

FELONY DISENFRANCHISEMENT IN INDIA: A STUDY WITH SPECIAL REFERENCE TO HIMACHAL PRADESH

Thesis Submitted for the Award of the Degree of

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By

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2025**

DECLARATION

I, hereby declare that the presented work in the thesis entitled “**Felony Disenfranchisement in India: A Study with Special Reference to Himachal Pradesh**” in fulfillment of the degree of Doctor of Philosophy (Ph. D.) is the outcome of research work carried out by me under the supervision of **Dr. Shobha Jain Gulati**, working as **Professor, School of Law, Lovely Professional University, Punjab, India**. In keeping with the general practice of reporting scientific observations, due acknowledgments have been made whenever the work described here has been based on the findings of other investigators. This work has not been submitted in part or full to any other University or Institute for the award of any degree.

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CERTIFICATE

This is to certify that the work reported in the Ph.D. thesis entitled “**Felony Disenfranchisement in India: A Study with Special Reference to Himachal Pradesh**” submitted in fulfillment of the requirement for the award of degree of Doctor of Philosophy (Ph.D.) in the School of Law, is a research work carried out by **Deepika Thakur, Registration No.11919684**, is a bonafide record of his/her original work carried out under my supervision and that no part of thesis has been submitted for any other degree, diploma or equivalent course.

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ABSTRACT

This research examined the complex issue of felony disenfranchisement, focusing on the Indian state of Himachal Pradesh. It explored national legislative practices, international human rights standards, and empirical perspectives on prisoners' voting rights. The study was structured into two primary sections, each addressing different facets of the issue. The first section analyzed the justifications for denying voting rights to convicted and undertrial prisoners from both retributive and rehabilitative perspectives. Retributivist views emphasize the need for punishment, arguing that forfeiting certain civil rights is part of the penalty for serious crimes. In contrast, rehabilitative perspectives highlight the potential benefits of voting rights for prisoners' reintegration into society. This section also reviewed the customs and legal guidelines concerning prisoners' voting rights and examined how these frameworks might impact their civil and political equality. Additionally, it investigated India's current legislative framework, identifying gaps and proposing areas for reform to enhance the inclusivity of the electoral system. The second half section involved an empirical investigation conducted in Himachal Pradesh, where surveys were administered to a diverse group of respondents, including the general public, legal professionals, police administrative staff, and prisoners. This investigation captured a broad range of perspectives on felony disenfranchisement, assessing regional variations in opinions regarding the extension of voting rights to prisoners and evaluating the level of awareness among prisoners in Shimla and Hamirpur districts about their voting rights. It also examined how prisoners perceive the rehabilitative impact of voting rights. Additionally, the research included a comparative examination of international conventions and legal frameworks related to prisoners' voting rights. This analysis provided a global context, highlighting how various countries address the issue and how international human rights norms influence national policies. The study reviewed key international human rights treaties and agreements that emphasize the importance of voting rights as a fundamental aspect of democratic participation, comparing these global standards with India's legislative practices. The findings offered valuable insights into the diverse experiences and viewpoints of prisoners, legal experts, the general public, and police administrative staff. By contributing to discussions on prisoners' rights and electoral reforms in India, this research advocated for a more inclusive and equitable democratic system, underscoring the need for legal and policy changes to protect prisoners' fundamental

human rights and ensure a more representative electoral process. This study is a valuable resource for policymakers, legal experts, and the broader community. The issue provides an unlawful discernment into the complexities of felony disenfranchisement and offers recommendations for enhancing the fairness and inclusivity of the democratic process. Through its detailed analysis and empirical findings, the research aims to support protecting prisoners' rights and promoting a more democratic and equitable electoral system.

