

THE INDIAN POSITION: CONSTITUTIONAL AND LEGAL FRAMEWORK

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Abstract

This chapter examines the constitutional and legal framework that regulates voting rights in India, with a particular emphasis on the prohibition of undertrial prisoners from voting. Universal adult suffrage is guaranteed by Article 326 of the Indian Constitution; however, the right to vote is not acknowledged as a fundamental right. Rather, it regards the right to vote as a statutory entitlement that is primarily regulated by the Representation of the People Act, 1951. According to Section 62(5) of the Act, individuals who are incarcerated, including those who are presumed innocent and are currently under trial, are prohibited from voting.

The chapter critically evaluates constitutional provisions, statutory law, and judicial interpretations to determine whether disenfranchisement is in accordance with the principles of equality under Article 14, personal liberty under Article 21, and democratic participation. It demonstrates the injustice of denying voting rights to prisoners who are still awaiting trial, which is in direct opposition to the principle of "innocent until proven guilty." "It also demonstrates the injustice of granting exceptions for preventive detention."

This chapter demonstrates that Indian courts have augmented the fundamental rights of prisoners in areas such as dignity and a prompt trial by examining case law and comparing it to that of other countries. Nevertheless, they have adhered to the legislature's decision regarding voting rights. Information from Tihar Jail is also included in the chapter, which demonstrates that a significant number of undertrial prisoners are unaware of their voting rights and are more concerned with matters such as bail and trial delays.

The research reveals that the present legal framework results in a democratic deficit by obstructing a significant portion of the population from voting. It also urges a reassessment of existing laws in accordance with international human rights standards and constitutional values.

The constitution and laws that govern voting rights in India demonstrate how democratic ideals and laws interact in complex ways. Although the Indian Constitution recognizes political participation as a fundamental component of representative democracy, the right to vote is not recognized as a fundamental right. Instead, it holds a distinct place in the legal system because it is recognized by the constitution, governed by the law, and limited by the courts.

This chapter examines how Indian constitutional provisions, laws, and court decisions all interact to affect citizens' voting rights, with a focus on those who are in jail pending trial. It examines whether the current system is consistent with constitutional protections for equality, personal freedom, and democratic participation, or whether it exacerbates the democratic deficit by excluding a large group of people who have not been convicted of a crime.

1.1 Constitutional Provisions Governing Voting Rights

The Indian constitutional framework governing the rights to vote is a fine tuned balance between universal suffrage and the administration of the voting procedures. In the Constitution, the principle of universal adult suffrage has been formally approved; it is undoubtedly stated that the right to vote is the kind of right declared by the Constitution, but it is not stated that it is a fundamental right. The structural provisions of the Constitution recognize the elector participation, but the statutory law deals with the details. This exceptional position has allowed Parliament to institute rules and restrictions concerning voter eligibility including those who are in prison. In order to understand the logic behind the denying of voting rights to undertrial prisoners under the current constitutional system, it is necessary to examine the relevant provisions of the Constitution and determine whether this argument can hold up scrutiny with references to the values of equality, personal liberty, and democratic governance.

1.1.1 Constitutional Recognition of Adult Suffrage

By mandating that elections for the House of the People and State Legislative Assemblies be conducted on the basis of universal adult franchise, Article 326 of the Indian Constitution establishes adult suffrage as a fundamental democratic principle. This is accomplished by establishing adult participation in the electoral process.⁸⁴⁰ By guaranteeing that every citizen who is over the age threshold is granted the right to vote, with a few exceptions, the provision demonstrates that the framers were committed to achieving political equality.

In contrast to a great number of other constitutions, the Indian Constitution does not expressly recognize the right to vote as a fundamental right anywhere in the document. Rather, it places voting within the framework of

the architecture of the constitution. The judicial review process and the ability of legislators to amend election laws have both been significantly impacted as a result of this deliberate decision.

1.1.2 Right to Vote: Constitutional Right or Statutory Privilege

The Supreme Court has consistently held that the right to vote is not a fundamental right, but a statutory right conferred by electoral legislation. In *Jyoti Basu v. Debi Ghosal*, the Court observed that the right to vote “is purely a creature of statute” and can be exercised only in accordance with the conditions prescribed by law.⁸⁴¹

This position has been reiterated in subsequent decisions, including *Anukul Chandra Pradhan v. Union of India*, where the Court upheld statutory restrictions on prisoner voting.⁸⁴²

However, while the act of voting may be statutory, the right to be considered for inclusion in the electoral process derives legitimacy from constitutional principles of equality and democracy. Scholars such as M.P. Jain argue that statutory regulation of voting rights must nevertheless conform to constitutional mandates under Articles 14 and 21.⁸⁴³

1.2 Representation of the People Act, 1951

Nevertheless, even though the Indian Constitution dictates that every adult ought to exercise their voting rights, there are certain rules according to which voting rights are defined by the statute law. The Act of the Representation of the People signed in 1951 is a major legislation. This legislation stipulates the right voting people and when this right may be denied. The Act provides the qualification of those who should and those who should not be eligible to run in office and how elections should take place. There are no rights of individuals who are imprisoned in this system. Section

⁸⁴¹ *Jyoti Basu v. Debi Ghosal*, AIR (1982) SC 983.”

