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புல்லறிவாண்மை

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பெருமிறை தானே தனக்கு.

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— சாலமன் பாப்பையா



TODAY'S ARTICLE

Centre says right to vote not same as freedom of voting

Krishnadas Rajagopal
NEW DELHI

The Centre has argued in the Supreme Court that the 'right to vote' in an election is different from the 'freedom of voting', and while one is a mere statutory right, the second is a part of the fundamental right to freedom of speech and expression.

The case was listed before a Bench headed by Justice Surya Kant for hearing on Thursday. However, the Bench did not assemble.

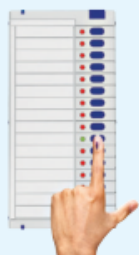
The Centre was responding to a petition seeking to declare Section 53(2) of the Representation of the People Act, 1951, and Rule 11 read with Forms 21 and 21B of the Conduct of Elections Rules, 1961, which apply to 'uncontested elections', *ultra vires* the Constitution for violating freedom of speech and expression under Article 19(1)(a). Section 53(2) kicks in when the number of candidates equals the number of seats



The 'right to vote'

is only a statutory right conferred by Section 62 of the Representation of the People Act of 1951. Freedom of voting is a species of the right to expression under Article 19(1)(a) of the Constitution

THE CENTRE
in its affidavit



to be filled in an Assembly or Lok Sabha election.

NOTA option

In such cases, the provision instructs a Returning Officer (RO) to declare all such candidates as duly elected by filling in Form 21 (in case of a general election) or Form 21B (in case of an election to fill a casual vacancy).

The petitioners, Vidhi Centre for Legal Policy, represented by advocate Harsh Parashar, and the Association for Democratic Reforms, through advocates Prashant Bhushan and Neha Rathi, submitted that the RO's declaration without conducting a poll prevented citizens from expressing their right to vote the 'None of the Above' or the NOTA option and voice their dissatisfaction about the contesting candidate.

Both the government and the Election Commission of India have responded to whether declaration of a sole candidate without taking any poll was a violation of the electors' right to express their unhappiness by voting NOTA.

The Centre's affidavit in court began with a fundamental lesson on the difference between 'right to vote' and the 'freedom of voting'.

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‘Right to vote different from freedom of voting’

It said the ‘right to vote’ was only a statutory right conferred by Section 62 of the Representation of the People Act of 1951, and subject to the limitations given in the statute. Freedom of voting, on the other hand, was a “species of the right to expression under Article 19(1)(a) of the Constitution”.

Illustrating the gulf, the Centre has quoted from a 2003 Supreme Court judgment in *Civil Liberties (PUCL) versus Union* that “the initial right (right to vote) cannot be placed on the pedestal of a fundamental right, but at the stage when the voter goes to the polling booth and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate is tantamount to expression of his opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter”.

But, the Centre pointed out, the freedom of voting (the freedom to choose a candidate through positive vote or a negative vote through NOTA) was dependent on whether or not there was a poll taken.

“Freedom of voting is an incidence of a poll,” the Union government submitted.

The election would be put to vote only if the number of candidates were more than the number of seats to be filled, as provided under Section 53(1) of the 1951

Topic: Centre's Stand – 'Right to Vote' vs 'Freedom of Voting'

Source: The Hindu

Relevance: GS Paper 2 - Polity, Fundamental Rights, Electoral Reforms

Linked Topics:

Article 19(1)(a), Representation of the People Act, 1951, NOTA, Electoral Laws, PUCL Case (2003)

Context:

The Centre, in its affidavit before the Supreme Court, distinguished between the *right to vote* and the *freedom of voting*. It stated that while the right to vote is merely a statutory right under the Representation of the People Act (RPA), the act of voting (expression of choice, including NOTA) is a part of the fundamental right to freedom of speech and expression under Article 19(1)(a).

Curiosity Question:

Can a citizen's freedom to express dissent through NOTA be denied when an election goes uncontested?

Analytical Overview:

- The case challenges *Section 53(2)* of the RPA, 1951, and *Rule 11* with Forms 21 & 21B of the Conduct of Election Rules, 1961, which allow a candidate to be declared elected without polling when seats equal candidates.
- Petitioners argue this provision curtails voters' freedom to express dissatisfaction through NOTA.
- The Centre's affidavit draws from *PUCL v. Union of India (2003)*, affirming that:
 - The *right to vote* is statutory.
 - The *freedom of voting*—the act of expressing choice—is a fundamental right under Article 19(1)(a).

