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PRISONER'S VOTING RIGHTS IN INDIA – NEED FOR INFUSING LIFEBLOOD INTO DEMOCRACY

AUTHORED BY - NIVEDHA P¹

1. INTRODUCTION:

In any democratic country, right to vote has always been the central focus as it is the very basis of ensuring public participation and it is a right which is very essential and universal. But to get this status of voting rights, people had been through a lot of struggle across the globe. Initially, it was given only to the political elite and people belonging to the category of women, racial minorities, and property less or poor persons were denied the right to vote. This was based on the sole reasoning that they cannot be trusted with such big a responsibility. For instance, in US even though the constitution was adopted in the year 1787, voting rights were denied for women and it was also upheld by the Federal Court in *Minor v. Happersett*². The voting rights for women were provided for only in 1920 by means of the 19th Constitutional amendment³ after struggle for almost half a century.

1.1 EVOLUTION OF RIGHT TO VOTE IN INDIA:

As far as evolution of voting rights in India is concerned, during the colonial period only 15% of the population had voting rights and that was also a limited right and was subjected to certain restrictions and conditions. Thus, the concept of universal adult suffrage was demanded for even before the Indian independence. The Karachi Resolution of 1931 in which the Indian National Congress stressed on implementing the adult suffrage principle. Dr. Ambedkar was an adherent supporter of the universal adult suffrage principle and he has provided two main reasons for the same:

(i) It is very essential to the citizenship held by the subjects of the State.

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² *Minor v. Happersett*, 88 U.S. (21 Wall.) 162 (1875). The Court while accepting that women are not any less than men observed that the right to citizenship does not confer the right to vote.

³ It states that “the rights of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex”.

(ii) It promotes political education to the masses.

But, The Constituent Assembly member H. V. Kamath was against this principle as he was of the opinion that it's a big power in the hands of the illiterate mass. However, it was finally accepted and was incorporated under Art 326 of the Indian Constitution.

Thus it can be understood from the above provision that the right to vote has been made a constitutional mandate but is subjected to certain restrictions and limitations⁴. Nonetheless, India takes pride in being the only country in which the right to vote has been provided right from the inception of its constitution. In this regard, it was observed by Constituent Assembly Member Alladi Krishnaswamy Ayyar as follows⁵:

"...in spite of the ignorance and illiteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man.... This Assembly deserves to be congratulated on adopting the principle of adult suffrage and it may be stated that never before in the history of the world has such an experiment been so boldly undertaken."

1.2 RIGHT TO VOTE – LEGAL STATUS:

The right to vote has been guaranteed under Art 326 to every person above the age of 18 years subject to certain restrictions that are prescribed by the enactments made by the Parliament in accordance with the power conferred on them. But it has not been given the status of a constitutional right. In this regard, there are plethora of judgments in which they have discussed about the status of right to vote i.e. whether it is a constitutional right or statutory right.

In *N. P. Ponnuswamy v. Returning Officer*⁶, it was held that Sec 61 of the Representation of Peoples Act, 1951 provides for right to vote making it more of a statutory right rather than a constitutional one. The same was upheld in *Rama Kant Pandey v. UOI*⁷. It is a creation of

⁴ In this regard, the Parliament has enacted the Representation of People's Act, 1950 and Representation of People's Act, 1951.

⁵ Gautam Bhatia, 'Ambedkar and the right to vote', Lawmint (2019) available at <https://www.livemint.com/mint-lounge/features/ambedkar-and-the-right-to-vote-1555040490483.html> last accessed on 25.06.2022.

⁶*N. P. Ponnuswamy v. Returning Officer*, [1952] SCR 218.

⁷ *Rama Kant Pandey v. UOI*, 1993 AIR 1766.

statute and is subject to limitations. The same was also observed in *Karunanidhi v. Hande*⁸. Similarly, in *Jyoti Basu v. Debi Ghosal*⁹, it was observed that, “A right to elect, fundamental though it is to democracy, is anomalously enough, neither a fundamental right nor a common law right. It is sure and simple, a statutory right”. The same was upheld in *Chief Election Commissioner v. Jan Chaudikar*¹⁰ wherein it was observed that the right to vote is a statutory right. The law gives it and thus has the power to take it away.

