

Prisoners and their Right to Vote

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The debate over prisoners' voting rights is a complex and contentious issue that touches on fundamental principles of democracy, justice, and the purpose of incarceration. Proponents argue that denying voting rights to incarcerated individuals undermines democratic ideals and impedes their rehabilitation and reintegration into society. Conversely, opponents often view disenfranchisement as a legitimate consequence of criminal behavior and raise concerns about the practicalities of facilitating voting within carceral institutions. This debate extends beyond legal and political considerations, intersecting with broader questions about societal values and the effectiveness of punitive measures in addressing crime. Empirical evidence from jurisdictions with varying voting policies for prisoners offers valuable insights into the potential impacts of such policies on recidivism rates, civic engagement, and democratic representation. As societies grapple with these complex issues, there is a need for nuanced dialogue and consideration of diverse perspectives to find solutions that balance the demands of punishment with principles of fairness, inclusion, and rehabilitation.

Keywords: Prisoners, Right To Vote, democratic representation, justice.

1. Introduction

The debate surrounding prisoners' voting rights is multifaceted, delving into questions of justice, rehabilitation, and democratic principles. At its core, it confronts us with the tension between punishment and the preservation of individual rights within a democratic society. On one side of the argument, proponents advocate for the restoration of voting rights to incarcerated individuals as a means of upholding democratic ideals and fostering their reintegration into society. They argue that disenfranchisement only serves to further marginalize and alienate an already vulnerable population, hindering their prospects for rehabilitation and successful reintegration upon release. Conversely, opponents often cite concerns about the loss of certain rights as a consequence of criminal behavior, viewing disenfranchisement as a legitimate aspect of punishment. They may also raise practical concerns about the logistics of facilitating voting within carceral institutions and question the

appropriateness of granting voting privileges to individuals who have violated societal norms. As societies grapple with these complex issues, the debate extends beyond legal and political realms, touching upon broader questions of morality, social justice, and the nature of democracy itself. In exploring the topic of prisoners' voting rights, it becomes evident that the issue transcends mere legalistic arguments, encompassing fundamental questions about the values we seek to uphold as a society and the treatment we afford to those who have transgressed its norms. Furthermore, the debate on prisoners' voting rights intersects with broader conversations about the purpose of incarceration and the effectiveness of punitive measures in addressing crime. Advocates argue that denying individuals the right to vote while they are incarcerated undermines the principles of democracy and perpetuates cycles of disenfranchisement, particularly among marginalized communities disproportionately affected by the criminal justice system. Moreover, the issue raises questions about the potential impact on democratic representation. When a significant portion of the population is disenfranchised due to their incarceration status, it can skew political representation and influence policy decisions, potentially undermining the democratic process itself. Beyond the theoretical arguments, empirical evidence from jurisdictions that have either granted or restricted voting rights for prisoners can inform the debate. Studies examining the impact of allowing prisoners to vote on rates of recidivism, civic engagement, and societal reintegration can provide valuable insights into the potential benefits or drawbacks of such policies. Ultimately, the discussion on prisoners' voting rights prompts us to critically examine our assumptions about justice, democracy, and the rights of individuals, challenging us to seek solutions that balance the demands of punishment with the principles of fairness, inclusion, and rehabilitation. As societies navigate these complex issues, it becomes imperative to engage in nuanced dialogue and consider the diverse perspectives and experiences of those directly impacted by these policies.

THE ENFRANCHISEMENT OF PRISONERS UNDER INTERNATIONAL LAWS

"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives," contends Article 21 of the Universal Declaration of Human Rights. Given that the Universal Declaration of Human Rights is not a treaty, it is reasonable to consider whether or not nations are required to comply to the articles and recommendations of the UDHR. In spite of the fact that the Universal Declaration of Human Rights (UDHR) is not a treaty and therefore cannot be signed, it is nonetheless regarded as a legally obligatory element of customary international law. As a consequence of this, the United Nations Charter mandates that all member nations, including India, adhere to its provisions. Additionally, it is not acceptable to discriminate against anyone on the basis of their "race, color, sex, language, religion, political or other opinions, national or social origin, property, birth, or another status." This is because everyone has the right to vote in "genuine periodic elections which shall be by universal and equal suffrage." This clause of the International Covenant on Civil and Political Rights is legally obligatory on the 168 governments that have ratified it. A number of international covenants and declarations, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights (to which the state in question is a party), affirm that all prisoners will be able to keep the human rights and fundamental freedoms that are outlined in these documents, with the exception of restrictions that are clearly necessary

due to the fact that they are incarcerated.

