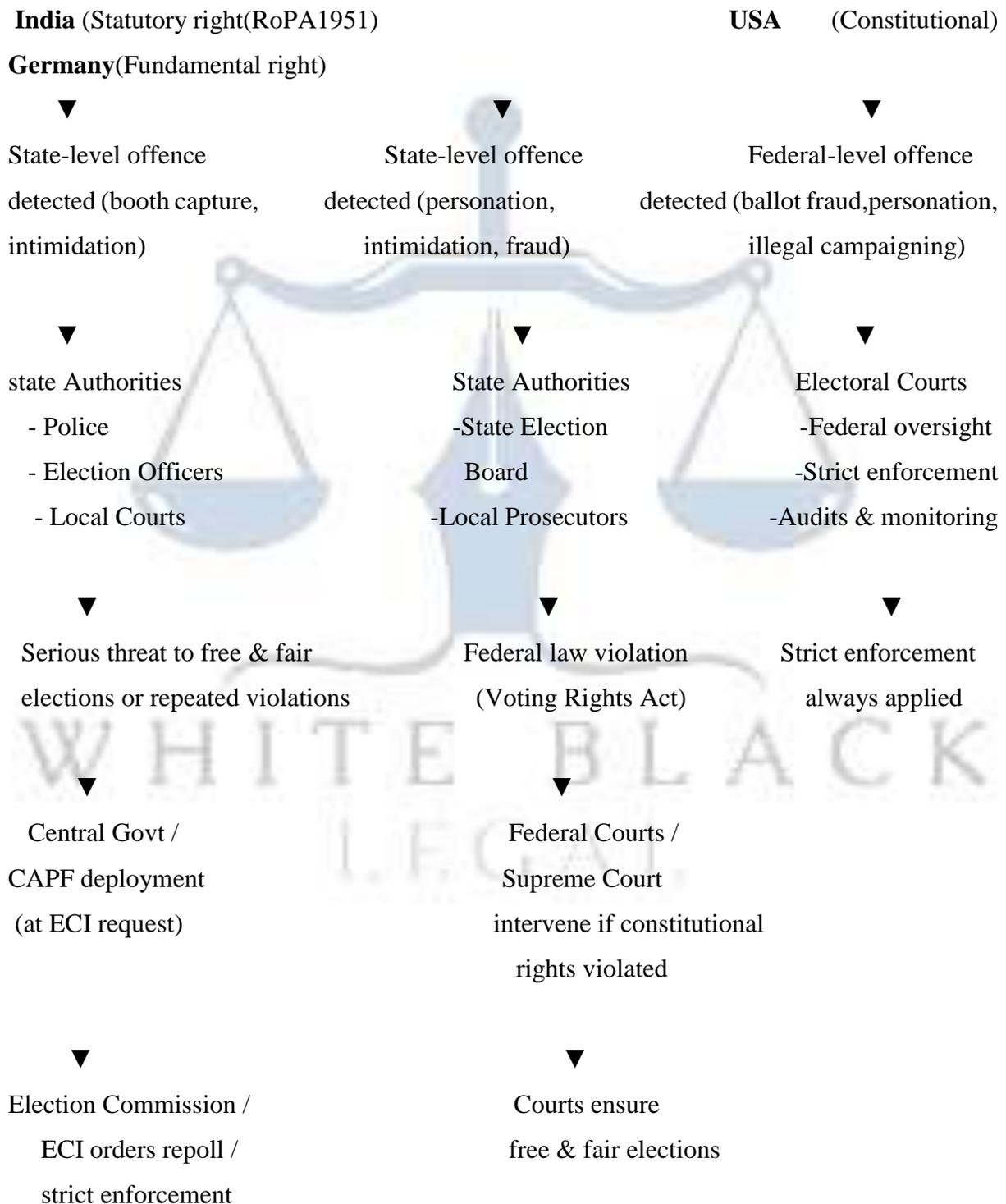
As considering the voter theft as fundamental right in Indian constitution every vote eligible citizen right in election malpractice such as voters' theft is highly protected. But critics that it would lead to an more number pending case in court, on implementing special court for conducting election related case. voter theft can be remedied by recognizing voting as a fundamental right. Strong and fair election laws must be enforced to protect this right. Educating voters, training election officials properly, and enforcing strict penalties for fraud also help protect the voting process. Together, these measures ensure free, fair, and trustworthy elections.