⁸⁴² *Anukul Chandra Pradhan v. Union of India*, (1997) 6 SCC 1.”

⁸⁴³ “M.P. Jain, *Indian Constitutional Law* 1123 (LexisNexis, New Delhi, 8th edn., 2022).”

⁸⁴⁰ “The Constitution of India, art. 326.”

62(5) of the act prohibits incarcerated people to vote. This rule however does not have any difference between individuals who are already convicted of a crime and those who are being kept in custody pending the decision of the case. This part of the Federal Constitution is dealing with various significant matters, among them being presumption of innocence, freedom, and equality. In addition, it has a tremendous influence on the way people engage in the process of democracy.

1.2.1 Structure and Purpose of the Act

Several amendments were made in the Representation of the People Act, 1951 to implement the constitutional obligation of Article 326 and making regulations to control elections to State Legislatures and Parliament. The Act stipulates a framework of organizing voter lists, membership prerequisites, prohibition of malpractices and the administration of elections.⁸⁴⁴

Although the right to vote is acknowledged by the Constitution, it is still implemented in the way that is stipulated in the statutory provisions that are presented in this Act. In *Jyoti Basu v. Debi Ghosal*, the Supreme Court ruled that right to vote was not a fundamental right but a statutory right, which was subject to all the provisions of the election law.⁸⁴⁵ This interpretation has provided Parliament with a great deal of leeway to decide how the right can be utilized or restricted, which has resulted in a lot of freedom.

Scholars have noted that India's statutory voting rights distinguish it from many other democracies where voting is considered a constitutional right.⁸⁴⁶

1.2.2 Section 62 and the Right to Vote

Section 62 of the Representation of the People Act pertains to the right to vote within the judicial system of the United States. The initial paragraph of this section states that all

individuals listed on the electoral roll are entitled to vote in that constituency.⁸⁴⁷

All individuals who are incarcerated, regardless of the reason for their confinement, or who are in lawful police custody are not permitted to vote in any election. The only exception to this rule is those who are being held in preventive detention. This clause can be found in Section 62(5) of the document.⁸⁴⁸

Every single person who is being held in custody, regardless of whether they are guilty or innocent, is included in the provision's expansive terminology terms. Therefore, in terms of voting rights, undertrial inmates, who are legally presumed innocent, are treated in a manner that is comparable to that of convicted criminals.

1.2.3 Preventive Detention Exception

The exception that applies to individuals being held in accordance with preventive detention laws is a crucial part of Section 62(5). Prisoners who are being held for pretrial detention can exercise their franchise, but those who have already been convicted or are awaiting trial cannot.

A determination of guilt is not necessary for preventive detention, which has led to criticism of the distinction as being arbitrary. Nevertheless, individuals subjected to preventive detention retain their voting rights. Inmates who are still on trial do not enjoy the same privileges since their guilt or innocence has not been decided. There is reason to be concerned about this inconsistency because it goes against the Constitution, specifically Article 14, which requires a reasonable classification based on intelligible differentia.⁸⁴⁹

Critics have claimed that the provision is more about administrative expediency than constitutional reasoning, and that it violates the principle of equality by failing to distinguish between different types of inmates. The

⁸⁴⁴ "Representation of the People Act, 1951 (No. 43 of 1951)."

⁸⁴⁵ "*Jyoti Basu v. Debi Ghosal*, AIR 1982 SC 983."

⁸⁴⁶ "M.P. Jain, *Indian Constitutional Law* 1125 (LexisNexis, New Delhi, 8th edn., 2022)."

⁸⁴⁷ "Representation of the People Act, 1951 (Act 43 of 1951), s. 62(1)."

⁸⁴⁸ "Representation of the People Act, 1951 (Act 43 of 1951), s. 62(5)."

⁸⁴⁹ "The Constitution of India, art. 14."

provision is a manifestation of administrative convenience, according to other commentators.⁸⁵⁰

1.2.4 Judicial Interpretation of Section 65(5)

Within the context of the case of *Anukul Chandra Pradhan v. Union of India*, the Supreme Court of India conducted an examination of the constitutionality of Section 62(5). The clause was upheld by the Court, which established that the right to vote is a statutory right that is subject to limitations imposed by legislation.⁸⁵¹

The Court contends that it is appropriate to prevent individuals who are detained from casting ballots in order to preserve the integrity of the election and to prevent any administrative problems from occurring. On the other hand, the decision did not consider either a strict proportionality test or a separate evaluation of the circumstances surrounding inmates who were awaiting trial.

The belief that electoral disqualifications fall under the purview of legislative policy has been strengthened as a result of subsequent rulings that have continued to rely on this logic. Even in cases where the Supreme Court expanded voter rights, such as *People's Union for Civil Liberties v. Union of India*, the validity of Section 62(5) was not reconsidered.⁸⁵²

1.2.5 Criticism and Democratic Concerns

Prisoners' disenfranchisement under Section 62(5) has been heavily criticized for the effect it has on democratic representation. There is a disproportionately high number of people awaiting trial in India. Delays in their trials or an inability to obtain bail cause many people to remain in custody for long periods of time.⁸⁵³

The democratic principle of universal adult suffrage would be undermined, and democratic governance would suffer if these people were not allowed to vote. There is cause for concern

regarding the potential for indirect discrimination by the government, given that this restriction disproportionately affects economically and socially disadvantaged groups.

