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## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **PRISONERS' RIGHT TO VOTE: BALANCING CIVIC RESPONSIBILITY AND REHABILITATION**

AUTHORED BY - SPRIHA BISHT

Designation: Student

Christ Deemed To Be University Pune, Lavasa

## **1. INTRODUCTION**

### **1.1 Overview of the Right to Vote as a Fundamental Aspect of Democracy in India**

Voting rights are the building blocks of democracy in India. According to Article 326 of the Indian Constitution<sup>1</sup>, the right to vote is conferred on the population with the age of 18 years or above. This piece of legislation confers voting rights on every citizen, enabling them to participate in the democratic system, and shaping the country's political environment. <sup>2</sup>In India, one is not just permitted to vote, it is a right that allows them to express their opinion; they can also use their voting power to have a significant impact on policy. As such, voting rights are critical to the functioning of Indian democracy, particularly given India's claim to be the largest democracy in the world, with more than a billion eligible voters who can vote in the elections that take place.

### **1.2 Importance of Examining Prisoners' Voting Rights in the Context of Civic Responsibility and Rehabilitation**

Voting is widely recognized as a basic right, prisoners, a significant contingent of the Indian populace, are excluded from voting under Section 62 of the Representation of the People Act, 1951<sup>3</sup>. Section 62(5) of the Act invalidates the vote of any person detained in prison, whether undergoing a verdict or not. This provision disqualifies around 400,000 prison inmates from voting, thereby prompting an important discussion about citizenship and punishment. <sup>4</sup>Reflecting on the voting rights of prisoners is important for many reasons: Firstly, it reflects the democratic principles of inclusion and equality because withholding the vote contradicts the idea that every

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<sup>1</sup> Constitution of India art. 326 (1950).

<sup>2</sup> Bhakti Parekh, Denial of Voting Rights to Undertrial Prisoners: An Unreasonable and Unjust Disqualification, LiveLaw (Oct. 18, 2021), <https://www.livelaw.in/law-firms/law-firm-articles/-voting-rights-undertrial-prisoners-black-robbs-legal-183859>.

<sup>3</sup> Representation of the People Act, 1951 section 62 (1951).

<sup>4</sup> Shrutika Pandey, Do Prisoners Have the Right to Vote? Hindustan Times (Jan. 17, 2023), <https://www.hindustantimes.com/analysis/do-prisoners-have-the-right-to-vote-101713879845125.html>.

citizen has a right to say in the government. Second, the right to vote could be a vital instrument in the rehabilitation of prisoners, by imbuing in them a sense of citizenship and publishing them to participate as active, responsible citizens. Lastly, it draws attention to larger societal perceptions of crime and rehabilitation, by showing that restorative justice contends with the notion that all normative rights are cancelled during the length of incarceration.

### 1.3 Purpose of the Study

The aim of the study, initiated by the Centre for Applied Human Rights' research group on 'Prisoners' Right to Vote: Balancing Civic Responsibility and Rehabilitation in India', is to critically interrogate the legal, ethical, and social considerations associated with the disenfranchisement of prisoners, particularly undertrials, under the current legislative framework enshrined in the Representation of the People Act, 1951. Our work is intended to explore how the exclusion of voting rights affects the prospects of rehabilitating and reintegrating prisoners in the community, and to examine the argument of democratic morality as a basis of political obligation, in the context of democratic systems, to extend the right to vote to all citizens. By evaluating the global scenario and the broader social justice concerns about the disenfranchisement of prisoners, we hope to make proposals for law reform and alternative voting practices that promote democratic inclusiveness and see the enjoyment of the right to vote and civic responsibility as vital components to maintaining a democratic polity premised on justice and equality.

## **2. HISTORICAL CONTEXT**

The roots of the incarcerated voting rights issue in India can be traced back to its colonial period. During the time of the British Raj, the electoral process was primarily dominated by the elite with only a small part of the population being afforded the right to vote<sup>5</sup>. Due to prisoners being deemed to have lost their civil liberties, the right to vote was withdrawn from them. Following the country's independence in 1947, India's constitution did not comment on the right of prisoners to vote as an independent issue. Over the years, however, the issue swelled as an argument on the subject began to be heard in the courts and by legislative changes which changed the debate.

