



Disenfranchisement of Undertrials in India

For Prelims: Lok Sabha elections, [Right to vote](#), [Representation of the People Act, of 1951](#), [Fundamental rights](#), [Election Commission of India](#)

For Mains: Prisoner disenfranchisement laws in India, Voting rights to undertrials, Representation of the People Act, 1951.

[Source: TH](#)

Why in News?

As the **18th Lok Sabha elections** are underway, more than four lakh [undertrials in prisons nationwide](#) are **unable to exercise their right to vote** due to a sweeping legal ban.

- The [Representation of the People Act, of 1951](#) prohibits voting for individuals confined in prison, regardless of whether they are convicted or awaiting trial.

Note:

- An undertrial is a person **who is currently on trial or who is imprisoned on remand whilst awaiting trial** or a person who is on a trial in a court of law.
 - The **78th Report of Law Commission** also includes a person who is in judicial custody on remand during investigation in the definition of an 'undertrial'.
- Data from the [Crime in India 2022 report](#) reveals that approximately over 500,000 individuals, if not more, will be unable to exercise their voting rights in the ongoing 2024 Lok Sabha elections, by way of their confinement.
 - As per **National Crime Records Bureau (NCRB)**, in 2022 there were 4,34,302 undertrials across jails in India, comprising 76% of the total jail population of 5,73,220.

Why are Undertrials Barred from Voting?

- **Section 62(5) of the Representation of the People Act:**
 - A person **confined in a prison, under a sentence of imprisonment or transportation, or in the lawful custody of the police**, shall not be allowed to vote at any election.
 - Despite being prohibited from voting, a person whose name is on the [electoral roll](#) will not cease to be an elector.
 - The prohibition to vote **does not apply to a person subjected to preventive detention under any current law**.
 - This provision has been upheld by the [Supreme Court](#), which has cited reasons such as resource constraints and the need to keep persons with criminal backgrounds away from

the election scene.

- The Supreme Court recognises free and fair elections as part of the '**basic structure of the Constitution**' but distinguishes that the **right to vote (Article 326) is considered constitutional right** rather than **fundamental rights**, subject to regulations imposed by laws such as the **Representation of People Act, 1951**.
 - Article 326 of the Indian Constitution provides for **adult suffrage**. **Every citizen over 18 has the right to vote unless disqualified** on the grounds of non-residence, unsoundness of mind, crime or corrupt practices.
 - **The right to be elected is considered a statutory right.**
- **Bar Against Contesting Elections Only After Conviction:**
 - Section 8 of the RPA, 1951 **disqualifies a person from contesting elections only upon conviction for certain criminal offences, not merely upon being charged.**
 - The Supreme Court has rejected pleas to disqualify persons with criminal charges or those who file false affidavits, stating that only the legislature can alter the RPA, 1951.
 - **Exceptions to disqualification:**
 - The **Election Commission of India** can remove or reduce the period of disqualification under certain circumstances.
 - A disqualified MP or MLA can still contest if their conviction is stayed on appeal to a higher court.

Historical Background of Prisoner Disenfranchisement

- **English Forfeiture Act of 1870:** It disqualified individuals convicted of treason or felony.
 - The rationale behind this was that once someone was convicted of such serious offences, they **forfeited their rights, including the right to vote.**
- **Government of India Act of 1935:** Individuals serving sentences of transportation, penal servitude, or imprisonment were barred from voting.
 - However, the RPA, 1951 adopted a broader approach to defining such disenfranchisement. It specified that individuals confined in prison, serving sentences of imprisonment or life or otherwise detained in lawful police custody, are ineligible to vote. This provision excludes only those in preventive detention.

Should Undertrials Have the Right to Vote?