We will now examine the legal status of prisoners' enfranchisement in different nations.

Constitution of South Africa: The right to vote is guaranteed to every adult citizen of South Africa, as stated in the Constitution of the nation. In light of this, the subject of whether or not incarcerated individuals are granted the right to vote in national elections has inevitably been brought up for consideration. During the most recent national parliamentary and provincial elections, which took place in 1999, the Electoral Commission issued an order that prevented all detainees from voting in the polls. This decision made by the Electoral Commission was contested by a group of inmates of the establishment. The decision that this action taken by the Commission was unlawful was made by the Constitutional Court in the case of *August and Others v. Electoral Commission and Others*¹⁸. It was determined by the court that the Commission had not operated in accordance with a law of universal limitation, which was the basis for the final ruling. Consequently, the acts taken by the Commission could not be legitimately justified in terms of the limitation clause because of the subsequent consequences. As a result of this, the resolution could not offer a conclusive response to the question of whether or not convicts might be denied the ability to vote¹⁹ for the reasons stated above. Therefore, it was quite evident that the amendments to the Electoral Act²⁰ that were made in 2003, which basically restricted the right to vote to criminals who were serving terms of jail without the possibility of a fine, would be challenged in court. This was because the amendments were enacted while the offenders were serving their sentences. Because of this, the decision of the Constitutional Court to reject these amendments in the case of *Minister of Home Affairs v. National Institute for Crime Prevention (NICRO)*²¹ should not come as a surprise to anybody. It is wonderful that the court did not shy away from exercising its constitutional obligation to safeguard the vulnerable and disenfranchised population that is housed in criminal correctional facilities. In addition, it is quite commendable that the court arrived at the conclusion that the case is encouraging for any future dispute concerning the rights of convicts.

United States of America: criminal disenfranchisement, also known as the method of withholding voting rights to those who have been accused of committing a criminal infraction, is an issue that continues to be encountered on a daily basis in the United States of America. Individuals are prohibited from being discriminated against on the basis of their age, gender, or ethnicity, as stipulated by the Constitution, which also guarantees that everyone has the right to voice their opinion. However, the 14th Amendment does provide states the authority to restrict the right to vote of those who have been convicted of a criminal charge. This is a provision that is given to states. In the United States, as of the year 2022, a felony conviction was responsible for the loss of voting rights to about 4.6 million individuals, which is comparable to one out of every fifty citizens who are eligible to vote.

Maine and Vermont are the only two states that do not limit voting and enable persons to exercise their right to vote while they are incarcerated. Maine and Vermont offer this privilege. In certain jurisdictions, a person's right to vote is temporarily suspended while they are incarcerated; but, after they are released from prison, their right to vote is instantly reinstated. This is the case in certain countries. A person must first fulfill any parole or probation terms, or in some cases, they must wait a certain amount of time, file an application, or pay a

predetermined sum in penalties and fees before their ability to vote may be reinstated in the remaining 26 states. It is also possible that the person must wait a specific amount of time before applying for reinstatement. In just three states—Iowa, Kentucky, and Virginia—the ability to vote is permanently taken away from a person who has been convicted of a criminal offense. Each of these states' governors have the authority to reinstate the right to vote in their respective states. It is possible that a procedure that allows for the restoration of voting rights will be a difficult and drawn-out one in locations that permit it. The submission of major paperwork to governmental bodies is a typical requirement that individuals must fulfill. In addition, there is a possibility that there will be an insufficient amount of resources or unexpectedly long wait periods, both of which might have a disproportionately negative effect on persons who have little financial resources and educational attainment. African Americans make up one out of every 19 individuals of voting age in the United States, according to research, which suggests that legislation that disenfranchises people of colour has a disproportionately negative impact on people of colour. It is possible to trace the origins of the practice of disenfranchisement in the United States back to the regulations that were in place during the time period of colonial control. This practice has a long period of history. After the end of the Civil War, a number of states passed laws that disenfranchised African Americans for committing felonies that were mostly committed by African Americans.