In *People’s Union for Civil Liberties v. UoI*¹¹ a different observation was made. It stated that in an abstract sense, right to vote is a constitutional and a fundamental right, the contours and lineation of which are to be worked out by parliament through statute. This is based on the reasoning that though right to vote is a statutory right, the act of voting is in exercise of free speech provided under Art 19(1)(a) of the Indian Constitution¹².

2. LEGAL PROVISIONS

2.1 DOMESTIC LAWS:

As far as statutory provisions are concerned, the Parliament has enacted two legislations in this regard based on the power bestowed upon it under Art 326 of the Indian Constitution.

The two concerned legislations are:

- (i) Representation of People’s Act, 1950
- (ii) Representation of People’s Act, 1951.

2.1.1 INDIAN CONSTITUTION:

Art 325 states that no person shall be denied inclusion in the electoral roll on the basis of caste, religion, sex, race or any of them. Art 326 provides for universal adult suffrage and states what the prescribed disqualifications are.

⁸ *Karunanidhi v. Hande*, 1983 AIR 558.

⁹ *Jyoti Basu & Ors. v. Debi Ghosal & Ors.*, AIR 1982 SC 983.

¹⁰ *Chief Election Commissioner v. Jan Chaudikar*, Civil Appeal no. 3040 – 3041 of 2004.

¹¹ *People’s Union for Civil Liberties v. Union of India*, Writ Petition Civil no. 161 of 2004.

¹² Gautam Bhatia, ‘*PUCL v. Union of India: The Supreme Court and the negative voting*’, Indian Constitutional law and Philosophy (Sept. 28, 2013), <https://indconlawphil.wordpress.com/2013/09/28/pucl-v-union-of-india-the-supreme-court-and-negative-voting/> last accessed on 27.06.2022.

2.1.2 THE REPRESENTATION OF PEOPLES ACT, 1950:

Sec 16 of the Act provides for disqualification for registration in electoral role. The following classes of persons are not entitled to be registered in the electoral role:

- (i) Not a citizen of India
- (ii) Person of unsound mind
- (iii) Disqualified from voting under any law.

2.1.3 THE REPRESENTATION OF PEOPLES ACT, 1951:

Sec 11A of the 1951 provides for disqualification if the person is convicted for commission of certain offences. The section reads as follows:

11A. Disqualification arising out of conviction and corrupt practices.—

(1) If any person, after the commencement of this Act, is convicted of an offence punishable under section 171E or section 171F of the Indian Penal Code, or under section 125 or section 135 or clause (a) of sub-section (2) of section 136 of this Act, he shall, for a period of six years from the date of the conviction or from the date on which the order takes effect, be disqualified for voting at any election.

(2) Any person disqualified by a decision of the President under sub-section (1) of section 8A for any period shall be disqualified for the same period for voting at any election.

However, it is imperative to note that the disqualification under Sec 11A can be removed by the Election Commission of India by exercising their discretion. This has been provided for under Sec 11B of the Representation of People Act, 1951.

Sec 62(1) of the 1951 Act provides for the right to vote and states that no person whose name is not mentioned in the electoral roll and who is not disqualified under this Act shall be entitled to vote. However, Sec 62(5) specifically states that,

“No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police: Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.”

From a bare perusal of the above section we can understand that the prisoners and under-trials are not entitled to vote. However, this exception is not applicable for detenués under the preventive detention law. Thus, it is clear that the right to vote is not an absolute right and is subjected to certain limitations and disqualifications specifically provided for under the Act.

2.2 INTERNATIONAL CONVENTIONS:

2.2.1 UNIVERSAL DECLARATION OF HUMAN RIGHTS:

As per Art 21 of the Universal Declaration of Human Rights (UDHR), 1948, states that

“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives”.

2.2.2 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR):

Art 2 states that there shall be no discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Art 25 provides for the right to vote which reads as follow:

“Right to vote to be exercised through voting in genuine periodic elections which shall be by universal and equal suffrage.”

