

News

A Supreme Court plea aims to grant undertrial inmates the right to vote.



The petitioner has argued that Section 62(5) of the Representation of People Act, 1951, which prohibits inmates from voting, is arbitrary.

The Supreme Court has received a public interest litigation (PIL) case contesting the denial of voting rights to Indian undertrial inmates

The Central government and the Election Commission of India (ECI) were asked to respond to the petition today by a bench consisting of Chief Justice of India BR Gavai and Justice Vinod Chandran.

Sunita Sharma, an attorney, brought the case before the court, arguing that it is arbitrary to forbid convicts from voting under Section 62(5) of the Representation of People Act, 1951 (RP Act).

The aforementioned clause stipulates that,

"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."

Sharma has argued that it is arbitrary to forbid prisoners—including those who have not yet been found guilty of any crime—from exercising their right to vote.

According to the plea, Section 62(5) of the RP Act is unjust, imprecise, and incomplete, and it erodes public trust in the rule of law.

Additionally, the general prohibition goes against the widely accepted presumption of innocent premise. Pretrial or undertrial detainees make up more than 75% of the prison population in India, and many of them are held there for decades. "These individuals are ultimately acquitted in 80 to 90 percent of cases, but they are denied the fundamental democratic right to vote for decades," the petition continues.

As long as the offense is not one of the serious offenses listed in Section 8 of the RP Act, Sharma has also noted that those convicted of crimes are permitted to run for office.

In light of the fact that their legislators may even be convicted, she has questioned why undertrial inmates are not allowed to vote.

"When a prisoner /convicted individual is permitted to contest elections who can influence law making system by becoming part of law making authority and can represent lakhs of voters, then how can ordinary citizen—who have not been declared or adjudicated as convicted—be denied the right to vote and to choose their own representative?" "The plea states."

The request also points out that the ECI has previously implemented "mobile voting"

initiatives to allow people in nursing homes, hospitals, and other facilities to exercise their right to vote. Sharma has questioned why comparable policies cannot be implemented to enable jailed undertrial inmates to cast ballots in elections.

"It is both feasible and constitutionally imperative to facilitate voting by local incarcerated electors—through polling stations within the approximately 1,350 jails nationwide and via postal ballots by interstate electors," the request states.

The petitioner has also admitted that the *Anukul Chandra Pradhan v. Union of India* (1997) case previously affirmed the legality of Section 62(5) of the RP Act.

The plea, however, notes that the Supreme Court at the time had considered the right to vote to be a statutory right rather than a basic one guaranteed by the Constitution. The plea points out that the Supreme Court's position on the right to vote has since evolved, citing the decision in *Anoop Baranwal v. Union of India* (2023), in which the Court determined that the right to vote would be considered a fundamental right under Part III of the Constitution rather than just a constitutional right.

Therefore, the petitioner has now urged the highest court to give recommendations to allow undertrial inmates (except from those convicted of corrupt acts under election rules) to vote, either by permitting mail votes or by directing the authorities to set up polling stations at jails.

The petitioner also requests that the Court "fill the vacuum" of RP Act 62(5) by adding circumstances in which a prisoner may be denied the right to vote based on individual judicial decisions, such as whether the prisoner has been found guilty of a particular crime or of a crime that carries a specific sentence.

Prashant Bhushan, an advocate, filed the petition.