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# **A CRITICAL ANALYSIS OF THE RIGHT TO VOTE FOR PRISONERS UNDER TRIAL IN INDIA**

*Authored By - Mathew Michael*

## **ABSTRACT**

The representation of people's rights act 1951 has laid down specific provisions relating to elections. According to the statute, prisoners under trial do not have the right to vote like convicts. This decision is ambiguous, as classifying convicted prisoners and prisoners under trial does not fall in line with Article 14 of the constitution of India and does not fall under the ambit of "reasonable classification". It does not align with the Natural law principle of "innocent until proven guilty". In this paper, the author shall be examined to what extent Article 14 of the constitution of India, 1950 applies to recognising and preserving the rights of under-trial prisoners concerning their right to vote, in consonance with the natural law principle of "innocent until proven guilty".

Keywords: elections, under trial, reasonable classification, natural law, right to vote

## **INTRODUCTION**

Adult suffrage is a concept which has been embedded in Article 326<sup>1</sup> of the constitution, which states that, "Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; but is to say, every person who is a citizen of India and who is not less than twenty one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this constitution or any law made by the appropriate Legislature on the ground of non residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election". There is an ambiguity which arises when prisoners under trial are not given the right to vote as they are

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<sup>1</sup> India Const. Art 326

not disqualified to vote under the act according to the natural law principle of “presumption of innocence” they are innocent until proven otherwise.

Article 14 of the Constitution of India provides that any classification made regarding this Article must be founded on an intelligible differentia (which distinguishes groups placed together from groups not placed together). However, A-14 creates an ambiguity regarding the classification and rationale in placing the under-trial prisoner with the Convicted prisoner, depriving them of their Right to vote. This ambiguity leads to a classification which is not reasonable and does not go in tune with the principle of natural justice, which provides that a person is “innocent until proven guilty” It is contended that the denial of prisoners their right to vote as the same as convicted prisoners does not fall under the ambit of reasonable classification. Hence, it violates the principle of natural justice. The research aims to determine the scope of Article 14 of the Constitution of India is applicable in recognising and preserving the rights of under-trial prisoners with respect to their right to Vote, in consonance with the Natural law principle of “innocent until proven guilty”. To analyse the research objectives and the problem in detail, the author seeks to adapt doctrinal-based research. The method of data collection is qualitative, and the data on which the author relies is taken from secondary sources and mainly involves the use of texts. As an ardent reader and observer, the author relies on the “existing data” in the form of statutes, case laws and journal articles. By content analysis, the paper seeks to understand the ambiguity in the law and the various legislations pertaining to denying under trials the right to vote as same as convicts.

## **HISTORY OF VOTING RIGHTS IN INDIA**

India became an independent nation in 1947, and the Constitution of India was adopted in 1950. The constitution guaranteed universal adult suffrage, meaning that all citizens above 18 have the right to vote. This right was extended to all citizens of India, irrespective of caste, creed, religion, gender, or economic status. Over the years, several amendments were made to the constitution to extend voting rights to various sections of the society, including women, Scheduled Castes and Scheduled Tribes<sup>2</sup>.

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<sup>2</sup> [legalserviceindia.com/legal/article-7582-all-about-vote-and-voting-rights-in-india.html](https://legalserviceindia.com/legal/article-7582-all-about-vote-and-voting-rights-in-india.html)

## **ADULT SUFFRAGE**

The right to vote has become a well-accepted part of international law and Indian constitutional jurisprudence. The historical and jurisprudential foundations of this right have been largely ignored by public discourse<sup>3</sup>. The constitutional right of the right to vote is what makes up a democracy; it is the primary function of a democracy. The right to choose one's leader is a matter of grave importance, and no one should be denied such a right. Article 21, Universal Declaration of Human Rights, 1948, says that "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".

The issue of voting rights for prisoners under trial in India is governed by the representation of the People Act, 1950, and the Representation of the Peoples Act, 1951. These acts provide for the preparation, revision, and correction of electoral rolls, the conduct of elections, and the qualifications and disqualifications of members of Parliament and the state legislatures. However, the Acts do not specifically address the issue of voting rights for prisoners under trial.

