

A Comparative Analysis Of Prisoner's Disenfranchisement In India And International Jurisdictions: A Critical Study

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Abstract

The fundamental pillar of a flourishing democracy is commonly recognized by way of the right to vote. It is a system by which individuals select representatives to advocate for their best interests. In this study, the authors examine the current global legal provisions of prisoners' voting rights within the framework of India. Suffrage was one of the major political issues that drove a revolt. Through laws, numerous Countries worldwide, such as the USA, UK, and India, have restricted the voting rights of inmates and former felons to varying degrees. Many of these Countries are among the largest democracies globally. The right to vote is a powerful symbol of societal inclusion, with its denial of the right to vote often being criticized. The importance of suffrage forms the basis of an individual's dignity towards their Country. There is an ongoing necessity to study and comprehend disenfranchisement concerning rehabilitative approaches to punishment, as the formerly leading "retributive theory" has failed to demonstrate its relevance in the modern era. A Comprehensive understanding of the concept of disenfranchisement is required, as there is no established principle governing the limitations of universal suffrage due to criminal charges. In light of international human rights jurisprudence, the authors aim to investigate the evolving dynamics of disenfranchisement.

Keywords: Democracy, Voting Rights, Prisoners, Prisoners' Disenfranchisement

Introduction

The fundamental nature of a democratic country rests on citizen participation via the right to vote. According to John Locke, those who disobey social standards shouldn't be permitted to vote or participate in Public Elections.¹ Disenfranchisement has long been a question of philosophical discussion to deny convicts the ability to vote.² Voting is a procedure that gives an individual a wa³ to express and validate their feelings of civic responsibility and patriotism. One of the most important expressions of promoting equality and dignity is voting. Early Platonic texts introduced the idea of social control, which was originally developed by Thomas Hobbes. This notion was further investigated by later scholars namely Jean-Jacques Rousseau and John Locke.⁴ Disenfranchisement ought to be appraised in light of the Social Contract Theory, which considers the importance of the

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¹ Levine L Eli. (2009). Does the Social Contract Justify Felony Disenfranchisement? *Wash. U. Jur. Rev.*, 1,193.

² Lessn, Michael. (1990). *Social Contract Theory*, 5 New York University Press, New York.

⁴ Wolff, Jonathan & Hobbes. (1994). The Motivations of Social Contract Theory. *Int. J. Philos. Stud* 286.

"right to vote" in democracies as well as the interaction between the citizen and the state.⁵ Political rights are traditionally argued to be forfeited by criminals who violate social standards. Disenfranchisement is seen from their viewpoint of the Social Contract to surrender that is thought to be inherent in the offense itself, rather than a response by others to the crime.⁶ Depriving inmates of their civil rights, among other rights, has long been justified under the societal Contract Theory, which holds that once a prisoner violates societal standards, they forfeit their rights. The government therefore seeks to protect the freedom to vote for those who have adhered to societal standards, which they see as the cornerstone of representative democratic values. Disenfranchisement is based on this idea. Denying someone the ability to vote or exercise other civil rights is known as disenfranchisement.⁷ This idea captures the conflict between people's participation in democracy and the contempt of those who don't follow societal standards.⁸ Disenfranchisement began as a way to keep people out of civil society and put obstacles in their way of getting involved. Its origins may be found in classical Greece, and the Middle Ages can be used to track its evolution.⁹ Criminals in Britain were denied the right to vote and sentenced to "civil death," which meant they lost their citizenship entirely. Disenfranchisement laws were first enacted in the United States in the 1600s as a means of punishing moral breaches.¹⁰ Originally, the early American voting system was limited to white male property owners. The United States Constitution gave African American men the right to vote when the 15th Amendment was ratified, and the first case of prisoners' disenfranchisement occurred during the Reconstruction era.¹¹ India, like many other nations, has also abolished the ability to vote for those who have been found guilty of crimes. The Commonwealth Franchise Act passed in India in 1902, prohibited those incarcerated from voting. The Commonwealth Electoral Act of 1918 remained substantially integral,¹² at present Section 62(5) of the Representation of the People's Act 1951 addresses the problem of felony disenfranchisement in India by forbidding confined convicts and those under-trials from exercising their right to vote. It is against the law to cast a ballot when "confined in a jail, whether under a sentence of imprisonment or transportation or is in the legitimate custody of the police," according to the Act.¹³ All inmates who have completed their terms are exempted from this limitation, nevertheless, the sweeping ban on prisoners exercising their right to vote, however, not only goes against the soul and spirit of the Indian Constitution but also the fundamental idea of the right to equality established in Article 14.¹⁴

1. INTERNATIONAL TREATIES CONCERNING THE LEGAL ASPECTS OF DISENFRANCHISING PRISONERS

Originally, the foundation of democracy was the idea of universal suffrage, emphasizing that everyone should be able to vote, not only men, taxpayers, or landowners, but also

⁵ Claudio, Lopez-Guerra. (2014). *Introduction, Democracy, and Disenfranchisement: The Morality of Electoral Exclusions* 19 Oxford University Press.