A number of states have recently taken administrative or legislative action to control the restoration of voting rights despite the fact that over seventy percent of Americans are in agreement that those who have been convicted of felonies should be able to vote again once they have completed their sentence. Since the beginning of the year 2020, eight states have changed their policies in a variety of different ways. Among these modifications are the simplicity of procedures for regaining voting rights, the consideration of the voting rights of those who are currently on parole or probation, and the availability of restoration through the utilization of authority provided by the governor. As a direct result of these reforms, the number of persons in the United States who do not have the right to vote has decreased by around 24 percent since the year 2016.

Canada, New Zealand, and Australia: Since 1924, the right to vote has been guaranteed in Australia by the implementation of compulsory enrollment, making it one of the most fundamental human rights in the country. On the other hand, the policy of the government has a disproportionate influence on patients who are locked up in hospitals and criminals who are incarcerated. Despite the fact that they are denied their rights, these persons are severely underrepresented. inmates regularly confront substantial barriers that prohibit them from exercising their right to vote, despite the fact that the present federal legislation permits inmates who have been on remand or who have been jailed for less than three years to cast ballots in federal elections. This is the case even though the law enables them to do so. It is possible that these difficulties include restricted access to the greater community as well as a lack of support from electoral entities. In the case of *Roach v. Electoral Commissioner*, the High Court of Australia came to the decision that it was a clear breach of the prisoners' constitutionally protected right to vote to prevent them from exercising their right to vote in federal parliamentary elections. This was the finding reached by the court. A legislative committee has been created in New Zealand with the intention of evaluating the law that is now in existence. This is part of the ongoing process of revising the capacity of convicts to

vote, which is currently being carried out. It is necessary for electoral commissions in both nations to make certain that convicts are registered to vote in order to guarantee that the ideas and beliefs of the general population are adequately reflected. An investigation that was carried out by the Victorian Electoral Commission in 2010 and given the title "Prisoners and Voting" came to the conclusion that the voting records of convicted individuals are not very attractive. Despite the fact that they were eligible to vote and were required to do so by law, only 26 percent of prisoners who were sentenced to three years or less actually registered to vote. This is despite the fact that they were eligible to vote. One of the most serious barriers to registration was the inability of electoral officials and correctional services to include convicted individuals in the political process. Individuals who were incarcerated were not permitted to take part in the political process because they frequently had the belief that voting did not give any personal benefits. This worldview, on the other hand, experienced a huge change and became considerably different after the criminals were made to feel as though their voice meant just as much in the process of crafting government policy as that of any other citizen.

RIGHT TO VOTE

Individuals are granted the ability to vote in elections through a civic right that is referred to as suffrage inside the United States. There is evidence that the Franks of ancient France have been using the term "suffrage" to refer to the right to vote in political elections ever since the beginning of time. Another form of suffrage is called "universal suffrage," and it is characterized as a condition in which the right to vote is not restricted on the basis of variables such as race, gender, religious views, or social position correspondingly. This type of suffrage is one of the varieties of suffrage. According to Article 326 of the Constitution of India, everyone have the fundamental right to vote. This right is guaranteed to every individual. Due to the fact that India is a democratic nation, this right is guaranteed to each and every individual. There are limitations put on the capacity of inmates or convicts of any type, including a person who is in the legal custody of the police, to vote in elections in India. These limitations come into effect. One of the sections of the Representation of the People's Act from 1951 contains the specifics of this restriction. As of the 31st of December in the year 2020, the National Criminal Branch Report of India indicated that there were a total of 4,88,511 individuals who were detained across the country. This number includes 3,71,848 persons who were at the time of their trial, 1,12,589 individuals who had been found guilty, and 3,590 prisoners who had their constitutional right to vote taken away from them as a result of their incarceration.³) As a direct result of this, the vast majority of the Indian populace was not given the chance to exercise their right to vote in the elections that were held in order to establish the government of India. There are a number of countries, including Europe, Ireland, Finland, Spain, Norway, Denmark, and others, who have provided their convicts with the ability to vote in order to promote the reformation of their social life once they have been released from imprisonment. This is done in order to help inmates become more productive members of society. A number of times, the Honourable Supreme Court of India has argued in favor of including the right to vote into Article 21 of the Constitution. These arguments have been made on several occasions. The unpleasant truth is that prisoners in India do not now have the right to vote. This is the case as of right now. As a result, there is an urgent requirement to reevaluate the voting rights of individuals who are now jailed in India.

