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A DIDACTIC PERUSAL OF THE SUFFRAGE OF PRISONERS IN THE LIGHT OF POLITICAL INADEQUACIES

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ABSTRACT

Indian democracy has been witnessing miscellaneous amendments and alterations in the provision of laws concerning the right to vote nevertheless the enfranchisement of inmates has not been taken into a grave regard yet anyhow. Constitutional morality has been challenged severely by section 62(5) of the Representation of the People Act, 1951 which bars a prisoner from exercising voting rights.

The paper probes into analyzing the voting rights of prisoners in the context of verdicts held by the juridical authorities in miscellaneous case laws about cementing the role of a successive democratic institution. The paper adopts a holistic approach in bringing to light the contemporary challenges that democracy is facing today to provide an equitable platform to the inmates for casting votes. Through the Doctrinal method paper tries to invigorate the political franchise of inmates and highlights the political agenda to achieve social developmental goals for the welfare of Indian democracy.

KEYWORDS: Democracy, Enfranchisement, Constitution, Representation of People Act, 1951; Social Justice, Political deficiencies

INTRODUCTION

A perpetrator who is under police custody or incarcerated in jail has been, certainly deprived of equitable voting rights in a democratic institution that provides instantaneous support in forming a substratum for decrepit legal system. It is a state of severe despair that India is the world's largest democracy nevertheless it is failing to meet the ends of social justice and achieve the constitutional goals in terms of reconsidering the voting rights of inmates. In the long run in Indian democracy numerous heated arguments and controversies have become the center of attraction in the limelight of recognizing the political rights of prisoners as raising voices against the inadequacies of the judicial system vindicates the veracity of the fact that to provide

the inmates equitable voting rights in a nation much efforts were made in the past but no satisfactory corollary, could be derived out of it¹. Election sub serves individuals from miscellaneous backgrounds for freely expressing their social opinions and political decisions to make the right choices for electing a candidate and, certainly, the destitution, of such political free will in the lives of inmates creates an imbalance in the functioning of society².

The occupancy rate of prisoners in India is considered to be vast in number amongst the majority of them are also the under trial prisoners, convicts, and accused, and certainly to provide them a platform where they can without any restrictions exercise their franchise becomes the responsibility of the Government³. Article 326⁴ of the Indian Constitution enshrines the voting rights of persons above 18 years of age irrespective of their background. In the consonance and harmony of constitutional safeguards like in article 19(1) (a)⁵ which talks about the freedom of speech and expression; article 14⁶, which reflects the concept of the right to equality; and article 21⁷, which is more about life and personal liberty the voting rights of prisoners can be easily taken into a solemn consideration to raise the issue of political inadequacy in the democracy at a huge scale⁸.

Intrinsically the loopholes that are thought in the capacity of conducting free and fair elections prominently become the reason for instability in the functioning of government at diversified levels by undermining the systemization of political liberalization and democratization which ultimately leads to the malfunctioning of law and society parallels. Section 62(5) of the Representation of People Act which prohibits a prisoner from exercising their voting rights is highly inspired by the Government of India Act, 1919 and 1935 for setting out the standards following peroration to set them apart of the society⁹. The decision was overturned by the parliament through the Representation of the People Amendment Act of 2013. A portion of the legislative changes asserts that as long as the incarcerated person's name continues to remain on the voter lists, he or she continues to be an elector and therefore can run for elected office. It clarified that even if a person is precluded from casting a vote, his or her name remains on the ballot paper¹⁰.

The issue concerning the voting rights of inmates has to be seen unambiguously in terms of public interest rather than making it a political agenda. Centralizing the ideologies about emboldened political deficiency certainly ruins the smooth and efficient functioning of democracy disrupts the social order and also forms the bedrock of a crumpled society¹¹. It is the

need of the hour to rethink uplifting the public interest issue by upholding an approach in the direction of freedom of speech and expression of the prisoners. Every citizen's vote in an election consolidates their dignity and personal autonomy. Voting is a democratic process in which everybody's vote matters.

It proclaims, in a country with great disparities in culture, religion, regionalism, caste, race, wealth, and power, that whoever we are, rich or poor, we all come from the same democratic country, India, whether we are poor, affluent, or discredited¹². Democracy is the heart and soul of the Constitution for the greater part, and the principles that regulate it are indispensable facets of the Constitution. As an outcome, the Courts' failure to broaden the scope of article 21 to include the right to vote is a huge oversight¹³.