⁶ Reimen, Jeffery. (2005). Liberal and Republican Arguments Against the Disenfranchisement of Felons. *Crl. Just Ethics* 1.

⁷ Disenfranchisement, Cambridge Advanced Learner's Dictionary (4th ed. 2013).

⁸ Marshall Pablo. (2018). Voting from Prison: Against the Democratic Case for Disenfranchisement. *Ethics & Global Politics*, 11,1.

⁹ Litwin P. Nathan. (2003). Defending an Unjust System: How Johnson v. Bush Upheld Felon Disenfranchisement and Perpetuated Voter Inequality in Florida. *Conn. Pub. Int. L.J.*, 3,236.

¹⁰ Behrens Angela. (2004). Voting Not Quite a Fundamental Right? A Look at Legal and Legislative Challenges to Felon Disfranchisement Laws. *Minn. L. Rev.*,89, 231.

¹¹ Brooks George. (2005). Felon Disenfranchisement: Law, History, Policy, and Politics. 32 *Fordham Urb. L.J.*,32,851.

¹² Singh Kavita. (2008). Civil death of prisoner: Disenfranchising the prisoners, in reality, causes his civil death, *NUJS Law Review*,1,240.

¹³ The Representation of People's Act 1951, Section 62(5).

¹⁴ The Indian Constitution, Article 14.

members of all socioeconomic classes. International human rights law has acknowledged that everyone over a particular age should be legally allowed to vote in elections. The International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, addresses the civil and political rights of an individual by considering voting to be the most important way to influence governmental decision-making, both of these international conventions on voting rights have emphasized its significance.

1.1 The Universal Declaration of Human Rights, 1948, asserts that everyone has the right to take part in the governance of their country, either directly or through freely chosen representatives. It also stipulates that elections must be conducted with universal and equal suffrage to ensure the representation of the people's will.¹⁵

1.2 The International Covenant on Civil and Political Rights, 1966, recognizes that the right to vote must be exercised without any form of discrimination, as outlined in Article 2(1) of the International Covenant on Civil and Political Rights. Article 25 asserts that "Everyone should have the right and opportunity, without any of the distinctions outlined in Article 2 and without arbitrary restrictions, the freedom to cast a ballot and to contest elections in legal, recurring elections that must be conducted using a secret ballot and a system of universal, equal suffrage." Any restrictions on the right to vote must be "necessary in a democratic society for a public objective," according to the UN Office of the High Commissioner for Human Rights. The Human Rights Committee has emphasized the need for proportionality between the crime, penalty, and the length of time the convict's right to vote is suspended in connection to Article 25 of the ICCPR. Therefore, the fact that a prisoner is in jail as a result of their actions should not be used as a justification for denying them a fundamental human right like the ability to vote. Consequently, a general prohibition on inmates being able to vote is considered an "unreasonable restriction" with the obligations outlined in the aforementioned treaty.¹⁶

2. DIFFERENT PROCEDURES USED IN VARIOUS PARTS OF THE WORLD TO ALLOW PRISONERS TO VOTE

Around the world, a variety of practices are used to provide inmates the right to vote. Every strategy represents the different ways that distinguish from one other nation to handle the problem of prisoner enfranchisement.¹⁷

2.1 Nations where inmates have been granted complete voting privileges.

2.2 Nations that have granted the right to vote that are subject to limitations depending on the gravity of the offense, the term of incarceration, and other circumstances.

2.3 Countries where voting is prohibited.

TABLE-1 Lists out the names of the Countries where Prisoners voting Rights are allowed, with restrictions and completed prohibited

SR. NO.	FULL VOTING RIGHTS	VOTING WITH LIMITATIONS	NO VOTING RIGHTS
1.	Spain	Armenia	Argentina
2.	Ireland	Belgium	Armenia

¹⁵ The Universal Declaration of Human Rights, Article 21.