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ABBREVIATIONS

EXPANSION	ABBREVIATION
Basic Principles for the Treatment of Prisoners	BPT
Chief Election Commission	CEC
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW
Economic and Social Council	ECOSOC
Election Commission of India	ECI
European Convention on Human Rights	ECHR
European Court of Human Rights	ECtHR
Fundamental Rights	FR
Government of India	GOI
High Court	HC
Human Rights Committee	HRC
International Convention on Civil and Political Rights	ICCPR
Indian Penal Code	IPC
National Crime Beareo Report	NCRB
National Human Rights Commission	NHRC
National Institute for Crime Prevention and the Reintegration of Offenders	NICRO
National Security Act	NSA
Non-Government Organization	NGO
Prison Reform Trust	PRT
Public Interest Litigation	PIL
Representation of the People Act	RPA
Right to Information	RTI
Standard Minimum Rules for the Treatment of Prisoners	SMR
Supreme Court	SC
United Declaration on Human Rights	UDHR
United Nations	UN
United Nations Human Rights Commission	UNHRC

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CHAPTER - 1

INTRODUCTION

“Without a vote or a voice, I am a ghost inhabiting a citizen’s space...I want to walk calmly into a polling place with other citizens, carry my placid ballot into the booth, check off my choices, and then drop my conscience in the common box.”

Joe Loya, disenfranchised ex-felon¹

1.1 PRELUDE

India with its massive voter of over 900 million people, holds the esteemed title of being the largest democracy in the world.² The process of voting begins with the notion of democracy.³ Voting is no longer seen as a privilege for a select few but rather a right that belongs to members of the nation. After a long struggle by oppressed groups in underprivileged socio-economic classes, women, and minorities who were formerly denied voting rights in the election of their government are now acknowledged as members of the electorate. The evolution of rights is an inherent aspect of human history that must be aligned with the evolving needs of society.⁴ Voting is not just a civic responsibility but also a representation of dignity and individuality, symbolizing the significance of every person's voice. The concept of universal suffrage, which grants voting rights to all members of society, is a growing trend worldwide. Irrespective of gender or wealth, every individual possesses the right to vote. Thus, enfranchisement connects individuals to the social order.⁵ However, it is important to emphasize that not everyone enjoys this privilege. In India as well as in international jurisdictions, convicted criminals, ex-felons, and under-trials are the sole segment of the population excluded from political participation. This exclusion raises concerns as it deprives prisoners, the only group in the modern era, of access to this fundamental

¹ Losing the Vote, available at: <https://www.hrw.org/legacy/reports98/vote/> (last visited on December 14, 2021).

² Baljeet Kaur, “Prisoner’s Right to Vote: Citizen without a Vote in a Democracy Has No Existence” 54 EPW 3 (2019).

³ Joshua A. Douglas, “The Foundational Importance of Voting: A Response to Professor Flanders” 66 Okla. L. Rev. 81 (2013).

⁴ Anup Chand Kapur, *Principles of Political Science* 210 (S Chand and Company Ltd, Uttar Pradesh, 2014).

⁵ Sidharth Mehta and Girish Ahuja, “Prisoner’s Disenfranchisement: Need for Reformation” 3 GLJ 157 (2021).

human right. This is referred to as disenfranchising criminals or felons.⁶ This research consequently undertakes a comprehensive comparative analysis of prisoners' voting rights worldwide. It examines the current legislation in India, particularly focusing on revision to Section 62(5) of the Representation of the People Act, 1951.⁷ This section, which addresses the denial of voting rights for incarcerated prisoners, has been criticized for its perceived lack of logic, arbitrariness, and contradictions. Therefore, this study aims to bring insight into these issues, highlighting the need for a more coherent and equitable approach in the political sphere. Additionally, an empirical study conducted in Himachal Pradesh offers valuable insights into the practical implications of the existing legislation.

1.2 EQUAL ELECTORAL PARTICIPATION FOR PRISONERS

The present study is crucial as it addresses the fundamental issue of prisoners' rights. Its primary objective is to advocate for a more inclusive electoral system that ensures equal participation for prisoners. Aligned with evolving theories of criminal justice reform, the study emphasizes a shift from punitive measures towards a reformatory approach that upholds prisoners' rights to dignity and freedom of expression. It highlights that despite being incarcerated, prisoners retain their basic fundamental human rights. Therefore, safeguarding their right to vote is imperative in contemporary times. To achieve this, the research study aims to identify the essential disparities needed to abolish the restrictions on prisoners' voting rights:-

i. Promoting Inclusivity and Equity in Electoral Systems: The study aims to ensure that prisoners are included in the political process and their voices are heard. By tackling this issue, it seeks to contribute to a fair and inclusive democratic process that upholds principles of equality and representation for all individuals, regardless of incarceration status.

ii. Adherence to International Treaties: The research embeds principles from various international instruments, like the Universal Declaration of Human Rights, United Nations standards, and the Standard Minimum Rules for the Treatment of Prisoners.

