

VOTING RIGHTS OF PRISONERS IN INDIA : AN ANALYSIS

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Introduction

In 2019, three law students, Praveen Kumar Chaudhary, Atul Kumar Dubey and Prerna Singh filed a Public Interest Litigation in the Supreme Court seeking voting rights for the incarcerated in the country^[1]. Essentially, the constitutionality of Section 62(5) of the Representation of Peoples Act, 1951^[2] was challenged. This section reads:

“No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police: Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.”

The election commission opposed this plea, stating that the right to vote is a statutory right and subject to reasonable restrictions prescribed in the said act. However, the students submitted that such a restriction goes against the spirit and soul of the constitution and denies the right to equality to its citizens.

A Theoretical Understanding

Before exploring the laws and precedents questioned in the plea, it is essential to examine this from a theoretical perspective. The fulcrum that centres this debate is the theory of punishment. The concept of depriving an individual of their rights (whether those of movement or free speech or even life) as a consequence of their conviction, is fundamentally based on the theory of retribution. The argument against the voting rights of prisoners finds its backing in the social contract theory. This theory explains that every individual binds themselves with a moral and political obligation to act as per the agreement they have entered into with society. Because the law lays down a large chunk of the social contract of society, when a person breaks the law, they have voluntarily chosen to deviate from the rules, i.e. break the social contract. Therefore, according to the theory of retribution, they now shouldn't be given the rights that a law-abiding citizen would enjoy. However, the theory of punishment that focuses on rehabilitation would hold the reformation of the individual first and declare unnecessary any deprivation of the convict's rights. This theory has held up better than the former in the “betterment of the society”

this is reforming individuals, deterring future crime and keeping the society safe.

Often it is also argued that the enfranchisement of prisoners will lead to criminalization of the electoral process, that it will contaminate the democracy.

International Law on Prisoner's Rights

1. Article 21 of the Universal Declaration of Human Rights^[3] reads:

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

India is a signatory to the Universal Declaration of Human Rights.

- Article 25 of the International Covenant on Civil and Political Rights provides for the right to vote. Article 2 of the same states that a distinction on the basis of race, colour, sex, language, religion,, political or other opinion, national or social origin, property, birth, or other status shall not be made. This "other status" may include the status of being a prisoner, so under article 2, they should get the same voting rights as the rest of the citizens.

India is a signatory to the ICCPR as well.

- Article 61 of The United Nations' Standard Minimum Rules for Treatment of Prisoners (also known as the Nelson Mandela Rules)

Article 51(c) of the Constitution of India is a DPSP which states that the state shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another. The DPSPs are fundamental in the governance of the country.

Indian Law on Prisoner's Rights

The Supreme Court of India, in *DBM Patnaik vs State of AP*^[4] and *Sunil Batra v. Delhi Administration*^[5] has opined that a prisoner remains a natural and legal person whose rights cannot be snatched away without reason. In *State of Maharashtra v. Prabhakar Pandurang Sanzgir*^[6], the SC stated that every prisoner retains all the rights that are enjoyed by free citizens except the ones which are necessarily lost as an incident of confinement. The restriction on the right to vote in no way is "incident to confinement".

Besides, although the right to vote is not a fundamental right, in *PUCL v. Union of Indian*^[7]

the SC recognized the difference between the right to vote and the freedom of voting, and held that the freedom of voting falls under 'expression' under article 19 of the constitution. In *State of Maharashtra v. Prabhakar Pandurang Sanzgir*, the Supreme Court stated that the mere fact that someone is detained cannot deprive one of his fundamental rights

The Supreme Court of India in the case of *Delhi High Court on Praveen Kumar Chaudhary v. Election Commission & Ors.*^[8] held that the right to vote is a common law right that is given by a statute and is neither a fundamental nor a constitutional right and is thus subjected to some of the restrictions imposed under section 62(5) of the Representation of Peoples Act, 1951.^[9]

The Supreme Court in the case of *Anukul Chandra Pradhan v. Union of India*^[10] held up the rule of civil death and said that keeping prisoners from exercising their right to vote is to prevent criminalization of politics.

Analysis

The Indian courts wrongly throw all prisoners under an umbrella and assume no distinction between them. . According to the [Prison Statistics India 2015 report](#) by the National Crime Records Bureau (NCRB), 67% of the people in Indian jails are under-trials; they haven't been given the opportunity to be heard yet, but are deprived of their rights to the same degree as that of proven convicts. When 'innocent until proven guilty' is a tenet of the criminal justice system, it is unfair for under-trials to be subjected to the same restrictions as are imposed on convicts. Criminalization of politics is a poor judgment to build on because criminalization of politics will occur when the representatives are themselves free of convictions, far from the case in this country. Enfranchisement of prisoners would not lead to criminalization of politics, rather a more inclusive and healthy democracy that does not restrict exercise of rights without reasonable cause.

