



Secrecy of Vote

Why In News

Recently, the [Supreme Court of India](#) held that in any election, be it to Parliament or State legislature, the **maintenance of secrecy of voting is “a must”**.

- It reiterated its **2013 judgement in the People's Union for Civil Liberties case**.

Key Points

▪ Highlights of the Latest Judgement:

- **Part of Fundamental Right:** The **secrecy is a part of the [fundamental right of freedom of expression](#)**.
 - The confidentiality of choice strengthened democracy.
- **Part of Basic Structure:** Democracy and free elections were a part of the **[Basic Structure of the Constitution](#)**.
 - The concept of 'basic structure' came into existence in the landmark judgment in ***Kesavananda Bharati vs State of Kerala case (1973)***.
- **On Booth Capturing:** Booth capturing and/or bogus voting should be dealt with iron hands, because it ultimately **affects the rule of law and democracy**.
 - Nobody can be permitted to **dilute the right to free and fair election**.
- **On Unlawful Assembly:** Once the unlawful assembly is established in prosecution of the common object, each member of the unlawful assembly is guilty of the offence of rioting.
 - The use of the force, even though it be the slightest possible character by any one member of the assembly, once established as unlawful constitutes rioting.
 - It is not necessary that force or violence must be by all but the liability accrues to all the members of the unlawful assembly.
 - The definition of 'unlawful assembly', according to Indian law, is laid down in **Section 141 of the Indian Penal Code**.

▪ Judgement in People's Union for Civil Liberties case, 2013:

- The two main key components that came out of the Supreme Court judgment are:
 - Right to vote also includes **a right not to vote** i.e right to reject.
 - **Right to secrecy is an integral part of a free and fair election**.
- **Right to Reject:** It implies that a voter while voting has every right not to opt for any of the candidates during an election.
 - Such a right implies a choice to remain neutral. It has its genesis in freedom of speech and expression.
 - Introducing a **'None of the Above' (NOTA)** button can increase the public participation in an electoral process.

- **Right to Secrecy:**

- It is a **central right of an elector to cast his vote without fear** of reprisal, duress or coercion **as per Article 21 of the Indian Constitution.**
 - Protection of the elector's identity and affording secrecy is therefore integral to free and fair elections.
- An arbitrary **distinction between the voter who casts his vote and the voter who does not cast his vote** is violative of **Article 14, Article 19(1)(a) and Article 21** of the Indian Constitution.
- **Article 21(3)** of the **Universal Declaration of Human Rights** and **Article 25(b)** of the **International Covenant on Civil and Political Rights** deals with the **“Right to secrecy”**.

- **Other Related Judgement:**

- Earlier, the SC held that the **principle of secrecy of ballots** is an important postulate of **constitutional democracy** and referred to **Section 94** of the **Representation of People Act (RPA) 1951.**
 - The section upholds the **privilege of the voters to maintain confidentiality** about their choice of the vote.

[Source: TH](#)

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