



UNDERTRIALS AND THEIR VOTING RIGHTS - GS II MAINS

Q. Undertrials are presumed innocent until proven guilty, so denying them the right to vote may be seen as punitive. Analyse (10 marks, 150 words)

News: *Blanket ban keeps out over 4 lakh undertrials from exercising franchise*

What's in the news?

- With the 18th Lok Sabha elections currently in progress, over four lakh undertrials across the country find themselves unable to participate in the voting process due to a broad legal prohibition.

Undertrials and their Voting Rights at Present Status:

1. Legal Provisions:

- Section 62(5) of the Representation of the People Act prohibits individuals confined in prison, under a sentence of imprisonment or transportation, or in police custody, from voting in elections.

2. Continued Electoral Status:

- Despite the prohibition on voting, individuals whose names are on the electoral roll remain electors.

3. Exclusion of Preventive Detainees:

- Notably, the ban on voting does not apply to individuals subjected to preventive detention under prevailing laws.

4. Supreme Court Rulings:

- The Supreme Court has upheld this provision, citing reasons such as resource constraints and the necessity to distance individuals with criminal backgrounds from the electoral process.

5. Legal Framework:

- While the Supreme Court recognizes free and fair elections as part of the Constitution's 'basic structure', it distinguishes the right to vote (Article 326) and be elected as statutory rights, subject to regulations in laws like the Representation of the People Act, 1951.

6. Constitutional Rights vs. Statutory Rights:

- Article 326 of the Indian Constitution enshrines adult suffrage, granting every citizen above 18 the right to vote unless disqualified due to factors like non-residence, unsoundness of mind, criminal convictions, or corrupt practices.

7. Disqualification for Contesting Elections:



- Section 8 of the RPA, 1951 disqualifies individuals from contesting elections only upon conviction for specific criminal offenses, not merely upon being charged.

8. Court's Stance on Criminal Charges:

- The Supreme Court has rejected pleas to disqualify individuals based on criminal charges or false affidavits, asserting that such alterations to the RPA, 1951 can only be made by the legislature.

9. Exceptions to Disqualification:

- The Election Commission of India holds the authority to remove or reduce the period of disqualification under certain circumstances.

10. Appeal Provisions:

- A disqualified Member of Parliament (MP) or Member of the Legislative Assembly (MLA) can still contest if their conviction is stayed pending appeal to a higher court.

Arguments in Favor of Provision of Voting Rights to Undertrials:

1. Presumption of Innocence:

- Undertrials are presumed innocent until proven guilty, so denying them the right to vote may be seen as punitive.

2. Representation and Political Participation:

- Allowing undertrials to vote ensures their interests are represented, including those related to prison conditions and the justice system.

3. Disenfranchisement Concerns:

- Denying undertrials the vote could disenfranchise marginalized groups who may be overrepresented in pre-trial detention.

4. Equality and Discrimination:

- Critics argue that denying undertrials the right to vote is discriminatory and violates principles of equality, unlike other countries with more nuanced laws.

Arguments Against the Provision of Voting Rights to Undertrials:

1. Public Safety Concerns:

- Allowing undertrials to vote may raise concerns about voter intimidation or interference, particularly in serious crime cases.

2. Logistical Challenges:

- Facilitating voting within prisons poses administrative challenges, including ensuring ballot secrecy and preventing coercion.



3. Temporary Nature of Detention:

- Undertrials voting rights could be restored upon acquittal or completion of sentence.

4. Punishment and Deterrence:

- Loss of certain rights, including voting, may serve as a deterrent against criminal behavior.

Legal Precedents Regarding Voting Rights in India:

1. Indira Gandhi vs Raj Narain Case, 1975:

- Free and fair elections are part of India's constitutional 'basic structure', ensuring laws violating this can be struck down.

2. Praveen Kumar Chaudhary vs Election Commission and Ors Case:

- The Delhi High Court clarified that voting is a statutory, not a fundamental, right.

3. People's Union of Civil Liberties (PUCL) vs Union of India Case, 2003:

- The Supreme Court clarified that voting is a constitutional but not a fundamental right.

4. Anukul Chandra Pradhan, Advocate vs Union Of India & Ors Case, 1997:

- The Court upheld Section 62(5) of the RPA, citing prisoners forfeiting freedoms, logistical challenges, and excluding individuals with criminal backgrounds from elections.

Way Forward:

1. Inclusivity in Electoral Systems:

- Evolve electoral systems to include incarcerated individuals through methods like mobile voting units or absentee ballots.

2. Focus on Rehabilitation:

- Provide opportunities for meaningful participation in decision-making processes to avoid further marginalization.

3. Differentiation Between Convicts and Undertrials:

- Consider differing electoral rights based on legal status.

4. Recognition of Voting as a Fundamental Duty:

- Incorporate the recommendation to make voting a fundamental right in the Indian Constitution, as suggested by the Swaran Singh Committee (1976).