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Voting Cannot Remain Merely a Statutory Right

 **THE HINDU**7 July 2026 · **POLITY** · **GS2**

CURATED & WRITTEN BY

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THE LIFT LINE

A democracy that lets citizens vote but leaves the right to vote resting on ordinary law has built its house on rented ground. The recurring question of whether the franchise is **statutory** (<https://ujyari.com/vocab/statutory/>) or constitutional is not academic hair-splitting; it decides how easily the vote can be taken away.

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

The status of the right to vote sits at the intersection of constitutional law, election administration and the basic-structure doctrine, all core to the Polity and Governance syllabus. The current controversy over the Special Intensive Revision (SIR (<https://ujyari.com/terms/sir-special-intensive-revision/>)) of electoral rolls gives it live, current-affairs relevance.

GS Paper 2: Salient features of the Constitution; fundamental rights; the functioning of the Election Commission and the conduct of free and fair elections; separation of powers and **judicial review** (<https://ujyari.com/terms/judicial-review/>).

Prelims angle: N.P. Ponnuswami (1952); *Kuldip Nayar v. Union of India* (2006); PUCL (2003, *NOTA* and Article 19(1)(a)); Article 326; Representation of the People Act, 1951; the concept of *NOTA*.

Mains angle: Whether the franchise deserves explicit constitutional protection, and how the classification of the right shapes the security of Indian democracy.

BACKGROUND AND CONTEXT

The Indian Constitution guarantees adult suffrage through Article 326, which provides that elections to the Lok Sabha and State Assemblies shall be on the basis of adult franchise. Yet the machinery of registering voters, preparing rolls and contesting elections is created by ordinary statute, chiefly the Representation of the

People Acts of 1950 and 1951. This gap between the constitutional promise of universal suffrage and the statutory mechanism to exercise it has produced decades of doctrinal (<https://ujjyari.com/vocab/doctrinal/>) uncertainty.

In *N.P. Ponnuswami* (1952), the Supreme Court held that the right to vote and to contest are not natural or common-law rights but rights conferred by statute, to be exercised only within the four corners of the election law. In *Kuldip Nayar* (2006), a Constitution Bench reaffirmed that the right to vote is a statutory right, casting doubt on stray observations that had begun treating it as constitutional. Against this, the PUCL line of cases (2003) located a voter's right to know a candidate's antecedents within the free-speech guarantee of Article 19(1)(a), and later recognised NOTA as protected political expression. The current SIR exercise, which asks large numbers of existing voters to re-establish eligibility, has revived the anxiety: if the vote is only statutory, how firmly is it protected when rolls are revised?

THE CORE ARGUMENT / ISSUE

The central claim is that in a constitutional democracy, the franchise cannot be left to rest solely on statute; it must draw firmer protection from the Constitution itself, because free and fair elections are part of the basic structure.

The Doctrinal Muddle

The Court has spoken in more than one voice. The “statutory right” holding coexists with rulings that treat informed, secret and free voting as flowing from fundamental rights. This inconsistency is not merely theoretical: it determines the standard of scrutiny a court applies when a citizen is struck off the rolls.

Ballot Secrecy, Informed Choice and NOTA

The Court has repeatedly held that secrecy of the ballot is the cornerstone of free and fair elections, that voters have a right under Article 19(1)(a) to know who they are voting for, and that NOTA gives voice to the right to reject. These are the building blocks of a substantive (<https://ujjyari.com/vocab/substantive/>), not merely procedural, franchise.

Basic Structure as the Anchor

Free and fair elections and democracy are settled parts of the basic structure (*Kesavananda Bharati*, *Indira Nehru Gandhi*). If the outcome of elections is constitutionally protected, the individual act that produces the outcome, the vote, cannot logically enjoy weaker protection.

CASE / PROVISION	YEAR	WHAT IT SETTLED
N.P. Ponnuswami	1952	Free Daily Current Affairs for UPSC & State PCS Vote and contest are statutory rights
Indira Nehru Gandhi v. Raj Narain	1975	Free and fair elections are basic structure
PUCL v. Union of India	2003	Right to know candidates under Article 19(1)(a); later NOTA
Kuldip Nayar v. Union of India	2006	Reaffirmed vote as a statutory right
Article 326	Constitution	Adult suffrage as the basis of elections

HOW TO THINK ABOUT THIS (ANALYTICAL FRAME)

Distinguish the right, the mechanism and the outcome. The right to vote is the citizen's entitlement (<https://ujijari.com/vocab/entitlement/>); the electoral roll and RP Act are the mechanism; free and fair elections are the outcome. India protects the outcome as basic structure and protects parts of the exercise (secrecy, informed choice) as fundamental rights, yet classifies the underlying right as merely statutory. That is the inconsistency. A useful frame for the exam is the ladder of protection: a purely statutory right can be curtailed by a simple majority in Parliament; a constitutional right requires amendment; a basic-structure feature cannot be abrogated at all. Where the franchise sits on this ladder decides how secure the vote is.

THE DIAGRAM IN WORDS

Constitution promises adult suffrage (Article 326) -> but the exercise of the vote rests on ordinary statute (RP Acts) -> courts call the right "statutory" yet protect secrecy, informed choice and NOTA as fundamental -> free and fair elections are basic structure -> the gap between a protected outcome and an under-protected individual right -> the case for firmer constitutional anchoring of the franchise.

WAY FORWARD

- 1 **Resolve the doctrinal conflict.** A larger Bench should reconcile the "statutory right" line with the fundamental-rights and basic-structure jurisprudence (<https://ujijari.com/terms/jurisprudence/>), ideally recognising a substantive, constitutionally grounded franchise.
- 2 **Protect the roll.** Any revision such as the SIR must follow a fair, transparent and non-arbitrary procedure with adequate notice, appeal and the burden placed on the State, not the citizen, so that no eligible voter is silently disenfranchised.
- 3 **Strengthen safeguards.** Preserve ballot secrecy, the right to information about candidates and NOTA as integral, not incidental, features of the franchise.
- 4 **Consider explicit protection.** A clearer constitutional articulation of the right to vote would end the recurring uncertainty and place the franchise beyond the reach of ordinary majorities.

PYO LINKAGE AND PRACTICE

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UPSC has repeatedly probed electoral reform and the Election Commission (2017: “In the light of recent controversies regarding the use of EVMs...”; 2022 on the role of the ECI in ensuring free and fair elections). This editorial extends those themes to the constitutional status of the franchise itself.

Practice question: “In India, voting cannot remain merely a statutory right.” Critically examine the constitutional status of the right to vote in light of judicial pronouncements and the basic-structure doctrine, and assess whether the franchise needs firmer constitutional protection. (15 marks, 250 words)

Sources: The Hindu (<https://www.thehindu.com/opinion>)

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