2.2.3 UNITED NATION STANDARD RULES FOR THE TREATMENT OF PRISONERS, 1955:

The UN has adopted the Standard Rules for the treatment of Prisoners, 1955¹³ which provides for the guidelines as to the purpose of imprisonment and the treatment to be given for the prisoners. Art 57 and 58 deals with the purpose of imprisonment and Art 60 and 61 deals with treatment of prisoners.

Art 57 states that there should be no further punishment after imprisonment as the right to self-determination is already taken away. Art 58 states that the purpose of imprisonment is to protect the society and thus, when the prisoners are released they should be made a law-abiding citizen.

Art 60 says that the prison regime should minimize any difference between the prison life and life at liberty and Art 61 states that the treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it.

2.2.4 RESOLUTION ADOPTED BY THE UN GENERAL ASSEMBLY ON BASIC PRINCIPLE FOR TREATMENT OF PRISONERS:

In addition to these conventions, the UN General Assembly adopted a resolution on basic principles for treatment of prisoners.¹⁴ Under this convention, the prisoner's rights are subjected

¹³ Popularly called as the Nelson Mandela Rules.

¹⁴ General Assembly Resolution no. 45/111. This resolution was adopted on 28th of March, 1991.

to certain restrictions which the States consider necessary. The prisoners shall be allowed all the fundamental rights which are provided for under the Conventions to which their concerned state is a party.

All the above mentioned legal provisions are related to right to vote and from comparative reading of Indian laws and Conventions, we can reach the conclusion that though India has ratified these conventions, it has taken a departure from the rules laid therein and has provided for a ban on voting rights for prisoners and undertrials.

3. PRISONERS RIGHT TO VOTE

3.1 POSITION IN INDIA:

As far as India is concerned, the right to vote is not given to prisoners and under-trial convicts. However, the persons under preventive detention are entitled to cast their vote. This is provided under Sec 62(5) of the Representation of People Act, 1951. The Constitutionality of Sec 62(5) of the Representation of People Act, 1951 was upheld in the *Anukul Chandra Pradhan v. Union of India*¹⁵.

3.1.1 TREATMENT OF PRISONERS:

With regard to prisoners, the prisoners will have no right to vote inside the prison. However, when they are out on bail, they will have the right to cast their vote. Thus, this results in further bifurcation of prisoners as –

- (i) Prisoners who can get bail
- (ii) Prisoners who cannot get bail.

In addition to this bail provision, they have the discretion to take ordinary and emergency leave. By using this leave, they can come out of the prison and cast their vote. In *Praveen Kumar Chaudhary & Ors. v. Election Commission of India*¹⁶ the Supreme Court upheld the denial of rights to prisoners under Sec 62(5) of the 1951 Act and held that the classification of the persons who are in jail and who are out of jail is a valid classification. In that case, the denial of voting rights for prisoners was challenged as violative of Art 14 of the Constitution. The SC refused the contention and accepted the defense of resource crunch raised by the UOI. If that is to be accepted as a reasonable classification, then the prisoners on bail should not be allowed to cast

¹⁵ *Anukul Chandra Pradhan v. Union of India*, AIR 1997 SC 2814.

¹⁶ *Praveen Kumar Chaudhary & Ors. versus Election Commission of India*, W.P.(C) 2336/2019.

their vote, so that they all together would constitute one group as prisoners. Thus, it can be seen that the judgment is not based on proper reasoning.

In practice, the prisoners were denied the right to vote and the bail application has been accepted only after proper scrutiny. For instance, In *Banwari Lal Kushwaha v. State of Rajasthan*¹⁷, the Rajasthan HC refused to permit a member of the assembly, who was in prison and under police custody, to vote in the Rajya Sabha elections. In yet another instance, The Minister of Minority Development and Aukaf of Maharashtra, Nawab Malik and former State Home Minister, Anil Deshmukh, who are currently in jail in money laundering cases since November 2021 and February 2022 respectively, sought temporary bail for a day to cast their votes in the Rajya Sabha elections. Their plea was rejected and was held that the accused were not entitled to vote.¹⁸

3.1.2 TREATMENT OF UNDER-TRIAL PRISONERS:

The under-trial prisoners are those persons whose case is being tried by a competent court and are kept under judicial custody pending trial. The criminal justice system is based on the sound legal principle that a person is innocent until proven guilty. But in practice, the under-trials are also kept in judicial custody even without being held guilty and thus, there arises a human rights violation which is a matter of serious concern.