### **THE EXTENT OF ADULT SUFFRAGE IN INDIA**

In India, the concept of Adult Suffrage is embedded in the constitution. Article 326 of the constitution of India states that any person above the age of 18 who is not otherwise qualified has the right to vote in the elections. This is not an absolute right, as some restrictions are placed on it. Every citizen's vote in an election is a security of dignity and parenthood<sup>4</sup>. In India, the right to vote is not exclusive, it can be taken away from the government in certain cases and is not given to some other people such as

- A convicted prisoner
- A prisoner who is under trial,
- A mentally unsound person

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<sup>3</sup> 1 NALSAR Stud. L. Rev. 39 (2005) The Fundamentals of the Right to Vote and Its Constitutional Status

<sup>4</sup> <https://www.livelaw.in/columns/constitution-of-india-prisoners-section-625-representation-of-people-act-right-to-vote-article-191-article14-204959?infinitemscroll=1>

## **RIGHT TO VOTE FOR PRISONERS**

This is a topic of wide debate about why a convicted prisoner should not have the right to vote. The usual answers were that a convicted prisoner is not a part of society and that his rights were violated and taken away from him when he was convicted of the crimes. India has banned prisoners' voting rights under section 62(5) of the representation of people Act; 1951. The decisions laid down by the courts were also in favour of this decision. On June 17, 2022, the Bombay High Court came up with a judgment rejecting the plea filed by two of the sitting Maharashtra Legislative assembly members, who are currently in judicial custody, wherein it denied granting relief by disallowing the members to vote in the elections for Maharashtra Legislative Council, which were being conducted on 20th June 4.

## **RIGHT TO VOTE FOR UNDERTRIALS**

In India, offenders under trial do not have the right to vote in ambiguous elections as they are not yet deemed guilty. One of the main core principles of Indian criminal law is that “every person is presumed to be innocent until proven guilty”. By this logic, offenders under trial are innocent, which means they should be given the right to vote. This is not the case which has been happening in the country. The reasoning given by the court is also very vague and ambiguous. In the landmark case of Ankul Chandra Pradhan v Union of India<sup>5</sup>, The issue before the court was;

Whether the petition under Art 32 of the constitutional challenge is made to the constitutional validity of sub-sec (5) of s. 62 of the Representation of the People Act,

The question is whether the sub-sec (5) classification of s.62 is reasonable.

The court said that Article 14 permits a reasonable classification which has a rational nexus (intelligible differentia) with the object of classification. The court went on to say that there are provisions made in the election law to exclude persons with criminal backgrounds from the election scene as candidates or voters; the court held that under trials or convicts were not allowed to vote to prevent the criminalisation of politics<sup>6</sup>.

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5 <https://www.studocu.com/in/document/guru-gobind-singh-indraprastha-university/llb/case-analysis-notes/21135265>

6 ibid

This decision made by the court was vague and ambiguous as, first of all, there is no rational nexus in classifying Convicts and under-trial prisoners together, as one is proven guilty and the other is not. But on the other hand, persons under preventive detention are given the right to vote. There is absolutely no rational nexus in the way these groups are classified.

Those who favour granting voting rights to prisoners under trial argue that denying prisoners the right to vote violates their fundamental rights. They argue that denying prisoners the right to vote violates their fundamental rights, as mentioned before. Prisoners are still citizens of India and should have the right to vote. Additionally, denying prisoners the right to vote could lead to discrimination and marginalisation of certain groups, such as underprivileged and marginalised sections of society, who are more likely to be incarcerated.