### **2.1 Evolution of Voting Rights for Prisoners**

- The Representation of the People Act, 1950: Though this law relates to conducting elections in the country of India, there were no provisions about prisoners' voting rights

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<sup>5</sup> How India Votes: History of Elections During the British Rule, Sahapedia (Jan. 17, 2023), <https://www.sahapedia.org/how-india-votes-history-elections-during-british-rule>.

initially. The Act did not make any provisions on the issue causing prisoners to lack the ability to vote.

Anukul Chandra Pradhan v. Union of India (1997)<sup>6</sup>: In this particular case the Supreme Court of India ruled that the right to vote is a constitutional right and cannot be withheld from a person simply because he is a criminal.

- Krishnamurthy Srinivas v. Union of India (2019)<sup>7</sup>: The Supreme Court again reaffirmed prisoners' voting right concerning the citizens' civic responsibilities and the need for reforms.

The Representation of the People (Amendment) Act, 2010: To address the Supreme Court decision, the Indian Parliament made further amendments to section 62 of the Representation of the People Act<sup>8</sup> in 2010 that permit prisoners to vote through post facilities. This amendment, however, was not put into practice in its implementation process as well as not effectively used by prisoners.

- Voting Rights of Prisoners Bill 2019<sup>9</sup>: In 2019, the voting rights of prisoners act was introduced in the Indian lower house of parliament, Lok Sabha, in an attempt to provide a guide on voting rights for prisoners. The bill has been introduced in the parliament now and once this bill is passed, it would only strengthen the legal provision of prisoners voting rights in India.

It is quite apparent from analyzing the timeline of giving and taking away the prisoners' right to vote in India that there initially was no recognition of this as an important right but slowly but steadily it seems to be changing and in parallel with this change there is an equal concern about security, rehabilitation, and electoral integrity.

### **3. VOTING FROM THE INSIDE? LET US EXAMINE THE CASE FOR EXTENDING VOTING RIGHTS TO PRISONERS**

The justification of prisoners' votes is rooted in the voter responsibility principle, the reformation, and provisions of the Constitution of India. Section 62(5) of the Representation of the People Act 1951 is the anti-voter factor of the current law which denies the prisoners including the under-trial prisoners from voting and this policy raises issues of equity, fairness, and credibility of the democratic system.

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<sup>6</sup> Anukul Chandra Pradhan, Advocate v. Union of India & Ors., AIR (1997) SC 2814 (INDIA).

<sup>7</sup> Krishnamurthy Srinivas v. Union of India, (2019) 3 SCC 1 (INDIA)

<sup>8</sup> Representation of the People Act, 1951 section 62 (1951).

<sup>9</sup> Voting Rights of Prisoners Bill, 2019 (India).

## Constitutional Framework

### Right to Vote as a Fundamental Right:

- The Indian Constitution under Article 326 recognizes the right to vote and this has adopted and established universal adult franchise. <sup>10</sup>The Representation of the People Act 1951 provides certain provisions that make voting by prisoners which is barred for all kinds of prisoners with or without conviction. Such a legal division of the issue imposes certain doubts about the nature of the voting rights as a constitutional or statutory right. The Supreme Court has stated that the right to vote is a statutory right, and as we know statutory rights are prone to be altered or even removed by legislation. Acting upon the verdict in the *Kuldip Nayar v Union of India* (2006)<sup>11</sup> the court reiterated that the Parliament has exclusive power to decide the policies for the voting rights.

### Disenfranchisement of Undertrial Prisoners

- Pre-trial detainees, that is persons detained and awaiting trial who have not been convicted, make up a large proportion of prisoners in Indian prisons. As per NCRB, covering up to 2021, there are about 427,165 undertrial prisoners and they make up about 77 percent of the total prison population<sup>12</sup>. One percent of the total prison population. Withholding that right from those people is counterproductive to the tenet of ‘innocent until proven guilty’ and an infringement on their citizenship rights.

### Upholding Democratic Values

- The removal of this group’s vote is undemocratic and efficacy because it is a way of denying the voting franchise to a section of the citizens. This exclusion tell the youths that their contribution does not count hence leading to disrespect for the law and democratic systems. The case of *Indira Gandhi v. Raj Narain* (1975)<sup>13</sup> held free and fair elections as basic structures of democracy; this makes any law that violates it unconstitutional<sup>14</sup>.

