

DEMOCRACY IS SHACKLES: SHOULD PRISONERS VOTE

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ABSTRACT

The significance of people's participation in governance is for the success of democracy, which emphasizes that democracy is characterized by the government of the people, by the people, and for the people which shows the active involvement and engagement of citizens in the governing processes. Prisoners may contest elections in India, but they are not allowed to cast a vote, as in many countries inmates have the right to vote but in India, they are not allowed to cast a vote. The fundamental principles of equality were established in India. The constitution is violated when the right to vote is completely denied to prisoners. We have stated a desire to construct a correctional and reformatory jail system. The Supreme Court of India itself stated that prisoners should not be treated as non-persons, and on the other hand keeping them away from casting votes also states that they are not treated as persons. In a democratic country, the right to vote has long been recognized as a fundamental human right.

INTRODUCTION

“If we want felons to become good citizens, we must give them rights as well as responsibilities, and there is no greater responsibility than voting”-

“**Representative John Conyers, Jr., Chair of the Judiciary Committee in Congress**”.¹

India's history of foreign rule spans several centuries, with major powers like the Delhi Sultanate, Mughal Dynasty, East Indian Company, and the British Crown imposing their dominion and ideologies. Post-independence in 1947, India emerged as a democracy granting voting rights to all citizens over 18, irrespective of their social or economic background, making it the world's largest democracy.

The right to vote is the backbone of democracy. Vote not simply means to choose their representative, it is a powerful tool that empowers individuals to shape their communities and

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¹ DR. SATISH CHANDRA AND DAL CHANDRA Stochastic Modeling & Applications Vol.26 No. 3 (January - June, Special Issue 2022 Part - 10) (p. 643)

theworld around them.

The act of casting a vote involves the process of indicating one's choice among a set of options such as candidates in an election or proposals in a referendum. This expression of choice is typically done through various methods, including paper ballots, electronic voting machines, or other forms of voting mechanisms, depending on the electoral system in place.

OBJECTIVE

The first and most important objective is to give prisoners voting rights as they are also the citizens of INDIA. The objectives behind prisoners' voting rights are centered around the principles of democracy and the rehabilitation of inmates. Here are some key points:-

- 1. Upholding Democratic Values:-** The right to vote is a fundamental aspect of democratic societies. Allowing prisoners to vote can be seen as a way to uphold the democratic principle that every citizen should have a say in how they are governed.
- 2. Rehabilitation:-** Granting voting rights to prisoners can be a part of their rehabilitation process. It encourages them to stay informed about societal issues and prepares them for reintegration into society as responsible citizens.
- 3. Equality:-** The idea that prisoners, as citizens, should not lose their basic civil rights despite their incarceration. This aligns with the belief in equality before the law.
- 4. Preventing Disenfranchisement:-** In many cases, prisoners are still part of society, and their interests are affected by government decisions. Allowing them to vote prevents the disenfranchisement of a segment of the population.
- 5. Reflecting on the nature of punishment:-** Some argue that the purpose of imprisonment is to protect society and rehabilitate offenders, not to strip them of fundamental rights, such as voting.

METHODOLOGY

The first main and most important method is that we can make reforms in prisoner's acts to give them also a right to contribute their responsibilities and duties toward the nation. The methods to apply prisoner's voting rights can vary by jurisdiction, but here are some general approaches based on global practices:-

1. Legislative changes:- Enacting or amending laws to allow certain categories of prisoners, such as undertrial prisoners or those convicted of minor offenses, to vote.
2. Voter registration drives:- Organizing voter registration initiatives within prisoners to enable eligible inmates to register and participate in elections.
3. Postal ballot:- Providing postal or absentee ballots to prisoners who are eligible to vote, ensuring they can cast their votes from within the prison.
4. Voting booth in prison:- Setting up temporary polling stations inside prisons for the duration of an election to facilitate the voting process for inmates.
5. Education and information:- Distributing educational materials about voting rights and procedures to prisoners to ensure they are informed and can exercise their rights effectively.
6. Legal advocacy:- Challenging existing laws that disenfranchise prisoners through public interest litigation and advocating for their voting rights.
7. International guidelines:- Aligning national laws with international human rights standards that support the enfranchisement of prisoners.

Note:- It's important to note that the implementation of these methods requires careful consideration of the legal framework, security concerns, and the rights of the incarcerated individuals.

RESULT:- They also get motivated that they also contribute to the nation's development so why don't they change their behavior and step forward towards a bright future of their own?

The result of implementing prisoners voting rights can have several implications:-

1. Democratic inclusion:- it could lead to a more inclusive democracy where all citizens, regardless of their incarceration status, have a say in the governance of the country.
2. Legal and policy changes:- There may be changes in election laws and policies to accommodate the voting process for prisoners, such as amendments to the Representation of People Act.
3. Impact on election outcome:- Studies suggest that allowing incarcerated individuals to vote is unlikely to significantly affect electoral outcomes due to generally low turnout among

this population.