Voting is a crucial component of public life, and every government that values democratic institutions values the right to vote. As a result, the very basis on which the courts have decided that prisoner disenfranchisement is erroneous, and if the court had decided to make the right to vote a fundamental right, as it should be, convicts would have had the right to vote to a certain extent. Second, section 62 (5) of the Representation of the People Act fails to distinguish between those who have been convicted and those who are still on trial¹⁴. This is a grouping of different classes into one without taking into account the inherent differences. There is no explanation why a person who has not been charged with a crime should be denied the right to vote. With such a provision, the Act establishes an erroneous dichotomy between people in jail who are not accused and people who are not in jail¹⁵. According to our criminal justice principles, anyone must be presumed innocent until proven guilty. The provision also allows accused who are on bail outside of prison to vote, whereas those who are not on bail are not allowed to vote.

RESEARCH QUESTIONS

- 1) How does section 62(5) of the Representation of People Act, 1951 challenge the spirit of constitutional ethos and morality in a democratic nation?
- 2) What is the ideal democratic structure which sub serves an equitable political identity to every citizen of India regardless of their background?
- 3) Why there is a lack of governmental support regarding the enfranchisement of prisoners and why does the judicial system hold a pessimistic approach to this issue?

RESEARCH OBJECTIVES

- 1) To analyze the present status of the enfranchisement of inmates under section 62(5) of the Representation of the People Act, 1951 in the limelight of miscellaneous political inadequacies in the modern scenario.
- 2) To enshrine the constitutional provisions forming a substratum for a healthy and true democracy.
- 3) To bring into light the uprising voices and the paradoxes existing regarding the enfranchisement of prisoners at a wide scale within law and society.

RESEARCH METHODOLOGY

In this research paper, the researcher has used the Doctrinal method for a deep perusal of the enfranchisement of inmates in the limelight of miscellaneous political inadequacies. The information has been taken from primary and secondary data sources.

DATA TAKEN FROM THE PRIMARY SOURCE: - Bare Act- (Representation of the People Act, 1951)

DATA TAKEN FROM THE SECONDARY SOURCE: - Multidisciplinary Journals, Books and Research papers.

I. ENFRANCHISEMENT OF THE DELINQUENTS IN MODERN DEMOCRATIC INSTITUTION: A MIASMA OF DESPONDENCY

Primordially suffrage has been considered as a pure statutory right that is specifically subjected to certain restraints under the Representation of People Act, 1951. A check on the gravity of perpetration committed by the delinquent plays a keen role in determining the magnitude of the judicial system. Without analyzing the solemnity of offense debarring the prisoners from casting votes depicts the inefficiency of the criminal justice system and also paves the way for an unfair and inequitable democracy in actual terms¹⁶. Indian democracy is the victim of many political deficiencies which gives birth to a major imbalance in the functioning of diversified electoral processes and sub-systems of government.

It is flabbergasting that the under trials, convicts, and people who are under the lawful custody of police can contest elections but cannot vote and this miasma of despair contrives the constitutional morality to step down and depicts an ambiguous picturesque of unethical democratic procedures at a wide scale¹⁷. According to Chapter 43 of the reference book on

General Elections, 2014 undertrial prisoners do not hold the right to vote even if their names are also there on the electoral roll.

This kind of inequality existing today constrains one to think of the repercussions of the social injustice that is being served as a means of snatching one's freedom to express ideas and voices under the coercion of fulfilling the political agenda¹⁸. Rule 18 of the Conduct of Elections Rules, 1961 palpably accentuates that the electors who are subjected to be under preventive detention can exercise their voting rights and cast their votes through postal ballots¹⁹.

In the case of **Anukul Chandra Pradhan vs. Union of India**, the apex court approved the cogency of article 62(5) of the Representation of People Act, 1951, and, held that permitting the prisoners to vote would require a large security force to keep a vigilance on the inmates and certainly, this is a very impractical perspective in the context of analyzing the enfranchisement of prisoners anyhow²⁰.

This is not a new concept in India where we have failed to bring Indian democracy to the next level of success as many political adversities at miscellaneous levels in conducting elections and casting votes are gradually making the political system of India hollowed which ensures, the interdict of politics. This policy certainly becomes the driving force of many internal conflicts within the political structure of the government and, further, this gives rise to numerous challenges to the execution of exercising constitutional rights and obligations in a well-disposed manner²¹.

The time to rethink the crucial aspects of political determinants that affect the life of an individual inside the prison has come to centralize the idea of providing equivocal voting rights to the inmates so that they can also enjoy constitutional prerogatives with dignity and honor in a democratic institution²². In terms of inmates' enfranchisement, many convicted offenders around the world do not have the opportunity to vote in elections; they have been legitimately denuded of their voting rights as a result of their criminal convictions. The voting right has been restrained as an additional punishment relying on the severity of the offense.