Arguments in Favour of Allowing Undertrials to Vote	Arguments Against Allowing Undertrials to Vote
<ul style="list-style-type: none">▪ Presumption of innocence: Undertrials are presumed innocent until proven guilty. Denying them the right to vote may be viewed as punitive action before conviction.<ul style="list-style-type: none">◦ The UN Human Rights Committee views denying voting rights solely based on custodial status as violating the presumption of innocence.◦ The Supreme Court held debarring undertrials from voting amounts to punishing them twice.	<ul style="list-style-type: none">▪ Public safety concerns: Allowing undertrials to vote may raise concerns about voter intimidation or electoral interference, especially in cases involving serious crimes.
<ul style="list-style-type: none">▪ Representation and political participation: Allowing undertrials to vote ensures that their interests and perspectives are represented in the political process, including	<ul style="list-style-type: none">▪ Logistical challenges: Facilitating voting for undertrials within prison environments may pose logistical and administrative challenges for election authorities, such as ensuring

<p>policies affecting prison conditions and the criminal justice system.</p>	<p>ballot secrecy and preventing coercion.</p>
<ul style="list-style-type: none"> Prisoners have violated the social contract and willingly placed themselves outside the social order. 	<ul style="list-style-type: none"> Social contract cannot be negotiated away.
<ul style="list-style-type: none"> Disenfranchisement concerns: Denying undertrials the right to vote could be seen as disenfranchisement, particularly for marginalised groups who may be disproportionately represented in pre-trial detention. 	<ul style="list-style-type: none"> Temporary nature of detention: Undertrials are in a temporary state of detention, and their voting rights could potentially be restored upon acquittal or completion of their sentence.
<ul style="list-style-type: none"> Voting Right: Critics argue that denying undertrials the right to vote is discriminatory and violates the principle of equality (Article 14). <ul style="list-style-type: none"> The ban lacks reasonable classification based on the nature of the crime or duration of the sentence, unlike in countries such as South Africa, the United Kingdom, France, Germany, Greece, and Canada. Additionally, disallowing undertrials from voting creates a distinction between convicts on bail who can vote and undertrials who cannot, leading to illogical discrimination. 	<ul style="list-style-type: none"> Punishment and deterrence: Some argue that the loss of certain rights, including voting, serves as a consequence of involvement in criminal proceedings and may act as a deterrent against criminal behaviour.

Legal Precedents Regarding Right to Vote in India

- Indira Gandhi v Raj Narain Case, 1975:** The Supreme Court recognised that free and fair elections are a part of the **'basic structure' of the Constitution of India**, and any laws or policies that would violate this principle could be struck down.
- Praveen Kumar Chaudhary V. Election Commission and Ors Case:** The Delhi High Court opined that **voting right is neither a constitutional nor a fundamental right but only a statutory right.**
 - The court upheld the constitutional validity of Section 62 (5), reaffirming that **prisoners do not have the right to vote.**
- People's Union of Civil Liberties (PUCL) vs Union of India Case, 2003:** The SC clarified that the **right to vote is a constitutional right** provided under Article 326 of the Indian Constitution. But the right to **vote is not enumerated as a fundamental right.**
 - The right to make a choice by means of a ballot is indeed a part of the [freedom of expression](#)** under Article 19(1)(a) of the Constitution.
- Anukul Chandra Pradhan, Advocate v. Union Of India & Ors Case, 1997:** The Court upheld the **constitutionality of Section 62(5) of the RPA**, which disenfranchises prisoners.
 - The Supreme Court **cited three main justifications:**
 - Prisoners forfeit certain freedoms due to their conduct.
 - Logistical challenges arise due to increased security needs for prisoners voting.
 - The intention to exclude individuals with criminal backgrounds from the electoral process.

Way Forward

- As electoral systems evolve and **inclusivity becomes a priority**, it's crucial to consider alternative methods for facilitating political participation among incarcerated individuals, such as **mobile voting units or absentee ballots**.
- Recognising the fundamental significance of voting rights for prisoners and upholding the aspiration of rehabilitation and reintegration, the focus **should be on not further marginalising prison populations but providing them with opportunities to meaningfully participate in decision-making processes**.
- Differentiate between convicts and undertrials when it comes to electoral rights.
- There is a need to **incorporate** the recommendation of the Swaran Singh Committee (1976) to include the **duty to vote as a [Fundamental Duty \(FD\)](#)** in the Indian Constitution and **subsequently make the right to vote a fundamental right**.

Drishti Mains Question:

Q. Examine the historical context and evolution of prisoner disenfranchisement laws in India. How have these laws impacted the democratic participation of undertrials and convicts?

UPSC Civil Services Examination, Previous Year Question

Q. With reference to India, consider the following statements: (2021)

1. When a prisoner makes out a sufficient case, parole cannot be denied to such prisoner because it becomes a matter of his/her right.
2. State Governments have their own Prisoners Release on Parole Rules.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)