According to a 2019 National Crime Records Bureau (NCRB) statistics, there are around 1350 prisons in India and India ranks 15th out of 217 countries on the basis of under-trial population. Indian prison accommodates more than 70% of the prison population¹⁹. As per the Prison Report, many undertrials languish in jails for several years.

- 74.08% of undertrials were confined for up to 1 year,
- 13.35% for 1-2 years,
- 6.79% for 2-3 years,
- 4.25% for 3-5 years and

¹⁷ *Banwari Lal Kushwaha v. State of Rajasthan*, S.B. Criminal Writ Petition No.234/2016.

¹⁸ Hinduja, 'Is the right to vote a fundamental right or a constitutional right?', The Leaflet (June 12, 2022), <https://theleaflet.in/is-the-right-to-vote-a-fundamental-right-or-a-constitutional-right/> last accessed on 27.06.2022.

¹⁹ Bhakthi Parekh, 'Denial Of Voting Rights To Under-trial Prisoners: An Unreasonable And Unjust disqualification', Live law (Oct 18, 2021), <https://www.livelaw.in/law-firms/law-firm-articles/-voting-rights-undertrial-prisoners-black-robos-legal-183859?infinitemscroll=1> last accessed on 27.06.2022.

- 1.52% of undertrials were confined for more than 5 years²⁰.

The main reasons for such delay include,

- (i) Delay in trial even though speedy trial is guaranteed under Art 21 of the Indian Constitution and also provided for under Sec 173 of the Criminal Procedure Code, 1973. It was also protected in *Vakil Prasad Singh v. State of Bihar*²¹ but it is not in practice as there is undue delay in completion of the trial.
- (ii) The bail is being granted based on some unreasonable condition even against the mandate of the Supreme Court in *Hussainara Khatoon v. Home Secretary, State of Bihar*²².
- (iii) Indiscriminate arrest and misuse of power by police officials are also an important reason. Even though Sec 41 of CR.P.C has been amended in 2009 to protect the accused from indiscriminate arrest and despite the ruling of the SC in *Joginder Kumar v. State of Uttar Pradesh*²³ that the arrest should be an exception and not the rule, the power to arrest is being abused to a very great extent.

Apart from denying them the right to life and liberty, they are also denied the right to vote. Even if the denial of voting rights to prisoners on the ground of reasonable classification can be accepted, there is no prudent and legit reason based on which the under-trials are denied their right to vote. This is a matter of serious concern and grave importance.

3.2 POSITION IN OTHER COUNTRIES²⁴:

The position with regard to right to vote for prisoners differs from one country to another. For instances, some 18 European Countries, Iran, Israel, Pakistan, South Africa, Ghana, Kenya, Botswana, Canada, Switzerland provides voting for prisoners. Ireland in the year 2006 provided voting rights for prisoners without any public demand, media outcry or judicial pronouncement. On the other hand, there are countries like Kyrgyzstan, Lebanon and New Zealand where there is blanket ban when it comes to prisoners voting rights. In Peru, the pre-

²⁰ Vidushi Gupta, 'The state of under trial incarceration in India', The Criminal Law Blog – National Law University, Jodhpur (Oct 25, 2020), <https://criminallawstudiesnluj.wordpress.com/2020/10/25/the-state-of-undertrial-incarceration-in-india/#:~:text=As%20per%20Prison%20Statistics%20India,of%201350%20prisons%20in%20India.&text=Undertrial%20prisoners%20formed%2070%25%20of,66.97%25%20over%20the%20past%20years> last accessed on 27.06.2022.

