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# Revisiting the Universal Adult Suffrage: The Voting Rights of Prisoners in India

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### Abstract

India being the world's largest democracy has been denying the most fundamental right of suffrage to its four lakh eligible voters. Unlike many of its counter parts, India has adopted 'universal adult suffrage', right from the inception of its democracy and thereby ensuring political justice to its people. Beyond the question that whether prisoners' suffrage is right or wrong, the denial of voting right to prisoners is seriously challenging India's claim of universal adult franchise. This Article is an attempt to problematize India's claim of 'universal adult franchise while taking up the case of prisoners. Finally, it argues that the denial of the voting right to prisoners is a violation of some of the fundamental rights which are enshrined in Indian constitution.

**Keywords:** Prisoner's right, Indian constitution, universal adult suffrage, justice, imprisonment

### Introduction

India is one of the most celebrated and successful democracies among the post-colonial states. Even though the country does not fulfill some of the basic requirements for having a stable and effective democracy, for last seven decades India remains one of the successful democratic nations across the world. Unlike many of its counter parts, India has adopted 'universal adult suffrage', right from the inception of its democracy and thereby ensuring political justice to its people. However, this Article problematizes India's 'universal adult franchise while taking up the case of prisoners. In doing so, the first part of this study explores the various rights guaranteed by the constitution of India to prisoners. Secondly, the Article examines the legal position in India related to prisoner's franchise. Thirdly, it unravels the debate on prisoner's suffrage. Finally, it argues that the denial of the voting right to prisoners is a violation of some of the fundamental rights which are enshrined in Indian constitution. The ideal of a democratic republic established in the Constitution's Preamble is best defined through the introduction of universal suffrage and completely equal treatment of the sexes not only before the law but also in the political realm. Political justice is defined as the absence of any arbitrary distinction between people in the political realm. To ensure the 'political' fairness promised by the Preamble, it was critical that every person in India's territory, regardless of his/her proprietary or educational qualifications, be entitled to participate in the political system like any other person. With this goal in mind, universal adult suffrage was established. The tenet of "one man, one vote," mandates that the Union's

and States's legislators be chosen every five years by the votes of the entire adult population. The makers of Indian constitution didn't have any doubt with respect to the introduction of universal adult suffrage along with the enactment of constitution. People in many well established and celebrated democracies had to wait for centuries for getting their right to vote since many of this nations have adopted both gender and property criteria for becoming eligible for voting. This is the contest in which the study raises an important question whether the idea of universal adult suffrage is absolute in India. The following part of this Article would enquire this while taking up the case of thousands of prisoners in India's jail.

Imprisonment is the most accepted form of punitive mechanism that is universally adopted by almost all the nations around the world. Prisoner is a person who is physically confined to a place, prison and is deprived of his/her personal freedom to a certain extent. In India we have approximately four lakh prisoners (NCRB 2016) scattered across more than 1350 jails in India. The rights of these prisoners are limited and basic in nature. The prisoners in our country face persistent issues like prison overcrowding, health care, racism, gang activity, violence etc. Prisoners are often subjected to psychological and physical torture during detention, exposed to subhuman living conditions and prison violence. The share of prisoners awaiting trial or sentencing in Indian jails are extremely high as compared to international standards. Various human rights legislations as well as judiciary have facilitated a change in the approaches of criminal justice system in India.

### Existing Rights of Prisoners in India

Fundamental Rights under Article 14,19,20,21 and 22 of the constitution of India deal with rights of Prisoners.

**Article 14:** Right to Equality

**Article 19:** Right to freedom of speech and expression

**Article 20:** Protection in respect of conviction for offences.

**Article 21:** Right to Life and Personal Liberty

**Article 22:** Protection against Arrest and Detention in certain cases.

### Voting Rights of Prisoners in India

India being the world's largest democracy has been denying the most fundamental right of suffrage to its four lakh eligible voters. It is one of the few countries in the world, which does not allow people confined in prisons to vote. Even if a person is in lawful custody, he or she is not allowed to vote as per the Indian law. Even though Article 326 of Indian Constitution mandates Universal Adult Suffrage (i.e., any citizen above 18 years of age has the right to vote) but, convicts and under-trials are barred from voting due to Clause 62(b) of Representation of People's Act, 1951.

No person shall vote at any election if he/she is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in lawful custody of the police. (Representation of the People Act)

### Why Prisoners Should be Given Voting Rights?

It is a harsh truth in India that any criminal can move towards becoming the MLA and MP and yet they cannot take an investment in the decision. Is it fair that a country like India, being one of the largest democracies, restrict this right to prisoners but allow criminals to participate in the very formation of our government?

A defeat in democracy is half-cured when discovered and non-voting is the worst disease that a democracy can suffer from [Meaning not clear]. The exercise of suffrage is undoubtedly a citizen's duty and probably the first of the most important rights. The right to vote defines our nation as a democracy and taking away this foremost right from a section of our society is unfair and biased. The right to vote is linked to many significant rights of individuals such as equality and justice. Laws are made and changed with different governments, while rights have been enshrined as fundamental. A crime today, maybe legal tomorrow. Hence, a right as fundamental as the right to vote should not be dependent on the status of imprisonment or conviction.

The purpose of prison is not punishment in its physical sense but a denial of liberty to reform, rehabilitate and reintegrate the convict into the society. The intention of prison should be to prepare the prisoners to return to society and lead a law-abiding and self-supporting life. Confinement as a result of punishment in itself is a punishment and no additional punishment should be inflicted on the person. This additional punishment aggravates the suffering and harms the dignity of the prisoner as a human being and a citizen. Article 20(2) of our constitution also clearly states that nobody should be punished twice for the same act. Therefore, an added punishment of disenfranchisement is completely unfair.

