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# RIGHT TO VOTE FOR PRISONERS: A PUBLIC SURVEY REPORT

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## 1. Introduction

The right to vote, often described as Universal Adult Franchise, has long been regarded as one of the most fundamental and perhaps the most defining features of a democratic system. At its core, democracy is built on the idea of popular participation in governance. This notion was famously articulated by Cleisthenes, who understood democracy as the “rule of the people,” a principle that found its earliest organised expression during the period of Athenian democracy between 508 and 322 BCE. Although many historians classify Athenian democracy as a pre-modern form of democracy, it remains significant for its practice of direct democratic participation, where citizens themselves deliberated and decided policy matters in public assemblies through voting and active engagement in civic institutions. While Athenian democracy represents the earliest well documented instance in which voting emerged as a central political practice, the idea of collective decision-making predates classical Greece. Long before formal states or written constitutions came into existence, early human societies relied on communal consensus when humans transitioned from isolated, forest-dwelling lifestyles to organised tribal communities. In such groups, decisions affecting survival such as hunting, movement, or conflict were often taken collectively, laying the foundations for what may be described as proto-voting practices. Over time, voting gradually transformed from an informal social practice into a recognised political right. This right came to be associated with representation in governance, whether exercised directly or through elected representatives. However, the entitlement to vote was rarely universal. Eligibility was frequently restricted on the basis of factors such as property ownership, gender, age, or social status, and these exclusions reflected the prevailing social values, political ideologies, and power structures of different historical periods. As awareness, social movements, and political activism evolved, these limitations were repeatedly challenged and, in many cases, dismantled.

In the contemporary world, particularly in the twenty-first century, most democratic states

formally recognise the right to vote for all citizens who have attained the age of majority, typically eighteen years. Despite this significant progress, one major category of citizens continues to be widely excluded from the electoral process: prisoners. Across much of the world, incarcerated individuals are statutorily barred from exercising their voting rights, based on a range of justifications that vary across jurisdictions. This thesis argues that such exclusions are remnants of an outdated and conservative worldview that no longer aligns with modern democratic principles. The prevailing assumption that individuals convicted of crimes should automatically lose their right to vote reflects an archaic understanding of citizenship and punishment. Much like earlier beliefs that denied women political agency by branding them as passive members of society, the disenfranchisement of prisoners undermines the principle of representation that lies at the heart of democracy. In a rapidly evolving political landscape, these justifications appear increasingly inconsistent with contemporary notions of equality, dignity, and civic inclusion. This thesis therefore seeks to critically examine the denial of voting rights to prisoners and to argue that the exceptions imposed on this right are neither necessary nor justifiable in the context of modern democratic governance.

## **2. Methodology**

This study uses mixed methodology through survey based research to gather reliable and credible data and public opinion over the topic “Right to vote for prisoners: Democracy in the 21st century” to understand the rationale of the public at large behind being inclined towards the provision of this political right or being resistant to the provision of this political right for the prisoners. This approach shall help the research in analysing, if the democratic model in India has matured enough to find itself in a secure space to provide such rights to the imprisoned or do the imperialist fears still persist within the society of a nation which has been an independent, democratic and republican state for 79 years.

### **2.1. Research Question**

The research questions which are subject to discussion and analysis are:

- i. “Should prisoners also have the right to vote and participate in the voting and electoral processes of India?”
- ii. “Should all types of prisoners be allowed the Right to Vote or should there be

categorised segregation for the same?”

These research questions need a philosophical and political perspective of the public, in the form of their opinions, to ascertain as to how the subject of political rights are evolving in a vastly democratic country such as India and grade the receptivity of the people towards a controversial ambit of the right to vote.

## **2.2. Research Hypothesis**

The research hypothesises that in the 21st century, the people of the Indian democracy are now observing a shift in the sentiment that the prisons should, instead of serving primarily as a tool of retribution or deterrence, it should now advance towards acting as a medium of reformation for the prisoner while ensuring that he serves his punishment but is not withdrawn from the society and alienated of his civil and political rights as ensured to him by virtue of his citizenship of India as it goes against the core principles of democracy.

## **2.3. Research Gap**

This topic has been subjected to some really good doctrinal discussions and works in India which have weighed in the pros and the cons of this aspect at length with jurisprudence at core but what has been lacking in all of these various studies is the thought of the primary stakeholders of this topic, i.e. the opinions of the ‘*demos*’, the citizens of the nation. There exists a void of research which has conducted a survey based research on the subject to assess the take of the citizens on the subject of suffrage for prisoners of the various categories in India. A research which has been conducted has taken accounts of the members of legal fraternity over the subject, while an important and educated opinion certainly but it misses out on the opinions of the general public which includes people from all social and educational strata.

## **2.4. Research Data**

The data which has been used here in this study is attained through a questionnaire based survey form, created on the Google forms platform, circulated in the public domain over whatsapp, instagram and by means of word of mouth for maximum reach to most people. The sample size of the survey is n=91, where ‘n’ is the number of people who filled out the survey form. The data which has been collected in this survey represents the unaltered and candid opinions of the members of the Indian society as people from various places such as Lucknow, Varanasi,

Bangalore, Delhi, Rajasthan took the survey by answering the questionnaire which represents the diversity in data collection so as to produce a mixed outcome rather than a geography biased outcome. To ensure maximum participation in the survey, the survey was made bilingual, i.e. English and Hindi, so as to ensure that people from all kinds of education and social background can fill this form with ease and no ambiguities in their interpretation of the question shall arise, so as to ensure an accurate expression of opinion with reference to the question asked.

## 2.5. Research Methodology

This study takes assistance of the survey which has been conducted through a questionnaire framed on google forms to analyse and understand the development of political thought in the public domain with respect to the provision of voting rights to the prisoners, convicted, under-trial and preventive detainees.

