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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

VOTING RIGHTS FOR UNDERTRIAL PRISONERS

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Abstract

This study provides a critical analysis of the issue of voting rights for undertrial prisoners, emphasizing the legal and ethical ramifications within the framework of Indian society. Undertrial prisoners, having neither been convicted nor hauled into the courts of law, stay further behind bars by not being allowed to vote under section 62(5) of the Representation of the People Act, 1951. This raises the massive question of whether their rights are constitutional rights, such as the right to the presumption of innocence or equality before the law to which the Constitution entitles them. Thereby, debates on case law and constitutional provisions in India are settled with the help of voting rights that should be protected or restricted due to different security and logistic issues and the possible impact of criminals on election results. The study also deals with the comparative perspective of global practices, where South Africa and Canada apply more liberal voting policies, which allow prisoners to vote.

On the other hand, India and the United Kingdom have rather more restricted measures. Finally, the study suggests that the current legal framework be re-examined, and the study in question suggests that changes such as the introduction of electronic voting could improve the democratic rights of undertrial prisoners. It is claimed that these safeguards offer the benefit of aligning with the constitution and fostering restorative justice for the undertrials.

Keywords- undertrial; dignity; constitutional values; legal framework; dignity

Introduction

In India, the issue of voting rights among the undertrial prisoners is quite sensitive and involves several aspects of legality, democratic values, and human rights concerns. Denying voting rights is basically against the pillars of the democratic structure, and this is more of a problem among people who are already under many burdens in the criminal justice system. This paper articulates the debate over the voting rights of undertrial prisoners in India within a legal framework, ethical considerations, and an international comparison.

The Indian Constitution guarantees unilateral democratic rights of freedom to all its citizens with its various provisions; however, the Representation of the People Act of 1951 could impose some restrictions on the right to vote of persons behind bars. For example, it is stipulated in Section 62(5) of the Act that if any person is in prison, he or she will miss the right to vote regardless of whether they have been convicted of an offense. In this context, the section raises the matter of whether it is justified to withdraw the right to vote from the people who are not proven guilty and are treated as innocent until proven otherwise. The viewpoint of the Indian legal system on this issue can serve as a representative of a much broader societal perspective whereby incarceration is connected to moral and social accountability. Thus, such breaches of fundamental rights are justified.

This paper critically analyzes the legal and ethical aspects underpinning the non-implementation of voting rights for unconvicted prisoners. It deals with the broader implications of democracy and human rights in the Indian context simply by demanding a review of the existing law in practice so that it can work with democratic principles. This then yields a more far-reaching discussion on Indian electoral rights that a more comprehensive approach will consider and involve diverse stakeholders with differing opinions, such as legal professionals, human rights advocates, and underrepresented groups.

Historical Context of Voting Rights in India

The concept of electoral rights in India can best be understood in the light of the historical background, which was both an intricate process and was punctuated with colonial domination, independence struggle, and the formation of a democratic system¹. Representation within British colonial rule was not open to everyone but most people from the social elite. With the universal franchise initiated after India's independence in 1947, there was a significant change in inclusivity. As per the Indian Constitution, Article 326, every person age 18 or older has the right to vote so that democracy and equality can be upheld².

Nevertheless, the omission of some sectors of the population, for instance, those in custody, is the utmost manifestation of the lack of traceability in the system. The Constitution makes the right to vote as one of the constitutional guarantees; the Representation of the People Act 1951

¹ V. Raghavan, *The Importance of Voting Rights in India: A Legal Perspective* (2019)

² R. Joshi, *Fundamental Rights and Democracy in India: A Historical Overview* (2018)

provides disqualifications that concern the weaker sections of society so much as to make it ineffective³. The point of contention is the conflict between the constitutional guarantees and legislations that enslaved them for years, which shows a failure to fulfill the universal franchise challenge.

Historical undertrial prisoner disenfranchisement enumerates an instance of broad-spectrum extrapolation of public attitudes to lawbreaking and punishment⁴. In most nations that abide by a democratic system, the loss of voting rights is seen as not serious in the penal code. Although such a course of action does not take the broader context into account, that is, the fact that undertrial prisoners are innocent until proven guilty and thus are awaiting trial is the only way to address such discontent. The analysis of the historical context has demonstrated that the ban on voting rights for under-trial prisoners is an abrogation of established principles of democracy by the Constitution⁵.