⁶ Jonathan Purtle, "Felon disenfranchisement in the United States: A Health Equity Perspective" 103 *Am J Public Health* 632 (2013).

⁷ The Representation of the People Act, 1951, s.62(5).

These global agreements provide a framework emphasizing respect for individual rights and dignity, including those of incarcerated individuals.

iii. Addressing Human Rights Violations: Despite the recognition of prisoners' rights, significant human rights violations persist. This study aims to highlight these issues and propose essential reforms to eliminate disenfranchisement, thus ensuring the protection of prisoners' fundamental human rights.

iv. Impact of the European Court of Human Rights: The European Court of Human Rights has issued directives and guidelines that have significantly influenced the protection of prisoners' voting rights and the promotion of positive reforms in prison administration. Its proactive stance adopts a more equitable and humane environment for incarcerated individuals, demonstrating a firm commitment to safeguarding human rights and ensuring that prisoners are granted the right to vote.

1.3 MEANING OF FELONY AND DISENFRANCHISEMENT

Felony disenfranchisement connotes a practice of barring individuals who have been found guilty of crimes from participating in political elections.⁸ According to the Merriam-Webster dictionary, “felony” denotes a severe criminal offense usually punishable by imprisonment for more than one year.⁹ Disenfranchisement refers to restricting prisoners from participating in the electoral process. It is defined as “depriving of a franchise, of a legal right, or some privilege or immunity, especially to deprive of the right to vote”.¹⁰ Thus, felony disenfranchisement is a form of punishment where the political participation of an individual is restricted due to imprisonment for serious crimes. Disenfranchisement can occur through legal means, hindering certain prisoners from exercising their voting rights. The act of disenfranchisement can be temporary or permanent, depending on the specific laws and regulations of the nation. It raises important questions about the balance between punishment and the preservation of democratic principles, as it deprives prisoners of their basic

⁸ Felony Disenfranchisement, *available at*: <https://www.oxfordbibliographies.com/display/document/obo-9780195396607/obo-9780195396607-0152.xml> (last visited on December 14, 2021).

⁹ Felony, *available at*: <https://www.merriam-webster.com/dictionary/felony> (last visited on December 14, 2021).

¹⁰ Disenfranchisement, *available at*: <https://www.merriam-webster.com/dictionary/disenfranchisement> (last visited on December 14, 2021).

fundamental human right to vote.

1.4 FELONY DISENFRANCHISEMENT: A GLOBAL PERSPECTIVE

Felony disenfranchisement has the potential to impact a significant number of prisoners worldwide, given the size of the global prison population and its continuous growth due to strict criminal policies.¹¹ However, it is crucial to recognize that denying prisoners the right to vote is not an inherent or necessary part of their punishment, nor does it contribute to their successful reintegration into society.¹² Critics argue that felony disenfranchisement fails to serve a purpose, as it does not effectively deter crime or promote rehabilitation.¹³ Engaging in thoughtful discussions and considering various perspectives on felony disenfranchisement is essential to ensure a fair and inclusive democratic process for all individuals, including those sentenced to crimes.¹⁴ Many are unaware that criminal convictions can revoke political rights, highlighting the need for greater public awareness. The right to vote is recognized and upheld by numerous international instruments. These instruments highlight the fundamental nature of the right to vote and assert the necessity of exercising it without prejudice. The UDHR¹⁵, ICCPR,¹⁶ and the International Convention on the Elimination of All Forms of Racial Discrimination¹⁷ all emphasize the significance of the right to vote. Article 25 of the ICCPR specifically emphasizes the principle of proportionality and unreasonable limitation, which require considering the severity of the offense committed by prisoners when deciding on the suspension of their voting rights. The concept of “unreasonable limitation” supports the argument that a ban on prisoners' voting rights should not contradict the obligations outlined in these treaties, and the importance of evaluating the duration of the voting rights on their suspension needs to ensure that the principles

¹¹ Locked Out 2022: Estimates of People Denied Voting Rights, *available at*: <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/> (last visited on December 14, 2022).

