

## **Voting Human rights of prisoners**

### **He can be M.P. & M.L.A, but cannot vote;-.**

A prisoner may become an M.P, or M.L. a but caste his vote. The Constitution of India and the representation of the Peoples' Act provide basic foundation of the Electoral System in India. Since, India is a democratic country leaning towards Federalist The office of the Chief Election Commissioner plays a vital role in the election system of the Nation. It is very common to say but it is a fact that a person, who is not convicted and who is simply under trial, simply a prisoner cannot caste his vote from jail or otherwise from a place where he is detained but he can very well contest election from jail. Is it not a flashy or mockery of law that who cannot caste his vote but he Can become an M.P. M.L. A. or Minister, tut if he simply wants to caste his vote during election period, he cannot do so. There are several instances in our country, where people have contested elections, while in jail, and some of them have also won and become Hon' ble M.L. a. or M.P. Emphatically speaking it has raised serious questions on the viability of the existing electoral system. Looking otherwise, it can very safely be said that those persons who cannot manage to get bail or not able to raise the amount required or the surety required for getting the bail and thus remained in jail, cannot exercise their right to a vote. Like wise, those who are in lawful or unlawful custody of the police cannot also vote. Hence, it can be inferred that the custody of the police for any accused provide immunity to the police for any action but rob the aggrieved from his valuable right to vote.

Now, the question is that whether a person, who is even convicted or not but who is confined in jail as a prisoner whether under sentence of imprisonment or otherwise or in police custody be barred from casting his vote. whether such a restriction would violate his fundamental rights vested in him under Articles 14, 19 and 21 of the Constitution and whether such a provision should be declared ultra virus and void to the Constitution. Now, the further question is that if such persons are supposed to surrender their right to vote as provided u/s 62(5) of the Representation of the Peoples Act, then this principle should be applied to all kinds of prisoners but it is not so how a person, who is detained in any provision of Preventive Detention laws such as N.S A. are legible for casting their votes.

It is no doubt true that the criminalization of Politics is a matter of hot discussion throughout the Nation and all attempts are being made to check it and ensure that at least no criminal should be allowed either to contest election or to caste his vote. Very recently, pushing ahead with its agenda of keeping criminals out of politics, the Election Commission has suggested that any person convicted of a crime for more than six months be debarred from contesting elections for six years.

In a letter to Prime Minister I.K. Gujral, the commission has recommended changes in a number of clause fine tune the existing Representation of Peoples Act (RPA) to plug the loopholes that have ambled even history sheeters to contest elections.

The letter, sent in mid September, urges that the amendments to the RPA be pushed through in the winter session of Parliament.

Two months ago the Commission had stirred up a nation-wide debate on the issue of checking criminalisation of Politics by suggesting that those convicted up to six months be barred from contesting elections even if they had appeals pending in the higher Courts.

Election Commissioner G V G Krishna's revelation in early August that up to 40 M. Ps in the current Parliament and nearly 700 out of the 4,072 legislators in State assemblies have criminal records had raised a storm in political circles. The question that had agitated the politicians was whether the axe would fall on sitting M.Ps or MLAs.

Though the Commission's clarification that the new rules would apply to future elections was some consolation, that the Election Commission meat business became evident soon after when it issued a directive that any person convicted by a court under section 8 of the RPA would be barred from contesting elections.

It was the first time in the recent Rajya elections that nominations forms were required to be accompanied by affidavits declaring that the candidate did not have a criminal past.

Another long-pending issue is raising the limit of election expenses, fixing a limit of Rs 15 lakh for parliamentary constituencies and Rs 6 lakh for assembly constituencies. Calling for flexibility in fixing the ceiling for election expenses, the EC has recommended that the power to suitably amend these limits for smaller or larger constituencies should rest with the Commission.

A significant recommendation relates to the politicians' seeking entry to the Rajya Sabha by giving false declarations on their address and enrolling themselves in the electoral rolls of the State. This problem could be eliminated altogether if the laws are amended to permit anyone to contest RS polls from any parliamentary constituency in the country so long as he or she is a valid voter.

I would like to mention here also that first of all these general reforms do not have any legislative support. It is further imports that this general order does not say anything and rather it is silent on the question on the fate of under trial prisoners. Chief Election Commissioner should make wide efforts in this regard to abolish this kind of discrimination and to assure that right to adult franchise should be made available to all concerned. Constitutional provisions of Articles 14, 19 and 21 of Fundamental Rights elaborate the position that a person should not be discriminated and he should be assured to exercise all his rights. Right to Adult franchise has been guaranteed to every citizen of India. When the Constitution of India has guaranteed to the citizens of India, then how it is possible to put restriction on this right by any other subordinate

authority. Let us examine constitutionality and legality of this issue now.