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<sup>10</sup> Ajoy Sinha Karpuram, Why Can Accused Persons in Prison Contest Polls but Not Vote?, Indian Express (May 1, 2024), <https://indianexpress.com/article/explained/explained-law/accused-persons-prison-poll-vote-9301880/>.

<sup>11</sup> *Kuldip Nayar v. Union of India*, (2006) Supp. (5) SCR 1; 2006 INSC 532. (INDIA)

<sup>12</sup> *Voting Rights for under trial Prisoners*, (Nov. 3, 2022), <https://www.drishtias.com/daily-updates/daily-news-analysis/voting-rights-for-under-trial-prisoners>.

<sup>13</sup> *Indira Nehru Gandhi v. Shri Raj Narain & Anr.*, AIR 1975 SC 2299.(INDIA)

<sup>14</sup> Ajoy Sinha Karpuram, Why Can Accused Persons in Prison Contest Polls but Not Vote?, Indian Express (May 1, 2024), <https://indianexpress.com/article/explained/explained-law/accused-persons-prison-poll-vote-9301880/>.

### Rehabilitation and Reintegration

- Denying voting rights goes against efforts to rehabilitate and reintegrate prisoners into society. <sup>15</sup>Several democratic countries, like Canada and South Africa, let inmates vote. They understand that taking part in civic duties plays a key role in helping people rejoin society after they finish their sentences. This way of thinking fits with current theories about prisons that focus more on helping inmates change than just punishing them.

### Lack of Reasonable Classification

- The sweeping ban on voting rights doesn't have a sensible grouping based on the type of crime or how long the sentence is. In other places, like Germany and France, prisoners can vote to different degrees. This shows a more detailed way of taking away voting rights. The lack of such grouping in India brings up worries about fairness under Article 14 of the Constitution of India<sup>16</sup>. This article says that everyone should be treated the same by the law.

### Logistical Challenges vs. Civic Rights

- Claims about practical difficulties and limited resources as reasons to stop prisoners from voting don't hold up when it comes to taking away a basic right. The need for more security and staff shouldn't be more important than making sure every citizen can vote. *Anukul Chandra Pradhan v. Union of India (1997)*<sup>17</sup> case backed up this idea of not letting prisoners vote because of these practical issues, but people see it from the old-fashioned lenses

In the cases of:

- In *Anukul Chandra Pradhan v. Union of India (1997)*<sup>18</sup>, the Supreme Court upheld the validity of Section 62(5) of the Republic of Peoples Act, reasoning that the loss of freedoms in jail due to behavior and logistical hurdles were justified reasons for disenfranchisement.

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<sup>15</sup> *Voting Rights for under trial Prisoners*, (Nov. 3, 2022), <https://www.drishtiias.com/daily-updates/daily-news-analysis/voting-rights-for-under-trial-prisoners>.

<sup>16</sup> Constitution of India art.14 (1950).

<sup>17</sup> *Anukul Chandra Pradhan, Advocate v. Union of India & Ors.*, AIR 1997 SC 2814 (INDIA)

<sup>18</sup> *ibid*

- The 2013 Patna High Court Ruling brings up the issue of the interplay between being in custody and electoral eligibility, hinting at the political motivations of the disqualification.
- The amendments of the Representation of People Act in 2013 made it clear that being in custody did not automatically disqualify individuals from being on the electoral roll, though it does prevent them from voting paradoxically, which creates a confusing web of interactions for those who are in custody.

### Punishment and Deterrence

- Opponents suggest that prisons provide a form of moral education, through the denial of the right to vote, which enables people to demonstrate the consequences of their behavior. They argue that allowing prisoners to vote might undermine this. The Supreme Court of India, in the case <sup>19</sup>Anukul Chandra Pradhan v. Union of India (1997), made this case when it argued that people who were imprisoned as a result of their behavior lose their equal freedom, including the right to vote, to ensure that social order and respect for the law are maintained.