Many democratic provinces and territories use postal ballots or supervised voting, which legal experts say would be a fairer way to let undertrial prisoners cast their votes.⁸⁵⁴

Restricting the voting rights of inmates in India was legislated for in 1951 with the passing of the Representation of the People Act. Even though the right to vote is a constitutionally guaranteed right for all adults, Section 62(5) places a general restriction that does not distinguish between convicted and indicted individuals. Despite serious constitutional concerns about equality, liberty, and democratic participation, this provision has mostly gone unchallenged due to the judiciary's respect to legislative policy. The next section then checks whether the presumption of innocence is compatible with the treatment of undertrial prisoners as individuals denied their rights by looking at their legal status according to the law governing criminal procedure.

1.3 Criminal Procedure and Status of Undertrial Prisoners

The legal position of the undertrial prisoners in India is largely governed by the Code of Criminal Procedure, 1973 and Articles 14, 19 and 21 of the Constitution. The individual who has been accused of a crime and has not been convicted by a court is considered to be an undertrial prisoner. Assumption of innocence is one of the key tenets of criminal law, which means that such individuals have to be treated unlike those who committed any crime. In actual sense, awaiting trial persons are usually restricted as convicted individuals are in terms of exercising their right to vote as mandated by the Section 62(5) of the Representation of the People Act, 1951. This is also a significant concern of fairness, due process, and whether it

⁸⁵⁰ "A.G. Noorani, *Constitutional Questions in India* 214 (Oxford University Press, New Delhi, 2000)."

⁸⁵¹ "*Anukul Chandra Pradhan v. Union of India*, (1997) 6 SCC 1."

⁸⁵² "*People's Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1."

⁸⁵³ "National Crime Records Bureau, *Prison Statistics India* 42 (Government of India, latest edn.)."

⁸⁵⁴ "Alec C. Ewald, *Punishing Disenfranchisement in America* 37 (Cambridge University Press, New York, 2002)."

is constitutional to deny a person their right to vote.

The Supreme Court of India has never indicated otherwise stating that the fact that one is in prison does not deprive them of their fundamental rights and that prisoners retained all their rights except what is obviously restricted by law. The judicial interpretation of the criminal procedure provisions has played a significant role in the establishment of rights of the under-trial prisoners and the need to provide humane and rational treatment to them.

1.3.1 Legal Status of Undertrial Prisoners Under Criminal Procedure

According to the 1973 Code of Criminal Procedure, a person may be detained during an investigation, inquiry, or trial if the court deems it necessary. Sections 167 and 309 of the Code govern remand and custody of individuals during legal proceedings.⁸⁵⁵

According to Section 167, police can detain someone for a limited period of time while investigating. Section 309 allows the court to keep the accused person in jail while the trial is ongoing. These rules are more about following the process than finding fault. The presumption of innocence protects a prisoner awaiting trial.

In *Hussainara Khatoon v. State of Bihar*, the Supreme Court discussed how terrible it was for many prisoners who were still being held while awaiting trial.⁸⁵⁶ The Court stated that Article 21 of the Constitution protects the right to a quick trial. The Court ruled that holding someone without a trial within a reasonable time is an infringement on personal liberty and the rule of law.

In *A.R. Antulay v. R.S. Nayak*, the Supreme Court reiterated that everyone has the right to a speedy trial at all stages of a criminal case, and that continuing to be detained without a trial is

unconstitutional if there is an unreasonable delay.⁸⁵⁷

1.3.2 Presumption of Innocence and Constitutional Protection

Indian law and international human rights agreements both acknowledge the significance of the presumption of innocence in criminal justice. According to Article 21 of the Constitution, no individual may be deprived of their life or freedom without adhering to the appropriate legal procedures.⁸⁵⁸ These procedures must be fair, just, and logical in light of the *Maneka Gandhi v. Union of India* decision.⁸⁵⁹

In the case of *State of Maharashtra v. Prabhakar Pandurang*, the Supreme Court ruled that prisoners are entitled to rights and that laws must authorize restrictions on their freedom. The Court rejected the notion that being detained entails the forfeiture of all civil rights.⁸⁶⁰

The Court ruled in *Sunil Batra v. Delhi Administration (I)* and *Sunil Batra v. Delhi Administration (II)* that prisoners are entitled to humane treatment and that prison officials are required to adhere to the Constitution. Justice Krishna Iyer maintains that fundamental rights are not terminated upon imprisonment.⁸⁶¹

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Court declared that the right to life encompasses the right to live with dignity, even while in custody.⁸⁶²

These decisions establish that individuals who are incarcerated pending their trial have not yet been convicted, and therefore, they cannot be considered to have forfeited all of their civil rights.

⁸⁵⁵ “Code of Criminal Procedure, 1973 (Act 2 of 1974), ss. 167, 309.”

⁸⁵⁶ “*Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.”

⁸⁵⁷ “*A.R. Antulay v. R.S. Nayak*, (1992) 1 SCC 225.”

⁸⁵⁸ “The Constitution of India, art. 21.”

⁸⁵⁹ “*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.”

⁸⁶⁰ “*State of Maharashtra v. Prabhakar Pandurang*, AIR 1966 SC 424.”