4. **Social and civic engagement:-** It might encourage greater social and civic engagement among prisoners, fostering a sense of responsibility and community involvement.
5. **Rehabilitation efforts:-** Voting rights can be integrated into rehabilitation programs helping to prepare inmates for reintegration into society.
6. **Equality and human rights:-** It could be seen as a step towards upholding equality and human rights, aligning with international human rights standards.
7. **Public perception:-** The move could alter public perception of prisoners, potentially reducing stigma and promoting a more rehabilitative approach to incarceration.

It's important to note that the actual results would depend on how these rights are implemented and the broader societal and political context.

What CONSTITUTION Says:-

- Article 326 of the Indian Constitution talks about the Right to vote. This article states that any elections conducted in the country either to the House of the People or to the Legislative Assemblies of States shall be based on age preference. This means that every citizen who is above the age of 18 years and is not otherwise disqualified has the right to register as a voter and to cast a vote at any election.
- While the Representation of the People Act, of 1950 lays out further details and regulations regarding voter registration and disqualification, the fundamental right to vote itself stems from Article 326 of the Constitution. This makes it a crucial pillar of Indian democracy and a cornerstone of the principle of equality and representation.
- The Representation of People Act (RPA), 1950 and 1951 deals with various aspects of elections in India, including voter registration, electoral roll preparation, election procedures, and offenses related to elections.²
- This Representation of People Act prevents prisoners from casting their vote and gives

² Sharma, A. and Reddy, B.S., 2023. Right to Vote Behind Bars: Is Imprisonment Not Enough? GLS Law Journal, 5(1), pp.23-29.

them the right to prisoners to contest elections.

- Section 62(5) of the Representation of the People Act (RPA) of 1951 states that individuals who are imprisoned, whether serving a sentence or in police custody, are not eligible to cast a vote in elections. However, this does not apply to individuals detained under preventive detention laws. Additionally, being prohibited from voting does not remove an individual's status as an elector if their name is already on the electoral roll.
- Section 3 of the Representation of People Act (RPA) 1951 states that individuals convicted of an offense and sentenced to imprisonment for at least two years, except for specific offenses, are disqualified from voting from the date of their conviction. This disqualification continues for an additional six years after their release.
- Section 62(5) of the Representation of People Act (RPA) 1951 prohibits individuals from voting in elections if they are confined in prison, regardless of whether they are in police custody or serving a sentence.³
- Section 3 of the Representation of People Act 1951 simply says that if a person is sentenced to two years or less than two years of jail then he/ she can contest the election otherwise they shall be disqualified for contesting the election.
- Anukul Chandra Pradhan v. Union of India & Ors. (1997 Judgment):-

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In a 1997 ruling, the court upheld the legality of Section 62 of the Representation of People Act on two grounds; firstly it stated that the right to vote is not guaranteed as a fundamental right under Article 14 of the Indian constitution and is subject to legislative restrictions. Secondly, the court found that section 62(5) of the Representation of People Act is constitutionally clear, concluding that prisoners' voting rights were not infringed upon by Articles 21 and 14 of the Indian constitution.

The argument posits that individuals imprisoned for their actions forfeit certain freedoms, including the right to vote, as imprisonment itself justifies these restrictions. They are distinguished from those who are not incarcerated, as their lack of freedom of movement

³ Sharma, A. and Reddy, B.S., 2023. Right to Vote Behind Bars: Is Imprisonment Not Enough? GLS Law Journal, 5(1), pp.23-29.

disqualifies them from voting.⁴

In the case of “NP Ponnuswami v. Returning officer, Namakkal constituency,” the constitution bench determined that the right to vote is not a fundamental right but a statutory right, subject to legislative constraints. Recently, a public interest case was filed by three law students seeking to grant voting rights to criminals, arguing for a distinction between severe crimes like murder and lesser offenses like theft. However, the court, referencing section 62(5) of the Representation of People Act and the decision in “Anukul Chandra Pradhan v. Union of India & Ors,” rejected the petition, affirming the existing framework regarding voting rights for convicts.⁵

Why To Prohibit & Why Not To Prohibit:-

1. Why to prohibit:- There are some reasons behind prohibiting the prisoners from voting, the reasons are mentioned below:

- If someone won't follow the law themselves, they shouldn't be allowed to choose their representative, who helps them in releasing them from prison.
- If the prisoners aren't prohibited from voting then all the big criminals like mafias, gangsters, murderers, etc. always try to choose the representative who will help them in releasing them from jail.
- Mainly Section 62(5) of The Representation Of People Act 1951 restricts prisoners from voting and says that individuals who were detained by the police and those serving a sentence of imprisonment after conviction are prohibited from voting in elections.
- Additionally, undertrial prisoners, despite being listed on the electoral roll, are also ineligible to participate in elections.

2. Why not prohibit:- There are some reasons not to restrict prisoners from voting, the reasons are mentioned below:

- To make INDIA a developed country we have to make reforms as other countries build

⁴ Kamran, K. and Yaseen, S., 2021. Case Comment on Anukul Chandra Pradhan v. Union of India & Ors. *Supremo Amicus*, 24, p.928.