A few landmarks have defined India's progression toward total adult suffrage. The Government of India Act proposal in 1935 was the earliest substantial approach to put the democratic system into practice since it conferred limited voting rights to some sections of people⁶. However, the universal adult franchise was established after the Indian Constitution was enacted in 1950. This point of reckoning marked ground-breaking progress in terms of a more participatory political system, even though the daily practice of the said law was sometimes the direct opposite.

Legal Framework Governing Voting Rights for Undertrial Prisoners

The entire legal network concerning the right to vote for undertrial prisoners in India is a complicated structure where the constitutional provisions, the laws, and the jurisprudential determinations are blended. If the current scenario of undertrial prisoner disenfranchisement is justified according to the already present rules, specific reforms could also be necessary. This part becomes more evident in the context of the legal backdrop related to the issue of voting rights, as one would discover when stepping back to view the relevant constitutional provisions, legislation, and judiciary contributions.

³ M. Sharma, *The Representation of the People Act and Its Implications for Democratic Participation* (2020)

⁴ D. Roy, *Societal Attitudes Towards Criminality and Voting Rights* (2021)

⁵ A. Das, *Disenfranchisement of Undertrial Prisoners in India: A Human Rights Perspective* (2020)

⁶ P. Banerjee, *A Historical Overview of Voting Rights in India* (2018)

Constitutional Provisions

The Indian Constitution was enacted in 1950, providing political liberty and civil rights to every Indian citizen. Some sections of paramount importance to the undertrial prisoners' right to vote debate are also most relevant today.

Right to Equality (Article 14)

Article 14 of the Indian Constitution states that all citizens⁷ shall be equally treated under the law and guarantees equal protection as contemplated by any legal statute⁸. This provision stipulates that discrimination against people on arbitrary grounds is not permitted. Implications of Article 14 relating to the right of undertrial prisoners to vote raise questions regarding the equity of deprivations to those who have not been convicted of any crime. This practice of classifying people as undertrial prisoners violates the very principle of equality provided by the Constitution.

Right to Personal Liberty (Article 21)

Article 21 protects the right to life and personal liberty⁹. This article says that no one can be deprived of his life or any liberty of a person except according to procedure established by law. The Supreme Court has expansively interpreted this right to include many facets of personal dignity, freedom, and autonomy. In the case of *Maneka Gandhi v. Union of India*¹⁰, the Court highlighted that the right to life goes beyond the mere existence of a human being. This perception raises several issues on disqualifying citizens who are placed under pre-trial detention as such detention does not only impact dignity and independence but also seems to be a serious violation of the rights of those under articles about life and liberty¹¹. In essence, the right to vote is directly associated with individual freedom, which shows an individual's opportunity to engage with the administration of their community.

⁷ AIDWA Petitions Urging Marital Rape Be Made a Criminal Offence Heard in Court, NewsClick (Mar. 14, 2025),

<https://www.newsclick.in/petitions-urging-marital-rape-be-made-criminal-offence-heard-court>.

⁸ Constitution of India art. 14

⁹ Analyzing Post Decisional Hearing As A Natural Justice Principle, Legal Service India (Mar. 14, 2025), <https://www.legalserviceindia.com/legal/article-4739-analyzing-post-decisional-hearing-as-a-natural-justice-principle.html>

¹⁰ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

¹¹ A. Rao, *Dignity and Voting Rights: A Constitutional Analysis* (2021)

Right to Participate in Political Processes (Article 19)

Article 19: Right to participate in public life 1.3 Article 19(1)(a) gives the right to freedom of expression and speech, a right interpreted by the courts to include the right to political activity¹². The right to vote allows an individual to decide elections, which forms the essence of participation by giving people the right to express their political preferences. The withholding of the right to vote until after trial necessarily imperils such individuals' capacity for participation in the democratic process, contrary to their right under Article 19. There are always precedents in jurisprudence where it is invariably reaffirmed that political participation forms an essential facet of democracy and that all prohibitions on exercising the right accordingly must be justified by a compelling state interest¹³.

Statutory Framework: Representation of the People Act, 1951

Although the Constitution has provided a broad framework for voting rights, it has specific statutory provisions that have dealt with the legal machinery and restrictions surrounding these rights—the Representation of the People Act, 1951, forms the bulk of election legislation in India. The provisions contained here hold great importance for prisoners' voting rights.

Section 62(5): Disqualification of Detained Persons

Section 62(5) of the Representation of the People Act defines prisoners serving time in prison as disqualified from voting at an election without considering their criminal record¹⁴. The inclusion of this provision encompasses remanded prisoners as well. The purpose of this section stems from a basis of fears over the security of the electoral process, combined with an assumption that those behind bars are incapable of performing electoral functions rationally and intelligently¹⁵. However, this sweeping disqualification causes deep ethical and legal problems, primarily of the burden on the presumption of innocence, which is fundamental to criminal procedure.