CHAPTER V –
COMPARATIVE AND CRITICAL ANALYSIS

Comparison with other democratic jurisdictions and evaluation of India's legal position.

Election Offence

(Voter theft / Personation)





Supreme Court of India

- Can hear election petitions
- Nullify / order repoll



Free & fair elections ensured

The flowchart outlines how India handles electoral offences such as voter theft and personation, tracing the process from state-level detection to potential intervention by central authorities or the judiciary, with key roles played by the Election Commission of India and the Supreme Court. Despite this structure, the current legal framework has limitations: interventions are generally reactive, CAPF deployment is reserved for serious incidents, and preventive measures like voter identification, booth-level supervision, and electronic verification are not yet fully integrated. By contrast, countries like Germany and the USA provide stronger constitutional or federal safeguards for voting rights, making their electoral processes less susceptible to malpractice. This suggests that elevating the right to vote to a Fundamental Right in India could strengthen legal protections, facilitate proactive enforcement, and minimize vulnerabilities to offences such as voter theft, thereby promoting genuinely free and fair elections.

CHAPTER VI

CONCLUSION AND SUGGESTIONS

[Summary of findings and concluding observations.]

6.1 SUGGESTION:

Recognising voting as a Fundamental Right would be a transformative move for Indian democracy and would offer several long-term benefits in the following ways:

Reinforcing Democratic Principles: Making the right to vote a fundamental right would highlight its importance in a functioning democracy, ensuring that participation is recognized as a core responsibility of citizens rather than an optional exercise.

Stronger Legal Oversight: With fundamental right status, any attempts at voter suppression, manipulation, or unfair restrictions could be directly contested under Articles 32 or 226,

providing citizens with more effective judicial remedies and enhancing accountability in the electoral process.

Ensuring Fair Elections: Given concerns about electoral fraud and manipulation, including EVM tampering, treating voting as a fundamental right would demand stricter monitoring, higher standards of transparency, and reforms in campaign financing and voter education.

Protecting Marginalized Groups: Socially and economically disadvantaged communities often face obstacles in exercising their vote due to access issues or coercion. Constitutional recognition would obligate the state to guarantee equitable and universal access to voting.

Alignment with International Democratic Practices: In several democracies, voting is either a constitutional or fundamental right. For example, Germany, South Africa, and Nepal treat it as a fundamental right, while countries like the US, Canada, France, and Australia recognize it constitutionally (with voting being mandatory in Australia). Adopting similar standards would reinforce India's commitment to participatory democracy.

6.2 CONCLUSION:

The right to vote is one of the most powerful tools citizens have to uphold a healthy democracy. It forms a critical foundation of democratic governance, enabling individuals to participate in shaping government policies and leadership. Historically, many groups—including women, racial minorities, and young adults—had to struggle to secure equal voting rights. Legislative measures such as amendments to the U.S. Constitution and the Voting Rights Act expanded these rights and safeguarded citizens against discrimination, demonstrating that democracy progresses when people advocate for equality and justice.

Even today, the protection of voting rights requires vigilance. Issues like voter suppression, misinformation, and unequal access to polling stations illustrate that these rights are not automatically guaranteed. Exercising the vote allows citizens to express their views and influence decisions that impact their communities and future generations. Additionally, voting represents a form of political expression, reflecting individual beliefs and dissent, and aligns closely with the freedom of speech and expression under Article 19, supporting arguments for its constitutional protection.

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