⁸⁶¹ “*Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494; *Sunil Batra v. Delhi Administration*, (1980) 3 SCC 488.”

⁸⁶² “*Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746.”

1.3.3 Problem of Prolonged Undertrial Detention

A major issue in India is that many people who are awaiting trial are held in jail for extended periods of time due to the time it takes to conduct investigations and trials. According to reports from the National Crime Records Bureau, the majority of prisoners are awaiting trial.⁸⁶³

In *Kadra Pahadiya v. State of Bihar*, the Supreme Court ruled that imprisoning accused people for years without a trial is illegal and violates Article 21.⁸⁶⁴

The Supreme Court Legal Aid Committee v. Union of India case stated that prisoners who had been imprisoned for more than the maximum sentence for their crime should be released.⁸⁶⁵

In *Bhim Singh v. Union of India*, the Court emphasized the importance of reviewing cases involving undertrial prisoners and ensuring that detention is not used as a form of punishment.⁸⁶⁶

These rulings acknowledge that pretrial detention is merely a procedural necessity not a punitive one and requires a great deal of care regarding any excessive limitations that may be placed on detainees.

1.3.4 Disenfranchisement of Undertrials and Conflict with Criminal Justice Principles

The Act of 1951, Section 62(5) of the Representation of the People Act, says that a person awaiting trial should not be allowed to vote, even though he is believed to have been innocent. This disenfranchisement is automatic and does not depend on the crime committed or the length of the time a person was imprisoned.⁸⁶⁷

According to the Supreme Court in the case of *Anukul Chandra Pradhan v. Union of India* the

rule was within the limits of the law but they have not specifically addressed the difference between those who are convicted and those who are on trial.⁸⁶⁸ There are also those people who disagree with the move arguing that it is too much of an operational convenience and lacks the evaluation of the equality of the restriction.

In scholarly literature, there have been criticisms of disenfranchisement of untrial prisoners based on the contradiction that an accused individual is innocent until proven guilty.⁸⁶⁹ A study conducted in different countries has shown that some democratic nations allow prisoners to vote through mail or on strict probation pending trial.⁸⁷⁰

This view is reinforced by the international human rights standards. Article 25 of the International Covenant on civil and political rights provides that each citizen has the right to vote in real elections and take part in governmental activities.⁸⁷¹ UN human rights committee has insisted that restrictions on right to vote should be reasonable and fair. The fact that under-trial prisoners in India are not able to exercise their right to vote is a great constitutional problem which needs to be reconsidered.⁸⁷²

Criminal justice in India acknowledges the fact that persons awaiting trial incarceration are considered innocent. They should receive treatment based on the assumption of innocence and the right to personal liberty as provided in article 21. In the rulings of the court, it has been confirmed severally that prisoners have basic rights and that their imprisonment should be fair, reasonable, and appropriate. Representation of the People Act, 1951, section 62(5) states that persons who are in a court of trial should not have the right to vote. This is against the criminal justice principles and

⁸⁶³ "National Crime Records Bureau, Prison Statistics India 45 (Government of India, latest edn.)."

⁸⁶⁴ "*Kadra Pahadiya v. State of Bihar*, (1981) 3 SCC 671."

⁸⁶⁵ "*Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731."

⁸⁶⁶ "*Bhim Singh v. Union of India*, (2015) 13 SCC 605."

⁸⁶⁷ "Representation of the People Act, 1951 (Act 43 of 1951), s. 62(5)."

⁸⁶⁸ "*Anukul Chandra Pradhan v. Union of India*, (1997) 6 SCC 1."

⁸⁶⁹ "M.P. Jain, *Indian Constitutional Law* 1130 (LexisNexis, New Delhi, 8th edn., 2022)."

⁸⁷⁰ "Alec C. Ewald, *Punishing Disenfranchisement in America* 52 (Cambridge University Press, New York, 2002)."

⁸⁷¹ "International Covenant on Civil and Political Rights, 1966, art. 25."

⁸⁷² "UN Human Rights Committee, General Comment No. 25 (1996)."

electoral laws. The latter part expounds on the way in which the court of law has dealt with these concerns by reviewing constitutional cases and precedents.

1.3.5 Field Interaction with Undertrial Prisoners at Tihar Jail

In this study, I had a short interview with inmates at Tihar Jail by the consent of the jail administration. This visit aimed at establishing how much the undertrial inmates were aware of their voting rights, and their perceptions of the limitations placed on them by the election law. The jail administrator and two inmates awaiting trial were the people I communicated with during my visit. The participants in this research are referred to as Undertrial Prisoners A and B. To accommodate the response, the questions in this study were explained in simple words.

As per the Indian Penal Code of 1860, 28-year-old Undertrial Prisoner A has been imprisoned in a petty offense of an altercation on the street, which is almost eight months. Undertrial Prisoner B is about 35 years old and has been locked up with the charge of petty theft during a year. Their cases were never heard in the court and both were held in custody awaiting trial.

I started by asking the question of whether they were aware that imprisoned persons cannot vote in elections. Undertrial A Prisoner stated that he noticed the rule but had no idea about the specifics of it.

Prisoner B, who is currently under trial claimed that he had never even thought of voting, being in prison, and was completely unaware that people who are under trial cannot vote.