¹² Christopher Uggen and Jeff Manza, “Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States” 67 *Am. Sociol. Rev.* 794 (2002).

¹³ Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 46 (Oxford University Press, New York, 2006).

¹⁴ Angela Behrens, Christopher Uggen, *et.al.*, “Ballot Manipulation and the Menace of Negro Domination: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002” 109 *AJS* 560 (2003).

¹⁵ The Universal Declaration of Human Rights, art. 21.

¹⁶ The International Covenant on Civil and Political Rights, arts. 2(1), 25.

¹⁷ The International Convention on the Elimination of All Forms of Racial Discrimination, art. 5.

it is just, reasonable, and justified.¹⁸

It is important to recognize that the right to vote for prisoners is not uniform globally and is subject to varying restrictions and conditions depending on the jurisdiction. Each country has its own set of rules and regulations that govern the eligibility criteria to exercise voting rights. Several nations, including Australia, South Africa, Canada, and France, uphold inmates' voting rights as part of progressive criminal justice reforms. They classify offenders based on sentence length and offense severity, ensuring compliance with human rights obligations, and many other European countries have granted full voting rights to all their inmates. This trend of allowing prisoners to vote can be observed in various countries across the globe, although specific statistics may not be readily accessible.¹⁹ For example, Ireland is a notable example, as it allows all convicts to exercise their voting rights without any controversy or external pressure. Ireland's approach to prisoner voting rights aligns with global best practices in civil rights, ensuring that all individuals, including prisoners, have the opportunity to participate in the democratic election process.²⁰ Similarly, in countries like Australia and some states of the USA, their approach is a bit restricted, and prisoner in these countries who serves at least three years in prison are prohibited from voting.²¹ This approach highlights treating prisoners as citizens and upholding their fundamental rights, even during confinement. It reflects a broader understanding that participation in the democratic process is a fundamental aspect of human dignity and societal reintegration.

In the realm of Criminology, it is essential to acknowledge that a criminal conviction does not strip a prisoner of their personhood or entitlement to rights. Penal reforms in India and other countries have shifted the focus from mere deterrence to the rehabilitation and reform of criminals, recognizing the need for a more humane approach to the criminal justice system.²² It is critical to recognize the value of the right to vote and to understand that preventing or depriving any person, whether guilty or not, of their basic human rights should not be overlooked. All individuals, as human

¹⁸ The International Covenant on Civil and Political Rights, art. 25.

¹⁹ Prisoner Vote by European Countries, *available at*: <https://www.bbc.com/news/uk-204475> (last visited on December 14, 2021).

²⁰ Cormac Behan and Ian O'Donnell, "Prisoners, Politics and the Polls Enfranchisement and the Burden of Responsibility" 48 *BJC* 319 (2008).

²¹ *Supra Note* at 19.

²² N. V. Paranjape, *Criminology and Penology* (Central Law Publication, Allahabad, 2006).

beings, possess inherent and fundamental rights essential for their well-being and survival. Forbidding prisoners from exercising the right to vote based on their sentence undermines the principles of equality and the right to dignity of every individual. Human rights are inherent to all individuals and universally applicable, ensuring equal access to fundamental rights without discrimination.²³ Prisoners, despite their confinement, still possess fundamental human rights, and denying them the right to vote can be perceived as a violation of these rights.²⁴ Upholding prisoners' voting rights is not merely an issue of justice, it is also an important step toward creating a more inclusive and democratic society. Allowing prisoners to participate in political elections can address the harsh treatment they often endure a voice and the ability to elect representatives who will support their interests and welfare. Encouraging political involvement can drive positive reforms within the criminal justice system, fostering a fairer and more equitable society that upholds the freedom of expression of all individuals. It is essential to ensure that every incarcerated individual, regardless of their sentence or crime, has the opportunity to engage in democratic elections and express their viewpoints. This effort aims to nurture a democratic nation that acknowledges the dignity and potential of all its citizens, potentially contributing to the well-being of prisoners and society overall.