Linking a ban on voting to imprisonment is arbitrary. Many people who commit trivial crimes are sent to jail, when people who have committed serious crimes walk around freely enjoying their rights. Not all crimes have the same injurious act, which is why at least specific categories of prisoners can retain their civil rights, including right to vote.

It is true that prisoners might still be a small population as compared to the size of other communities. Even then the vote seekers and subsequent winners of power have a moral responsibility to be responsive towards demands of the prisoners. The views and needs of prisoners are currently not represented. Women prisoner's face privacy-related issues and problems such as prison overcrowding and abuse by warders. These are not treated as serious political issues since the affected cannot vote and the public has no interest in prisoners' wellbeing. So, voting can empower them to talk about their problems.

Section 62(5) of the Representation of People's Act, 1951 can be challenged on the grounds of Article 14 that is the right to equality, Article 19(1) (a), that is freedom of speech and expression and Article 21 that is right of life and personal liberty.

Several nations such as France, Germany, South Africa, Canada, Spain and others have allowed prisoners to vote. These countries do not disenfranchise their prisoners. The convicts are allowed to vote while in prison unless the loss of the right to vote is part of their sentence as directed by the court, depending on the nature of crime.

The words of a South African judge (Mbodla 2002) beautifully remind us of the importance of vote and citizenship:

"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 intertwined in a single interactive polity."

### Why Prisoners Should Not be Given the Right to Vote?

The scope of limitation on the right of prisoners to vote, varies across borders. In some countries the ban on the right to vote end upon the release of a prisoner, i.e., disenfranchisement is temporary, whereas in some nations criminal disenfranchisement is permanent and continues even after the sentence has been served. So, should prisoners be given this right of enfranchisement or should it be temporarily or permanently restricted?

The debate against prisoner's right to vote originated from the concept of "civil death", which means people who have been sent to prison are deprived of all or almost all civil rights. Prisoners are shut away from the society to not only protect it, but to symbolize the society's disgust at their acts. Those who offend against the common good of the society should have no right to contribute to the governance of society. They can be given these rights only when they make amends to society by serving their sentence.

The strongest reasoning against prisoner's voting is that the lawbreaker has breached the "social contract". When a lawbreaker voluntarily breaks the law, he or she chooses to go outside the society. Therefore, he/she should not be given the rights which a law-abiding citizen enjoys. A prisoner has broken the law and trust, they are corrupt, and hence should be excluded from governance. Denial of voting rights will give a signal of disapproval from the society and will act as deterrence. The right to cast vote is neither a fundamental right nor a common law right and is provided only by a statute. Voting is a privilege and people in prison has shown they are not worthy of that privilege by breaking the law.

Rehabilitation should focus on making prisoners realize and sincerely regret the effects of their actions. It should not aim

to give them a feeling of dignity of the illusion that they are full members of the society.

Prisoner interest and concerns are represented by NGO's and statutory inspection bodies, that ensure they are not ill-treated, which rules out their need of representation of their views and needs. If prisoners are unsatisfied with their condition, they should not have got there in the first place, and they have only themselves to blame.

Giving prisoners the right to vote can sway a council or a general election because prison is comparatively large in size, and it would affect the constituency size and count. There is also a worry regarding prison officers influencing the prisoner's vote. Given that prison is a closed space away from the society as it is, we cannot ensure if the votes cast are legitimate or not.

Another thing to be noted is prisoner's participation. In many countries where prisoners are allowed to vote (like South Africa, Kenya, Ireland), the participation of prisoners remain very low. Even the number of prisoners who register for voting is low. So, when the participation itself is very low why allow it. Even jail administrators often lack the knowledge about voting laws and establishing a voting process. There is also difficulty in providing additional facilities for voting in prison such as extra security during the voting period.

In order to affirm and maintain the sanctity of the franchise in our democracy and to preserve the integrity of the voting process, prisoners should not be allowed to vote.

#### **Plea Made in Indian Court for Enfranchisement of Prisoners**

Three law students, Praveen Kumar Chaudhary, Atul Kumar Dubey and Perna Singh filed a Public Interest Litigation in the Delhi high court seeking voting rights for all persons lodged in jails across the country. The petition challenged the constitutionality of Section 62(5) of the RP Act, which deprives prisoners of the right to vote.

The Delhi high court rejected the petition seeking voting rights for prisoners noting that the right to cast vote was neither a fundamental right nor a common law right and was only provided by a statute. A Bench of Chief Justice D.N. Patel and Justice C. Hari Shankar remarked that the facility was provided under the law and it can be taken away by law as held by the Supreme Court. The Bench noted the right to vote provided under the statute-Representation of the People Act-was subject to restrictions imposed by the law, which does not allow prisoners to cast vote from jails.

#### **Conclusion**

Whether prisoners can be given voting right or not is one of the well debated topics in democracies across the world. While many prominent democratic nations are granting the voting rights to prisoners, India belongs among those nations who have denied prisoners the right to suffrage. This is in a way inflicting one more punishment to them apart from the prescribed penalty in accordance with their breach of law. However, Article 22 of the constitution protect all citizens from double jeopardy. On the other hand, once someone is convicted, he or she doesn't deserve any civil rights. Since the arguments from both sides have merits, the voting right of prisoners has become one of the dilemmas in politics. Beyond the question that whether prisoners' suffrage is right or wrong, the denial of voting right to prisoners is seriously challenging India's claim of universal adult franchise.

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