The structure of the survey form which was circulated contained a small introduction along with the following questions which have been subjected to analysis in this study:

### 2.5.1. Survey Introduction:

*This google form serves as a survey and data collection tool for my BA.LLB (Honours), 10th semester dissertation topic, "Right to vote for prisoners: Democracy in the 21st century". The thesis aims to critically analyse the concept of suffrage (Right to vote) as a constitutional right for the prisoners who are also a citizen of that country. This google form is aimed towards collecting the public opinion on the aforementioned topic based on an age group basis.*

यह गूगल फॉर्म मेरे बीए.एलएलबी (ऑनर्स) के दसवें सेमेस्टर के शोध प्रबंध विषय, "कैदियों के लिए मतदान का अधिकार: 21वीं सदी में लोकतंत्र" के लिए एक सर्वेक्षण और डेटा संग्रह उपकरण के रूप में कार्य करता है। इस शोध प्रबंध का उद्देश्य मताधिकार (मतदान का अधिकार) की अवधारणा का विश्लेषण करना है, जो एक संवैधानिक अधिकार है, जबकि कैदि भी उसी देश के नागरिक हैं। इस गूगल फॉर्म का उद्देश्य आयु वर्ग के आधार पर उपरोक्त विषय पर जनमत एकत्र करना है।

### 2.5.2. Survey Questions

1) *Your Age / आपकी उम्र\**

a. *Less than 18*

- b. 18-25 Years
- c. 25-35 Years
- d. 36-50 Years
- e. 51 - 60 Years
- f. Above 60 Years

2) *Your Profession / आपका पेशा\**

- a. *Student / विद्यार्थी*
- b. *Self - Employed / स्वनियोजित*
- c. *Government Employee / सरकारी कर्मचारी*
- d. *Corporate Sector / कॉर्पोरेट क्षेत्र*
- e. *Unemployed / बेरोज़गार*
- f. *Other:*

3) *Have you ever been imprisoned? / क्या आप कभी जेल गए हैं?\**

- a. *Yes / हाँ*
- b. *No / नहीं*

4) *Do you feel the Right to Vote should be provided to prisoners against whom crime accused has been proven (Convicted Prisoners)? / क्या आपको लगता है कि जिन कैदियों के खिलाफ अपराध साबित हो चुका है (दोषी ठहराए गए कैदी) उन्हें भी मतदान का अधिकार दिया जाना चाहिए?\**

- a. *Yes / हाँ*

b. No / नहीं

c. Maybe / शायद

5) *Why do you think so?* / आप ऐसा क्यों सोचते हैं?

6) *Do you feel the Right to Vote should be provided to prisoners against whom the crime has not been proven but a trial is ongoing (Undertrial Prisoners)?*

/ क्या आपको लगता है कि उन कैदियों को भी मतदान का अधिकार दिया जाना चाहिए जिनके खिलाफ अपराध साबित नहीं हुआ है लेकिन मुकदमा चल रहा है (विचाराधीन कैदी)? \*

a. Yes / हाँ

b. No / नहीं

c. Maybe / शायद

7) *Why do you think so?* / आप ऐसा क्यों सोचते हैं? \*

8) *Do you feel the Right to Vote should be provided to person under Preventive Detention?* / क्या आपको लगता है कि निवारक हिरासत में रखे गए व्यक्तियों को भी मतदान का अधिकार प्रदान किया जाना चाहिए? \*

a. Yes / हाँ

b. No / नहीं

c. Maybe / शायद

9) *Why do you think so?* / आप ऐसा क्यों सोचते हैं? \*

10) *Are you aware that Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Macedonia, Montenegro, Serbia, Spain, Sweden, Switzerland and Ukraine allow for prisoners to vote in elections?* / क्या आपको पता है कि चेक गणराज्य, डेनमार्क, फिनलैंड, आयरलैंड, लातविया, लिथुआनिया, मैसेडोनिया, मॉन्टेनेग्रो, सर्बिया, स्पेन, स्वीडन, स्विट्जरलैंड और

यूक्रेन में कैदियों को चुनाव में वोट देने की अनुमति है?\*

a. Yes / हाँ

b. No / नहीं

The form deliberately misses out on many personal data, such as name and contact detail, so as to ensure that all people can feel free to write their political opinion without being under the apprehension of being judged or scrutinised in public for their opinion, which has been proven in popular psychological researches which talk about the hesitation and discomfort an individual feels while filling out surveys with too many personal details due to the human brain's cognitive and social process while evaluating the costs and benefits of disclosure<sup>1</sup>. However, to establish social relevance of the survey with the research questions, sensitive data such as age and profession of the participant was collected and to ensure that this data is protected and the anonymous nature of the survey is maintained to build confidence in the participant to express their true opinions, in the settings section of the google forms platform for this survey, collection of email addresses was set to "Do not collect" under the "Responses" and "Defaults" tab which renders the author with absolutely no information about the participant who filled the survey form.

The survey was kept crisp and precise in its nature so as to conserve the time of the participant and narrow down the scope of the survey to only research specific questions.

### 2.5.3. Questionnaire Analysis

The questionnaire asks a total of 10 questions and its relevance shall be discussed in the light of the research questions.

2.5.3.1. The first question collects the age group of the participant to determine various factors about the participant such as eligibility to vote in elections, standard mental maturity, ability to contribute to the political thought, longevity of the participant in the political sphere so as to deduce long term impact. The question has been provided with 6 age groups, as mentioned in 2.3.2. (1), which represent the standard mental ability of these

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<sup>1</sup> Roger Tourangeau, Lance J. Rips & Kenneth Rasinski, *The Psychology of Survey Response* 213–15 (Cambridge Univ. Press 2000)

age groups representing a similarity in the thought process

2.5.3.2. The second question collects the profession of the participant so as to determine their contribution to the society and how socially active they are. The author has made attempts to categorise the question in 5 broad categories which cover almost all professions under its heads. However, in case the participant doesn't fall in any of the 5 categories, the question has a sixth option of "Other", by selecting which, the participant can fill their profession or employment status in the form which shall contribute towards the final chart of the survey.

2.5.3.3. The third question collects special information about the participants, i.e. whether they have been imprisoned or not, to give special preference to their opinion, if in affirmation. This special preference is based on the assertion that it enhances the veracity of the opinion due to it being a personal and direct experience of the participant with regards to their disenfranchisement.