1.5 LEGAL INSIGHTS ON PRISONERS' VOTING RIGHTS AND PRISON STATISTICS IN INDIA

In contemporary society, the refusal of prisoners' voting rights sparks discussions on the fundamental principles of democratic governance. Section 62(5) of the RPA, 1951, states that individuals who are incarcerated or in police custody are not eligible to vote. This provision excludes prisoners and those in police custody from participating in elections, reflecting the broader restrictions on voting rights for certain individuals under Indian law.²⁵ Voting upholds the principles of democracy, as it allows individuals to have a voice in selecting their representatives and to influence the policies and decisions that impact their lives. Nevertheless, this exclusion of prisoners'

²³ V. N. Rajan, *Whither Criminal Justice Policy* 178 (Sagar Publications, New Delhi, 1983).

²⁴ M.C. Val Son, "Rights of the Prisoner: An Evolving Jurisprudence" *CULR* 291 (1995).

²⁵ The Representation of the People Act, 1951, s.62(5).

voting rights raises debatable questions on the basic principles of democratic Governance and the treatment of prisoners worldwide. In the case of *Mohan Lal Tripathi v. District Magistrate*²⁶, the Supreme Court of India highlighted and stressed the significance of the right to vote by declaring that the right to vote is a constitutional right and a vital aspect of democracy. The right to vote enables citizens to participate in the democratic process and have a voice in the governance of their own country, highlighting its fundamental importance in shaping the nation's policies and decisions.

The rationale behind Section 62(5), which prohibits prisoners' voting rights regardless of the nature or severity of their offenses, is to safeguard the integrity of elections by excluding individuals with a criminal background from participating in the electoral process. The aim is to prevent those sentenced for crimes from influencing election outcomes. However, denying prisoners their fundamental human right to participate in elections may undermine democratic principles within a country. Imprisonment is a form of punishment, and achieving a balance between justice and the protection of democratic values is crucial. Finding this balance poses a complex challenge that necessitates careful consideration of various factors, including:

- i. The kinds of offenses committed.
- ii. The duration of the punishment.
- iii. The potential impact on the democratic process.

It is critical to preserve and protect prisoners' voting rights in terms of justice, equality, and democracy in the modern era. To protect prisoners' rights, the Indian judiciary has consistently referred to fundamental rights outlined in the Indian Constitution. Voting is considered a type of expression, falling under Article 19(1)(a), which safeguards the right to freedom of expression in the Constitution. On the contrary, in the *Kuldip Nayar v. Union of India & Ors.*²⁷, the Supreme Court clarified that the "right to vote" is a statutory right rather than a fundamental or common law right. In the *Anukul Chandra Pradhan*²⁸ case, the Supreme Court of India addressed the

²⁶ (2007) 1SCC 485.

²⁷ (2006) 7 SCC 1.

²⁸ *Anukul Chandra Pradhan v. Union of India*, AIR 1997 SC 2814.

legal framework concerning prisoners' disenfranchisement, making it a pivotal case in interpreting prisoners' voting rights in India. The framework outlined in Section 62(5) of RPA was central to this judgment, establishing that individuals serving a prison sentence do not retain the right to vote or participate in the electoral process. The Supreme Court ruled that the right to vote is not an inherent fundamental or constitutional right, but a privilege granted to citizens through legislative provisions. The court acknowledged that this right is subject to limitations and restrictions. Consequently, the Supreme Court found that Section 62(5) does not violate the arguments put forward by the petitioners. Following a prolonged period, the Hon'ble High Court of Delhi reignited discussions on prisoners' disenfranchisement with a recent ruling in the *Praveen Kumar Chaudhary*²⁹ case, the court upheld the Constitutional validity of Section 62(5) of the RPA, 1951. The petitioners argued that there is no substantial differentiation between an individual in custody and one who has been granted bail or is not in custody. They also contended that Section 62(5) prohibits a person from voting but does not prevent them from contesting for elections. This implies that a prisoner can stand as a candidate but cannot exercise their voting right while incarcerated. The petitioners further asserted that such differentiation violates Article 14 of the Indian Constitution and undermines its fundamental structure.