### Public Trust in Democracy

- *Another reason why some people don't want prisoners to have the right to vote is that they think that if people who have been in jail are allowed to vote, it could lead to suspicions of cheating. This might make people feel that the result was not fair, and affect the relationship of trust which is necessary between voters and politicians. The problem is, that one court in India stated that if prisoners were allowed to vote, there could be "criminalized politics" which would harm Indian democracy.*

### Security Concerns

- Security concerns are also frequently cited as a primary rationale for withholding prisoner voting rights. The logistical challenge of organizing elections within the prison is a key concern, with the potential for disruption or confrontation equally worrisome. In the Supreme Court's decision in <sup>20</sup>Anukul Chandra Pradhan, the additional security resources and logistical challenges required to enable a prisoner vote were referenced in the phrase "the mountain of security measures to be taken". This underscores the practical issues of

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<sup>19</sup> Anukul Chandra Pradhan, Advocate v. Union of India & Ors., AIR 1997 SC 2814 (INDIA)

<sup>20</sup> *ibid*

providing a secure and smooth voting system for persons in custody, which could also undermine the overall electoral system's integrity.

#### Legal Precedents and Historical Context

- *In India, the law governing prisoners' right to vote harks back to historical legacies that have framed the right to vote as a privilege, rather than a fundamental right. This is apparent in the <sup>21</sup>Representation of the People Act, 1951, which provides that a person who is in prison cannot vote. This perspective has been supported by a line of case law, including the 2013 Supreme Court's understanding of the political disenfranchisement of prisoners as supportive of maintaining the integrity of the electoral rolls and preventing the influence of criminals in politics. This history suggests that India's law understands the consequences of a criminal conviction to justify the revocation of the right of political participation; in other words, elections law in India is understood more punitively.*

#### **4. IMPACT OF VOTING RIGHTS ON REHABILITATION**

*The Representation of the People Act, of 1951 in India disqualifies prisoners from voting. <sup>22</sup>Section 62(5) of the Act, says that an individual cannot vote if they are confined in a prison, whether under a sentence of imprisonment or otherwise, or in the lawful custody of the police.*

*Indian courts have often used constitutional fundamental rights to protect prisoners. For example, the Supreme Court in <sup>23</sup>Charles Sobraj vs. Superintendent, Tihar Jail case emphasized that detention does not mean the abandonment of fundamental rights. Nevertheless, there is no access to the right to vote for prisoners, showing a balance from civic responsible and a notion of serving a sentence.*

*Research on extending voting rights for rehabilitation indicates positive outcomes. International studies attest that voting can help prisoners feel connected to society and subsequently reduce recidivism. Voting taps into a sense of civic responsibility and power, critical for successful integration into society.*

*Some countries allow prisoners to vote, whether it be full or partial voting rights. For instance,*

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<sup>21</sup> Representation of the People Act, 1951

<sup>22</sup> Representation of the People Act, 1951 section 62 (1951).

<sup>23</sup> Charles Sobraj vs The Suptd., Central Jail, Tihar. New Delhi, 1978 AIR 151

*South Africa's Constitutional Court held that prisoners have the right to vote, noting that the right to vote is fundamental to citizenship. These examples aid in understanding the balance between voting rights, civic responsibilities, and rehabilitation goals.*

*In India, the question remains on whether extending voting rights to prisoners can assist with rehabilitation and reintegration. Advocates argue that it could encourage a sense of care and duty, but others might contend that voting may be viewed as undermining the purpose of punishment.*

### **CONCLUSION**

If we see, the issue of prisoners' voting rights in India demands that we consider complex legal, moral, and societal concerns. The right to vote is vital for any democracy; however, India's current law leaves out many prisoners (including undertrials), leading to questions about justice, equality, and inmate rehabilitation within the Indian democratic system. A historical analysis will reveal that there is a legacy of disenfranchisement rooted in colonial practices, which have changed but still continue to exhibit punitive tendencies. Nevertheless, the landmark decision by the Supreme Court has stressed on the fact that no one should arbitrarily take their voting rights away from them. Claims that are made about extending suffrage among prisoners resonate with democratic principles and restorative justice ideas too. Voting by those serving time in prison helps build civic responsibility which in turn eases integration hence reducing cases of recidivism. Still though prison security along with electoral integrity need to be addressed with respect to this debate over whether or not to allow prisoners cast their ballots. As India grapples with its identity as a global largest democracy it must re-evaluate how it treats disenfranchised inmates. Advocacy for change of laws and alternatives to voting can enable an all-inclusive democracy based on fairness and equality. By acknowledging the voting rights of every person including those who are imprisoned, such a move would help transform our society into "a more perfect union".