²¹ *Vakil Prasad Singh v. State of Bihar*, Criminal appeal no. 138 OF 2009.

²² *Hussainara Khatoon v. Home Secretary, State of Bihar*, 1979 AIR 1369.

²³ *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.

²⁴ Baljeet Kaur, 'Prisoner's right to vote: citizen without a vote in a democracy has no existence', Economic & Political Weekly, Vol. 54, Issue No. 30 (27 Jul, 2019), <https://www.epw.in/node/154673/pdf> last accessed on 27.06.2022.

trial prisoners have right to vote but they cannot be exercised.

In some countries, the right exists in principle but depends on

- (a) The offence committed – Kuwait, if it is considered to be a serious offence.
- (b) The sentence imposed – Iceland where if you are sentenced for imprisonment for period exceeding 4 years, then you will be debarred from voting.
- (c) Type of election – For instance in Ukraine, prisoners can vote in national election as they are considered as citizens. In Czech Republic, Latvia, prisoners cannot vote in local elections as they are not affected by local issues.

However, the rationale behind debarment from voting rights varies from country to country. For instance, in Poland, if you are sentenced for 3 years or more and if the offence has been committed with a motivation which deserves special condemnation, then you will be debarred from voting in election. In Belgium, Conviction per se does not debar you. The proportionality test will be followed to ascertain the status of the prisoner.

3.2.1 WILLINGNESS OF PRISONERS TO CAST VOTE:

Even when the prisoners were allowed to vote, there was low participation. For instance, in 2010 Victoria State election in Australia only 26.4% of the prisoners casted their vote as against the total registered out of around 92.96%. In 2014 National and Provisional election in South Africa, only 9% of the prisoners registered to vote. However, this lower percentage is due to the following main reasons:

- (i) No information or very limited information on how to vote is being provided to the prisoners.
- (ii) The procedure to cast their vote is complicated so they stay out of it.
- (iii) Failure on the part of the government or prison management to facilitate voting.
- (iv) Lack of interest.

4. ARGUMENTS FOR AND AGAINST PRISONERS

RIGHT TO VOTE²⁵

When it comes to right to vote for prisoners, there are several people who argue for it and some say that this classification has to be done away with. The arguments made on this behalf are discussed below:

²⁵ Supra at 30.

4.1 ARGUMENTS AGAINST GRANTING PRISONERS THE RIGHT TO VOTE:

(i) CIVIL DEATH PRINCIPLE:

The people are of the opinion that civil death should be a part of punishment. Back in those days people were subjected to harsh punishments, the convicts were denied even the basic rights which were enjoyed by the citizens. For example, the freedom of expression, right to possess or inherit property, opportunity to serve in army, etc. were denied to the convicts and they were treated differently even after serving the sentence. This system is however not followed at present.

(ii) SOCIAL CONTRACT THEORY:

The Philosophers like Thomas Hobbe, John Locke, Jean Jacques Rousseau has propounded a theory called social contract theory. According to this, the subjects enter into an agreement with the ruler, by which their rights and duties are determined. The people argue that the convicts have already broken the contract between them and the ruler and thus, they are entitled to exercise their right to vote, as they have voluntarily put themselves outside the social order by their conduct.

(iii) PURITY OF BALLOT BOX:

It is contend that the ballot box is pure and this purity is to be preserved. The said objective can only be achieved by denying prisoners the right to vote. This was the reason mentioned by the Constitutional Court in South Africa in *Minister of Home Affairs v. National Institute for Crime Prevention and the Re-integration of Offenders (NICRO) and Ors.*²⁶

(iv) IT IS ALSO A PUNISHMENT AND STATE IS DUTY BOUND TO IMPOSE IT:

The government has an obligation to punish the offenders. This is based on the duty of the State to prosecute and punish the offender. The denial of right to vote is always a punishment that will consequently follow any conviction.

