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# Dignity in Prisoners' Right to Vote

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VAANYA SANGWAN<sup>1</sup>

## ABSTRACT

*This research paper examines India's legislative framework on prisoners' voting rights and its relevance to human dignity. As a democratic country, India's argument over the right to vote has been ongoing. Article 326 of the Indian Constitution allows for adult suffrage, which means that everybody over the age of 18 in India has the right to vote, subject to the statute's limitations. When it comes to a prisoner's right to vote, however, India has enforced an absolute blanket ban under Section 62(5) of the Representative of the People Act, 1951. By establishing this provision, India chose criminal disfranchisement, and Supreme Court judgments have consolidated this criminal disfranchisement. In this article, we will examine a few international laws and institutions. This research paper will also discuss the necessity for reform in India's legislative policy as well as how denying a prisoner's ability to vote is an infringement on their dignity.*

**Keywords:** Right to Vote, Blanket ban for prisoners.

## I. INTRODUCTION

The term "dignity" is particularly prevalent in today's rights-conscious society. Though there is no agreement on its universal definition, its pervasiveness as a notion is obvious. It has been the cornerstone of international human rights legislation as well as state constitutional rights legislation.

Human dignity is addressed in a wide range of contexts. Most people see it as an important component in justifying human rights and determining what is reasonable and moral. By definition, all persons are granted certain rights that cannot be denied based on attributes that distinguish them, such as gender, race, sexual orientation, and so on. The Preamble to the Universal Declaration of Human Rights (UDHR) refers to the inherent dignity of all members of the human family as, "the foundation of freedom, justice and peace in the world . . .". Continuing on the same line Article 1, UDHR, states, "All human beings are born free and equal in dignity and rights<sup>2</sup>."

The preamble to the Indian Constitution expresses a sincere commitment by the Indian people to preserve and defend the human dignity of all individuals. As a result, it is critical to address

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<sup>1</sup> Author is a student at BML Munjal University, India.

<sup>2</sup> Article 1 of Universal Declaration of Human Rights

every danger or violation of human dignity wherever it arises. It makes no difference whatever group of people, including prisoners, are subjected to a danger or violation of human dignity; the outcome is the same: human society suffers, and its progress and development are delayed, in addition to the quiet suffering of the individual victim<sup>3</sup>. Treating ex-felons, prisoners, undertrials, or convicts as human beings rather than as a subset of the human race indicates society's profound respect for human life.

Human dignity is an intrinsic human virtue that is recognised as the conceptual core of human rights. This intrinsic dignity is unalienable and irreplaceable. For instance, under the Islamic Republic of Iran's jail system, inmates and detainees retain their value as human beings regardless of the charges of which they are accused or convicted.

#### **(A) Issue**

1. Whether criminal disfranchisement, infringes the Dignity of the prisoners?
2. Should prisoners be subjected to civil death or reformatory system, in order to ensure their dignity is protected by the law?

## **II. IS CIVIL DEATH JUSTIFIABLE THROUGH THE CHOICES OF THE PRISONERS**

*Denying prisoners their right to vote undermines law and policy that is meant to rehabilitate and integrate prisoners<sup>4</sup>.*

Every voter's vote in an election ensures their dignity and identity. The world's largest democracy, India, has been depriving its four lakh eligible voters of their most basic right to vote. When roughly 90 crore Indian residents were permitted to vote in the 2019 Lok Sabha Elections, around 4 lakh people were denied the right to vote<sup>5</sup>. These citizens included detainees, undertrials, and criminals, and only those on bail were eligible to vote.

India is one of the few countries that has a blanket ban on all prisoners' voting rights, as stated in Section 62(5) of the Representation of the People Act, 1951, which states that no person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment, transportation, or otherwise, or is in the lawful custody of the police: Provided, however, that nothing in this sub-section shall apply to a person subjected to preventive detention under any

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<sup>3</sup> Jarain, E. (2016). "Prisoners' Dignity: A Forgotten Dignity". The Delhi University Journal of the Humanities and the Social Sciences 3: 155-169.