## **ARTICLE 14**

Article 14 of the constitution of India, 1950 was not a standalone provision in the Draft Constitution, 1948. It was initially included in draft Article 15 (Article 21), which read: “Protection of life and liberty and equality before the law - No person shall be deprived of his life or liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the law within the territory of India<sup>7</sup>.” The draft was put up for discussion which too almost 2 days and in the letter sent to the president of the constituent Assembly dated 3rd November 1949, the draft committee mentioned that - “we have considered it more appropriate to split this article into two parts and to transfer the latter part of this article dealing with “equality before the law” to a new article 14 under the heading “right to Equality”, article 14 was thereby introduced into the constitution of India, 1950.

Article 14 of the Constitution of India talks about Equality before the law; the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth<sup>8</sup>.

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7 <https://www.constitutionofindia.net/articles/article-14-equality-before-law/>

8 India.Const. Art. 14

## **THE DOCTRINE OF REASONABLE CLASSIFICATION**

has been derived from article 14 of the constitution of India. This classification was founded on an intelligible differentia. In the case of the State of West Bengal v. Anwar Ali Sarkar, the Supreme Court of India stated the twin test for reasonable classification. The court held that for the classification to pass the test, two conditions must be fulfilled<sup>9</sup>:

1. Classification must be founded on an intelligible differentia which distinguishes those grouped from others and
2. The differentia must have a rational relation to the object sought to be achieved by the Act.

In another famous case of Ram Krishna Dalmia v. Justice S. R. Tendolkar, AIR 1958, the Supreme Court held that: it is well established that Article 14 forbids class legislation; it does not forbid reasonable classification for legislation. It condemns discrimination not only by a substantive law but also by a law of procedure. Hence, Article 14 forbids the class legislation but does not forbid reasonable classification; however, these classifications must not be arbitrary, artificial or evasive<sup>10</sup>. Hence it has been well established that the doctrine of reasonable classification is very important in grouping items.

A reasonable classification is essential in the smooth running of the law system and in ensuring that everyone is treated equally in the eyes of the law. Such a classification is important as our law system believes in treating individuals equally. For example, the same type of tax cannot be levied on everyone, as everyone has a different amount of income. Although it seems equal, there is inequality, and the tax should vary according to their economic status.

## **STEPS TO ENSURE SMOOTH VOTING PROCESS** **FOR PRISONERS UNDER TRIAL**

- Prisoners under trial can vote from the jail premises without stepping out of jail through the system of postal voting, Also called Electronically Transmitted Postal

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<sup>9</sup> State of west Bengal V Anwar Ali Sarkar 1952 AIR 75

<sup>10</sup> Ram Krishna Dalmia V S. R Tendolkar 1958AIR 538

Ballot Papers and under. These ballot papers are distributed electronically to electors and returned to the election officers via post<sup>11</sup>.

- Prison authorities must inform prisoners under trial of their right to vote and the procedures for exercising this right. The authorities must also ensure that prisoners have access to the necessary facilities to exercise this right, such as voter registration forms, ballot papers, and polling booths.
- As mentioned earlier, the authorities can facilitate the voting process by setting up polling booths inside the prison premises or arranging for prisoners to vote through postal ballots.
- The prison authorities must ensure the security of the voting process and prevent any attempts at rigging or tampering with the votes. They must also ensure that the privacy of the voters is protected.
- Prisoners under trial must also be given sufficient legal aid and information about the various parties to ensure maximum accuracy in the voting process.

## **CONCLUSION**

The paper's main objective was to determine why prisoners under trial should be given the right to vote and how classifying under-trial and convicted prisoners do not align with reasonable classification principles. To establish the scope of the Natural law Principle of "innocent until proven guilty" concerning the "Right to vote" for prisoners under trial. The author contends that prisoners under trial are yet to be judged; hence, they are deemed innocent, and therefore, they should be given the right to vote as innocent people are allowed to vote as per adult suffrage. The Supreme Court of India has to recognise the right of prisoners under trial to vote, and it is time for the government to implement this ruling. The election commission of India should devise a suitable mechanism to enable these prisoners to exercise their right to vote while ensuring the safety and security of these prisoners in the ways mentioned in the research paper.

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<sup>11</sup> <https://www.nextias.com/current-affairs/04-11-2022/voting-rights-of-undertrial-prisoners>