I then asked them, did voting mean something to them and had they ever voted before they were incarcerated.

Prisoner A told me that he had already voted in a local election, but he did not think it was that consequential.

Prisoner B claimed that he did not vote a lot and elections did not have a strong impact on his life.

I then asked them whether they felt that it was unfair that those who are yet to be tried cannot vote either.

Prisoner A claimed that getting bail and getting back home was more important to him than voting in the present.

Moreover, the Prisoner B stated that the delayed action of the court was an even greater problem to him than the voting rights, because his case had been pending some time.

I asked them whether they blamed the government or the system to cause the delay in their case.

Prisoner A claimed that the court always gives him dates, but nothing happens, so he comes to a conclusion that the system is extremely slow.

Prisoner B also claimed that the impossibility to have a good lawyer aggravates the position of the poor. They are therefore languishing in jail over a very long period before the case is resolved.

I asked them as to whether they would want to vote should the law permit them to vote whilst in prison.

Prisoner A stated that he would vote in case the facility is created, but now his priority is to ensure that he gets out of prison.

Prisoner B stated that the right to vote was granted but when one is in prison his or her own interests take precedence over the electoral issues.

In the visit, I had a short conversation with the jail administrator on whether the inmates were aware of their voting rights. According to the officer, the majority of inmates awaiting trial put their bail, family and court appearances before their political rights. He claims that not many inmates seek information about the voting process, and a significant portion of prisoners

do not know that Election Act prohibits undertrial prisoners to engage in elections.

As it was discovered in this discussion, despite denying voting rights to the untrial inmates being a significant constitutional and democratic issue, most people are unaware of the value of the right. Voting is a secondary issue when they are faced with their urgent problems, including separation in their families, economic problems, and delays in court. This is also an indicator of a larger issue in Indian democracy whereby, a significant number of the people including the non-prisoners do not have a thorough grasp of the significance of the right to vote. As a result, despite the fact that it goes against the principle of universal adult suffrage, the issue of disenfranchising of undertrial prisoners receives little attention.

1.4 Judicial Interpretation and Case Law Analysis

The way judges interpret the law has been critical in determining what basic rights prisoners and people detained without trial in India have. The Constitution guarantees equal rights, liberty, and participation in democratic government. However, laws such as Section 62(5) of the Representation of the People Act, 1951, make it more difficult for people in jail to vote. The Indian Supreme Court has repeatedly stated that people who go to jail do not lose all of their basic rights. However, the Court has upheld some legal limits because they benefit public safety, make things easier for the government, and ensure fair elections. This section examines significant court cases involving prisoners' rights, being detained without trial, and being unable to vote in elections. This is done to help you understand how the Constitution feels about prisoners who are still being tried but are unable to vote.

1.4.1 Prisoner's Fundamental Rights under the Constitution

A.K. Gopalan v. State of Madras showed that the Supreme Court's early stance on individual liberty was constrained; in that case, the Court

held that restrictions on liberty could be justified so long as they followed established legal procedures.⁸⁷³ Decisions made later on greatly changed this viewpoint.

Any procedure that infringes upon an individual's liberty must be equitable, just, and rational, according to the Supreme Court's ruling in *Maneka Gandhi v. Union of India*, citing Article 21. In recognizing the rights of the incarcerated and those detained without trial, this decision was the first step.⁸⁷⁴

A prisoner's fundamental rights, with the exception of those specifically limited by law, are upheld by the Court in the case of *State of Maharashtra v. Prabhakar Pandurang*.⁸⁷⁵ The Supreme Court ruled in the case of *Sunil Batra v. Delhi Administration (I)* that basic human rights are not infringed upon by prison walls. The idea was further solidified by this.⁸⁷⁶

The Supreme Court's decision in *Sunil Batra v. Delhi Administration (II)* upheld the constitutional right of inmates to humane treatment.⁸⁷⁷

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Supreme Court ruled that everyone has the right to live a dignified life, regardless of whether they are in custody or not.⁸⁷⁸

These decisions make it very clear that all prisoners, even those waiting for trial, have constitutional rights.

1.4.2 Right to Speedy Trial and Protection of Undertrial Prisoners

The Supreme Court has consistently expressed apprehension about the significant number of individuals who are incarcerated for extended periods without trial.

The Court in *Hussainara Khatoon v. State of Bihar* argued that the right to a speedy trial is

⁸⁷³ "A.K. Gopalan v. State of Madras, AIR 1950 SC 27."

⁸⁷⁴ "Maneka Gandhi v. Union of India, AIR 1978 SC 597."

⁸⁷⁵ "State of Maharashtra v. Prabhakar Pandurang, AIR 1966 SC 424."

⁸⁷⁶ "Sunil Batra v. Delhi Administration, (1978) 4 SCC 494."

⁸⁷⁷ "Sunil Batra v. Delhi Administration, (1980) 3 SCC 488."

⁸⁷⁸ "Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746."

encompassed by Article 21 and that the liberty of individuals awaiting trial is infringed upon by their prolonged incarceration.⁸⁷⁹

The Court in *Kadra Pahadiya v. State of Bihar* condemned the practice of extended detention and directed the State to ensure the expeditious conduct of trials.⁸⁸⁰

The Supreme Court *Legal Aid Committee v. Union of India* case mandated the release of individuals who had been incarcerated for alleged offenses beyond the maximum sentence.⁸⁸¹

The Supreme Court in *Bhim Singh v. Union of India* mandated that all states conduct a review of the cases of incarcerated individuals and implement measures to prevent unlawful detention.⁸⁸²

These rulings suggest that pretrial detention is not punitive and should not violate the rights of individuals without justification.