<sup>4</sup> Kaur B, "Prisoners' Right to Vote: Citizen without a Vote in a Democracy Has No Existence" (*Economic and Political Weekly* November 22, 2019) <<https://www.epw.in/engage/article/prisoners-right-vote-citizen-without-vote>> accessed December 1, 2022

<sup>5</sup> Kaur B, "Prisoners' Right to Vote: Citizen without a Vote in a Democracy Has No Existence" (*Economic and Political Weekly* November 22, 2019) <<https://www.epw.in/engage/article/prisoners-right-vote-citizen-without-vote>> accessed December 1, 2022

law for the time being in force<sup>6</sup>. Denying prisoners, the right to vote is analogous to a democracy condemning them to civil death and forcing them into a place where they feel neglected.

In *Anukul Chandra Pradhan v. Union of India*, AIR 1997 SC 2814, while rejecting the petition seeking the right to vote for prisoners provided some reasons for why such a ban was in place:

(ii) A person who is in prison as a result of his own conduct cannot claim equal freedom.

(iii) To keep prisoners away from the spirit of free and fair elections.

The court held, that a person who is in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in prison. The classification of persons in and out of prison separately is reasonable. Restriction on voting of a person in prison results automatically from his confinement as a logical consequence of imprisonment<sup>7</sup>. (Para 8)

We need to realise offenders are sent to prison “as a punishment, not for punishment”. The legislation and rules enacted for Prison’s conduct and operations are established to make sure a reformative environment is set up to help the prisoners choose a better and healthy path in their life after being released from the prison. By taking away their basic civil rights such as the right to vote we are pushing them further away from the society and aggravating their prison life. Denying prisoners, the right to vote indicates that they are lesser than normal citizens, diminishing their dignity and sense of self-worth and weakening the attempts to support them in moderating their actions.

A hint of the same view can also be seen in Article 60(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules of 1955, “the regime of the institution should seek to minimise any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings<sup>8</sup>.” As a result, the court’s remark that a person imprisoned as a result of his own actions cannot claim equal freedom gives insight on how inmates are perceived on a level lower than the average citizen. These perspectives cause inmates to doubt their identity, self-worth, and dignity. The government and the general public are frequently unaware of or unsympathetic to the conditions that may have driven the convicts to make decisions that landed them in jail.

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<sup>6</sup> The Representation of the People Act, Section 62(5)

<sup>7</sup> Para 8 of *Anukul Chandra Pradhan v. Union of India*, AIR 1997 SC 2814

<sup>8</sup> Standard Minimum Rules for the Treatment of Prisoners, Article 60 (1)

### III. FREE AND FAIR ELECTIONS: A WAY TO DENY VOTING RIGHT TO PRISONERS

In 2018, inmates in the United States staged a nationwide strike, with one of their demands being the opportunity to vote "All restricted individuals serving jail terms, pretrial prisoners, and so-called "ex-felons" must have their voting rights counted. "Representation is required, and all voices must be heard<sup>9</sup>." "I will pay taxes, but I won't be allowed to vote," one of the convicts was reported saying. "It lets me know that I'm not actually a citizen... I will have no influence in the political process or the future of the nation". Similarly, inmates in India have the title of citizen; nevertheless, they have a lot more constraints and restricted liberty, and so their feeling of being a normal human is susceptible to numerous situations and comes with a lot of difficulties and government ignorance. Prisoners are barred from voting in elections because they "breached the social compact."<sup>10</sup> The argument is based on the social contract, which states that citizens agree to obey and be controlled by a set of standards. In democratic countries, the rule of law is the primary tool of the social contract. So, when a criminal freely chooses to defy the law, he or she chooses to live outside of society. Denying people, the right to vote sends a negative image from society and acts as a deterrent. These arguments are developed to argue that those who have breached the law and destroyed trust are unethical, and that a democratic process as essential as voting should not be tainted or corrupted by their participation.