Russia also changed its legislative framework in 2017, enacting a new law that allows certain categories of prisoners to vote in federal elections. In a country like India, where all government institutions emphasize the protection of citizens' fundamental, democratic, civil,

and human rights, it is also important to protect the right to life of another group of individuals who are incarcerated²³.

There should be no duvet prohibition on the voting rights of Indian prisoners. Moreover, section 62(5) contradicts another section of the same act, section 8(3) of the R.P. Act 1951, which states that a person convicted of an offense punishable by imprisonment for less than two years is eligible to contest an election.

This creates a perplexing situation in which a prisoner is considered amicably dead and thus cannot vote in elections and has no right to choose his/her representative, but the same prisoners, if he meets the conditions of section 8 (3), can contest the election and become himself/herself representative in the government²⁴. Even before their crimes are confirmed, the inmates are regarded to be second-class residents in this situation. Prison reform debates and conversations about their civil and political rights have been ongoing for a long time. The basic reasoning for denying rights to inmates is that an individual who has committed wrongdoing has contravened the social contract and has rescinded all liberty and rights. Nevertheless, this is not appropriate because a custodial sentence does not imply a complete loss of liberty²⁵.

Voting is an evocative activity, and severely limiting it further deteriorates and segregates convicts from society, negatively impacting the prison's ability to reform as an entity. Furthermore, one of the primary reasons given for denying voting rights is to prevent political criminalization. India's criminal justice system is also tarnished by its history of encoding and subsequently incarcerating more Dalits, Adivasis, Muslims, and economically disadvantaged people. Exclusion of the right to vote to inmates leads to a significant deficit of vote share in these communities. Furthermore, India is one of the very few countries that have rejected this entitlement to its under-trial population²⁶. Besides that, the majority of those imprisoned in India are awaiting trial. However, the Court did not clarify how it is that inmates constitute a threat to free and impartial elections while individuals on parole do not. Second, the court determined that the categorization of Detenue and convicts is prudent, but it did not consider under-trial inmates, whose guilt has yet to be established and who, according to criminal jurisprudence principles, are innocuous until proven guilty²⁷.

II. CONCEPT OF EGALITARIANISM AND BURGEONING DEMOCRATIC FALLACY IN TERMS OF SUFFRAGE OF PERPETRATORS

The trial of a case is prolonged until the accused has been found guilty of any perpetration and it can also be further extended for fulfilling certain judicial formalities. Under trial, inmates must be allowed to exercise their enfranchisement in a democratic nation without imposing any, kind of restraints on their political free will²⁸. It's been quite a long time still the same question still arises in front of the country for how long just based on criminal background one be isolated intrinsically from being a part of a true democracy? It is a state of severe quandary and indignation that the political anomalies form the bedrock of a crumpled society but primarily the emphasis is to centralize the ideologies about stepping down the functioning of smooth and effective electoral procedures²⁹. The inmate being under the effervescence of such draconian law which certainly prohibits them from being a part of the political system and defaces their identity as a whole suffers at a large scale. A person who is out on bail has been considered entitled to exercise the right to vote and, similarly, a person who is under preventive detention has been also considered in the capacity for enjoying their suffrage by law³⁰. However, there is a major gap in interlinking the ideal political framework of democracy with the overall structural pattern of constitutional mandate. In India law is considered to be above all and, to maintain the authenticity and credibility of the elections under section 62(5) even two MLAs were barred from voting who were confined in the prison³¹. The consideration for the voting rights of inmates is preferably not thought of in the capacity of exacerbating and validating the reliability of political outcomes at a wide scale but, today it has become a matter of nuance and significance in the eyes of the judiciary. The conflict is not with Indian bureaucracy rather the issue is all about settling the paradoxes that are arising at the central and state level about bringing the democratic alliance and roles in a systemized order.

There is a lacuna of comprehensive perspective in analyzing the enfranchisement of prisoners because the main agenda is to promote party politics in the name of public welfare and in actual terms to undermine the concept of Right to Equality in general. Democracy is marked, by the sanctity of electoral proceedings and the intrinsic basic feature of the Indian Constitution derives its inspiration from the articles governing the social status of an individual in society³². To uphold the equity and probity of democratic alliance and maintain the magnitude of constitutional provisions incessantly a push should be made in, the direction of mandating equitable voting rights to the prisoners to burgeon the social functioning of Indian democracy. Albeit any prognostication cannot be heralded in this context that whether the times

ahead would be favorable for Indian democracy or the country have to face severe effects in the limelight of political deficiencies but, presently the struggle for providing voting rights to prisoners is arduous to fight with the Indian judicial system³³.

