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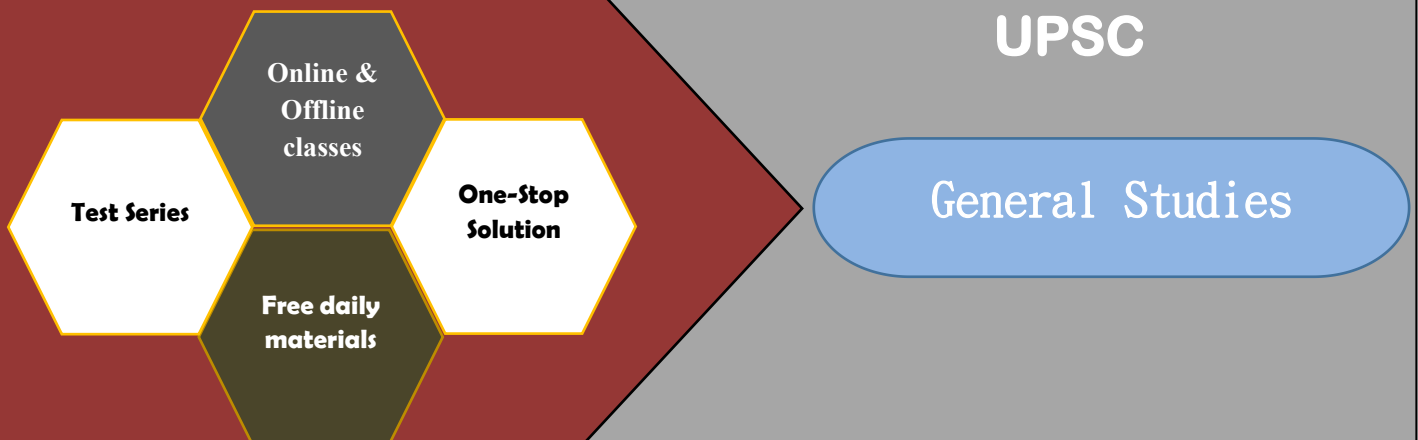
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Secrecy of Vote

Notes for civil services preparation



Secrecy of Vote

- 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**.
- No body 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** and 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. 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.