PRISONERS' RIGHT TO VOTE IN INDIA

According to current figures provided by the World Prison Brief Database, there are around 10.36 million individuals now being held in detention institutions across the globe. In addition, the National Crime Records Bureau (NCRB) and the Ministry of Home Affairs have disclosed that India is the sole country in which there are 418,536 inmates. This figure includes 2.8 lakh convicted individuals who are now awaiting trial. These offenders are being imprisoned in prisons that have the capacity to hold just 356,561 more inmates than they now have available. The act of voting in elections is not only a civic responsibility, but it is also a means of protecting one's own dignity and rights as a citizen. It is possible to exercise one's right to vote by casting a ballot. Regardless of a person's socioeconomic standing or the conditions in which they were raised, the voting process is the means by which the worth and value of each and every individual is acknowledged. This is a proof that democracy is inclusive, which is especially crucial in a nation as diverse as India, where people come from a wide range of various cultures, beliefs, castes, ethnicities, and economic backgrounds. This is a sign that democracy is inclusive. In accordance with Article 326 of the Constitution of India, all citizens of India who are at least eighteen years old and who are not disqualified on the grounds of non-residence, unsoundness of mind, crime, or corrupt or illegal practices are granted the right to vote in elections for the House of the People and Legislative Assembly of each and every state. This right is granted to all citizens of India. This section ensures that every individual has the same chance to vote by ensuring that every citizen who is eligible to vote has equal access to the electoral process. This access is granted regardless of the citizen's social, economic, or political standing.

The capacity to exercise one's right to vote is an essential component of citizenship, and it plays a crucial role in choosing the course that the nation will take in the future. Participating in the electoral process and exercising their right to vote gives citizens the power to choose people who will represent them and make decisions on their behalf. Citizens have the option to pick individuals who will represent them. In order to guarantee that elected officials do not violate the interests of the people they represent and to ensure that they are held responsible for their activities, it is a powerful weapon that may be utilized to ensure that this occurs. Adult suffrage is the foundation upon which elections to the Lok Sabha and state Legislative Assemblies are conducted. This means that every individual who is at least 18 years old is granted the right to vote without any kind of discrimination being applied to them. Specifically, the Constitution of India ensures that this right is protected. However, in accordance with the provisions of Section 62(5) of the Representation of the People Act of 1951, voters who are detained are not entitled to take part in elections 48. It is against the law to cast a ballot for someone who is presently being detained in a correctional institution. This regulation applies regardless of whether the individual is serving a sentence of incarceration, transportation, or another kind of imprisonment, or whether they are in the custody of law enforcement personnel. As a result of the legislation that is now in existence, it does not apply to anyone who is being detained without a trial. On the other hand, it does not apply to these individuals. A challenge to the validity of this provision was taken before the Supreme Court of India in the case of *Anukul Chandra Pradhan v. Union of India*.

This challenge was over the constitutionality of this section. The Supreme Court upheld the validity of Section 62(5) because it tries to attain the goal of decriminalizing some political

activity. This is the reason why the Supreme Court upheld the constitutionality of the section. Additionally, the court arrived at the judgment that holding elections within correctional facilities would be impossible owing to the significant amount of infrastructure and help that would be necessary. This was one of the reasons why the court ultimately came to this determination. In addition, the court came to the conclusion that the right to vote is restricted by the requirements of the law and that it may only be exercised in the ways that are authorized by the laws. In the case of Praveen Kumar Chaudhary and others vs the Election Commission of India and others, the constitutional validity of Section 62(5) was once again challenged before the Delhi High Court. The decision was made in the case. Because there is no legal distinction between those who are in detention and those who are out on bond, the claim that it violates Article 14 of the Constitution was founded on the fact that there is no difference between the two of them. The court also took into consideration the point that the second proviso of the provision permits an individual whose name is not on the electoral register to run in the election; nevertheless, if they are incarcerated, they are not permitted to vote in the election. In contrast, the Delhi High Court affirmed the validity of Section 62(5) by pointing to the judgment that was reached in the case of Anukul Chandra Pradhan v. Union of India. This ruling allows the court to uphold the constitutionality of the provision.