1.4.3 Judicial Approach to Voting Rights and Electoral Disqualification

While the Supreme Court has consistently protected other civil liberties, the right to vote has not always been one of them. Voting is a privilege, not a fundamental right, according to the Supreme Court's ruling in *Jyoti Basu v. Debi Ghosal*. Because of this interpretation, parliament now has significant control over how citizens exercise their franchise.⁸⁸³

In the case of *Anukul Chandra Pradhan v. Union of India*, it was directly argued that Part 62(5) of the Representation of the People Act, 1951 violated the constitution.⁸⁸⁴ The highest court in the land has affirmed the ban, ruling that inmates constitute a distinct category that must not be granted voting rights in the interest of maintaining order in the legislative and electoral processes.

However, the verdict failed to specify how the guilty inmates differed from the ones who were still awaiting trial. Treating individuals who are still awaiting trial as if they were prisoners violates the principle that everyone is innocent until proven guilty, according to some.⁸⁸⁵

According to the Supreme Court's ruling in *People's Union for Civil Liberties v. Union of India*, voting is crucial.⁸⁸⁶ Additionally, it instructed them to strengthen democracy by adding the NOTA option. Although the case did facilitate voting, inmates are still unable to reach the voting age of 18.

A statute that allowed lawmakers convicted of crimes to remain in office was overturned by the Supreme Court in the case of *Lily Thomas v. Union of India*.⁸⁸⁷ Maintaining clean streets is obviously important. This decision highlights the need for election laws to accommodate voting while simultaneously ensuring system integrity.

1.4.4 International Judicial Perspective

Other jurisdictions that operate judicial systems have shown more leniency when it comes to voting rights of prisoners.

In the case *Hirst v. United Kingdom (No. 2)*, the European Court of Human Rights held a total ban imposed on the voting rights of the prisoners, violating the right to free elections.⁸⁸⁸

In the case of *Sauvé v. Canada (Chief Electoral Officer)*, the Supreme Court of Canada found that the limitation of the right to vote to the prisoners has violated the equality and democratic principles.⁸⁸⁹

In the case of *Richardson v. Ramirez*, the United States Supreme Court upheld certain voting restrictions on the convicted felons.⁸⁹⁰ However, there has been a lot of discussion on the choice of writing of academics.

⁸⁷⁹ “*Hussainara Khatoun v. State of Bihar*, (1980) 1 SCC 81.”

⁸⁸⁰ “*Kadra Pahadiya v. State of Bihar*, (1981) 3 SCC 671.”

⁸⁸¹ “*Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731.”

⁸⁸² “*Bhim Singh v. Union of India*, (2015) 13 SCC 605.”

⁸⁸³ “*Jyoti Basu v. Debi Ghosal*, AIR 1982 SC 983.”

⁸⁸⁴ “*Anukul Chandra Pradhan v. Union of India*, (1997) 6 SCC 1.”

⁸⁸⁵ “M.P. Jain, *Indian Constitutional Law* 1132 (LexisNexis, New Delhi, 8th edn., 2022).”

⁸⁸⁶ “*People's Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1.”

⁸⁸⁷ “*Lily Thomas v. Union of India*, (2013) 7 SCC 653.”

⁸⁸⁸ “*Hirst v. United Kingdom (No. 2)*, (2005) 42 EHRR 41.”

⁸⁸⁹ “*Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 SCR 519.”

⁸⁹⁰ “*Richardson v. Ramirez*, 418 U.S. 24 (1974).”

There are also certain restrictions that are supported by the international human rights laws. The right to vote is a right of every citizen and Articles 25 of the International Covenant on Civil and Political Rights stipulates that citizens have the right to vote. The UN Human Rights Committee believes that the restrictions should be reasonable and fair.⁸⁹¹

These relative judgements point to the fact that a blanket disenfranchisement of pretrial prisoners might not be in accordance to the modern day democratic ideals.

The Indian judicial interpretation acknowledges that there exist basic rights of a prisoner and an undertrial detainee and that personal liberty cannot be encroached arbitrarily. The Supreme Court has broadened the meaning of Article 21 by highlighting the need to treat the imprisoned humanely, grant quick trials and protection against the Constitution against those who are incarcerated. However, in relation to the voting rights the Court has been more accommodative to the lawmaking policy and has reiterated the disqualification under Section 62(5) of the Representation of the People Act, 1951. The inability to draw the line between convicted and pretrial prisoners results in a constitutional clash between the concept of criminal justice and the electoral law. This strain raises much apprehension as to equality, democratic involvement, and real connotations of universal adult suffrage in India.

1.5 Constitutional Concerns and Democratic Deficit

Voting rights limitation of prisoners, particularly the ones awaiting trial, has serious constitutional concerns as far as Indian democracy is concerned. The Representation of the people Act, 1951, limits the incarcerated people but the limits should be evaluated against the basic concepts of universal adult suffrage, freedom and equality as emphasized in the constitution of India. The introduction of undertrial prisoners into the electoral process

provokes the contradiction between constitutional values and the law statutes since the undertrial prisoners are the ones who are supposed to be innocent unless proven guilty. This part evaluates the constitutional implications of the disenfranchisement of prisoners and evaluates the extent of the legal system damaging the democratic principle.