When the court announced its decision in *Anukul Chandra Pradhan v. Union of India*, it did not acknowledge that prisoners, as Indian citizens, have the right to vote for their representatives and that every vote symbolises a person's dignity and identity. Many of our politicians have criminal cases filed against them, yet they are permitted to run for office, spread propaganda, and represent people. Doesn't this tarnish the concept of free and fair elections?

Article 326 of the Constitution of India states, that "the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election"<sup>11</sup>. The right to vote is

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<sup>9</sup> Incarcerated Workers Organizing Committee, <https://incarceratedworkers.org/campaigns/prison-strike-2018>

<sup>10</sup> Kaur B, "Prisoners' Right to Vote: Citizen without a Vote in a Democracy Has No Existence" (*Economic and Political Weekly* November 22, 2019) <<https://www.epw.in/engage/article/prisoners-right-vote-citizen-without-vote>> accessed December 1, 2022

<sup>11</sup> Article 362 of the Constitution of India

not a legislative gift; rather, it flows as a result of Article 326 of the Indian Constitution and, as such, cannot be called a fundamental right." The "right to vote," on the other hand, is a fundamental civil right that cannot be deemed a privilege. These civic rights are intended to protect an individual from unjust treatment, yet in India, the same rights are revoked upon conviction.

Furthermore, adult franchise expresses one's desire to be ruled, which is the fundamental basis of democracy. One vote, one value is a democratic principle that regulates Indian democracy's election system and is used to express support for or displeasure with the administration that governs them. This guarantees the freedom to choose one's representative in general elections in the name of the right to vote, and prisoners are not exempted from this right as they are still citizens of India. A democracy is based on the concept that a voter chooses a politician rather than the other way around, and if it is agreed that disfranchisement happens immediately as a result of imprisonment, then such a right becomes a simple privilege.

According to Article 61 of the Nelson Mandela Rules, "the treatment of inmates should emphasise not their separation from the community, but their ongoing participation in it..." Steps should be done to protect inmates' civil interests, social security rights, and other social advantages<sup>12</sup>." A prisoner's right to vote is revoked as an additional penalty. This added punishment may increase the prisoner's suffering and diminish his or her dignity as a human being and citizen. As highlighted in Articles 60 and 61, such exclusion should not be considered as part of our penal system because the primary objective of imprisonment is to maintain a convict's involvement in civil life and instil an understanding of responsibility toward his subsequent return to society as a "law-abiding" and "self-supporting" civilian<sup>13</sup>. The legislation should be in place to guarantee that convicts are treated with dignity and respect while in jail, and that when they re-enter society, they return with the same feeling of dignity and are treated in the same manner.

Protecting inmates' dignity and human rights presents tremendous difficulties. Prisons, as whole institutions, have separate power dynamics between staff and prisoners, which raises the possibility of abuses of prisoners' dignity. Human dignity protection is hampered by definitional difficulties: an individual's subjective perception of personal dignity may contradict the societal

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<sup>12</sup> Standard Minimum Rules for the Treatment of Prisoners, Article 61

<sup>13</sup> Kaur B, "Prisoners' Right to Vote: Citizen without a Vote in a Democracy Has No Existence" (*Economic and Political Weekly* November 22, 2019) <<https://www.epw.in/engage/article/prisoners-right-vote-citizen-without-vote>> accessed December 1, 2022

dignity perceived by others. Prisoners deeply feel regard for or denial of human dignity; the battle for recognition is difficult and ongoing.

#### **IV. WHO ARE ALLOWED TO VOTE IN INDIA?**

Under Section 62(5) of the Representation of the People Act, 1951, individuals in lawful custody of the police and those serving a sentence of imprisonment after conviction cannot vote. Undertrial prisoners are also excluded from participating in elections even if their names are on electoral rolls. Only those under preventive detention can cast their vote through postal ballots. India is one of the few countries that has a complete blanket ban on prisoners right to vote.