Here, it also helps to see global trends in enfranchisement of prisoners. Baltic states, Norway, Finland, Denmark, Spain, Ireland and some others have allowed their prisoners the right to vote, no matter the gravity of the crime. Some countries like Netherlands, Romania, Slovakia, Luxembourg, Cyprus, Germany and Iceland have found a middle course in the debate and made a distinction between prisoners on the basis of their sentence. Countries like Australia have a sentence limit for prisoners that will be enfranchised. In Australia, anyone with a sentence less than 5 years is allowed to vote.

Conclusion

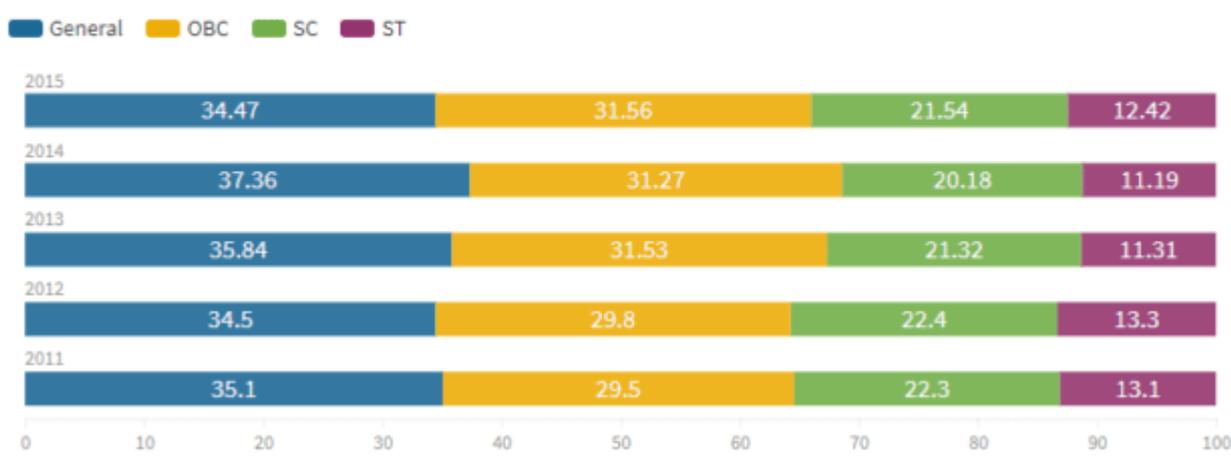
Apart from the arguments for and against enfranchisement of prisoners that find their

grounds in legal theory, precedents, and constitutional safeguards, the working of the criminal justice system, or its consequence, should not be ignored. The criminal justice system doesn't work without its flaws and shortcomings, and this is clear when the socio-economic background of prisoners is analyzed. The following data^[11] was presented in India Today, based on findings on the caste profile of prisoners published by the NCRB, in 2016.

Caste profile of undertrial prisoners in India

(Values in percentage)

More than 65 per cent of undertrial prisoners in India belong to the Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Castes (OBC).



Not only caste hierarchies, but differences in education levels, religions, economic status, etc. also seep into the criminal justice system and contribute to its fallacies.

In the light of such observations, when it's clear that some people get legal aid more easily than others and historically oppressed communities are still disadvantaged when it comes to justice delivery, the additional disenfranchisement only pushes them further down in the ground. The reality of the criminal justice system today is that it not only reinforces the socio-economic hierarchies of the country into a space which should be free from such biases and "justice delivery" should be the main objective, but it also worsens the divide by ridding them of their right to expression of political choice.

The disenfranchisement of prisoners, therefore, must be questioned by taking into consideration not only the legal aspect of such a rule, but also the kind of oppressive social hierarchies it institutionalized. It should never be observed in isolation from the social conditions of minority groups in India.

References

- [1] ANI, *SC agrees to hear PIL backing prisoner's right to vote*, BS, (April 17, 2019), https://www.business-standard.com/article/news-ani/sc-agrees-to-hear-pil-backing-prisoner-s-right-to-vote-119041701000_1.html.
- [2] Representation of People Act, Number 43 of 1951.
- [3] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).
- [4] D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh (1975) 3 SCC 185.
- [5] Sunil Batra v. Delhi Administration (1978) 4 SCC 494.
- [6] State of Maharashtra v. Prabhakar Pandurang Sangzgiri (1966), SC 424.
- [7] People's Union of Civil Liberties (PUCL) v. Union of India, (2003) 2 S.C.R. 1136.
- [8] Praveen Kumar Chaudhary v. Election Commission & Ors., (2018), W.P.(C) 2336/2019.
- [9] *supra*, note 2.
- [10] Anukul Chandra Pradhan v. Union Of India & Ors, (1997), SC 2814.
- [11] Mukesh Rawat, *Poor, young and illiterate: Why most Indian prisoners fight long lonely battles for justice*, INDIA TODAY, (November 15, 2019), <https://www.indiatoday.in/india/story/undertrial-prisoners-indian-jails-ncrb-report-prison-statistics-supreme-court-1618588-2019-11-15>.