2.5.3.4. The fourth question collects the opinion of the participant over enfranchisement of convicted prisoners. This relates directly to the research questions as mentioned above in 2.1. . The question provides three options as seen in 2.3.2. (4). A third option of "Maybe" has been added to determine a shift or a conflict in the mind of the participant from the conventional opinion to a modern opinion or to determine the existence of an ambiguity relating to the enfranchisement.

2.5.3.5. The fifth question of the questionnaire is a follow up question to the fourth question. It seeks to collect the opinion of the participant with respect to the question. The question also aims to collect the rationale of the participant behind choosing their desired answer to question fourth so as to analyse the data and interpret the public opinion.

2.5.3.6. The sixth question collects the opinion of the participant over the enfranchisement of the undertrial prisoners. This question directly relates to the second research question as to what is the common man's thought on the limitation or expansion of the right to vote for prisoners. The question provides three options as seen in 2.5.2. (6). A third option of "Maybe" has been added to determine a shift or a conflict in the mind of the participant from the conventional opinion to a modern opinion or to determine the

existence of an ambiguity relating to the enfranchisement.

2.5.3.7. The seventh question is a follow up question to the sixth question. It seeks to collect the rationale of the participant for choosing their desired answer to the sixth question so as to analyse the data and interpret the public opinion.

2.5.3.8. The eighth question seeks to collect the opinion of the participant with respect to enfranchisement of the persons held under preventive detention. This question acts as an awareness check of the participants regarding the already established law on the subject and check if their opinion resonates with the law or not. This shall account for the further doctrinal discussions in the analysis section of this paper. The question provides three options as seen in 2.5.2. (8). A third option of “Maybe” has been added to determine a shift or a conflict in the mind of the participant from the conventional opinion to a modern opinion or to determine the existence of an ambiguity relating to the enfranchisement.

2.5.3.9. The ninth question is a follow up question to the eighth question. It seeks to collect the rationale of the participant for choosing their desired answer to the eighth question so as to analyse the data and interpret the public opinion.

2.5.3.10. The tenth question assesses the awareness of the participant on the subject of evolving democratic principles across different global jurisdictions where the right to vote is allowed for prisoners to vote in elections. No follow up question is set up to seek rationale for lack of awareness on the subject as the two choices available in this question sufficiently fulfil the purpose.

## **2.6. Justification of Approach**

This approach was sought best by the author for this study as political and civil rights are something which are concerned largely with the public and their stake in the society and with every decision and research which concerns these fields of study, it is really important to account for the opinions of the primary stakeholders of the society. Since the topic relates with the evolving principles of democracy in the 21st century hence it is only right and truly democratic in the spirit of this research as well to conduct a survey amongst the citizens of this nation rather than resorting to only doctrinal sources which are mostly academic discussions

of a certain scenarios, mostly capturing the opinions of the elites of the society or legal fraternity or discuss majorly the judicial and statutory interpretations, don't necessarily represent the public sentiment or opinion over a subject. It should also not be ignored that doctrinal sources, in such a heavily public centric topic that discusses political rights of a prisoner who may or may not be a citizen of this country, may diverge from empirical accounts of public perceptions which might ignore the accounts of the true stakeholders of this discussion.

### 2.7. Limitation

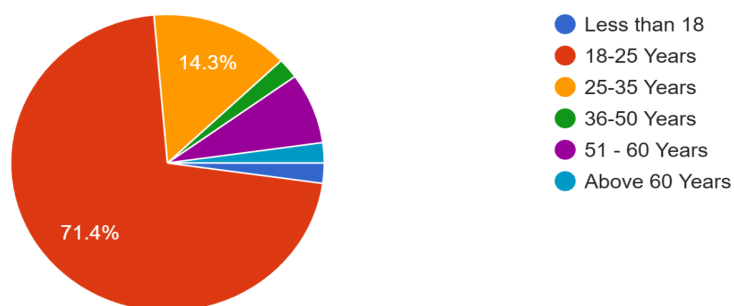
This research is limited by the small sample size of the survey and while thorough attempts have been made to include participants from diverse places such as Bangalore, Delhi and other places, their size in the survey however remains low in count and the survey was majorly conducted in the state of Uttar Pradesh, more specifically in the eastern region of the state. So rather than representing a public opinion at large, it majorly gives out a ubiquitous opinion.

## 3. Survey Results and Data Presentation

### 3.1. Age Distribution

The following pie-chart represents the age groups of the participants who filled out the survey form:

Your Age / आपकी उम्र  
91 responses



The data in the pie-chart reads as follows:

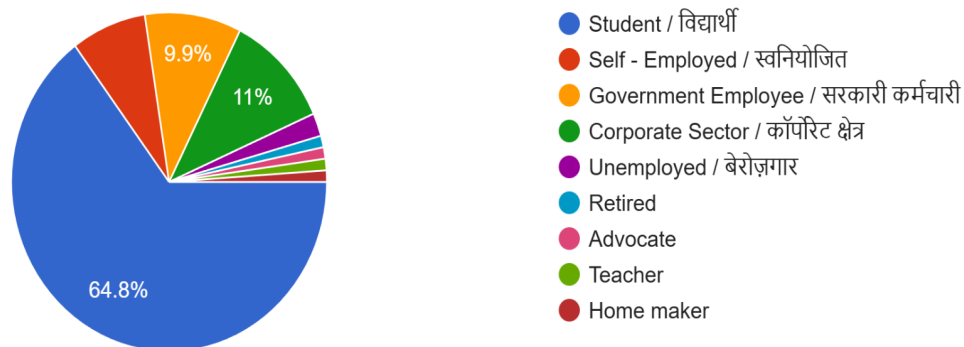
2.2% of the participants were less than 18 years of age. The majority of the survey participants fell in the age group of 18-25 years with 71.4%. The second highest participation came from the 25-35 years of age group with 14.3%. The age group of 36-50 years contributed to 2.2% of participation. The people in the 51-60 years of age group constituted to a total of 7.7% of the participation. Finally, only 2.2% of the people belonged to the age group of Above 60 years.