1.5.1 Conflict with the Principle of Equality under Article 14

Article 14 of the Constitution ensures that the law protects all individuals equally and that everyone is equal in the eyes of the law. Legislation must establish classifications that are logically connected to the intended objective and are based on clear distinctions.⁸⁹²

According to Section 62(5) of the Representation of the People Act, 1951, it is unlawful for any individual in custody to vote, with the exception of those who are being held under preventive detention laws.⁸⁹³ This classification has been criticized as arbitrary due to the fact that it treats undertrial prisoners, who are presumed innocent, in the same manner as convicted criminals, while allowing individuals who are being held for preventive reasons to vote.

The Supreme Court in *Maneka Gandhi v. Union of India* declared that equality is the antithesis of arbitrariness and that laws that impact personal freedom must be equitable.⁸⁹⁴ The Court also observed in *E.P. Royappa v. State of Tamil Nadu* that equality is violated when state action is arbitrary.⁸⁹⁵

Some scholars have argued that the removal of the right to vote from all undertrial prisoners fails the test of reasonable classification and raises serious constitutional concerns, based on these ideas.⁸⁹⁶

⁸⁹² “The Constitution of India, art. 14.”

⁸⁹³ “Representation of the People Act, 1951 (Act 43 of 1951), s. 62(5).”

⁸⁹⁴ “*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.”

⁸⁹⁵ “*E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.”

⁸⁹⁶ “M.P. Jain, *Indian Constitutional Law* 1135 (LexisNexis, New Delhi, 8th edn., 2022).”

⁸⁹¹ “International Covenant on Civil and Political Rights, 1966, art. 25; UN Human Rights Committee, General Comment No. 25 (1996).”

1.5.2 Impact on Personal Liberty under Article 21

Article 21 delineates the safeguarding of life and personal liberty, asserting that any restrictions must adhere to a fair, just, and reasonable procedure.⁸⁹⁷ Subsequent to the Maneka Gandhi case, Article 21 has been interpreted expansively to include various rights fundamental to living a dignified life.

In *Sunil Batra v. Delhi Administration*, the Supreme Court affirmed that prisoners retain fundamental rights and that incarceration does not equate to total deprivation of freedom.⁸⁹⁸ In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Supreme Court affirmed that the right to life includes the right to live with dignity, even in custody.⁸⁹⁹

Undertrial prisoners, who have not yet been convicted, are prohibited from voting, which may be construed as an extraneous limitation on their liberty unrelated to the grounds for their detention.

The Supreme Court's ruling in *Hussainara Khatoon v. State of Bihar* unequivocally established that individuals undergoing trial cannot have their rights infringed upon without just cause.⁹⁰⁰ Given the process by which this decision was reached, constitutional rights ought not to be curtailed beyond what is strictly essential.

3.5.3 Universal Adult Suffrage and Democratic Participation

Article 326 of the Constitution establishes the principle of universal adult suffrage. This principle asserts that all citizens who are of voting age are eligible to vote, unless the law explicitly prohibits them from doing so.⁹⁰¹ This article asserts that laws have the capacity to impose restrictions on objects; however, these restrictions must be consistent with democratic principles.

The Supreme Court of India declared in the case of *People's Union for Civil Liberties v. Union of India* that the right to vote is a fundamental element of democracy, despite the fact that it is only legally protected.⁹⁰² The Supreme Court considers elections that are both free and fair to be a fundamental element of the Constitution.

The concept of universal participation is undermined by the fact that a substantial number of prisoners who are currently undergoing trial are unable to vote. The National Crime Records Bureau reports that the majority of individuals who are incarcerated in Indian prisons are there prior to the commencement of their trials.⁹⁰³ A substantial number of them remain incarcerated, not due to the fact that they committed a particularly severe offense, but rather because they are unable to pay bail, are impoverished, or have had their trial postponed.

The denial of the right to vote to these individuals, according to the opinions of academics, exacerbates the challenge for underrepresented groups to have their voices heard in political discourse, thereby generating an imbalance in the democratic process.⁹⁰⁴

1.5.4 International Human Rights Perspective

Voting is a universal human right that is accorded by international human right law. Article 25 of the International Covenant on Civil and Political Rights is that all citizens have the right to engage in real elections whereby they are held on a regular basis.⁹⁰⁵

According to the UN Human Rights Committee, any form of restriction of voting rights has to be fair and reasonable, but not random.⁹⁰⁶ Detractors believe that the all-inclusive disenfranchisement of prisoners goes against democratic ideals.

⁸⁹⁷ "The Constitution of India, art. 21."

⁸⁹⁸ "*Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494."

⁸⁹⁹ "*Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746."

⁹⁰⁰ "*Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81."

⁹⁰¹ "The Constitution of India, art. 326."

⁹⁰² "*People's Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1."

⁹⁰³ "National Crime Records Bureau, *Prison Statistics India 52* (Government of India, latest edn.)."