- However, the Centre clarified that this “freedom of voting” arises only if a poll occurs; no poll means no occasion for expression.
- Thus, uncontested elections do not violate freedom of expression, as the right to vote itself is not fundamental.

Constitutional / Policy Linkages:

- Article 19(1)(a) – Freedom of Speech and Expression
- Representation of the People Act, 1951 – Sections 53(1), 53(2), 62
- Conduct of Elections Rules, 1961 – Rule 11, Forms 21 & 21B
- PUCL v. Union of India (2003) – Recognized NOTA as an element of freedom of expression

Way Forward / Recommendations:

- Clarify statutory provisions to ensure voter choice and transparency even in uncontested polls.
- Consider legal reforms to institutionalize NOTA’s significance beyond symbolic expression.
- Promote voter awareness on electoral rights and participation.

Prelims Pointers:

- *Section 53(2), RPA 1951* – Provides for uncontested elections without polling.
- *NOTA* introduced in 2013 following *PUCL v. Union of India (2003)* ruling.
- *Right to vote* = Statutory; *Freedom of voting* = Fundamental under Article 19(1)(a).

Mains Keywords: Right to Vote, Freedom of Expression, NOTA, Electoral Reforms, Representation of the People Act, PUCL Case, Uncontested Elections

Mains Practice Question:

Examine the constitutional distinction between the “right to vote” and the “freedom of voting”. In this context, discuss whether uncontested elections undermine the principles of democracy and freedom of expression.

One Line Takeaway:

While voting is a statutory right, expressing that vote—positive or negative—is part of the citizen’s fundamental right to freedom of expression, but only when an actual poll is held.

Redraw welfare architecture, place a UBI in the centre

As India's wealth gap stretches to levels unseen since Independence and technology races ahead of policy, we find ourselves hurtling toward a collision of crises, job-shedding automation, gig economy precarity, climate-driven displacement and a mental health time bomb fed by chronic insecurity. At this moment, ideas such as universal basic income (UBI), once dismissed as utopian, deserve a fresh, pragmatic look. A UBI can cushion mass unemployment, restoring consumer demand when machines outnumber workers, rewarding unpaid care that props up the formal economy, and rebuilding a social contract frayed by pandemics and capitalism alike. In India, where welfare systems are often plagued by inefficiencies, exclusions and complex eligibility filters, a UBI offers a radical yet simple proposition: a periodic, unconditional cash transfer to every citizen, irrespective of income or employment status. Re-examining it is no longer an academic indulgence. It is an urgent policy imperative. By embedding dignity, autonomy and simplicity into its design, a UBI challenges us to rethink what a welfare state ought to provide in the 21st century.

Universality is the primary strength of a UBI. Where Bismarckian and Beveridgean models peg security to past employment or bureaucratic proof of hardship, a UBI anchors it in citizenship alone, transforming social protection into a streamlined, rights-based pipeline that is resilient to automation shocks, climate emergencies and the invisible labour of care. It bypasses the administrative complexities of targeted welfare and removes the stigma associated with poverty-based entitlements. It aims to create a basic floor of income security for all, ensuring that no one is left behind due to bureaucratic lapses or conditional access.

The argument for a UBI in India

India's current welfare landscape, though expansive, remains fragmented and uneven. Schemes suffer from leakage, duplication, and exclusion. A UBI offers a way to streamline welfare delivery, particularly as digital infrastructure, such as Aadhaar and Direct Benefit Transfer (DBT) platforms, matures. But the argument for a UBI is not just administrative; it is fundamentally moral and economic.

The macro numbers flatter us. Earlier this year, the Press Information Bureau (PIB) claimed that India ranks fourth globally in income equality, citing the consumption-based Gini index. However, this measure focuses on household expenditure, not income or wealth, and thus masks the true extent of economic inequality. According to the World Inequality Database, India's wealth inequality Gini stood at 75 in 2023. The top 1% of the population owns 40% of the national wealth, while the top 10% controls nearly 77%. These figures suggest a level of concentration unseen since colonial times.

At the same time, India's GDP growth – 8.4% in



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In today's crisis-ridden world, ideas such as a universal basic income (UBI) are an urgent policy need

2023-24 – has failed to translate into broad-based prosperity. Nobel laureate Joseph Stiglitz has long argued that GDP, while measuring economic output, does not account for the quality of life, environmental sustainability or equity. This disconnect is underscored by India's ranking of 126 out of 137 countries in the 2023 World Happiness Report – behind Nepal, Bangladesh, and Pakistan. GDP-centric narratives obscure rising precarity, job insecurity and social stress.