Upon the inspection of the data mentioned above, it can be observed that the majority of the participants came from the 18-25 years of age group which represents the youth and the young people. It should also be noted that the majority of the participants are also in the voting-age which means they are capable in forming independent civil and political opinion and can elect their own representatives.

### 3.2. Profession

The following pie-chart represents the various professions of the participants who filled out the survey form:

Your Profession / आपका पेशा  
91 responses



The data in the pie-chart reads as follows:

A total of 64.8% of the participants were students. 7.7% of the participants were Self-Employed. 9.9% of the participants worked as Government Employees. 11% of the participants worked under the corporate sector. 2.2% of the participants were unemployed. 1.1% of the participants were retired. 1.1% of the participants identified their profession as Advocate, however other advocates who filled this survey, marked themselves as self-employed. 1.1% of

the participants of the survey worked as teacher, however, many teachers and professors who filled out this survey, marked themselves as either Government employees or under the corporate sector. 1.1% of the participants worked as a home maker.

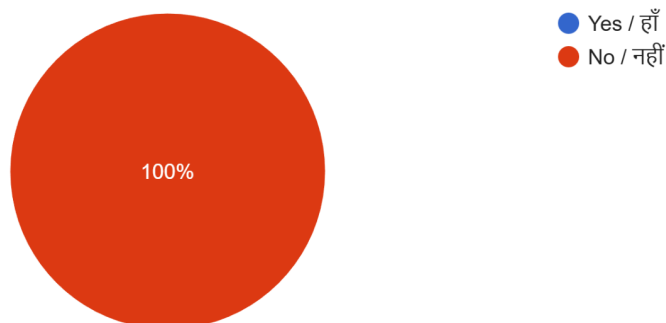
Upon the perusal of the data, it can be observed that the chart was dominated by participants who were students but it was not the only group which participated in the survey. A sizeable diversity of people belonging to various professions such as teacher, government employees, corporate employees, self-employed persons, advocates, home-maker participated in the survey thus improving the sample quality of the survey and bringing a diverse perspective to the discussions.

### 3.3. Experience with Imprisonment

The following pie-chart represents the experience of the participants with imprisonment or an encounter with the law which resulted in an imprisonment:

Have you ever been imprisoned? / क्या आप कभी जेल गए हैं?

91 responses



The data in the pie-chart reads as follows:

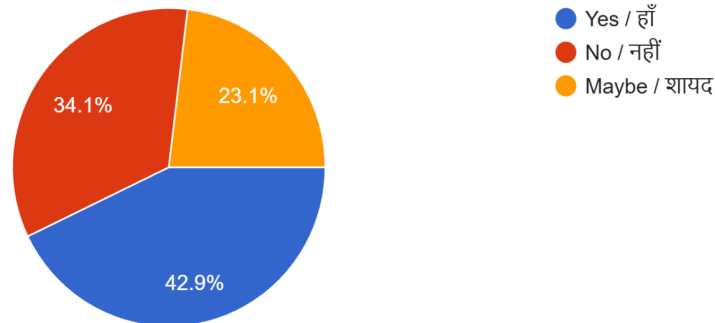
100% of all the participants who participated in the survey had never been imprisoned. The data reflects external public perception rather than lived prisoner experience.

### 3.4. Right to Vote for Convicted Prisoners

The following pie-chart represents the opinion of the participants with respect to enfranchisement of Convicted Prisoners:

Do you feel the Right to Vote should be provided to prisoners against whom crime accused has been proven (Convicted Prisoners)? / क्या आपको लगत... कैदी उन्हें भी मतदान का अधिकार दिया जाना चाहिए?

91 responses



The data in the pie-chart reads as follows:

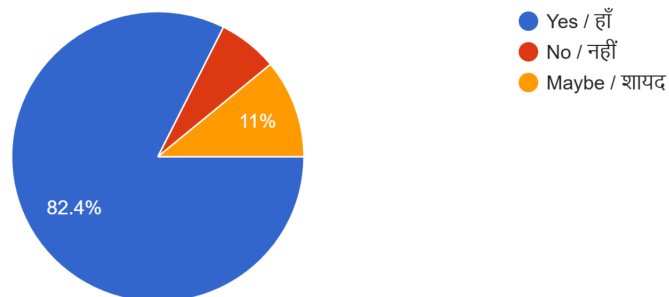
42.9% of the participants opined that the convicted prisoners should also be given the right to vote in elections. 34.1% of the participants opined that the convicted felons should not be given the right to vote in elections. Whereas 23.1% of people remained undecided and expressed as “Maybe” the right to vote should be given to the convicted prisoners.

### 3.5. Right to Vote for Under-trial Prisoners

The following pie-chart represents the opinion of the participants with respect to enfranchisement of Undertrial Prisoners:

Do you feel the Right to Vote should be provided to prisoners against whom the crime has not been proven but a trial is ongoing (Undertrial Prisoners)? ... नहीं हुआ है लेकिन मुकदमा चल रहा है (विचाराधीन कैदी)?

91 responses



The data in the pie chart reads as follows:

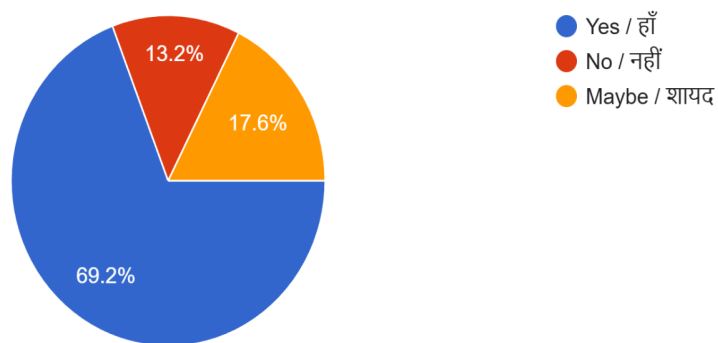
82.4% of the participants opined that the Undertrial prisoners should be given the right to vote. 6.6% of the participants opined that the Undertrial prisoners should not be given the right to vote. Whereas 11% of the participants remained undecided and opined as “Maybe” the right to vote should be given to the Undertrial prisoners.