⁵ Dhavan, R. and ADVOCATE, S., 1977. *The Supreme Court of India* (p. 420). Tripathi.

and also to follow and give the right to vote to prisoners with some restrictions.

- The Indian Prisoners Act mentions prisoners' right to employment and if they want to educate prisoners, want to reform prisoners then they should give them the right to vote, in prison women also face problems related to privacy and due to giving voting rights they can also raise their issues.
- If prisoners are still full human beings, they should not be excluded from the democratic process.
- Despite being under trial, a person is innocent until proven guilty by law. Denying under trials the right to vote contradicts this principle.

INDIA'S STAND ON PRISONERS VOTING RIGHTS

- The debate revolves around whether prisoners, despite their crimes, should retain their basic rights of citizenship, including the right to vote. While logistics challenges exist, the principles of democracy and human rights call for a reconsideration of prisoners voting rights in INDIA.
- In INDIA the persons who are under trial should be allowed to vote, many under-trial people have spent more time in prison than the actual term their alleged crime merits.
- According to Section 62(5) of the Representation of People Act 1951 prohibits prisoners from voting and says that, individuals in the lawful custody of the police and those serving a sentence of imprisonment after conviction cannot vote.
- A report of BRITANNICA PRO CON.ORG compares the voting rights of felons internationally in 45 countries in which 21 countries have no restrictions (felons can vote even while in prison), 14 countries have selective restrictions (some felons may be banned from voting while in prison), 10 countries have complete ban on voting while in prison (felons can vote upon release from prison) and around 4 countries impose post- release restrictions (felons are banned from voting even after release from prison).
- (INDIA is one of those 10 countries that impose a complete ban on voting while in prison)

(felons can vote upon release from prison).⁶



⁶ <https://felonvoting.procon.org/international-comparison-of-felon-voting-laws/>

CONCLUSION

- Voting rights is a complex and multifaceted issue that varies by jurisdiction. In some countries, prisoners are completely disenfranchised, while in others, they retain the right to vote. The debate often centers around the nature of voting rights, whether they are inalienable human rights or a privilege that can be restricted due to criminal behavior.
- A key argument for allowing prisoners to vote is the principle of universal suffrage, which suggests that voting is a fundamental democratic right not to be withdrawn as a punitive measure. It's also argued that allowing prisoners to vote can aid in their rehabilitation and help maintain their engagement with society.
- On the other hand, those against prisoners' voting rights often argue that committing a crime severe enough to result in imprisonment is a breach of the social contract and thus forfeits certain civic rights, including voting.
- Around 73% of the prisoners' cases are under trial as per the survey of NCRB(National Criminal Research Bureau) clarifies that still they are not completely declared as the culprit, so those persons whose cases are under trial should get the right to vote from the prison.⁷
- As per the research conducted by me on my level, most people say that prisoners also are human beings and they also have the right to vote, right to choose their representatives.

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FULL VOTING RIGHTS:- Countries like NORWAY, Belgium, and ESTONIA allow all prisoners to vote without restrictions.

PARTIAL VOTING RIGHTS:- Some countries like Germany or Argentina permit voting for certain categories of prisoners or under specific conditions.

--So just like above mentioned countries INDIA should give certain rights to prisoners to cast their votes.

- In Norway all citizens including prisoners, have the right to vote in national elections there is no specific act dedicated to granting this right to prisoners, as it's implicitly covered by the general right to vote for all citizens enshrined in the constitution of

⁷ <https://www.livelaw.in/news-updates/ncrb-releases-prison-statistics-india-report-2022-243973>

Norway:-

- No Restriction Based on Criminal Record: Regardless of the prisoners retain their right to vote.
- Voting From Prison: - Prisoners can vote by absentee ballot, ensuring their vote is counted while respecting the security measures within the prison system.
- Prisoners in the U.S. are allowed to vote.
- In Germany, all convicts are allowed to vote.
- All Israeli citizens have the right to vote while in prison.
- I think that if the person doesn't have the right to vote while in prison, there is also no right to contest the election.
- India being the world's largest democracy, the voting process is one of the most important things, but when you deny prisoners the "right to vote" then you are punishing them more. If prisoners can contest elections then why not cast a vote, it challenges section 62(5) of the Representation of People Act 1951.
- The Indian Prisoners Act mentions their right to employment if they want to educate the prisoners, if they want to make reforms in the prisoners' lives then they should give them the right to vote also, in prison women also face problems related to privacy and due to giving voting rights they can also raise their issues and voice.
- We are not suggesting giving voting rights to everyone, but mainly to those prisoners who are not habitual criminals and the under-trial prisoners with certain restrictions while voting.
- If the convict's imprisonment is less than 2 years, then they can contest an election, so why not the same nature criminals cast a vote, if they can contest the election the other prisoners should also be given a right to cast a vote to those who are convicted less than 2 years.