A modest, unconditional deposit, landing in every Jan Dhan account without forms or favours, means that a gig-worker can buy vegetables even when the app is quiet and a rickshaw driver's child can start the school term with new shoes. So, a UBI chips away at extreme concentration, reduces the lure of one-off freebies, and anchors growth in every kitchen rather than just in quarterly spreadsheets.

Pilot studies within India, including the Self Employed Women's Association (SEWA)-led initiative in Madhya Pradesh (2011-13), found that UBI recipients experienced better nutrition, increased school attendance, and higher earnings. International trials in Finland, Kenya and Iran showed similar results, with improved mental health and food security, without reducing willingness to work.

Automation and artificial intelligence add urgency to the case for a UBI. According to a McKinsey Global Institute report, up to 800 million jobs worldwide could be displaced by 2030 due to automation. India's semi-skilled and informal workforce is especially vulnerable. A UBI can provide a buffer during this transition, allowing time for upskilling and repositioning in the labour market.

It will rework the citizen-state relationship

The philosophical case for a UBI is equally compelling. For decades, the relationship between the citizen and the state has been largely transactional, defined by market participation and economic contribution. A UBI offers a structural antidote to the very populist, consumer-as-voter politics Shruti Kapila critiques. It removes the political incentive to dangle ad hoc freebies, free power here, a loan-waiver there, that parties deploy to manufacture short-term allegiance. When income security is decoupled from partisan largesse, voters are less hostage to transactional giveaways and more empowered to judge governments on systemic outcomes: quality of schools, rule of law, and ecological stewardship. In this sense, a UBI shifts the relationship from consumerism ("Vote me in, get subsidised units of electricity") back to citizenship ("You already possess a basic economic right; now demand good governance"). It replaces the politics of paternal patronage with a rights-based social contract, undercutting populist schemes that thrive on scarcity, targeted subsidies and moral grandstanding.

Worries that a basic income cheque would make everyday prices explode do not match how

people live where such cheques already exist. Big inflations, Weimar and Zimbabwe happened when factories shut and debts were owed in foreign money, not because ordinary people got a little extra spending money. Fund a UBI responsibly, keep the shelves stocked, and it becomes a cushion against hardship, not a spark for price hikes. Rather than dismiss a UBI as fiscally unviable or politically risky, we must engage with it seriously, as a tool to reduce poverty, mitigate inequality, and strengthen democratic citizenship.

It is important to recognise that a UBI is not a panacea. It will not by itself create jobs, fix public health systems or transform education outcomes. But it can serve as a base – providing a minimum level of economic security upon which individuals can build lives of agency and aspiration. It also recognises and supports unpaid labour, especially the care work undertaken predominantly by women, which remains invisible in traditional economic metrics. A UBI is not about promoting dependency; it is about expanding opportunity.

Some issues such as funding

Despite its promise, a UBI raises legitimate concerns. A minimal UBI of ₹7,620 a person a year – equivalent to the poverty line – would cost around 5% of India's GDP. Funding such an initiative would require either raising taxes, rationalising subsidies, or increasing borrowing, each of which has its economic implications. Moreover, a UBI's universality could dilute its redistributive intent by allocating resources to affluent sections alongside the poor.

A practical way forward would be to introduce a UBI in phases. Vulnerable groups – women, the elderly, persons with disabilities and low-income workers – could be prioritised. This targeted rollout would allow for evaluation and infrastructure building before full-scale implementation. A UBI could also complement, rather than replace, essential schemes such as the Public Distribution System and the Mahatma Gandhi National Rural Employment Guarantee Act, particularly in the early stages.

Another key challenge is technological access. While Aadhaar and Jan Dhan have expanded financial inclusion, gaps remain in digital literacy, mobile access and bank connectivity particularly in tribal, remote, and underserved areas. These gaps must be closed to prevent exclusion from a scheme intended to be universal.

As the Indian state seeks to modernise its welfare architecture, a UBI deserves a central place in the conversation. History suggests that India will revisit the question sooner than we think. The calculus is no longer 'Can we afford UBI?' but 'Can we afford the democratic cost of mass insecurity?' Universality, not means-testing, is the architecture fit for a 21st-century welfare state.