### 3.6. Right to vote for Preventive Detainees

The following pie-chart represents the opinion of the participants with respect to enfranchisement of Preventive Detainees:

Do you feel the Right to Vote should be provided to person under Preventive Detention? / क्या आपको लगता है कि निवारक हिरासत में रखे गए व्यक्तियों को भी मतदान का अधिकार प्रदान किया जाना चाहिए?

91 responses



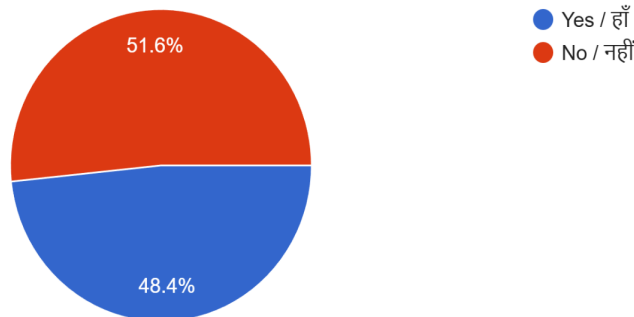
The data in the pie-chart reads as follows:

69.2% of the participants opined that the right to vote should be given to preventive detainees. While 13.2% of the participants opined against the right to vote for preventive detainees. Whereas 17.6% of the participants remained undecided and expressed as “Maybe” the right to vote should be given to the persons under preventive detention.

### 3.7. Awareness on International Practices

The following pie-chart represents the awareness status of the participants with respect to enfranchisement of prisoners in various countries:

Are you aware that Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Macedonia, Montenegro, Serbia, Spain, Sweden, Switzerland and Ukra...क्रेन में कैदियों को चुनाव में वोट देने की अनुमति है?  
91 responses



The data in the pie chart reads as follows:

51.6% of the participants were not aware of the fact that countries like Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Macedonia, Montenegro, Serbia, Spain, Sweden, Switzerland and Ukraine allow for prisoners to vote in elections whereas 48.4% of participants were indeed aware of the fact.

#### 4. Analysis

The analysis has been split under the following heads for the sake of logical flow and data interpretation i.e. Convicted Prisoners, Undertrial Prisoners and Preventive Detainees. This shall help in examining the analysis in the light of the opinions expressed by the participants with respect to the type of prisoner.

##### 4.1. Convicted Prisoners

| Age Group   | Yes | No | Maybe | Total |
|-------------|-----|----|-------|-------|
| 18-25 Years | 27  | 23 | 16    | 66    |
| 25-35 Years | 6   | 5  | 2     | 13    |
| 36-50 Years | 1   | 1  | 0     | 2     |
| 51-60 Years | 5   | 1  | 1     | 7     |

|                |   |   |   |   |
|----------------|---|---|---|---|
| Above 60 Years | 0 | 2 | 0 | 2 |
| Less than 18   | 0 | 0 | 2 | 2 |

*Table 1: Age – Opinion tabulation of data on Voting Rights for Convicted Prisoners.*

As it can be seen from the *Table 1*, that the majority of the participants believed that even the convicted prisoners should be given the right to vote. Though the percentage of such people don't exceed more than 50% but the evidence of a majority vote lying in the favour of enfranchisement of the convicted prisoners represents that the participants feel secure in providing such enfranchisement and they do not see the liberty of prisoners in exercise of their political rights as a danger or threat to the social fabric. The majority belief of the people in support of this opinion lied in few key arguments being:

- Committing a crime does not impact the citizenship status of the individual hence they should be given the right to vote.
- If politicians who are accused of crimes can be allowed to contest from the prisons then why such inequality with the prisoners.

These opinions were represented in some of the perspectives of the participants, as extracted from the survey and mentioned below:

*” Even if they may have done something which is against the law, this doesn't remove the fact they are a citizen and giving them voting powers won't harm the state in any way.”*

*“Right to vote is vested in an individual by virtue of him being a citizen of this country, being a convicted prisoner does not takes away his citizenship. He/she does have a say in choosing its government.”*

*“A convicted prisoner is still a citizen of the State.”*

However, there still exists a 34.1% population of the survey which believes that convicted prisoners should not be enfranchised. They believe that the convicted prisoners because of their guilty acts, lose their ability to rationally make decisions and hence should not be provided the right to vote. This opinion was represented in some of the perspectives of the participants,

extracted from the survey and mentioned below:

*“A corrupt minded person should not contribute in the society in any manner.”*

*“They don't know what's morally wrong and hence they are committing the crimes, what do you expect after they give votes?”*

Out of the total participants, 23.1% of the participants were people who were unsure of the enfranchisement of the convicted prisoners. Their opinions represented a dilemma in restricting the political rights of the prisoners. Many of the opinions expressed a need to have a more developed form of restriction on the rights with the severity of the crime as a determining factor for the restriction of the right to vote and participate in the electoral processes. This was reflected in some of the perspectives of the participants, extracted from the survey and mentioned below:

*“They are criminal and they can misuse the right, but we can't even stop them because we can't violate someone's fundamental rights.”*

One participant stated that *“Convicted prisoners ka case thoda different hota hai kyu ki yahan court ne crime prove kar diya hota hai... Isliye kuch serious offences like violent ya grave crimes me temporarily voting right restrict karna samajh mein aata hai.... Law todna aur democratic process ka hissa banana dono ke beech balance zaroori hai.*

*Lekin sab crimes same nahi hote”* (Translation: The case of convicted prisoners is slightly different because here the court has proven the crime. Therefore, temporarily restricting voting rights makes sense for some serious offenses, such as violent or grave crimes. A balance is needed between breaking the law and participating in the democratic process but not all crimes are created equal.)