¹⁶ The International Covenant on Civil and Political Rights, Article 25.

¹⁷ Manza, Jeff & Uggen, Christopher. (2006). *Locked Out: Felon Disenfranchisement and American Democracy*. Oxford University Press.

3.	Serbia	Chile	Brazil
4.	Peru	Finland	Bulgaria
5.	Latvia	Australia	Chile
6.	Finland	Austria	Estonia
7.	Ukraine	Belgium	Hungary
8.	Croatia	Finland	India
9.	Slovenia	France	Luxembourg
10.	South Africa	Germany	Portugal
11.	Spain Bosnia	Greece	Romania
12.	Sweden	Italy	Russia
13.	Switzerland	Malta	United Kingdom
14.	Iceland	New Zealand	
15.	Poland	Norway	
16.	Czech Republic	San Marino	
17.	Macedonia		
18.	Lithuania		
19.	Denmark		
20.	Israel		
21.	Canada		

3. GLOBAL LEGAL PRECEDENTS UPHOLDING DEMOCRATIC VALUES ON DISENFRANCHISEMENT

Several International law, have stressed the significance of upholding democratic principles and human dignity. Following are the cases, in various countries, which have set legal precedents that emphasize the importance of acknowledging diverse perspectives within a democratic society, as well as the fundamental right to participate in elections on Prisoner's Disenfranchisement.

3.1 Canada: Presently, all prisoners in Canada are entitled to vote. In 2002, the Supreme Court of Canada ruled that any ban on prisoners voting was unconstitutional as it constituted an unreasonable restriction on the right to vote. The Court determined that such a prohibition could not be justified in a free and democratic society. This decision removed a partial prohibition that had previously prevented individuals serving prison sentences of less than two years from voting in federal elections, and it also eliminated all restrictions on prisoner voting at the provincial level.¹⁸

3.2 Europe: In many countries across Europe, there are no prohibitions on prisoner voting. Some countries have limited and targeted prohibitions, while several prohibitions on prisoners from voting have been lifted due to recent rulings by the European Court of Human Rights,¹⁹ for example, Sweden, Switzerland, and Ukraine, Sweden, Denmark, Ireland, Spain, Serbia, Finland, Croatia, Montenegro etc.

3.3 South Africa: The importance of voting was highlighted in the South African case of August and Others v. Electoral Commission and Others, which declared that "Every citizen's vote is a badge of dignity and personhood." It does say that everyone matters."²⁰

¹⁸ *Sauve v. Canada*, [2002] 3 S.C.R. 519.

¹⁹ *Hirst v. United Kingdom*, [2005] ECHR681

²⁰ *August and Others v. Electoral Commission*, 1999(4) BCLR368(CC).

3.4Israel: The decision in the Israeli case of *Hilla Alrai v. Minister of the Interior* highlighted how crucial it is to work towards common goals with tolerance and respect, especially in a democracy where minority opinions are represented.²¹

4. AN EXAMINATION OF PRISONERS' DISENFRANCHISEMENT IN THE UNITED STATES, THE UNITED KINGDOM, AND INDIA

Democracy is a fundamental principle of governance and societal organization, serving as a cornerstone of modern political systems. The continuation of democracy depends on fair and free elections. Democracy is sustained through the conduct of free and fair elections. Some Constitutional theorists have emphasized the significance of the "right to vote" in a democratic system.²²

4.1UNITED KINGDOM: The European Court of Human Rights ruling in the *Hirst v. United Kingdom*,²³ case had a considerable impact on the United Kingdom's policy regarding prisoner disenfranchisement. The disenfranchisement rules in the UK forbid incarcerated individuals from using their right to vote in any municipal or parliamentary election. The judiciary determined that these disenfranchisement regulations are in violation of Article 3 of the First Protocol's "right to free elections" and are in conflict with England's adoption of the European Convention on Human Rights. Disenfranchisement was referred to by the court as "a blunt means that discriminatorily harmed a major category of persons." The court's decision emphasized that the indiscriminate nature of the disenfranchisement rules disproportionately affected a significant group of individuals, thereby undermining their right to participate in the democratic process. Following this ruling, the UK government faced pressure to amend its laws on prisoner disenfranchisement. In response, the UK Parliament debated various proposals to address the issue, including the possibility of allowing certain categories of prisoners to vote. However, as of the latest, the UK has yet to fully comply with the European Court of Human Rights ruling, and the debate on prisoner voting rights continues to be a topic of legal and political contention in the country.