The views expressed are personal

Topic: Universal Basic Income (UBI) as a New Welfare Model

Source: The Hindu

Relevance:

GS Paper 3- Economy, Governance, Welfare Schemes, Inclusive Growth

Linked Topics:

Inequality in India, Social Justice, DBT, Automation, Poverty Alleviation, Gig Economy, Fiscal Policy

Context:

As India faces widening inequality, automation-led job loss, and fragmented welfare systems, the idea of a **Universal Basic Income (UBI)** — periodic, unconditional cash transfers to all citizens — is gaining renewed policy attention. The article argues that UBI can rebuild India's welfare architecture on the principles of universality, dignity, and economic security.

Curiosity Question:

Can a Universal Basic Income become the foundation of a new social contract between the state and its citizens in 21st-century India?

Analytical Overview:

• **Rationale:**

- India's welfare delivery suffers from inefficiency, leakage, and exclusion.
- Growing inequality — top 1% owns 40% of wealth — calls for redistributive reforms.
- GDP growth hasn't translated into equitable well-being; India ranks 126th in the 2023 World Happiness Report.

• **Merits of UBI:**

- Provides *income security* to all citizens, especially amid automation and AI-driven job displacement.

- Simplifies welfare delivery using Aadhaar and DBT infrastructure.
- Strengthens dignity and autonomy by removing bureaucratic filters and stigma of poverty-based schemes.
- Reduces populist politics and transactional “freebie” culture by ensuring a baseline economic right.
- Recognizes unpaid labour, especially women’s care work.
- **Empirical Evidence:**
 - Pilot projects (e.g., SEWA in Madhya Pradesh, 2011–13) improved nutrition, school attendance, and income.
 - International examples (Finland, Kenya, Iran) showed better mental health and food security without reducing work participation.
- **Fiscal and Practical Concerns:**
 - Estimated cost of ₹7,620 per person/year \approx 5% of GDP.
 - May require tax reforms, subsidy rationalisation, or phased rollout.
 - Risk of resource dilution if rich also benefit; hence, a *phased or targeted rollout* may precede universal implementation.
 - Digital gaps in rural and tribal areas must be bridged for inclusivity.
- **Transformative Potential:**
 - Reorients citizen-state relationship from *paternalism* to *rights-based citizenship*.
 - Makes democracy more resilient by ensuring basic income security and reducing dependence on populist giveaways.

Constitutional / Policy Linkages:

- Article 21 – Right to Life with Dignity
- Directive Principles: Article 38 (social order), Article 41 (right to work and assistance)
- SDG 1 – No Poverty, SDG 10 – Reduced Inequalities
- NITI Aayog’s Economic Survey (2016–17) chapter on UBI

Way Forward / Recommendations:

- Pilot UBI for vulnerable groups (women, elderly, disabled) before universal rollout.
- Combine with reforms in taxation, subsidy management, and financial inclusion.
- Maintain essential welfare schemes (PDS, MGNREGA) alongside UBI initially.
- Ensure technological and banking access for last-mile inclusion.

Prelims Pointers:

- UBI = Periodic, unconditional cash transfer to all citizens.
- India's Gini (wealth inequality) ≈ 75 (World Inequality Database, 2023).
- SEWA UBI Pilot (2011–13) – Madhya Pradesh.
- GDP \neq measure of welfare or happiness (Stiglitz critique).

Mains Keywords: Universal Basic Income, Inequality, DBT, Fiscal Policy, Social Justice, Automation, Redistribution, Welfare Architecture

Mains Practice Question:

Discuss the feasibility and implications of introducing a Universal Basic Income in India. Can it replace existing welfare schemes and address the challenges of inequality and automation?

One Line Takeaway:

A Universal Basic Income can reshape India's welfare state from fragmented populism to universal dignity — the question is no longer affordability, but the cost of inaction.

The second issue

A more expansive reading of the surrogacy law can help more couples

The Supreme Court's recent observations about the legality of going in for surrogacy for the second child has raised the fundamental issue of what a law is meant to regulate. In a petition in the Court, a couple facing secondary infertility sought to use surrogacy, as under the Surrogacy Act, surrogacy cannot be resorted to for the second child. Their advocate argued that the state cannot interfere in the private lives and reproductive choices of citizens. Secondary infertility is when a couple is unable to conceive, or carry a pregnancy to term, though they have previously birthed children naturally. The causes are similar to primary infertility – Polycystic Ovary Syndrome, endometriosis, and lifestyle factors. The petitioners sought an exemption to have a second child through surrogacy, submitting that the definition of 'infertility' in the context of surrogacy, both in the ART and the Surrogacy Acts, was not restricted to only primary infertility. Under Section 4(iii)(C)(II) of India's Surrogacy (Regulation) Act, 2021, a couple is eligible for surrogacy only if they do not have any surviving child (biological, adopted, or through surrogacy). Exceptions are made only if the existing child is mentally or physically challenged or has a life-threatening disorder. The government submitted arguments supporting the view that surrogacy cannot be deemed a fundamental right, and that it involves the use of another woman's body. While the judge orally remarked that the restriction imposed under the provision was "reasonable", the Court has decided to examine whether a law banning married couples facing secondary infertility from using surrogacy to have a second child amounts to a restriction on the reproductive choices of citizens.