Convicts' institutional discrimination is widely assumed as the defiance of universal suffrage to inmates. Article 326 of the Indian constitution recognizes universal adult enfranchisement as well as emboldens Parliament to introduce laws underpinning this domain. Section 62 of the Representation of the People Act 1951, stipulates who cannot cast a ballot. Inmates or those in captivity are not given the right to vote, but those in detention without trial are³⁴. This systematic oppression of India's policy is completely baseless which also refutes changing global postures, whilst Europe has now been facilitating its voter suppression strategy, with countries like Canada offering portable voting stations within county jails. Furthermore, the underlying principles of majority rule and democratic governance rest upon this assertion that it's up to the citizens to decide who they desire to govern them, instead of the government to decide who their electorates ought to be³⁵. Contemplate how simple it would be for the administration to identify those who refute its ethos by simply incarcerating them with no threat of losing elections or electoral support. Prisoner disenfranchisement, first and foremost, excludes the prison population from public participation, with severe repercussions. For convicts, they are denied the right to participate in their society, further discouraging them from seeking help.

It is associated with feelings of shame and punishment, neither of which is conducive to prisoner rehabilitation³⁶. Prisoners are one of society's most entrenched groups, and denying them the right to change their public lives ensures that their oppression persists. The power structures that are conceived as ameliorative institutions as well as appropriate care takers for inmates seem to be in actuality a framework with a lack of basic accommodations and privileges³⁷.

The voting right is a critical element of one's individuality, as well as, it offers a sense of connection to the larger group. An entity for the transformation and rehabilitation of convicts, and also to their successive reunification into the community, must enable them to live with dignity and honor and to take part in social and political pursuits. Voter suppression is not substantiated by law or human reasoning. Inmates' lack of a voice exacerbates discrimination in our society and hinders criminal justice reform³⁸.

III. EVOKING A NEED FOR DEMOCRATIC SYSTEMIZATION AND JUDICIAL DEVELOPMENTS: SUFFRAGE OF INMATES IN A STATE OF SEVERE QUANDARY

Unambiguously, the Right to vote is inherent in the Constitution of India under Article 326, but the judicial system overrides this right to prisoners which certainly vitiates the democratic alliance and establishes a paradigm of challenging the spirit of the constitution at a wide scale³⁹. Public Interest Litigation sub serves in the capacity of public welfare at large which involves common issues about the development of the social and economic structure of the nation by raising voices for the benefit of human society at large. The enfranchisement of inmates had been taken into consideration by filing PIL in the Delhi High Court but, the social justice could not be done with a viewpoint of analyzing the constitutional safeguards in a structured format which acted directly in the gross violation of freedom of speech and expression⁴⁰. Law and society have always acted antithesis to each other and to harmonize the democratic relations and societal balance by providing benefits to the state in terms of voting rights of the prisoners state has always played a negative role⁴¹. India bears the lengthiest Constitution in the whole world and the way upcoming challenges about diversified political concerns regarding the voting rights of a prisoner seem to be pernicious for the democratic progression is certainly not propitious for the overall functioning of free and fair elections⁴².

The nation is striving hard to find its appropriate political identity in terms of a healthy democratic structural pattern due to which conflict arises within the governmental panels and, leads to the imbalance in the functioning of electoral procedures at a broad scale⁴³. Democratic systematic order being in a state, of severe dilemma due to the overpowering effects of political mania somehow becomes the reason, for undermining the concept of egalitarianism to the prisoners who are suffering for the equitable constitutional status in terms of enfranchisement⁴⁴. The specific amendments in that provision of law which is in gross violation of the constitutional ethos and directly challenge the spirit of constitutional features can be done with a viewpoint of serving the democracy with a new vigor and rejuvenation.

It is a travesty of justice that so far the nation has not been able to conclude a major decision regarding the voting rights of inmates and the key factors that play a significant role in determining democratic sustainability are being bound under the coercion of political influence

and judicial empowerment which further gives a confounded lead in the governance of law and society parallels⁴⁵.

Every individual is connected to the political organization in such a manner that if one is barred based on his/her social background or any other social factors from taking part in the electoral process or caste votes it is a direct attack on constitutional morality and in a general sense it can be understood as to be a challenging stereotype for discomfoting the social order and democraticprestige⁴⁶.

The idiosyncrasy, that depicts advocating the need for a revolution in the criminal justice system must be upheld with a viewpoint of endorsing the equitable enfranchisement rights for the inmates in a democratic institution. Irrespective of how recent the concept of universal adult suffrage was thought up, it is indisputably and substantively a major aspect of a comprehensive and healthy democracy.