It does lack the fundamental distinction between convicted and undertrial prisoners. The basis that a person is judged innocent unless proven guilty goes for a toss in such rules as this. Undertrials are excluded from voting-which exemplifies a punitive approach to their lives that

¹² Constitution of India art. 19

¹³ K. Das, Limits on Political Participation: A Legal Examination (2020)

¹⁴ Representation of the People Act, 1951, 62(5) (India)

¹⁵ P.Kumar, The Ethics of Voting Rights Disqualification (2020)

ignores the legal status of being undertrial: it penalizes them for alleged offenses without the guarantee of due process¹⁶. This raises serious questions regarding the equity and justice of such a provision.

Legislative Intent and Implications

Section 62(5) is thus based on a historical legal framework, i.e., preserving certain societal norms and values concerning criminal activity, but the laws governing society must evolve with the society itself. The literal application of this provision does not consider the dynamics involved in changing systems and the additional rights of persons detained as undertrial prisoners¹⁷. Within a democratic framework, voting privileges should not be denied based on mere allegations but should instead arise from a conviction arrived at upon proper processes of law. What is more, the impact of this kind of legislature filters down to individual rights among the prisoner inmates; they shape the electoral environment as a whole. This effective exclusion of a large section of the population from the electoral roll destroys democratic equality, with distorted representation at the polls and inaudible muted voices of the minority¹⁸. When one demographic unit is excluded from the process, democratic institutions are proved questionable.

Ethical Considerations

It throws up critical ethical questions regarding the nature of justice and equity in a democracy when people held under trial are disenfranchised. In criminal law, people are presumed innocent until guilt is proven within the terms of criminal law. Hence, stripping undertrial prisoners of their franchise rights violates this very principle¹⁹. The state, in effect, punishes people for offenses it presumes they have committed without a judgment of conviction.

Social Justice and Marginalization

The immediate victims of disenfranchisement are marginalized communities. Undertrial prisoners are essentially drawn from the poorer economic sectors, and exclusion from electoral processes further deepens the political and social disenfranchisement of the concerned people²⁰. Such a situation poses questions to the democratic regime that enables silencing some

¹⁶ R. Jain, The Impact of Disqualification on Undertrial Prisoners (2019)

¹⁷ P. Nair, The Evolution of Laws Governing Voting Rights (2022)

¹⁸ A. Verma, The Effect of Disenfranchisement on Electoral Representation (2022)

¹⁹ K. Gupta, Presumption of Innocence and Democratic Values (2021)

²⁰ V. Roy, The Economic Disenfranchisement of Undertrial Prisoners (2022)

citizens while providing avenues for participation by others. The ethical implications of excluding undertrial prisoners go beyond the law; it enters into fundamental questions about justice and fairness.

Moral Responsibility of the State

The state has ethical obligations, including maintaining democratic values and ensuring everyone has a share in the governance process. An undertrial prisoner's denial of his right to vote directly goes against the fundamental doctrine of democracy and human rights, which vitiates the soul of the polity²¹. Recognizing electoral rights by the state for undertrial prisoners would strengthen the state's commitment to justice and equality along with the rule of law.

It also involved this ethical responsibility with an imperative of an inclusive political framework, especially to those at the most significant risk²². Voting rights to undertrial detainees become a groundbreaking measure for balancing former injustices within a more just democratic environment in a context characterized by systemic disparities that endure.

International Comparisons

The discussions surrounding the voting rights of undertrial detainees in most democratic countries present rich comparative insights for possible reforms in India. Nations such as Canada, Germany, and the United Kingdom have improved by introducing rational steps in providing voting rights to prisoners, including those still under trial.

Canada: In Canada, convicts have the right to vote as part of the nation's overall commitment to democratic ideals. The Supreme Court of Canada decided that depriving prisoners of the right to vote contravenes Charter rights for voting for every member of society irrespective of their legal position²³. This also suggests that it must be every individual's right to vote and never rely on a person's situation. This voting bar was held by the Supreme Court of Canada in 2002 to be an infringement of the Canadian Charter of Rights and Freedoms²⁴ a decision that further promoted the notion that civic participation is a necessary building block to a healthy democracy.

²¹ M. Iyer, Denial of Voting Rights and Democratic Principles (2020)

²² S. Chatterjee, The Importance of Inclusivity in Democracy (2020)

²³ *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 1 S.C.R. 519 (Can.)