4.2UNITED STATES OF AMERICA: The Supreme Court affirmed the legitimacy of prisoner disenfranchisement in the case of *Richardson v. Ramirez*,²⁴ ruling that disenfranchisement statutes do not violate the Fourteenth Amendment to the United States Constitution. The ruling in *Hunter v. Underwood*²⁵ where an Alabama law denying voting rights to certain criminal offenders was found to violate the Fourteenth Amendment's Equal Protection Clause due to its disproportionate impact on Blacks and racially discriminatory intention, marked an important legal precedent in addressing the issue of disenfranchisement. This case highlighted the potential for disenfranchisement laws to infringe upon constitutional rights and perpetuate racial discrimination, prompting increased scrutiny of such laws in the United States. As a result, there has been ongoing debate and legal challenges regarding the fairness and constitutionality of disenfranchisement laws across different states in the U.S.

4.3INDIA: Article 326 of the Indian Constitution defines "adult suffrage" as the foundation for elections to the Legislative Assemblies of States and the House of People. The constitutionality of Section 62(5) of the Representation of Peoples Act, 1951, was challenged in the case of *Anukul Chandra Pradhan v. Union of India*.²⁶ The disenfranchisement clause in Section 62(5) of the Representation of Peoples Act, 1951, was

²¹ *Hilla Alrai v. Minister of the Interior* HC2757/06P.D.50(2)18(1996).

²² Jain, M.P. (2006). *Indian Constitutional Law*, Lexi Nexis.

²³ *Hirst v. United Kingdom* (No 2), (2005) ECHR 681.

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

²⁵ *Hunter v. Underwood*, 471 U.S.

²⁶ *Anukul Chandra Pradhan v. Union of India*, AIR 1997 SC 2814.

argued to violate Article 14 of the Constitution. It was contended that denying someone the opportunity to exercise their democratic right to vote offends their sense of worth, thus violating Article 21 of the Indian Constitution. The restriction on individuals lawfully detained by the police, which includes those held during an investigation but not yet charged, highlights the absurdity of the provision. A person convicted and sentenced to jail but released on bail, however, remains eligible to vote. This is justified by the notion that a detained person cannot claim equal freedom of expression, speech, or movement. In the case of **Sunil Batra v. Delhi Administration**²⁷, the limitation imposed under Section 30(2) of the Prisons Act, 1894, was deemed not excessive as it was intended to preserve jail security and inmate protection. This limitation, put in place to safeguard the security of prisoners, does not violate Article 19(1)(d) of the Constitution.

Under Section 62(5) and Section 11A of the Representation of the People Act, two different provisions prohibit prisoners from exercising their right to vote. Section 11A lists various offenses that disqualify a criminal from voting, such as bribery, undue influence, and election fraud. Section 11B empowers the Election Commission to revoke any disqualification imposed by Section 11A at any time.²⁸ Section 62(5) states that any person in police custody is barred from voting, regardless of their sentence or trial status, except for those under preventive detention, as stipulated in the proviso clause. These rights to vote have been challenged in court several times; nonetheless, they have been determined to be legitimate and constitutional. It is critical to recognize that the right to vote is not fundamental or constitutional, but rather a statutory right. As a result, the courts have viewed it as a “privilege” that can be revoked at any time.

In the cases, **Anukul Chandra Pradhan v. Union of India**²⁹, and **Radhakrishnan v. Union of India**³⁰, the courts have also said, that prisoners are deprived of certain liberties during imprisonment and cannot be held to be on the same footing as other citizens. The Court relied on the purity of ballot idea in the case of to defend prisoner disenfranchisement. The main argument put forward in such a view is that a “ballot box” should be free from any kind of corruption, which is exactly what prisoner enfranchisement might lead to. In India, the major argument against prisoner enfranchisement seems to be that allowing prisoners to vote would result in the criminalization of politics. This, however, seems to be a highly contentious line of argumentation. In India, the argument against prisoner enfranchisement is that granting inmates the right to vote might make politics a crime. But this is a very controversial and contested issue. Not when inmates are granted the right to vote, but rather when people with criminal histories hold positions of political authority, is when politics becomes criminalized. In court, it is assumed that criminals could try to cast ballots for other criminal candidates. Voting rights are statutory rights, as they are not guaranteed by the Indian Constitution but rather by the Representation of the People Act, 1951. But voting rights are an essential component of a robust democracy, and Article 21's inability to expand its purview to include Voting rights is a serious omission. Every administration that respects democratic societies should take the right to vote seriously since it is an essential component of public life. Therefore, the authors believes that the foundation upon which the courts have determined prisoner disenfranchisement is incorrect. awaiting trial. This lack of differentiation is a clear misclassification of different groups without considering their inherent differences. There is no justifiable reason why individuals who have not been convicted of a crime should be deprived of their right to vote. According to the principles of criminal justice, every individual should be presumed innocent until proven guilty. Therefore, the provision in the Representation of the People Act that allows individuals out on bail to vote, while those not on bail cannot, creates an

