



## Voting Rights for Under trial Prisoners

**For Prelims:** Provisions related to Prisoners' right to Vote, NCRB, Article 14 (right to equality).

**For Mains:** Voting Rights for Under trial Prisoners.

### Why in News?

Recently, the **Supreme Court** has decided to examine a petition challenging a provision in the election law that imposes a blanket ban on under trials, persons confined in **civil prisons and convicts serving their sentence in jails** from casting their votes.

### What are the Associated Implications?

- **Disenfranchises a Large Segment of the Population:**
  - The latest [National Crime Reports Bureau \(NCRB\)](#) report of 2021 shows that a total of 5,54,034 prisoners were confined as on 31st December, 2021 in various jails across the country.
  - The number of convicts, undertrial inmates and detainees were reported as 1,22,852, 4,27,165 and 3,470, respectively, accounting for 22.2%, 77.1% and 0.6% respectively at the end of 2021.
  - There was a hike of 14.9% in the number of undertrial prisoners from 2020 to 2021.
- **Undermine Respect for Law and Democracy:**
  - Denying penitentiary (a prison) inmates the right to vote is **more likely to send messages that undermine respect for the law and democracy** than messages that enhance those values.
- **Deprive from Right:**
  - Denying the right to vote does not comply with the requirements for legitimate punishment.
  - If a convicted person can vote if she is out on bail, why is the **same right denied to an under trial** who is not yet found guilty of a crime by a court of law.
  - Even a judgment-debtor (a person who has not paid his debt despite a court verdict) who has been arrested and detained as a civil person is deprived of her right to vote. Detainment in civil prisons **is unlike imprisonment for crimes.**
- **Lacks Reasonable Classification:**
  - The ban lacks reasonable classification based on the nature of the crime or duration of the sentence imposed unlike in countries like South Africa, United Kingdom, France, Germany, Greece, Canada, etc.
  - This lack of classification is anathema to the fundamental right to equality under [Article 14 \(right to equality\)](#).

### What are the Provisions related to Prisoners' right to cast their vote?

- The right to vote is a **constitutional right under Article 326** of the Constitution.
- Under **Section 62(5) of the Representation of the People Act, 1951**, individuals in the lawful

custody of the police and **those serving a sentence of imprisonment after conviction cannot vote**. Undertrial prisoners are also excluded from participating in elections even if their names are on the electoral rolls.

- Only those under [preventive detention](#) can cast their vote through postal ballots.

## UPSC Civil Services Examination, Previous Year Question

**Q. With reference to India, consider the following statements:**

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)**

**Exp:**

- Parole can be looked at from the perspective of a privilege for prisoners who seem to be capable of reintegrating into society.
- Although some criminal statutes carry a right to an eventual parole hearing, typical laws do not absolutely guarantee parole itself. Authorities retain the discretion to deny parole to prisoners they deem dangerous. Hence, statement 1 is not correct.
- The grant of parole is governed by rules made under Prison Act, 1894 and Prison Act, 1900. Many State governments have also formulated guidelines to facilitate decision-making to determine whether parole needs to be granted in a particular case or not. For example, the Rajasthan Prisoners Release on Parole Rules, 1958. Hence, statement 2 is correct.
- **Therefore, option (b) is the correct answer.**

**Source: TH**

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