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Q11

Discuss the procedures to decide the disputes arising out of the election of a Member of the Parliament or State Legislature under The Representation of the People Act, 1951. What are the grounds on which the election of any returned candidate may be declared void? What remedy is available to the aggrieved party against the decision ? Refer to the case laws.

UPSC Civil Services Mains 2022 · GS II · 15 marks · Parliament and State Legislatures

Parliament and State legislatures - structure, functioning, conduct of business, powers and privileges and issues arising out of these.

Core demand of the question

- Discuss the procedure for settling election disputes in India under the **Representation of the People Act, 1951**
- State the grounds on which an election can be declared void, the remedies, and the leading case law, including **Article 329(b)**

Revision summary

Article 329(b) permits an election to Parliament or a State legislature to be questioned only by a statutory election petition.

The **Representation of the People Act, 1951**, after 1966, gives that jurisdiction to the High Court (**Section 80A**), on a petition within forty-five days (**Section 81**).

Section 100 lists grounds of voidness; **Section 123** defines corrupt practices; many irregularities void the poll only if the result is materially affected.

Sections 98 and **99** set out the High Court's orders; **Section 116A** is the appeal to the Supreme Court.

Ponnuswami (1952) and **Mohinder Singh Gill (1978)** keep **Article 226** from substituting for the petition during the process.

Indira Nehru Gandhi v. Raj Narain shows that even a constitutional attempt to oust election-case review can fail basic structure.

Introduction

Article 329(b) channels every challenge to a parliamentary or Assembly election into an election petition presented in the manner Parliament has prescribed. That manner is the **Representation of the People Act, 1951**: a High Court trial, statutory grounds of voidness, and an appeal to the Supreme Court - not a writ that restarts the poll in the middle of the count.

Body**Constitutional bar and the exclusive petition**

- **Article 329(b)** says that no election to either House of Parliament or to a State legislature shall be called in question except by an election petition presented to such authority and in such manner as is provided by law.
- **N.P. Ponnuswami v. Returning Officer, Namakkal (1952)** held that "election" covers the entire process from notification to result, and that High Courts should not use **Article 226** to interrupt that process; the remedy comes after, by petition.
- **Mohinder Singh Gill v. Chief Election Commissioner (1978)** confirmed that once the electoral process has begun, judicial review yields to the statutory petition, while still allowing the **Election Commission** to act fairly under **Article 324** within the process.
- After the 1966 amendments, **Section 80A** of the 1951 Act vests jurisdiction in the High Court; the earlier Election Tribunal is not the present forum.

Procedure under the 1951 Act

- **Section 81** requires the petition to be presented by a candidate or an elector within forty-five days of the date of election of the returned candidate, with the security and form that the Act and rules prescribe.
- The petition is tried by a High Court judge as nearly as possible like a civil suit, with the returned candidate and, where corrupt practice is alleged, other necessary parties; trial is meant to be expeditious.
- **Sections 98** and **99** empower the High Court to dismiss the petition, to declare the election void, to declare another candidate duly elected in specified situations, and to name persons guilty of corrupt practice.
- A subsequent disqualification for corrupt practice follows from the President's decision under **Section 8A**, after the **Election Commission's** opinion, which is a separate consequence from the voiding of that one election.

Grounds on which an election may be declared void

- **Section 100** is the catalogue. The High Court shall declare the election void if the returned candidate was not qualified or was disqualified on the date of election, or if a corrupt practice was committed by the candidate or with his consent by an agent, or if nomination was improperly accepted, or if votes were improperly accepted or rejected, or if the result was materially affected by non-compliance with the Constitution or the 1951 Act or rules, or by improper rejection of a nomination, among the heads listed in that section.
- **Corrupt practices themselves are defined in Section 123:** bribery, undue influence, appeal to religion or caste in the forbidden manner, publication of false statements, use of official machinery, and related heads - each with a high standard of proof because the penalty is severe.
- "Materially affected" is the hinge for many procedural irregularities: a defect does not void an election unless it is shown to have changed, or to have been capable of changing, the result, which protects the franchise against technical upsets.
- **Distinguishing corrupt practice from mere electoral offence matters:** not every IPC or RPA offence is a **Section 123** corrupt practice, and only the former automatically triggers the **Section 100** voidness path in the same way.

Remedy after the High Court

- **Section 116A** gives a right of appeal to the Supreme Court on any question, whether of law or fact, from every order of the High Court under **Section 98** or **99**, within the limitation the Act states.
- The Supreme Court may stay the High Court's order; until then, the seat may already have been treated as vacant, which is why stay practice is politically sensitive.

- Extraordinary writs remain theoretically available against the **Election Commission** for matters that are not "calling the election in question," but Ponnuswami still bars using 226 as a substitute petition.
- **Indira Nehru Gandhi v. Raj Narain** remains the constitutional cautionary tale: the Allahabad High Court voided an election on statutory grounds; the Thirty-ninth Amendment's attempt to place that dispute beyond judicial review failed the basic-structure test in the Supreme Court.

Case law that a 15-mark answer should actually use

- Ponnuswami is the **Article 329(b)** process case; Gill is the **Article 324**-during-process case.
- Raj Narain / Indira **Gandhi** is the collision of election law with constitutional amendment.
- Later High Court and Supreme Court petitions turn on proof of corrupt practice and on the "material effect" test rather than on a new forum.

Flow diagram

Art 329 b -> Election petition High Court s.80A
Election petition High Court s.80A -> s.100 grounds including s.123
Election petition High Court s.80A -> s.98 99 orders
s.98 99 orders -> s.116A appeal to Supreme Court
Art 329 b -> Ponnuswami no mid-process writ

Conclusion

Election disputes in India are High Court petitions under the 1951 Act, because **Article 329(b)** makes that the only way to question the result. Voidness follows **Section 100** grounds, especially qualification, corrupt practice, and result-altering irregularity, with a Supreme Court appeal under **Section 116A**. The case law protects the process from mid-stream writs and still insists that a proven corrupt practice can unseat a returned candidate.

Facts & figures

Article 329(b)

Bars questioning an election to Parliament or a State legislature except by an election petition presented as provided by law.

Section 80A, Representation of the People Act, 1951

Confers jurisdiction to try election petitions on the High Court.

Section 100, Representation of the People Act, 1951

Grounds on which a High Court shall declare an election void, including disqualification, corrupt practice, and result-affecting non-compliance.

Section 123, Representation of the People Act, 1951

Defines corrupt practices such as bribery, undue influence and forbidden communal appeal.

Section 116A, Representation of the People Act, 1951

Appeal to the Supreme Court from High Court orders under **Sections 98** and 99.

N.P. Ponnuswami (1952)

Held that the election process is not to be interrupted by writ; the remedy is the election petition after the result.

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