Another person reaffirmed that the right to vote should be restricted for the people who are convicted of serious and grave crimes which are violent in nature. They stated that *“I think that the prisoners who are convicted under serious offences shall not be eligible for the Right to vote because law breakers cannot be law makers although on ground level many law makers are law breaker... But still!! On moral grounds it should be considered as an important point and if u break the law then you will temporary loose the civic rights. And there is also about public trust. On the other hand voting is a fundamental right and participation in democracy*

*encourages rehabilitation. So I feel that the person who is involved in minor crime, they should get this opportunity.... And the person who is involved in serious crime should not attain this right as a punishment.”*

*Another participant stated that “In my understanding, the right to vote for criminals can be linked with the severity of their crimes, for instance, crimes of non-bailable nature should also come with no voting rights, but pity crimes like theft or assault without intention to cause grievous hurt should have the right to cast their vote”*

Such opinions with reforms at core and reasserting a justified balance between the crime and restrictions were at the core of the submissions made by the people.

*One participant stated that “I don’t think convicted prisoners should have the right to vote while serving their sentence, since they’ve already been found guilty of breaking the law. However, once they complete their punishment, the right to vote should be restored so they can reintegrate into society.”*

This opinion resonated with a few other participants as well. This perspective however stands in consonance with the law but upon a psychological analysis it represents a progressive and reformatory mind-set which recognises the fact that the convicted prisoners, even when under punishment, do not become devoid of their political experience and civil opinion and to enhance the effect of reintegration of prisoners in the society, they should be allowed to vote as soon as their punishment ends. While this is true legally and after the prisoners have served their punishments, they again retain their political rights but due to the imperial nature of S. 62(5) of the Representation of Peoples Act, 1951, the prisoners are considered as individuals with a corrupted sense of morality and political opinion and hence are deemed as unfit to participate in the electoral processes during their. The Representation of Peoples Acts deem a prisoner unfit to express their political opinions by virtue of them being imprisoned. However at the same time, the act deems the prisoners as fit to participate in the electoral processes from the day their punishment ends. This rationale lacks a logical gradient and makes the reintegration process as a sudden change rather than a gradual process. It also fails to explain a sudden change in the law’s assumption of the person as capable or incapable of participating in the electoral processes.

#### 4.2. Undertrial Prisoners

| Age Group      | Yes | No | Maybe | Total |
|----------------|-----|----|-------|-------|
| 18-25 Years    | 53  | 5  | 8     | 66    |
| 25-35 Years    | 11  | 1  | 1     | 13    |
| 36-50 Years    | 2   | 0  | 0     | 2     |
| 51-60 Years    | 7   | 0  | 0     | 7     |
| Above 60 Years | 2   | 0  | 0     | 2     |
| Less than 18   | 1   | 0  | 1     | 2     |

*Table 2: Age – Opinion tabulation of data on Voting Rights for Undertrial Prisoners.*

As it can be seen from *Table 2*, that the majority of the participants believed that the undertrial prisoners should be given the right to vote. A total of 82.4% of the participants opined that Undertrial prisoners should not be disenfranchised under a blanket ban or restriction in any form as they are yet not convicted of any crime, major or minor. This percentage exceeds more than half of the participants of this survey and on comparison with the percent of participants who supported enfranchisement for the convicted prisoners, it exceeds by 39.5%. This represents that there stands a near absolute opinion of the participants that the undertrial prisoners should not be subjected to disenfranchisement and no person should be deprived of their political rights unless they have been convicted of a crime. These opinions were represented in some of the perspectives of the participants, as extracted from the survey and mentioned below:

One participant stated that *“Yes because innocent until proven guilty”*. Another participant stated that *“They might be innocent”*. This opinion was commonly stated by the majority of the participants across the survey.

Another participant stated that *“Undertrial prisoners are presumed innocent until guilty hence their presumption of innocence demands voting rights.”* A similar opinion was made which lays out things much clearly jurisprudentially, stating *“Undertrial prisoners have not been proven guilty in a court of law and are presumed innocent until conviction. Denying them the right to vote would amount to punishment before guilt is*

*established, which goes against the principles of justice and natural rights as established by our grundnorm.*” This opinion reasserts the core principle of Indian jurisprudence which presumes innocence of the accused before the eyes of law until his crime has been proven beyond reasonable doubt. The provision of S. 62(5), restricting the voting rights of people under police custody, creating a blanket ban on the enfranchisement of even undertrial prisoners lacks a logical consistency and is also contradicting in nature with the principle of “Innocent until proven guilty”.

Another participant stated a similar opinion when he said *“The basis of our legal system stands on the principle of "Innocent until proven guilty". According to the data, most of the undertrial prisoners are often innocent, but due to delay in our legal system, they have to suffer in jail for years. So when the person is not convicted, he is still innocent and he should have right to vote”*. The participant in his opinion stated a very critical observation which stands true in the contemporary scenario that is India has a huge amount of undertrial prisoners languishing in the prison without conviction. As per a report from the NCRB, 75.8% of the total prison population account for the undertrial prisoners<sup>2</sup>.

However, a small number of participants, i.e. 6% of the participants believed that undertrial prisoners should not be enfranchised. If the opinions of the participants are subjected to analysis, it can be seen that there does not exist solid reasoning behind their opinions. These opinions were represented in some of the perspectives of the participants, as extracted from the survey and mentioned below:

One participant said *“Not safe for society lot of dangerous people case run throughout life”*.

Another participant said *“They are under the process”*.

These opinions do not provide much in-depth reasoning behind disenfranchising undertrial prisoners.