It may be noted that the Court recently diluted the age specification for surrogacy, allowing age relaxation for couples who had frozen embryos prior to passing the Act. If the avowed intent of the law, as argued at the stage of debate, is to prevent commercial surrogacy, or exploitative situations taking advantage of vulnerable women, besides regulating the mushrooming fertility centres (in conjunction with the ART Act), then to impose restrictions differentiating between primary and secondary fertility seems like splitting hairs. Currently, there is no law restricting the number of children a person can have in India, though many States have incentivised a two-child norm in terms of government benefits, jobs or political offices. A more expansive interpretation of the law, facilitating, for all those in need, access to the benefits of technology, is likely to satisfy two requirements – assisting intending parents, and preventing commercial surrogacy.

Topic: Surrogacy for Second Child and the Scope of Reproductive Rights

Source: *The Hindu*

Relevance:

GS Paper 2 – Governance, Social Justice, Rights of Women, Health Policy

Linked Topics:

Surrogacy (Regulation) Act 2021, ART Act 2021, Right to Privacy, Reproductive Autonomy, Fundamental Rights, Ethics in Reproduction

Context:

The Supreme Court has decided to examine whether prohibiting married couples facing *secondary infertility* from using surrogacy to have a second child violates their *reproductive rights*. The issue arose from a petition challenging Section 4(iii)(C)(II) of the Surrogacy (Regulation) Act, 2021, which allows surrogacy only if a couple has **no surviving child**, except in cases of disability or life-threatening illness.

Curiosity Question:

Should the law on surrogacy differentiate between primary and secondary infertility, or should reproductive choice remain an individual's fundamental right?

Analytical Overview:

• **Current Legal Position:**

- The *Surrogacy (Regulation) Act, 2021* restricts surrogacy to couples without a surviving child.
- The Act allows exceptions only when an existing child is mentally/physically challenged or suffers from a life-threatening disorder.
- Surrogacy is permitted only for altruistic purposes (non-commercial).

• **Petitioners' Argument:**

- The law unfairly excludes couples suffering from *secondary infertility*.

- Infertility, whether primary or secondary, should qualify under ART and Surrogacy Acts.
- Restricting access violates *Article 21* (right to privacy and reproductive autonomy).
- **Government's Stand:**
 - Surrogacy is not a *fundamental right* as it involves another woman's body.
 - The restriction serves a *reasonable regulatory purpose* — preventing exploitation and commercialisation.
- **Judicial Context:**
 - The Court had earlier relaxed the **age limit** for surrogacy where embryos were frozen before the Act came into force.
 - This indicates a flexible, case-based approach by the judiciary toward reproductive laws.
- **Ethical & Policy Concerns:**
 - The intent of the Act was to prevent *commercial surrogacy* and exploitation of poor women, not to restrict reproductive choice.
 - India has no law limiting family size; differentiating between first and second child is inconsistent with broader rights-based norms.
 - A liberal interpretation can ensure both — protection of women's rights and access to reproductive technology for genuine cases.

Constitutional / Policy Linkages:

- **Article 21:** Right to life includes right to privacy, dignity, and reproductive autonomy (as affirmed in *K.S. Puttaswamy v. Union of India* and *Suchita Srivastava v. Chandigarh Administration*).
- **Article 14:** Equality before law – prohibition on arbitrary classification (primary vs. secondary infertility).
- **Directive Principles:** Article 39(e) – Protection of women's health.

- **Related Acts:** ART (Assisted Reproductive Technology) Act, 2021; Surrogacy (Regulation) Rules, 2022.

Way Forward / Recommendations:

- Revisit the Act to remove arbitrary distinctions between primary and secondary infertility.
- Balance reproductive rights with ethical safeguards against commercial exploitation.
- Establish a transparent, regulated framework for altruistic surrogacy with medical oversight.
- Include single parents and non-traditional families in future reforms to reflect evolving social realities.