In its most basic form, adult suffrage indicates that every member of a society has the freedom to vote in their preferred government. Although this definition appears to be perfectly fit to any representative government, there are still numerous circumstances where this enfranchisement is conferred, so it is not ubiquitous in the legal context. The right to vote allows an individual in society to vote in support of their aspirations. In a democracy, an interconnection of such votes will result in the finest government for everyone. In this respect, when a large class of citizens is disenfranchised, no one can vote in their best interest, and thus nothing to stimulate political actors to try to make policies in their pursuit helps⁴⁷. For the longest time, the communities with the least political clout were the most exploited. The right to vote should not be denied to prisoners who have not been prosecuted. Unexpectedly, the prohibition on voting by inmates is based on the simple fact that he or she ceases to be an "ordinary resident" of a constituency while serving time in prison⁴⁸. Varavara Rao, an Andhra Pradesh-based writer, felt that under-trial prisoners in the country, like Detenue, should be granted the right to vote by postal ballot. In numerous petitions filed through it, the Supreme Court has been unable to explain how the contrast between state felons, prisoners awaiting trial, and prisoners under preventive detention is rational⁴⁹.

CONCLUSION

It is the epoch where the roots of a democratic republic nation are reinforced in the sense of sub-serving all citizens with the right to vote so that an individual can freely elect a representative and, the country also demands egalitarianism for inmates in this context. Denying the social priorities to a specific group of people merely on the grounds of certain standardized norms depicts the sign of discrimination that still exists about variegated political inadequacies. Juxtaposing the ideal framework of political standardized governance with the provisions of public welfare policies about democratic rights and constitutionalism seems to be not feasible till the struggle for the voting rights of prisoners continues to exist so far. Many factual dealings, articles in the answer of constitutional immorality, and speeches relating to amending the provision of section 62(5) of the Representation of People Act, 1951 have emerged at a wide scale in the modern scenario. But the natural corollary of these indefatigable efforts has not provided succor in ameliorating the progression of social justice anyhow. Democracy is referred to as of the people, by the people, and for the people in a general sense and to uphold the cogency and accuracy of this remark a deep analysis must be made in the direction of enfranchisement of prisoners who are suffering from a long time for an equivocal political identity in a democratic nation. On a philosophical level, convict voter suppression has always been based on the widely accepted theory of cordial fatal injury that intends to prove inmate social exclusion on the core principle that those who violate established community processes withhold their rights to take part in constitutional democracy.

Numerous different theories, such as the authenticity of the voting polls concept, that aim to safeguard the sanctity as well as the dignity of the ballot box by precluding virtuously crooked individuals from voting, as well as the prevalent containment hypothesis, have also been used to vindicate convict social exclusion. Presently, it is evident that prisoner disenfranchisement policies must be reevaluated. To comprehend what kind of model works best, an analysis of different policies from around the world must be performed to determine what best fits the Indian scenario.

With the deep encroachment of electoral politics, it is not unreasonable to expect prisoners to vote for criminals. However, the fact remains that any speculation on the part of the court cannot be used as a comprehensive reason to prevent criminals from voting. Elections in a democracy allow us to express our requirements and concerns through our elected leaders. These officials represent our expectations and can be made liable if they do not act on them.

A criminal justice system's, focus should not only be on punitive action and prevention of crime but also on conditions that facilitate the reunification of the transgressor into society. Disenfranchisement of prisoners segregates them from society.

No Indian political party has included prison policy changes in their election manifesto, leaving prisoners at the mercy of faltering prison systems. The operation of police departments, as well as the situation and living conditions in jails, are important issues for the prisoners who reside there.

To understand whether removing the right to vote is valid or invalid, we must first comprehend the nature of such a right and why it is a statutory rather than a constitutional right. The right to vote is enshrined not in the Indian Constitution, but in the Representation of the People Act, 1951, a statute that makes the right to vote a statutory right.

It has to be palpable that such a right cannot be viewed narrowly and concisely. The right to vote is one of the core elements of a healthy democracy. Because of the larger political implications, most developed democracies and liberal states prefer a more universal model of enfranchisement. The right to vote is a means to express the freedom of speech and expression as it provides an identity to an individual in terms of exercising his/her political rights without any external and internal restraints which furthers the cult of progressive democracy.

The Indian judicial system is silent on this issue upholding the cogency of law depriving the inmates to cast their votes and the PIL which was filed by three law students a time back in the light of recognizing the voting rights of prisoners was also apotheosized by the Supreme Court.

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