

# Voting Rights of Prisoners

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According to Sec 62(5) of Representation of the People Act, 1951, 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 subsection shall apply to a person subjected to preventive detention under any law for the time being in force.

## Why is it in the news?

- Three law school students are challenging the law that forbids prison inmates from voting, contesting that such a blanket ban on prisoners' right to vote was not just a violation of the spirit and soul of the Constitution, but also of the basic principle of equality and right to freedom of expression (Art 19(1)(a)). In the petition, they have suggested setting up electronic voting machines in the prison itself.
- In 1997, as part of the case Anukul Chandra Pradhan v. Union of India and Others, the petitioner too argued that the subsection violated Art 14 (equality before law) of the Constitution, and also Art 21, as the restriction placed on the right to vote denied dignity of life.

## Arguments favoring voting rights for prisoners

- All categories of the prison population-convicts, under trials, and those in custody are denied their right to vote.
- While changes in laws governing prison conditions and the criminal justice system directly impact them, the prisoners themselves have no say in the choice of representatives who make those changes.
- It is ironic that while those charged with crimes can

contest elections, they cannot vote. In this case, the prisoners are deemed to be lesser citizens even before their crimes have been proven.

- Countries like Iceland, the Netherlands and Germany have opted for a middle path: Voting is allowed subject to certain permits and conditions such as the quantum of sentence served. They are only disenfranchised as an added penalty based on the gravity of the crime.
- Innocent until proven guilty is a central tenet of the justice system. In this context, prisoner voting can prove to be a major component of rehabilitative justice.

[The RPA, 1951 states that any contestant to an election to legislative bodies has to be an elector. However, anyone in prison or in the lawful custody of the police (other than preventive detention) is not entitled to vote. The Supreme Court in 2013 thus concluded that a person in jail or police custody is not entitled to vote, and therefore, is not an elector, and thus, cannot contest elections.

The parliament overturned the decision through Representation of People Amendment Act, 2013. One of the amendments states that as the name of the jailed person continues to be on the electoral rolls, he or she also continues to be an elector and can file nomination for an election. It provided that by reason of prohibition to vote, a person whose name has been entered in the electoral roll shall not cease to be an elector].