- **Should undertrials be allowed to vote?**

The existing voting restriction is criticised for making no distinctions based on crime or sentence—that is, convicts are barred from voting regardless of the seriousness of the offences they committed or the length of their sentence. It also makes no distinction between convicted and non-convicted prisoners, nor does it distinguish between those under legal police detention<sup>14</sup>. Furthermore, unless proven guilty by law, a person is deemed innocent. Despite this, an undertrial is not permitted to vote, although a detainee is. The clause is also arbitrary and violates the rights to equality and the right to vote guaranteed by Article 326, making it an unfair restraint.

Undertrials should have the right to vote. This is because many prisoners awaiting trial have spent more time in prison than the real sentence for their supposed crime. Their numbers much exceed those of inmates.

#### **V. PRISONERS RIGHT TO VOTE: TREND ACROSS THE WORLD**

The Irish government granted all of its convicts the right to vote in 2006, without any public outrage, media debate, or judicial ruling. Ireland followed through on its human rights obligations, the right to vote to all people, including convicts. Iran, Israel, and Pakistan all permit their incarcerated members to vote in elections. South Africa, Ghana, Kenya, and Botswana all allow convicts to vote in elections. Some countries like Australia have set a time period of serving in prisons as the ground for elimination from voting. For instance, prisoners who have served a sentence of less than three years or are serving a sentence of periodic detention are allowed to enrol and vote in federal elections, however, if an individual is serving

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<sup>14</sup> Editor I, “Voting Rights of Prisoners” *INSIGHTSIAS* February 13, 2020 <<https://www.insightsonindia.com/2020/02/13/voting-rights-of-prisoners/>> accessed December 18, 2022

more than three years he is barred from enrolling and voting. But he or she can vote once they're out of prison<sup>15</sup>. Similarly, in 2019, the Florida House passed a bill that restored the voting rights of ex-felons on the condition that they first pay all the fees, fines and court costs before they can vote<sup>16</sup>. In Portugal, crimes that are committed against the state or the democracy can lead to prisoners' disfranchisement<sup>17</sup>. On the other hand, people under trial are allowed to vote in UK and New Zealand, however, these countries have taken a negative stance when it comes to prisoners right to vote.

## VI. CONCLUSION

Every individual's vote is a sign of dignity and self-expression. The emphasis of our policies should not be on exclusion, deterrence, or punishment, but on a reformatory system that guides inmates to willingly embrace discipline and self-regulatory behaviour over a period of time. Denial of voting rights will further isolate the person from society, pushing them towards civil death and diminishing their representation in democracy. Democracy requires participation from convicts during the government formation process, as a lot of convicts are the people who have not been proven guilty and are awaiting their judgment, thus convicts will choose representatives who can uphold equality and deliver justice, thus ensuring that people participate in elections for their own betterment rather than due to some political agenda. For far too long, elections in India have turned into political events to suppress voter turnouts. The government needs to restore elections as the fundamental element of democratic freedom and do justice to 'one person, one vote, one value'. Allowing prisoners to vote can help us achieve this goal. We need to ponder over the question: do we desire a deterrent system in which citizens are punished and disregarded, or should we strive for a reformatory system in which offenders are rehabilitated and reintroduced into the community? The opportunity to vote for inmates is a step toward transforming our criminal justice system into a compassionate, reform-oriented institution that adheres to widely recognised human rights norms.

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<sup>15</sup> [https://www.aec.gov.au/Enrolling\\_to\\_vote/Special\\_Category/Prisoners.htm](https://www.aec.gov.au/Enrolling_to_vote/Special_Category/Prisoners.htm)

<sup>16</sup> Stracqualursi V, 'Florida House Passes Bill That Would Require Ex-Felons Pay All Fees before Exercising Voting Rights | CNN Politics' (*CNN*, 25 April 2019) <<https://edition.cnn.com/2019/04/25/politics/florida-amendment-4-voting-rights-felons/index.html>> accessed 2 December 2022

<sup>17</sup> Santos I, 'In Debate on Prisoner Voting Rights, Don't Forget International Commitments' (*The Hill*, 3 May 2019) <<https://thehill.com/opinion/civil-rights/441891-in-debate-on-prisoner-voting-rights-dont-forget-international/>> accessed 2 December 2022