The Supreme Court has already made its view clear on the diabolical nexus between Politicians,

Bureaucrats, big industrial houses with great Mophas and under-world dons. The Supreme Court has directed to the Union Government to set up a body of eminent personalities and jurists, having crystal clear and upright reputation to look into this nexus. It is highly unfortunate that very little progress has been made in this direction so far. The Supreme Court has described criminalisation of Politics as the bone of Society and negation of democracy. Recently, the present Hon'ble Chief Justice of India, Sri J.S.Verma has said that "criminalization of Politics is subversive of free and fair elections which is a basic feature of the Constitution. The Supreme Court noted the importance of free and fair election and right to adult franchise but I am afraid to say that some-times the Court undermines the significance of free and fair elections, while it dismissed a petition, which had challenged section 62(5) of the Representation of the People's Act. In this writ petition, it was challenged that section 62(5) is violative and ultra vires to the Constitution and it was urged to the Court that Right to vote should be extended to all under trial prisoners also but the Court dismissed this plea and held that the expression "or otherwise" has very wide connotations. It denies voting right to the under trials and other persons detained in prison for any reason including an inability to furnish bail. This restriction applies even to those persons who are in the custody of the police lawfully or unlawfully.

It will include a person detained during investigation or in police custody through the order of the Court before a charge-sheet has been filed against him.

But a person even convicted or sentenced or under trial who is released on bail is permitted right to vote. The Court held that it shall not be a discrimination. With due regards and apologies, I do not share this view when right to adult franchise has been guaranteed to all then certainly each and every person (citizen) who has right to vote should tender it and there should not be an unreasonable legal bar prohibiting the use of this right. Further, it is also to be noted that there should not be any discrimination at least within a group. If a person, who is under trial but under preventive detention, why he should be permitted to vote. I think if he has been permitted then other under trials, should also be permitted otherwise it shall be clear cut violation of articles 14, 19 and 21 of the Constitution. At least, it is a denial of the human right also. Now-a-days, human movement is getting momentum. We have to preserve human rights at all costs. Right to vote is very valuable human right. It is the basic foundation not only of the democracy but also of the present legal system. A person, who is under trial, may be found innocent, then what shall happen. Is there any provision for compensation to be paid from stopping him to tender his vote. Whether the under trial, who is deprived from his right to vote can be compensated easily either way. If it is found that he was quite innocent and

he remained in jail without any reasonable and probable cause. Fortunately, the Supreme Court has armed all the Lower Courts as well itself with the power that if a person, who is deprived of his liberty without any reasonable and probable cause, then the Court compensate him in terms of money for his grievances.

I think this facility should be extended to those under trials, who have been deprived of this right. All Indian citizens, unless he is a convict or an insolvent or otherwise disqualified for his right to vote or this right is taken away expressly under any law for the time being in force, should be permitted to cast their vote during election process as a goodwill gesture for the human rights. The Apex Court has tried to distinguish between under trial prisoners under ordinary criminal laws with their counterparts detained under preventive laws. It has been said that preventive detention such as N.S.A. is meant to prevent any breach of law, while persons in jail after conviction or during investigation and trial subsequent to the commission of crimes is on different footing. I think this distinction is itself not sufficient. The proceedings of the Preventive Detention laws are taken against those offenders or criminals, who are beyond the reach of ordinary criminal laws or against those, who are highly criminals or mischief mongers but they had made their escape good from the Courts on legal technicalities and they are counter-form of terror in the Society. The Supreme Court in the case of Sangram Singh versus Union of India, held that right to vote was a statutory right and it is not a common law right. The right to vote or to stand as a candidate for election is not a right but is a creature of statute or special law and must be subject to the limitation imposed by it. The Court kept in view the representation of the Peoples' Act and various other election laws prevalent in this country.

I think that it is the universal truth that in all democratic countries right to adult franchise has been assured fundamentally although it may not be very ancient right but it can very safely be said to be a very fundamental right for the foundation of Society now a days. The present day legal position is that a prisoner cannot vote but he can be a MLA, MP or minister. This legal position should be changed and party should be maintained. All under trial prisoners should be permitted to vote irrespective of his crime unless and until he is specifically barred or disqualified from tendering vote. Looking into the human rights movement & Article 14, 19, and 21 of the Constitution this restriction upon right to vote of prisoners should be removed by the Government itself and if this restriction is not removed by the Government, then our Courts specifically the Apex Court should not hesitate in declaring these provisions null, void and ultra virus to the Constitution. The Court should also show its regard and respect to the human rights as shown by it in the past so that right to adult franchise can be utilized by all citizens of India, whether they are in jail or not but at least they are the Hon'ble members and citizens of India.