

EVOLUTION OF ELECTION LAW VIDE DIFFERENT JUDICIAL PRONOUNCEMENTS

- The current issue, which is primarily limited to cases involving local self-government in the nation, aims to examine how election law has changed over time as a result of different court rulings. The topic at hand also lists the various ways in which the establishment of local self-government brought about changes in society. Needless to say, the State Election Commission played a key role in bringing about these changes. The two main categories of local self-government are rural and urban, each with three layers. While the rural portion is referred to as a panchayat, the urban portion is well-known as a municipality.
- Concept of self governance can be traced back to time of the **Rig-Veda** (1700 BC), evidence suggests that self-governing village bodies called ‘sabhas’ existed. With time, these bodies became panchayats (councils of five persons). During pre-independence, these institutions were known as "**panchayats**" and were primarily responsible for maintaining law and order in rural areas.
- Local Self-Governments were responsible for resolving disputes and providing a forum for **village-level decision-making**. Panchayats were often headed by a village headman chosen by the village elders.
- In the 19th and early 20th centuries, British colonial rule introduced **modern forms of local self-government** in India, which were based on the Panchayati Raj system. These institutions have continued to evolve and play a vital role in the governance of rural areas in modern India.

Some important committees, which recommended Local Self-Governments, are given below:

- **Balwant Rai Mehta Committee (1957):** This committee recommended the establishment of PRIs at the village, intermediate, and district levels. It also recommended that PRIs be given financial resources and powers to decide on local issues.
- **Ashok Mehta Committee (1977):** This committee recommended that PRIs be given more powers and resources and that they be made responsible for planning and implementing development projects at the local level.
- **G.V.K. Rao Committee (1985):** This committee recommended that PRIs be given greater autonomy and that they be made accountable to the people they serve. It also suggested that PRIs be given the power to levy taxes and fees.
- **L.M. Singhvi Committee (1986):** The L.M. Singhvi committee recommended the need for constitutional recognition and legal framework for Panchayat Raj Institution and [urban local bodies](#) to strengthen the local self-governance in India.
- **P.K. Thungon Committee (1989):** It recommended constitutional recognition for the local government bodies.
- **Second Administrative Reforms Commission (2007):** The principle of Subsidiary should be upheld, and there should be a clear delineation of functions for each level of local government.

With the adoption of the 73rd and 74th amendments to the Indian Constitution, the idea of local self-government underwent a radical transformation. The 74th amendment dealt with the municipal institution, whereas the 73rd amendment dealt with the Panchayati raj

institution. Part IX for Panchayats, which runs from article 243 to 243O, and Part IXA for Municipalities, which runs from article 243P to 243ZG, were introduced as a result of the aforementioned alteration.

Following the aforementioned amendments, nearly all state governments and union territories made significant changes to the relevant panchayat and municipality act. As a result, these acts gradually underwent a number of changes that served as a catalyst for social change.

It is important to note that the provisions of the Representation of People's Act, 1951 have consistently served as a guiding principle for the election laws of local self-government. Consequently, the judgments pronounced based on these provisions have influenced the functioning of local self-government throughout the country and needless to mention that the State Election Commission acted as an instrument of change.

For the sake of conciseness, just a few specific cases have been mentioned that have significantly influenced the interpretation of election law, which holds great significance in our democratic system.

POWER OF ELECTION COMMISSION

Mohinder Singh Gill vs Chief Election Commissioner, New Delhi since reported in (1978)1 SCC 405, the power of election commission came for discussion it was stated that when Parliament or any State Legislature has made valid law relating to or in connection with

elections, the Commission shall act in conformity with, not in violation of such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from pushing forward a free and fair election with expedition.

NATURE OF RIGHTS AND RELIEF UNDER ELECTION LAW

Reiterating the law laid down in **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency** reported in [1952]1SCR218 , and **Jagan Nath v. Jaswant Singh and Ors.**, [1954]1SCR892 , this Court held in **Jyoti Basu and Ors. v. Debi Ghosal and Ors.**, reported [1982]3SCR318 , - "A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

Similarly in **Jyoti Basu and Ors. v. Debi Ghosal and Ors.**, reported [1982]3SCR318 it was also laid down that "An Election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance With the statutory creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied."

A bench of three judges (M.B. Shah, P. Venkatarama Reddi and D.M. Dharamadhikari, JJ.) of this Court in **People's Union for Civil Liberties (PUCL) and Anr. v. Union of India and Anr.** reported in (2003) 4 SCC 399 considered the validity of the Representation of the People (Third Amendment) Act, 2002 (4 of 2002). By the said amendment, a candidate contesting an election (to which the Representation of the People Act, 1951 applies) is required to furnish certain information at the time of filing of nomination. In that context, Justice P.V. Reddi examined in some detail the nature of the **right to vote** in the background of the observations made in two earlier decisions of this Court, in **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Namakkal, Salem** (supra) and **Jyoti Basu and Ors. v. Debi Ghosal and Ors.** (supra) and recorded the categorical conclusion that the "right to vote" if not a fundamental right is certainly a "constitutional right" and "it is not very accurate to describe it as a statutory right, pure and simple". The learned Judge recorded nine of his conclusions in para 123. The 2nd conclusion reads as follows:

(2) **The right to vote** at the elections to the House of the People or Legislative Assembly **is a constitutional right but not merely a statutory right**; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.