⁹⁰⁴ "Alec C. Ewald, *Punishing Disenfranchisement in America 61* (Cambridge University Press, New York, 2002)."

⁹⁰⁵ "International Covenant on Civil and Political Rights, 1966, art. 25."

⁹⁰⁶ "UN Human Rights Committee, *General Comment No. 25* (1996)."

In the case of *Hirst v. United Kingdom (No. 2)*, the European Court of Human Rights held that a blanket ban on prisoners voting would violate the right to free election.⁹⁰⁷

In *Sauvec v. Canada (Chief Electoral Officer)*, the Supreme Court of Canada concluded that disenfranchisement of prisoners is unconstitutional to the extent that the said practice cannot be reduced to the principle of punishment.⁹⁰⁸

As comparative research goes on to illustrate, a large number of democracies permit pretrial detainees to vote because it is now understood that detention prior to conviction does not merit the denial of civil rights.⁹⁰⁹ These international incidences also prove that India should review its position.

1.5.5 Democratic Deficit and Need for Freedom

The lack of public awareness, judicial deference, and statutory disqualification are the primary factors that prevent a significant number of people from exercising their right to vote. As a consequence, this leads to a democratic deficit, in which the idea of universal adult suffrage is present in theory but is not fully implemented in practice.

The validity of Section 62(5) was upheld by the Supreme Court of India in the case of *Anukul Chandra Pradhan v. Union of India*; however, the ruling did not address the situation of prisoners who are awaiting trial in its entirety.⁹¹⁰ Since then, the issue has not been revisited in the context of new approaches to understanding Article 14 and Article 21. squared Since then, the issue has not been revisited.

As per the recommendations of legal experts and policy reports, inmates who are still awaiting trial should be allowed to vote in person, through the mail, or through a proxy, provided that they are under supervision.⁹¹¹

These measures would achieve a balance between the preservation of constitutional values and the facilitation of government operations, which would be a win-win situation. Modifications in this area would make democratic participation easier and bring Indian law in line with contemporary human rights standards.

The denial of voting rights to individuals who are being held in pretrial detention raises significant constitutional concerns with regard to democratic participation, individual liberty, and equality. Statutory restrictions on voting rights are permissible; however, these restrictions must be in accordance with the principles of proportionality and equity outlined in the Constitution. In spite of the fact that judicial decisions have broadened the scope of prisoners' rights in a variety of areas, the denial of voting rights continues to not be challenged in the majority of cases. The fact that prisoners who are still awaiting trial are not allowed to participate in the electoral process exacerbates a democratic deficit and highlights the necessity of reevaluating the existing legal framework in accordance with norms that are established by international organizations and constitutional principles.

Conclusion

A significant conflict between democratic principles and legal constraints is revealed by an analysis of the constitutional and legal framework that governs voting rights in India. The Constitution guarantees universal adult suffrage as a fundamental principle; however, the designation of the right to vote as a statutory right has enabled Parliament to impose significant restrictions, most notably through Section 62(5) of the Representation of the People Act, 1951.

Serious constitutional concerns are raised by the blanket disenfranchisement of undertrial prisoners. It violates the principle of equality established in Article 14 by failing to distinguish between convicted prisoners and those who are presumed innocent. The classification's

⁹⁰⁷ *Hirst v. United Kingdom (No. 2)*, (2005) 42 EHRR 41.”

⁹⁰⁸ *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 SCR 519.”

⁹⁰⁹ “Christopher Uggen et al., “State-Level Estimates of Felon Disenfranchisement,” 24 Sentencing Project Report 3 (2022).”

⁹¹⁰ *Anukul Chandra Pradhan v. Union of India*, (1997) 6 SCC 1.”

⁹¹¹ “Law Commission of India, “Report on Electoral Reforms” 112 (Government of India, 2015).”

arbitrariness is demonstrated by the exception made for individuals in preventive detention. Additionally, the restriction violates Article 21's protection of personal freedom by imposing a limit on an issue that is not related to the purpose of detention, which is purely procedural and not punitive.

In India, judges have consistently recognized the right of prisoners to a compassionate treatment, dignity, and a prompt trial, thereby expanding their rights. On the other hand, the courts have adopted a more lenient approach to voting rights, maintaining legislative restrictions without conducting a comprehensive constitutional and proportionality analysis. This results in an inconsistency in the safeguarding of fundamental rights.

The results also suggest a more significant issue with democracy. The exclusion of undertrial prisoners, who constitute a substantial portion of the prison population, results in a democratic deficit, particularly for groups that are already disadvantaged or impoverished. The field interaction at Tihar Jail demonstrates that individuals are preoccupied with their own concerns and are not well-informed about voting rights. This exacerbates the issue.

Some democratic systems permit individuals who are incarcerated to vote through methods such as supervised voting or postal ballots, as evidenced by comparative international practices. These models demonstrate that administrative issues can be resolved without compromising democratic participation.

In summary, the government is permitted to regulate voting rights; however, these regulations must adhere to the constitutional principles of equality, freedom, and fairness. This standard is not met by the current framework, necessitating a reevaluation. The implementation of practical voting mechanisms for undertrial detainees and the reform of Section 62(5) to differentiate between categories of prisoners would improve democratic inclusivity and ensure that Indian

law is consistent with international human rights standards and constitutional morality.

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