(v) DETERRENT THEORY:

Deterrent theory is a theory of punishment according to which, people are most likely to be

²⁶ *Minister of Home Affairs v. National Institute for Crime Prevention and the Re-integration of Offenders (NICRO) and Ors.*, 2005 (3) SA 280 (CC).

dissuaded from committing a crime if the punishment is swift, certain and severe. The punishment given will deter the convict from committing any other crime and at the same time, will deter the common public from indulging in acts which has resulted in conviction of the accused. This theory is based on two fundamental principles, that is, certainty (that the wrongful act or criminal act will be followed by punishment with 100% certainty) and severity of punishment (that the punishment imposed need not be proportional but rather severe in nature to deter people). The same reason is being given for a denying the right to vote. This defense was also raised in *Hirst v. The United Kingdom*²⁷. The people will know that disqualification from voting will follow and thus, will act as a deterrent.

These are some of the arguments put forth by majority of people while contending that the right to vote should not be given to prisoners.

4.2 ARGUMENTS AGAINST RIGHT TO VOTE:

(i) CONCEPT OF CIVIL DEATH IS OUTDATED:

The people are of the opinion that the concept of civil death is outdated. This system was followed in ancient period when the fundamental and basic human rights weren't developed. Now, the state has developed into the status of welfare state wherein the welfare of all the people concerned in the state is to be taken into consideration. Thus, the concept of civil death finds no place. Hence, the denial of voting rights for prisoners based on this reasoning is obsolete.

(ii) UNDERMINES THE DEMOCRATIC POLITY:

Voting happens in a democratic country, wherein the subjects will have a say in deciding their ruler which will be determined based on their right to vote. The very core of democratic principle is that the ruled will elect their ruler. When that is the basic principle, denying the prisoners the right to vote undermines the democratic policy. This is based on the reasoning that the prisoners still continue to be a part of the country and just because they are convicted, does not mean that they become stateless. Their identity as a citizen of that particular country will still be retained and remains intact. Thus, the denial of right to vote for prisoners and under-trials are unjust.

²⁷ *Hirst v. the United Kingdom*, (2005) ECHR 681.

(iii) ELECTED SHOULD NOT BE ALLOWED TO DETERMINE THE ELECTORATE:

Another argument is that the elected should not be allowed to determine the electorate. Here, the elected that is being chosen by the electorate should not be allowed to decide the voter as this would create bias. Thus, the elected should have no say in determining the eligible voters.

(iv) DISPARITY IN TREATING THE ACCUSED:

When a person who has been accused of committing an offence can contest in an election, the denial of voting rights for prisoners and undertrials is unreasonable. In *Public Interest Foundation v. UoI*²⁸ it was held that the voters have a right to know the criminal antecedents of the contesting candidates and thus, the political parties must publish the same in the website and newspapers. In fact, criminalization of politics has become so rampant that it has been dealt with in 2 main committee reports:

- (a) Goswami Committee on Electoral Reforms (1990)
- (b) Vohra Committee Report (1993)

Thus, when a person cannot be debarred from contesting in election merely because a case has been initiated against him or a charge sheet has been filed, the same must apply to under-trial prisoners as well. The principle of innocent until proven guilty has to be applied equally to both the elected and the elector.

(v) REHABILITATION SHOULD BE THE ULTIMATE MOTIVE:

The purpose of sentencing has shifted from deterrence to rehabilitation and thus, when the aim of the punishment is to rehabilitate the offender and make him a law abiding citizen, curtailing him from exercising his right to elect representative will not simply help the cause.

These are some of the arguments in favour of and against the granting of voting rights for prisoners.

5. SUGGESTIONS AND CONCLUSION

5.1 SUGGESTIONS:

India being a signatory of the UDHR, the ICCPR steps must be taken to ensure compliance. Since the Convention has nowhere provided for blanket ban on prisoners and under-trial, the legal position in India has to be changed in accordance with the principles laid down in these

²⁸ *Public interest Foundation v. Union of India*, Writ Petition (Civil) no. 536 of 2011.

conventions. Some of the suggestions in this regard would include:

- (i) The prisoners should also be considered as a part of society and even their say matters.
- (ii) The right to life does not mean mere animal existence and it is inclusive of right to live with dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self. This was observed in *Francis Coralie v. Union Territory of Delhi*²⁹. The right to vote is also a basic necessity in a democratic country. Thus, the ban should be removed.
- (iii) The problems of prisoners should also be addressed and this will not be done unless and until they are added in the electoral roll. When done, the manifestos would certainly include the development of prison management and its condition.
- (iv) The right to vote should be given the status of fundamental right, so that it will not be curtailed unnecessarily except under Art 19(2) which should withstand the test of reasonable restrictions. Justice Chelameswar, one of the nine Judges in *Justice K. S. Puttaswamy v. UoI*³⁰ had referred to the need to have a fundamental right to vote.
- (v) Elections can be held inside the prison which would reduce the need for additional finances.
- (vi) Postal ballots can also be used to conduct election for prisoners and under-trials.
- (vii) Election can be held in a pre-selected day before the actual poll to reduce any discrepancies. This system is followed in Canada and the same can be applied here.

²⁹ *Francis Coralie v. Union Territory of Delhi*, 1981 AIR 746.

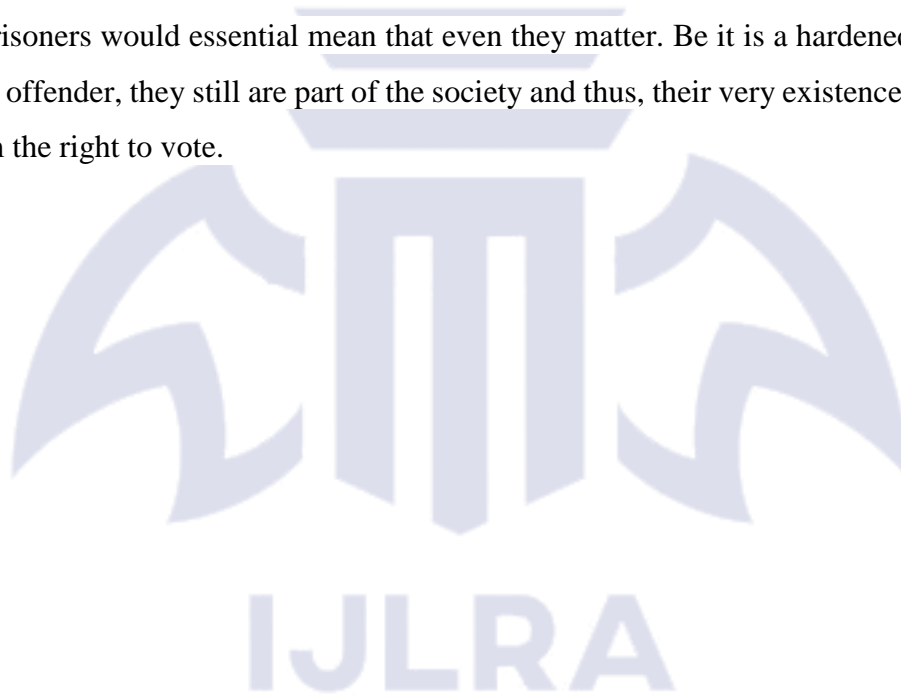
³⁰ *J. K.S.Puttaswamy v. Union of India*, Writ Petition (Civil) No. 494 OF 2012.

5. 2 CONCLUSION:

Right to vote accords the status of citizenship as it is a privilege which is being exercised only by the citizens of a country. In *August v. Electoral Commission*³¹, it was observed that

“The vote of each and every citizen is a badge of dignity and of personhood. Quite literally, it says that everybody counts. In a country of great disparities of wealth and power, it declares that whoever we are, whether rich or poor, exalted or disgraced, we all belong to the same democratic South African nation; that our destinies are inter-twined in a single interactive polity”.

The same applies to all the countries irrespective of its economic, geographic political or social differences. To put it in nutshell, imprisonment does not mean statelessness. Right to vote, if given to prisoners would essential mean that even they matter. Be it is a hardened criminal or a first time offender, they still are part of the society and thus, their very existence is enough to allow them the right to vote.



³¹ *August v. Electoral Commission*, 1999 (3) SA 1.