

# 1. Right to Vote – Polity

Centre says right to vote different from freedom of voting. The Supreme Court is examining whether Section 53(2) of the RPA, 1951, which allows declaring an uncontested candidate elected without a poll, is unconstitutional. Petitioners argue this denies the fundamental "freedom of voting" (Art 19(1)(a)) by preventing the use of NOTA, while the Centre counters that the "right to vote" is a statutory right that only applies when a poll is held.

## The Core Legal Argument in the Supreme Court

The Centre has presented an argument in the Supreme Court distinguishing between two key concepts related to voting.

### The Centre's Distinction

**'Right to Vote'** – This is defined as a mere statutory right, meaning it is granted and regulated by laws (like the Representation of the People Act).

**'Freedom of Voting'** – This is positioned as a part of the fundamental right to freedom of speech and expression, as guaranteed under Article 19(1)(a) of the Constitution.

**About the Petition** – A petition is currently before the Supreme Court seeking to declare specific electoral laws unconstitutional.

### Provisions Challenged

1. Section 53(2) of the Representation of the People Act (RPA), 1951.
2. Rule 11 (along with Forms 21 and 21B) of the Conduct of Elections Rules, 1961.

### Legal Provisions Involved

**Section 53(2), RPA 1951** – This law mandates that if the number of validly nominated candidates in an election is equal to the number of seats to be filled, the Returning Officer (RO) must immediately declare those candidates elected without conducting a poll (i.e., an uncontested election).

**Forms 21 & 21B** – These are the official forms used by the Returning Officer to formally declare candidates elected in an uncontested situation, thereby certifying the election as complete without any voting.

**Article 19(1)(a)** – This article of the Constitution guarantees all citizens the fundamental right to freedom of speech and expression.

### Petitioners' Arguments (Against Uncontested Elections)

**Violation of Voter Expression** – The primary argument is that by declaring a candidate elected without holding a poll, citizens are denied their fundamental right to express themselves under Article 19(1)(a).

**Denial of NOTA** – This lack of a poll specifically prevents voters from exercising their right to express dissent through the None of the Above (NOTA) option.

**NOTA as a Democratic Tool** – The petitioners assert that NOTA is a crucial democratic instrument that enables voters to register their dissatisfaction with all available candidates.

**Suppression of Dissent** – By removing the opportunity to vote, the law effectively suppresses this legitimate form of political expression.

### Centre's Response (Defending the Law)

**Conditional Freedom** – The Centre cites the PUCL vs Union of India (2003) judgment to argue that the "freedom of voting" (as an expression) arises only when a poll actually takes place.

**Voting as an "Incidence of a Poll"** – Therefore, if no poll is legally required (as in an uncontested case), there is no occasion or platform to exercise this freedom. The freedom is an *incidence* of the poll, not a standalone right that *demand*s a poll.

**No Right to NOTA in Uncontested Seats** – If no election is held, voters cannot claim a right to vote, and by extension, they cannot claim a right to use the NOTA option.

**NOTA's Legal Status** – The Centre clarified that NOTA is not legally a "candidate" under Section 79(b) of the RPA, 1951. It is merely an "option" or an "expression," not a "contesting entity."

**Need for Certainty** – The government emphasized that elections cannot remain undecided. Declaring a winner in an uncontested case ensures electoral certainty and the proper functioning of representation.

## Significance of the Case

**Democratic Representation** – It raises fundamental questions about the balance between electoral efficiency (avoiding costly, unnecessary polls) and voter autonomy (the right to express dissent).

**Constitutional Interpretation** – The case tests the legal boundary between statutory voting rights (which can be regulated by law) and the constitutional right to expression (which is a fundamental right).

**Electoral Reform Debate** – The Supreme Court's decision could significantly influence future electoral reforms regarding the mechanism for uncontested seats and the legal standing and power of the NOTA option.

## Types of Rights in the Indian Context

This table differentiates the major categories of rights available to individuals in India.

| Type of Right                   | Source & Nature                                                                     | Examples                                                                                                     | Enforceability                                                                                                                                                                                             |
|---------------------------------|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Natural Rights</b>           | Inherent and inalienable, bestowed by nature.                                       | Right to life, Right to liberty.                                                                             | Not directly enforceable. Indian courts may see them as <i>embodied</i> in Fundamental Rights (e.g., Art. 21 reflects the natural right to live with dignity). The state cannot make laws to violate them. |
| <b>Constitutional Rights</b>    | Contained in the Constitution but <b>outside Part III</b> (Fundamental Rights).     | Right to property (Art. 300A), Freedom of trade (Art. 301), No taxation without authority of law (Art. 265). | Enforceable in a High Court under Article 226 or as per the legal process defined in the relevant laws.                                                                                                    |
| <b>Statutory / Legal Rights</b> | Provided and regulated by ordinary laws passed by Parliament or State Legislatures. | Right to work (MGNREG Act), Right to subsidised food (NFSA), Rights under the Forest Rights Act.             | Enforceable only as per the specific legal process and remedies provided within the law that creates the right.                                                                                            |

## The Legal Status of the 'Right to Vote'

The classification of the "right to vote" has been a subject of continuous judicial debate.

**Constitutional Provision** – **Article 326** of the Constitution grants universal adult suffrage, stating that every citizen (18+) has the right to be registered as a voter.<sup>3</sup>

**Statutory Framework** – This right is operationalized by laws enacted by Parliament, primarily the Representation of the People Act, 1950 (for voter registration) and the Representation of the People Act, 1951 (for the conduct of elections).

### Judicial Interpretations –

- N.P. Ponnuswami case (1952)** – The Supreme Court held that the right to vote is a statutory right, not a common law right, and is therefore subject to the limitations imposed by the statute (the RPA).
- PUCI case (2003)** – In a separate opinion, Justice P.V. Reddy observed that the right to vote, "if not a fundamental right, is certainly a 'constitutional right'" (stemming from Article 326).<sup>4</sup>
- Anoop Baranwal case (2023)** – The majority opinion in this case reiterated the judgment in the *Kuldip Nayar* case, affirming that the right to vote is only a statutory right.

**Current Legal Status** – Based on the prevailing judgments, the current legal status of the right to vote is that it is a statutory right, created and controlled by law.

Source – <https://www.thehindu.com/news/national/right-to-vote-is-different-from-freedom-of-voting-centre-to-sc/article70246977.ece>