Prelims Pointers:

- Surrogacy (Regulation) Act, 2021: bans commercial surrogacy; allows altruistic surrogacy for Indian couples.
- Secondary infertility – inability to conceive or carry pregnancy after a previous natural birth.
- ART Act 2021 – regulates assisted reproductive technology services.

Mains Keywords: Surrogacy Act 2021, Secondary Infertility, Reproductive Rights, Article 21, Altruistic Surrogacy, Privacy, Gender Justice

Mains Practice Question:

Examine the constitutional and ethical dimensions of the restrictions imposed by the Surrogacy (Regulation) Act, 2021. Should reproductive autonomy extend to couples facing secondary infertility?

One Line Takeaway:

Restricting surrogacy to childless couples ignores genuine medical needs; a rights-based, compassionate interpretation can align the law with reproductive justice.

Why the nomination process needs reform

The Representation of the People Act (RP), 1951 mandates that only qualified candidates can contest an election. However, the process of verifying said qualifications has accumulated complexity over the years, with too much importance being laid on procedural technicalities than actual 'defects of a substantial character'

LETTER & SPIRIT

Kannan Gopinathan

A young woman from Dadra and Nagar Haveli called last week about the recent municipal council elections. This is a district in which I once served as Collector and Returning Officer. Her father's nomination for municipal councillor had been rejected with no hearing or chance at verification. She asked, "Sir, is this how elections work?" The honest answer is yes. And that is the problem.

One often hears about how nominations of candidates contesting elections are rejected over technicalities without any chance for clarification. However, the fact of that matter is that such rejections are lawful. The most undemocratic part of India's electoral process occurs before a single vote is cast — at the stage of nomination scrutiny.

The politics of procedure

India's electoral nomination process vests extraordinary discretion in a single official — the Returning Officer (RO). The Representation of the People Act (RP), 1951, particularly Sections 33 to 36, and the Conduct of Elections Rules, 1961, govern the nomination process. Section 36 authorises the RO to scrutinise nominations and reject those deemed invalid. The RO's power under Section 36(2) to conduct a "summary inquiry" and to reject nominations for "defects of a substantial character" is extraordinarily wide, and largely un-reviewable before polling, since Article 329 (b) bars courts from interfering mid-election. The law says no nomination should be rejected for defects not of a substantial character. But there are no written guidelines on what is substantial. And the only remedy to protest it is an election petition after the polls, when the damage is irreversible. In a democracy, this absolutism dressed in legal language has the potential to become a tool of political exclusion.

In Bihar this year, a Rashtriya Janata Dal (RJD) candidate's nomination was rejected for leaving some fields blank. Last year in Surat, Opposition candidates were eliminated after proposers denied signatures, delivering a Lok Sabha seat unopposed. In the 2019 elections in Varanasi, decorated BSF jawan Tej Bahadur Yadav was rejected because he could not obtain an Election Commission certificate overnight. In Birbhum, former IPS officer Debashish Dhar was kept off the ballot when his no-dues certificate from the government was delayed. Yet, there is no publicly available consolidated dataset on rejection grounds, patterns, or party-wise breakdowns. This opacity shields the weaponisation of procedure.

Procedural traps

Section 36 of the RP Act mandates that only qualified candidates can contest. However, the process of verifying qualification has accumulated complexity over the years. Well-intended judicial interventions have paradoxically worsened the problem. Supreme Court directions mandating detailed affidavits on assets, liabilities, and criminal cases were meant to ensure transparency, yet each new disclosure requirement added another opportunity for technical rejection. For example, in *Resurgence India versus Election Commission* (2013), the Supreme Court held that false declarations lead to prosecution but don't invalidate nominations, only incomplete ones do. This means that a candidate who



Gruelling rules: RJD candidate from the Saran constituency, Rohini Acharya, files her nomination papers for the Lok Sabha elections, in April 2024. ANI

lies but fills all columns stays on the ballot, and one who makes a good-faith error can be rejected. The system now punishes incomplete declarations more harshly than dishonest ones.

A missing signature, a mismatched electoral number, a form filed at 3:05 PM instead of 3:00 PM, a blank column in an affidavit, a delayed oath, a missing no-dues certificate — any of these can end a candidacy. The burden of proof thus lies entirely on the citizen seeking to exercise a legal right, and not on the official denying it. This is constitutionally backwards. The right to be voted for is the necessary twin of the right to vote. Without candidates to choose from, the ballot is ritual without substance. The first principle must be that every qualified citizen has a presumptive right to contest. That right can be denied only when the RO establishes, with clear evidence, a substantive constitutional or statutory disqualification. Technical paperwork errors cannot be a reason for disqualification.