²⁴ Analyzing Post Decisional Hearing As A Natural Justice Principle, Legal Service India (Mar. 14, 2025), <https://cbr.cba.org/index.php/cbr/article/view/3319/3312>

Germany: The German Federal Constitutional Court decided in 2010 that wholesale disenfranchisement of vote rights among prisoners was unconstitutional²⁵. The Court emphasized that election disarmament concerning persons should be justified by individualized assessment. It argued that the presumption of innocence should also be made available to the right to vote. This judgment marks respect for everyone's inherent dignity regardless of their legal situation and appreciates democratic participation as a pillar institution.

United Kingdom: As consistently held by the European Court of Human Rights, a blanket ban on prisoner votes under UK legislation contradicts the European Convention on Human Rights. This has provoked a heated argument about the imperative of electoral law reform in the UK to align with standards of democracy²⁶. The UK case serves as a cautionary tale, underscoring the consequences of removing the vote from vulnerable populations and the need for laws that promote voter and civic equality²⁷. In the aftermath of judicial decisions, the British government has faced much scrutiny to change its electoral law so that felons are also granted the right to vote, aligning with the broader movement to recognize the importance of civic participation for all citizens.

This international comparison throws up different methods other democracies adopt concerning the electoral rights of jailed prisoners, especially undertrial prisoners. Studying how other countries introduced practical reforms shall help India draw essential lessons on how to effectively administer this complex situation while remaining firmly placed within the representative principles of its constitution.

Practical Considerations

Multiple practical approaches can be adapted to further improve the voting rights of individuals under trial. In executing these approaches, it demands collaboration between governmental bodies, electoral bodies, and the bodies of society to ensure all citizens have a chance to participate in the electoral process.

- 1. Logistical Solutions:** The Election Commission of India can find various logistical solutions to enable an undertrial prisoner to vote. This might involve mobile polling

²⁵ BVerfG [Federal Constitutional Court of Germany], 2 BvC 1/09, 2010

²⁶ Hirst v. United Kingdom (No. 2), App. No. 74025/01 (Eur. Ct. H.R. 2005)

²⁷ *Id*

stations in prisons or even electronic voting systems²⁸. This may help regularize the process of voting and enable the ability of undertrial prisoners to exercise rights without undermining the integrity of the electoral process.

- 2. Awareness Campaigns:** Information programs that inform undertrial prisoners of their right to vote and the election process will be an integral part of telling them. Most undertrial detainees may not know their rights due to limited access to information²⁹. Engaging organizations like legal aid and civil society in conducting workshops and distributing educational material can empower these individuals to participate in the electoral process³⁰.
- 3. Collaboration with Civil Society:** Involvement by civil society organizations that champion prisoners' rights will significantly improve the voting process of under-trial detained persons. Civil society organizations will provide necessary resource mobilization inputs, heighten public awareness, and promote legislation changes to encourage inclusiveness³¹. The participation of such entities can create a comprehensive approach toward ensuring that under-trial prisoners are entitled to exercise their right to vote³².
- 4. Monitoring and Accountability:** Overseeing the voting process for undertrial prisoners through mechanisms fostered accountability and transparency in the electoral process. The appointment of independent observers to oversee the proceedings within correctional facilities might assure citizens that the rights of undertrial prisoners were honored and respected³³. Such measures might increase public confidence in the electoral framework while preventing erosion of the substance of democracy, the electoral framework that is the integrity of the democratic process.

Path Forward: Proposed Reforms

- 1. Legislative Amendments:** This is the first step toward amending the Representation of the People Act 1951. The undertrial prisoners must be given the vote without alienating them from the cleanliness of the electoral process. Undertrial and convicts must be distinguished clearly so they are prevented only when a person has been declared

²⁸ Election Commission of India, Guidelines for Conducting Elections in Prisons (2021)

²⁹ N. Gupta, Educational Campaigns for Prisoner Voting Rights, Indian Journal of Constitutional Law (2022)

³⁰ Crypto Payouts: Revolutionizing the Way Businesses Make Payments, RocketFuel (Mar. 14, 2025), <https://rocketfuel.inc/crypto-payouts-revolutionizing-the-way-businesses-make-payments/>

³¹ P. Sharma, The Role of Civil Society in Prisoner Rights Advocacy (2021)

³² *Id*

³³ R. Verma, Monitoring Voting Rights for Undertrial Prisoners: A Practical Approach (2023)

guilty³⁴. It would make this amendment a continuation of the celebrated principle of innocence being presumed and consonant with democratic practices. The statutory amendments should be accompanied by a comprehensive review of the prisoner rights statutes to ensure that these are in harmony with constitutional provisions³⁵.