A conclusion with which Justice Dharamadhikari expressly agreed. The third learned judge Justice M.B. Shah recorded no disagreement. It is pertinent to point here that by virtue of above said PUCL judgement which paved way for requirement of filing mandatory

information on affidavit filed along with nomination paper and thus voters right to evaluate and assess its candidate in better way. while section 33A of RP act, 1951 was upheld and requirement of filing of certain information on affidavit filed along with nomination paper was made compulsory. Such information which was mandatorily required to be disclosed were criminal antecedents, assets and liability of both spouse and dependent and education qualification. By virtue of said judicial pronouncements, almost all the acts pertaining to local self-government paved way for similar prescription in their act and thus a giant leap was taken as far as informed voters aspect in concerned in local self-government.

POPULATION AWARENESS: -

In **Javed and Ors. v. State of Haryana and Ors. reported in (2003) 8 SCC 369**, hon'ble Supreme Court held that "right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right...".

Infact in case of Javed(supra) provision of disqualification on account of more than two living children was put to challenge which was upheld by the Hon'ble Supreme Court held, "One of the objects of the enactment is to popularize family welfare/family planning programme. This is consistent with the national population policy. To carry out the purpose of the Act as well as the mandate of the Constitution, the Legislature has made a provision for making a person

ineligible to either contest for the post of panch or sarpanch having more than two living children. Such a provision would serve the purpose of the Act as mandated by the Constitution. It cannot be said that such a provision would not serve the purpose of the Act.

The impugned disqualification does have a nexus with the purpose sought to be achieved by the Act. Hence, it is valid.”

PUBLIC AWARENESS FOR HYGIENE, EDUCATION ETC.

In *Rajbala vs State of Haryana* since reported in (2016)2 SCC 445, the Hon'ble Supreme Court while upholding the constitutional validity of provisions of Haryana Panchayati Raj (Amendment) Act, 2015 which inserted provisions for additional eligibility criteria on contesting election to panchayat - Aspirant must not have arrears in certain cooperative institutions - Aspirants must have a functional toilet at their residence, the Hon'ble Court was pleased to hold that right to vote and right to contest as constitutional right. Provision for having toilets in order to contest election though existed in Karnataka since 2000 only.

DECRIMINALISATION OF POLITICS:-

In *Krishnamoorthy vs Sivakumar* since reported in (2015)3 SCC 467 While filing nomination form, if requisite information, relating to criminal antecedents, were not given, indubitably, there was attempt to suppress, effort to misguide and keep people in dark - Disclosure of criminal antecedents especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at time of filing of nomination paper as mandated by law was categorical imperative - When there was non-disclosure of offences pertaining to

areas mentioned in preceding clause, it created impediment in free exercise of electoral right - Concealment or suppression deprived voters to make informed and advised choice as consequence of which it would come within compartment of direct or indirect interference or attempt to interfere with free exercise of right to vote by electorate, on part of candidate – Nondisclosure would amount to undue influence and, therefore, election was to be declared null and void.

DISQUALIFICATION ON CONVICTION

Lily Thomas vs Union of India since reported in (2013)7 SCC 653 the Hon'ble Supreme court Disqualification to contest election on conviction--Members of Parliament or State Legislatures stand on same footing as sitting members of Parliament and State Legislatures so far as disqualifications are concerned--Sitting Members of Parliament and State Legislatures cannot enjoy special privilege of continuing as members even though they are convicted of offences mentioned in sub-sections (1), (2) and (3) of Section 8—Sitting Members of Parliament or State Legislatures no longer be protected by subsection (4) of Section 8--Parliament lacks legislative powers to enact Section 8(4)--Accordingly Section 8(4), ultra vires the Constitution--Membership of Parliament or State Legislatures, not saved by Section 8(4), notwithstanding that members convicted of offences files appeal or revision against conviction/and or sentence.

It is important to note that the aforementioned instances represent only a small portion of the various laws established by the Constitutional courts of India. However, their significance in shaping electoral jurisprudence has been significant.

Undoubtedly, the process of law is continuously evolving, and as a result, our country's election laws have also evolved in response to the changing dynamics of society. It would be accurate to assert that, in comparison to other democracies throughout the world, we are significantly advanced in terms of our election laws.

Thank You everyone