Some of the common procedural technicalities on which nominations are rejected include:

The oath trap: Every candidate must take an oath before a specified authority after filing nomination but before scrutiny. If it's too early, it's invalid, and if too late, the nomination is rejected. Moreover, if it is not before the specified authority, your form is again bound to be rejected.

The notarisation trap: Every Form 26 affidavit (an affidavit which needs to be filed by the candidate along with nomination papers) must be notarised by a specified authority. Not having done so can result in rejection of the nomination.

The certificate trap: Along with nomination papers, the candidate is liable to submit no-dues certificates from municipal bodies, electricity boards, or other government departments; clearance certificates from the Election Commission for government servants; and various other bureaucratic attestations, each of them a veto point when it comes to the time of scrutiny. Thus, each issuing office becomes a

potential chokepoint where deliberate delay can eliminate a candidacy.

These procedures, once designed as safeguards, have turned into potential opportunities for delay and manipulation. Here, bureaucratic compliance is being rewarded over democratic legitimacy.

Facilitation, not filtration

Other democracies show a different approach. In the U.K., ROs help candidates fix errors before deadlines. Canada mandates a 48-hour correction period. Germany requires written notice of problems, time to remedy them, and multiple appeal layers. Australia encourages early submission to allow corrections. The common idea being that officials are facilitators, not sentinels.

India also has a checklist system. The RO Handbook instructs ROs to point out defects at the time of filing and record them in a checklist. But this checklist has no legal standing. The Handbook itself clarifies that the checklist "will not prevent the Returning Officer from pointing out other defects, if any, discovered later during scrutiny." A nomination can be marked defect-free at filing, yet rejected at scrutiny for defects the RO discovers later. The candidate has no right to rely on the checklist, and the RO faces no legal obligation to honour it. The checklist thus remains as an illusion of transparency without offering any real protection to the candidate.

The RO's role must shift from discretion to duty. When a deficiency exists, the RO must issue a detailed written notice specifying the exact error, the legal provision violated, and the correction needed. Candidates must get a guaranteed 48-hour window to fix it after receiving this notice.

The law must thus classify deficiencies into three categories: (1) technical or paperwork defects such as missing signatures, blank affidavit columns, clerical errors, no-dues certificates etc. These cannot justify rejection; (2) matters requiring verification of authenticity such as disputed signatures, challenged documents etc. These require investigations before rejection; and (3)

constitutional and statutory bars. These should lead to immediate and absolute disqualification. Moreover, every rejection order must be reasoned. The RO must specify which exact requirement was not met, which provision of law was violated, what evidence supports the finding, and why the defect is substantial enough to justify rejection.

A digital solution

The Election Commission of India (EC) can build a nomination system that is digital-by-default; one that doesn't depend on excessive paperwork. This is not to argue for a digital-only framework, but a digital-by-default framework that can eliminate disqualifications based on blank columns and misspelt names or typos. The entire nomination process could move to an integrated online portal linked with the electoral roll. The system could automatically validate voter ID, age, and constituency details. Oath, affidavit submission, proposer verification, and deposit payment could all be digital. Moreover, every nomination's progress such as when it was filed, verified, deficiency notified, corrected, accepted or rejected, should be visible on a public dashboard with timestamps and reasons.

Upholding democracy

When a nomination is rejected arbitrarily, two rights are violated: the candidate's right to contest and the voters' right to choose. The world's largest democracy deserves a nomination process that is modern, fair, and inclusive, where the burden of proof is on the state to justify exclusion, not on citizens to prove their right to participate.

The EC should work towards a citizen-friendly nomination process that would end the bureaucratic red tape around disqualifications for blank columns, wrong payment modes, misspelled signatures, misspelt names and typos, no-dues certificates or a delayed oath. It should work towards a simplified process that removes the possibility of using procedure as politics.

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THE GIST

India's electoral nomination process vests extraordinary discretion in a single official — the Returning Officer (RO).

In *Resurgence India versus Election Commission*, the Supreme Court held that false declarations lead to prosecution but don't invalidate nominations, only incomplete ones do. This means that a candidate who lies but fills all columns stays on the ballot, and one who makes a good-faith error can be rejected.