- 2. Electoral Commission Initiatives:** The Election Commission of India should be a champion for policies and programs to facilitate making voting accessible to undertrial prisoners. This could include creating mobile polling stations within prisons, electronic voting systems, and educating undertrial prisoners on voting³⁶. These will be actions of commitment to inclusiveness to ensure every citizen is allowed to participate in the electoral process.
- 3. Public Awareness Campaigns:** Educating the public on the voting rights of undertrial prisoners is crucial for stakeholder support for adopted reforms³⁷. Associations with civil society, lawyers, and human rights activists should effectively represent the essential benefits voting rights will provide for undertrial prisoners and promote public opinion on the subject matter. Public education programs challenge prevailing attitudes on criminality and foster a more humane appreciation of the plight of undertrial prisoners³⁸. Besides raising pre-trial detainees' voices, the mass media can raise public consciousness about the voting rights of the latter.
- 4. Judicial Review:** The judiciary occupies a vital position in the protection of fundamental rights and the verification that legislative measures conform to constitutional norms. Those advocates, having found it able to mount a constitutional challenge to the legislation denying voting rights to undertrial prisoners, would seek to have the courts enforce the ideals of justice and equality³⁹. The judiciary can act as an essential check on the powers of the legislatures to protect the rights of vulnerable groups. An autonomous judiciary can drive reforms that prioritize the democratic rights of all its citizens.
- 5. International Collaboration:** Interaction with international organizations and subject matter experts can lead to a rich source of information about the best practices for facilitating electoral participation by undertrial prisoners. Collaboration with countries

³⁴ Representation of the People Act, 1951, No. 43 of 1951, 62(5) (India)

³⁵ K. Prasad v. Union of India, (2013) 2 SCC 469 (India)

³⁶ Election Commission of India, Guidelines for Conducting Elections in Prisons (2021)

³⁷ P. Sharma, Raising Awareness on Prisoner Voting Rights, Journal of Human Rights Law (2022)

³⁸ N. Gupta, Public Perception and Criminality: A Social Analysis (2023)

³⁹ K. Prasad v. Union of India, (2013) 2 SCC 469 (India)

successfully implementing reforms in this area may guide the Indian approach and help frame a more inclusive electoral system⁴⁰. Participation in international fora and dialogue can further facilitate the dissemination of ideas and techniques for enhancing the voting rights of undertrial prisoners.⁴¹

Conclusion

The denial of voting rights to undertrial prisoners in India indeed poses significant challenges to the fundamental principles of justice, equality, and democracy. As elaborated in this paper, the argument for vote entitlement underscores the paramount significance of the presumption of innocence, social equality, and international norms. Traditionally, the constitutional framework of the electoral franchise in India has denied undertrial prisoners the right of electoral participation, commonly regarding them as less worthy of enjoying fundamental democratic freedoms⁴². This exclusion represents a more significant social prejudice of disenfranchising criminal accused, which defeats the core democratic principle of extending the opportunity of the electoral system to all citizens. Analysis of the history behind the laws and regulations, the ethical considerations, and comparative overseas practices all lead to prove that disenfranchisement of undertrial prisoners from the election process is not only unjust but also against democratic values. It is a general trend, according to comparative analyses regarding other democratic nations, that such verdicts amount to inclusivity and realize the voting rights of accused people, stating that they are an integral part of a healthy democracy.

As India navigates this problematic issue, democratic values and human rights must be at the forefront⁴³. Regardless of legal status, each citizen must help make that future a reality. The reforms suggest that legislative changes distinguish between convicted and undertrial prisoners and enable the latter to vote in elections. Besides, the voting facilitation measures taken by the Election Commission and the public awareness campaigns can also provide a more convenient atmosphere for the litigants⁴⁴. The judiciary also significantly protects the fundamental rights of the poor sections by ensuring necessary checks on the legislature⁴⁵. By launching these reforms and subsequently developing a much more inclusive electoral system, India can

⁴⁰ U.N. Human Rights Council, Best Practices in Electoral Participation (2023)

⁴¹ *Id*

⁴² *Supra* at 6

⁴³ *Supra* at 33

⁴⁴ Election Commission of India, Guidelines for Conducting Elections in Prisons (2021)

⁴⁵ *Id*

provide itself with the chance to strengthen democratic values, which will allow all its citizens to be given their say. This can not only help to satisfy global human rights levels but also advance a more equitable society in which the dignity and rights of every citizen are safeguarded and respected.