Following its investigation, the court arrived at the conclusion that the clause's purpose is to protect the legitimacy of the electoral process and to forestall the criminalization of political action. It was determined that any wording that helps to the achievement of this purpose is beneficial to the Constitution and needs to be supported. This was the conclusion that was reached. As a result of this, the law as it presently stands is that the right to vote is subject to the constraints that are placed by the law, and Section 62(5) of the Representation of the People Act, 1951, which prevents criminals from participating in elections, is constitutionally acceptable. This is because the legislation is a consequence of this. In order to prevent the criminalization of politics and to ensure that elections are not interfered with, the clause was created with the intention of preventing such from happening. In the matter of Praveen Kumar Chaudhary and others vs the Election Commission of India and others, the Delhi High Court ruled that Section 62(5) is valid and affirmed its constitutionality.

CRITICAL ANALYSIS

No prison should be able to employ arbitrary power or tyranny, especially in a democratic society. But, based on the old idea of civil death, there is a well-known and pervasive practice known as criminal disenfranchisement, which means withholding the right to vote to individuals who are currently in prison. This idea runs counter to rulings from India's highest court, which have upheld the right of inmates to fundamental freedoms and treat them as unique persons. The right to exist and the power to acquire, possess, and transfer different forms of property are all part of these rights. The Indian Supreme Court looked into the Anukul Pradhan case to see if Section 62(5) of the R.P. Act 1951 violates Article 14 of the Constitution. Prisoners in India are totally barred from casting ballots according to this section of the law. The court has held that in order for a classification to be valid, the basis must be an intangible differentia that is rationally related to the subject of the classification. If the classification is to be considered sensible, it needs to meet both of these requirements. Because it limits voting rights to jailed people, Section 62(5) does not meet this criterion. This include both people in police custody for legitimate reasons and those who are awaiting trial. To put that in context,

those who have been convicted and given a jail sentence but have been released on bond are allowed to vote.

On the other hand, Section 62(5) contradicts Section 8(3) of the R.P. Act of 1951, which says that a person can run for office if their felony conviction was for a shorter than two-year jail term (5). This complicated scenario arises because prisoners have the right to run for office and vote in elections, yet they cannot cast ballots while they are in prison. This would indicate that prisoners are already devalued as human beings before the veracity of their crimes is established. Restorative and reformatory justice ideas are the backbone of India's criminal justice system. Reformatory approaches try to lessen the chances of recidivism by offering therapy or services to formerly incarcerated individuals. The rehabilitation theory posits that offenders may be changed by punishment, which in turn reduces the likelihood of further transgressions. Conversely, once inmates have finished their rehabilitation at a prison, they are returned to the same environments that encouraged their criminal activity. In light of this, it is critical to make sure they maintain their changed identities when they rejoin regular society. Regrettably, the Indian courts have ignored the fact that these principles of criminal justice are at odds with the intent of Section 62(5) of the R.P. Act 1951, which places a severe restriction on the voting rights of convicted individuals. In essence, it is contrary to the ideals of restorative and reformatory justice, as well as a breach of the inmates' fundamental rights, to deny them the opportunity to vote.

2. Conclusion:

The controversy surrounding the voting rights of inmates compels us to address the contradictions that exist between democracy, the concept of punishment, and the concept of communal inclusion. On the other hand, opponents raise worries about the repercussions of providing such privileges to those who have broken society standards. Proponents believe that the restoration of voting rights is a method of supporting democratic values and promoting rehabilitation, while opponents raise concerns about the ramifications of doing so. Disenfranchisement, on the other hand, may be a factor in perpetuating cycles of marginalization and hindering attempts for rehabilitation and reintegration, according to scientific findings and ethical concerns. In addition, the restriction of voting rights has the potential to produce a distortion in democratic representation and to weaken the credibility of political processes. In order to go forward, it is very necessary to participate in nuanced discourse and take into consideration the many points of view held by all stakeholders, including the persons who are now jailed. The policies that govern the voting rights of convicts ought to have the objective of striking a balance between the accountability for criminal activity and the maintenance of democratic ideals and the inclusion of society. In the end, we may strive toward policies that promote both public safety and social cohesiveness by reexamining our beliefs about justice, democracy, and the rights of individuals. This will ultimately result in the development of a society that is more democratic and equitable for everyone.

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