When a nomination is rejected arbitrarily, two rights are violated: the candidate's right to contest and the voters' right to choose.

Topic: Reforming India's Election Nomination Process

Source: *The Hindu*

Relevance:

GS Paper 2 – Governance, Electoral Reforms, Representation of People Act, Role of Election Commission of India

Linked Topics:

Electoral Integrity, Democratic Participation, Bureaucratic Discretion, Right to Contest, Digital Governance

Context:

The article highlights how India's election nomination process, governed by the *Representation of the People Act, 1951*, has become excessively procedural, often leading to arbitrary rejection of nominations. It argues that Returning Officers (ROs) exercise wide discretion under Section 36 of the Act, and lack of procedural safeguards has turned what should be a democratic filter into a bureaucratic barrier.

Curiosity Question:

Can India's democracy truly be called participatory when procedural technicalities prevent eligible citizens from even contesting elections?

Analytical Overview:

India's nomination scrutiny process gives disproportionate power to Returning Officers to reject nominations for "defects of a substantial character." However, what constitutes "substantial" remains undefined. Since Article 329(b) bars judicial interference during elections, rejections are rarely reviewed before polling, effectively excluding candidates without remedy. Many nominations are rejected over trivial issues — blank affidavit columns, missing signatures, minor delays, or missing certificates. Ironically, the current system punishes *incomplete honesty*

(minor omissions) more severely than *deliberate dishonesty* (false declarations), as seen in *Resurgence India v. Election Commission (2013)*. Judicial reforms meant for transparency have instead multiplied technical traps.

Comparative Insight:

Other democracies treat election officers as facilitators. The U.K., Canada, Germany, and Australia provide time to rectify nomination errors before rejection. In India, however, even after a “defect-free” checklist, nominations can still be invalidated during scrutiny, exposing systemic opacity.

Major Issues Identified:

- **Discretion without accountability:** ROs have unchecked power during scrutiny.
- **Procedural traps:** Oath, notarisation, and certificate requirements act as veto points.
- **Lack of transparency:** No public data on rejection patterns.
- **Judicial non-interference:** Article 329(b) prevents pre-poll redress.
- **Administrative bias:** Technical compliance overrides democratic legitimacy.

Reform Suggestions:

- Shift the RO's role from *discretionary gatekeeper* to *democratic facilitator*.
- Legally guarantee a **48-hour correction window** for technical errors.
- Classify deficiencies into: (1) Technical – fixable, not grounds for rejection; (2) Authenticity-related – require verification; (3) Legal/constitutional – immediate disqualification.
- Mandate **reasoned rejection orders** specifying violated provisions and evidence.
- Build a **digital-by-default nomination system** linked to the electoral roll for automatic verification, online affidavit filing, oath submission, proposer validation, and public dashboards showing application progress and reasons for rejection.

Constitutional / Policy Linkages:

- **Article 19(1)(a) & (c):** Freedom of expression and association – includes right to political participation.
- **Article 21:** Right to life and personal liberty extends to right to contest.
- **Article 324:** Powers of the Election Commission to ensure free and fair elections.
- **Article 329(b):** Bars judicial interference during election process.
- **Representation of the People Act, 1951 (Sections 33–36):** Governs nomination and scrutiny.

Way Forward / Recommendations:

Reform must focus on making elections *citizen-friendly* rather than *bureaucratically controlled*. A fair system must presume eligibility unless clear statutory disqualification exists. The Election Commission should operationalize digital nomination platforms, ensure procedural uniformity across constituencies, and publish data on rejection grounds for transparency and accountability.

Prelims Pointers:

- **Returning Officer (RO):** Statutory authority under RP Act to scrutinize and accept/reject nominations.
- **Article 329(b):** Courts cannot intervene in election matters before polling.
- **Resurgence India v. Election Commission (2013):** False declaration ≠ invalid nomination; incomplete declaration = invalid.
- **Form 26:** Mandatory affidavit declaring assets, liabilities, and criminal cases.

Mains Keywords: Electoral Reform, RP Act 1951, Returning Officer Discretion, Electoral Transparency, Digital Governance, Democratic Participation, Procedural Justice

Mains Practice Question:

“Excessive proceduralism in India’s election nomination process undermines the democratic right to contest.” Discuss with reference to the Representation of the People Act, 1951 and recent cases of arbitrary nomination rejections.

One Line Takeaway:

Democracy begins at nomination — India needs reforms that make the process inclusive, transparent, and facilitative, not exclusionary.