A total of 11% of the participants were unsure about their stance on the subject and hence chose maybe as their option. These opinions were represented in some of the perspectives of the

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<sup>2</sup> National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, Govt. of India 2023).

participants, as extracted from the survey and mentioned below:

*“They might be innocent.”*

*“Not until the trial ends.”*

*“Because you don’t know yet if they are wrong or not, it depend upon the fact that what crime are we talking about. If it’s a grave crime they shouldn’t be allowed to vote even on a trial.”*

*“Its India majority of the cases are pending and most of the people who have cases against them are in parliament. They have active cases against them yet they vote! On the other hand simply accusing a person doesn't mean they are the guilty party (as of recent times many false cases regarding multiple aspects of life are at a rise) and should be allowed. There must be a balance of a line crossing which would mean no vote.”*

The majority opinion in the group which selected maybe as their answer, reaffirmed the stance of innocent until proven guilty while expressing doubt in enfranchising the undertrial prisoners. This probable doubt stems from the possible conviction which might happen and hence under the impression of allowing a convict to participate in the electoral processes, they have seemingly shown doubt in enfranchising the undertrial prisoners but at the same time their doubt also lingers around the issue that if a person who is not convicted in the future, depriving them of their political rights seems unfair.

**4.3. Preventive Detainees**

| <b>Age Group</b> | <b>Yes</b> | <b>No</b> | <b>Maybe</b> | <b>Total</b> |
|------------------|------------|-----------|--------------|--------------|
| 18-25 Years      | 42         | 10        | 14           | 66           |
| 25–35 Years      | 11         | 1         | 1            | 13           |
| 36–50 Years      | 2          | 0         | 0            | 2            |
| 51–60 Years      | 6          | 0         | 1            | 7            |
| Above 60 Years   | 2          | 0         | 0            | 2            |
| Less than 18     | 0          | 1         | 1            | 2            |

*Table 3: Age – Opinion tabulation of data on Voting Rights for Preventive Detainees.*

As it can be seen from the data so derived from the survey that the majority of the participants believed that the preventive detainees should be given the right to vote. A total of 69.2% of the participants of the survey were of the opinion that people held under the police custody for preventive detention should be enfranchised and be allowed to participate in the democratic processes of the state. This percentage also exceeds more than 50% of the total participants. This represents a strong public opinion that the people kept under preventive detention should not be disenfranchised, reaffirming that preventive detainees are not held under custody for a convicted crime or are not even subject to an ongoing trial. Hence they should not be deprived of their political rights. Even the law does not put any restriction on the practice of political rights of such detainees nor does it disenfranchise them. Section 62 (5) of the Representation of People Act, 1951<sup>3</sup> clearly states in its proviso that preventive detainees are not subject to the restrictions laid down in S. 62(5). These opinions were represented in some of the perspectives of the participants, as extracted from the survey and mentioned below:

*One participant said “In a democracy, every section of the society deserves to cast a vote regardless of who their origin, and what their past might be. It also ensures that the under-represented still have their voices heard without prejudice.”*

*Another participant said “Again, denying the right to vote to people under preventive detention can very easily lead to exploitation of power by the ruling party by simply sending notable local leaders and influential people into preventive detention on grounds of maintenance of peace and lead to corruption”. This opinion is key in analysing the possible misuse of the provisions laid down by the law by creating a provision to eliminate political competition in electoral processes. While this cannot be done so for the people held under preventive detention as there is no disenfranchisement under the law but when a similar parallel is drawn with undertrial prisoners in mind, where the law puts a blanket disenfranchisement, such misuse can be very possible.*

*Another participant said “They might not have committed much bigger crime.” This opinion was shared by a lot of other participants who voted in favour of enfranchisement of the preventive detainees. This opinion reaffirms the common*

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<sup>3</sup> Representation of the People Act, No. 43 of 1951, § 62(5) (India).

sentiment that the right to vote, if it is being restricted at all, should be restricted only for prisoners who have carried out heinous crimes or crimes of severe nature.

However, 13.2% of the participants believed that even the persons held under preventive detention should not be given the right to vote, even when they have not been disenfranchised by any law in force. These opinions were represented in some of the perspectives of the participants, as extracted from the survey and mentioned below:

One participant said *“Persons under preventive detention are held because competent authorities believe their actions may threaten public order or national security. Although they may not be convicted of a crime, the detention itself is a serious legal measure taken in the interest of society’s safety. Therefore the right to vote should be curtailed.”*

Another participant said *“Because preventive detention itself is applied when there is an apprehension of crime or to incite crime”.*

Another participant said *“People under preventive detention should not be given the right to vote, as they are detained to prevent threats to public order and national security.”*

While these opinions advocated for the disenfranchisement of people held under preventive detention, the common theme of these opinions were that people who are preventively detained are because of their potential threat to the order of the society hence why they should be disenfranchised.

A total of 17.6% of the participants were unsure about their stance on the subject and hence chose maybe as their option. These opinions were represented in some of the perspectives of the participants, as extracted from the survey and mentioned below:

One participant said *“They might not have committed much bigger crime”.*

Another participant said *“A democracy gets its legitimacy from participation. Preventive detention is not a conviction, so the person hasn’t been proven guilty in a court of law.”*

Another participant said *“Voting is a fundamental right and detention shouldn't strip it.”*

These opinions accurately represent the majority sentiment of the group of participants who chose maybe as their choice of answer.

#### 4.4. Awareness on International Practices

This question was aimed to seek the awareness of the survey participants on the status of enfranchisement of prisoners in other democracies across the globe. Upon simple perusal of the data collected by the survey, it can be seen that 51.6% of the total participants were unaware of the fact that countries such as Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Macedonia, Montenegro, Serbia, Spain, Sweden, Switzerland and Ukraine provided the prisoners with the right to vote with some or no restrictions whereas 48.4% of the participants were aware of the aforementioned fact. This goes on to impact the quality of the survey in positive that even without knowing about the international practices on the subject, the participants still voiced majority support for the enfranchisement of the prisoners across all the categories. This shows that there exists a shift in the perception of the people of this country from an imperial perspective where prisoners were arbitrarily deprived of their political rights irrespective of the severity of their crime to a modern approach where the common public feels that a true democratic nation should not deprive a person of their most important democratic right. Countries such as Norway<sup>4</sup>, Sweden<sup>5</sup>, Denmark<sup>6</sup> and Finland<sup>7</sup> (Nordic Countries) allow for Universal suffrage without any restrictions. Countries such as Spain<sup>8,9</sup> and Germany<sup>10,11</sup> allow for the enfranchisement of the prisoners unless they are expressly disqualified from by judicial pronouncements. Countries such as Australia<sup>12,13</sup> and New Zealand<sup>14</sup> disenfranchise prisoners who are subject to punishments of imprisonment for more than 3 years. United Kingdom, the country from where India derives its majority of laws and jurisprudence, largely bans voting for prisoners but allows certain types of prisoners such as prisoners on temporary release or civil wrongs or awaiting conviction (i.e. Undertrial)<sup>15</sup> are allowed to vote in electoral

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<sup>4</sup> Kongeriket Norges Grunnlov [Constitution] § 50 (Nor.).