²⁷ *Sunil Batra v. Delhi Administration AIR 1980 SC 1597.*

²⁸ Sethi, Amal & Joshi, Prakruti. (2014). Knocking on the legislature's door proposal to Reform the Criminal disenfranchisement laws in India. *SACJ*, 1.

²⁹ *Anukul Chandra Pradhan v. Union of India*, AIR 1997 SC 2814.

³⁰ *Radhakrishnan v. Union of India*, S.C. 265 (1999).

unjust differentiation within the same group of people. These consequences violate Article 14 of the Indian Constitution, which guarantees equality before the law and equal protection under the law. Despite this, neither the courts nor the legislature have made any significant efforts to address this issue.

5. THE IMPACT OF PRISONER'S DISENFRANCHISEMENT ON MODERN DEMOCRACIES

The following points stated below collectively highlight the complex and multifaceted impact of prisoners' disenfranchisement on modern democracies, emphasizing the need for careful consideration and potential reform in this area.

5.1 Threat to Democracy: Denying prisoners the right to vote poses a challenge to the democratic process and the functioning of a democratic system. It raises questions about the inclusivity and fairness of the electoral process, which are fundamental to a healthy democracy.

5.2 Lack of Evidence for Crime Reduction: There is a lack of evidence supporting the claim that disenfranchisement reduces crime. This raises concerns about the justification for denying individuals their voting rights based on assumptions rather than empirical evidence.

5.3 Conflict with International Human Rights Standards: Many nations oppose the adoption of criminal disenfranchisement, citing its conflict with international human rights standards. This opposition emphasizes the need to align disenfranchisement laws with established human rights norms.

5.4 Contradiction to Rehabilitation Goals: Criminal disenfranchisement conflicts to rehabilitate criminals and reintegrate them into society. It raises questions about the effectiveness of disenfranchisement as a tool for rehabilitation and societal reintegration.

5.5 Exclusion from Democratic Participation: Current definitions of disenfranchisement exclude a substantial portion of society, particularly individuals with felony convictions, from exercising their voting rights. This exclusion contradicts the principles of democratic participation and representation.

5.6 Potential for Inclusive Solutions: There is a need to explore the potential for more inclusive approaches to voting rights, especially for individuals with criminal histories. This exploration could lead to effective solutions that align with the principles of democracy and inclusivity.

5.7 Reconsideration of Practice: Given the presented arguments, there is a need to reconsider the practice of disenfranchising prisoners and its implications for democracy. This reconsideration should involve a thorough examination of the impact of disenfranchisement on democratic values and principles.

CONCLUSION

The denial of voting rights to prisoners is a complex issue that challenges the democratic principles and human rights standards in a contemporary society. This practice raises fundamental questions about the nature of democracy, the rehabilitation of offenders, and the principles of justice and equality. Recent studies have indicated a negative link between voting and eventual criminal behavior among individuals with and without a criminal history. This suggests that disenfranchisement may not be an effective means of reducing crime and may hinder the rehabilitation of offenders by further isolating them from civic engagement. Moreover, the denial of voting rights to prisoners runs counter to the aim of penology, which is the rehabilitation of offenders. By excluding prisoners from the democratic process, societies may be hindering their ability to reintegrate into civil society

and contribute positively to their communities upon release. This raises important questions about the purpose of incarceration and the role of the justice system in promoting rehabilitation and reintegration. Furthermore, the growing resistance of other nations to adopt Prisoner disenfranchisement policies indicates a shifting global perspective on this issue. Many countries are reevaluating their approach to prisoner disenfranchisement, recognizing the need to balance the rights of individuals with the demands of justice and public safety. In light of these considerations, it is evident that prisoner disenfranchisement is inexcusable in a modern society that respects international human rights. The practice raises significant ethical and legal concerns and warrants a thorough reevaluation in the context of contemporary democracies. It is essential to consider alternative approaches that uphold the principles of justice, rehabilitation, and democratic participation for all members of society, including those who are incarcerated.