<sup>5</sup> Regeringsformen [Instrument of Government] 3:4 (Swed.).

<sup>6</sup> Danmarks Riges Grundlov [Constitution] § 29 (Den.).

<sup>7</sup> Suomen perustuslaki [Constitution] 731/1999, § 14 (Fin.).

<sup>8</sup> Constitución Española, B.O.E. n. 311, Dec. 29, 1978, art. 23 (Spain).

<sup>9</sup> Ley Orgánica del Régimen Electoral General, L.O. 5/1985, art. 3 (Spain).

<sup>10</sup> Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], art. 38 (Ger.).

<sup>11</sup> Strafgesetzbuch [StGB] [Penal Code], § 45 (Ger.).

<sup>12</sup> Commonwealth Electoral Act 1918 (Cth) s 93(8AA) (Austl.).

<sup>13</sup> *Roach v. Electoral Commissioner* (2007) 233 C.L.R. 162 (Austl.).

<sup>14</sup> Electoral Act 1993, s 80(1) (d) (N.Z.).

<sup>15</sup> Representation of the People Act 1983, c. 2, § 3(1) (UK).

practices.

#### **4.5. Recommendations**

Based on the analysis derived from the observations of the survey and the opinions of the participants, the paper recommends the following legal reforms, keeping in mind the survey findings, constitutional principles and comparative international practices:

**4.5.1. Enfranchisement of prisoners (Long Term reform):** Based on the survey data, the author recommends that the disenfranchisement of prisoners seems a draconian practice in the contemporary world and is against the spirit of democracy. Hence, all prisoners should be given the right to vote and participate in the electoral processes during the service of their sentence.

**4.5.2. Judicial control over suffrage while sentencing:** Drawing from comparative international practices, the author recommends for a reform in the restriction of suffrage of prisoners. The restriction, rather than being vested in the statute, should be vested in the judges. The restriction on suffrage should be vested in the judicial discretion and should be imposed through judicial sentences, subject to conditions.

**4.5.3. Sentence based restriction (Model options for legislative reforms):** If the above recommendations seem too aggressive as a change to bring in the framework, then the restriction on the right to vote for prisoners should be subjected to the length of imprisonment sentence served by the prisoner. Just like in Australia and New Zealand, prisoners serving sentences longer than 3 years are subject to deprivation of right to vote, in India also, prisoners who are found guilty of crimes where they are punished with a sentence of 7 years or more, their right to vote should be suspended statutorily. The reasoning behind having 7 years as the threshold is because the Indian criminal jurisprudence recognises offences with sentences of 7 years and more imprisonments as serious and more heinous offences.

**4.5.4. Enfranchisement of Undertrial Prisoners (Immediate Reform):** In the light of the development in democracy and democratic principles and observing India's rise as one of the fastest growing democracies with it being the largest democracy of the 21<sup>st</sup> century and in consonance with Article 14 of the Indian Constitution, it becomes crucial

to recommend that the undertrial prisoners should not be subject to blanket disenfranchisement. Given the data of NCRB reports on the number of undertrial prisoners dominating the prisons and a not so high conviction rate, it is imperative that the blanket ban on the voting rights of the undertrial prisoners be lifted by bringing amendment in S. 62 (5) of the RPA, 1951 by striking off the words “*or is in the lawful custody of the police*” from the section, which creates a blanket ban.

#### **4.5.5. Postal ballots as a method of polling for prisoners (Administrative Mechanism):**

The provision of polling of votes through postal ballots should be resorted to for the individuals who are imprisoned and are allowed to vote as it is provided to people who are held under preventive detention.

### **4.6. Conclusion**

Voting as a right is the most essential right of a democracy. It forms the core of democracy as it allows for the expression of choice, which is the foundation of democracy. This study was aimed at finding out the public opinion on the continued disenfranchisement of the prisoners in India and if it is justified in the 21<sup>st</sup> century.

While the study found out that there was a division in the opinion of enfranchisement of the convicted prisoners, although the majority being in support of it, the survey most importantly found out that the public sentiment is of the opinion that undertrial prisoners should be allowed to vote unless they are convicted. A small observation which was also made in the survey was that a lot of participants mistakenly assumed the right to vote as a fundamental right rather than a statutory right as upheld by the Hon’ble Supreme Court in various landmark judgements such as *Jyoti Basu v. Debi Ghosal*<sup>16</sup>. It was also found out that the participating public was not majorly aware of the international practices across other democracies which allow for the right to vote to prisoners. A country which aims to model its punishment infrastructure around reformatory jurisprudence cannot have a legislative framework which totally excludes the individual from the democratic practices upon mere police custody and not even conviction. This was found by this study by comparing doctrinal sources with the empirical data collected.

In conclusion, the discussion and debate around the enfranchisement of the prisoners is not one for the electoral mechanics but it is more centred on the philosophy of democratic inclusion

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<sup>16</sup> **Jyoti Basu v. Debi Ghosal**, (1982) 1 S.C.C. 691 (India).

and citizenship. This study clearly indicated a shift in the public sentiment in the contemporary time with respect to the enfranchisement of the prisoners. It was found out that yes prisoners of all categories and types should be allowed to vote. However, the recommendations provided for a category of reforms where some were immediate in nature and some were gradual in their implementation. Ultimately, it is not the exclusion which demonstrates the strength of a democracy but it is the ability to increase the inclusion and defend the rights of all stakeholders along the line.