The petitioners raised concerns about why prisoners are not allowed to vote in any election when they are imprisoned, being transported, on trial, or in police custody, despite having the legal right to do so. They argue that this creates disparity by granting the right to vote to those released on bail but denying it to those whose charges have not been proven (under-trial prisoners). This raises questions about whether this distinction amounts to discrimination, particularly for those lacking the means and resources to obtain bail. Additionally, the petitioners argue that even prisoners held in civil jails are denied the right to vote, creating further inequity compared to prisoners who have been granted bail. The petitioners further argue that the ban on inmates' voting rights lacks reasonable classification, as it fails to differentiate between convicted individuals, those awaiting trial, and those in lawful police custody. This, in

²⁹ *Praveen Kumar Chaudhary v. Election Commission & Ors.* W.P. (C) 2336/ 2019.

turn, violates the Right to Equality,³⁰ the Right to Freedom of Speech and Expression³¹, the Right to Life and Personal Liberty³², and the Right to Election of the Indian Constitution³³. The petitioner similarly contends that this ban unjustly deprives a significant portion of the population of their fundamental right to vote. The Indian judiciary has been involved in upholding the core principles of democracy and protecting the right to vote through a series of landmark judgments. These rulings have consistently highlighted the critical importance of democratic governance and the essential role that voting plays in ensuring the legitimacy and accountability of elected officials. Through these cases, the judiciary has established the key precedents in constitutional jurisprudence, defining the standards and parameters necessary for maintaining the democratic values embedded in the Indian Constitution. In *Maneka Gandhi v. Union of India*³⁴, the Supreme Court emphasized that the right to vote is integral to the democratic system, requiring any law restricting it to adhere to principles of justice. In *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors.*,³⁵ the Court stressed the statutory and constitutional nature of the right to vote, insisting on free and fair elections to preserve the integrity of the electoral process. *Lakshmi Charan Sen & Ors. v. A.K. Mandal & Ors.*,³⁶ reiterated that any arbitrary action impeding a citizen's right to vote is unconstitutional, emphasizing equal opportunities in electoral participation. Further, in *PUCI v. Union of India and another*,³⁷ the Court affirmed that the right to vote is not only a legal but also a constitutional one, subjecting any infringement to rigorous scrutiny. These cases

³⁰ The Constitution of India, art. 14. Equality before the law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.

³¹ The Constitution of India, art. 19(1)(a). All citizens shall have the right to freedom of speech and expression.

³² The Constitution of India, art. 21. Protection of life and personal liberty person shall be deprived of his life or personal liberty except according to procedure established by law.

³³ The Constitution of India, art. 326. Elections to the House of the People and Legislative Assemblies of the States are to be based on adult suffrage-; that is to say, every person who is a citizen of India and who is not less than 18 of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

³⁴ AIR 1978 SC 597.

³⁵ (1978) 1 SCC 405.

³⁶ AIR 1981 SC 615.

³⁷ (2003) 4 SCC 399.

collectively highlight the judiciary’s steadfast commitment to uphold the right to vote as a cornerstone of Indian democracy.

1.5.1 NCRB Report on Indian Prisoners

Data from the National Crime Records Bureau for 2021 indicates that India had 554,034 prisoners as of December 31, 2021. Notably, the number of undertrial prisoners surged from 371,848 in 2020 to 427,165 in 2021, reflecting an increase of approximately 14.9%. This significant rise in undertrial prisoners compared to convicts raises critical concerns about their rights, including their exclusion from democratic processes like voting. State-wise statistics reveal that Uttar Pradesh has the highest number of prisoners at approximately 90,606, followed by Bihar with about 59,577, and Maharashtra with around 31,752. The fact that undertrial prisoners constitute 60%-70% of the total prison population highlights broader issues with the justice system's efficiency in timely case resolution. Despite their rights to employment and education, prisoners continue to be denied their right to vote, revealing disparities in civic participation based on incarceration status.³⁸

Table 1: Shows the total no. of incarcerated prisoners from 2017 to 2021³⁹

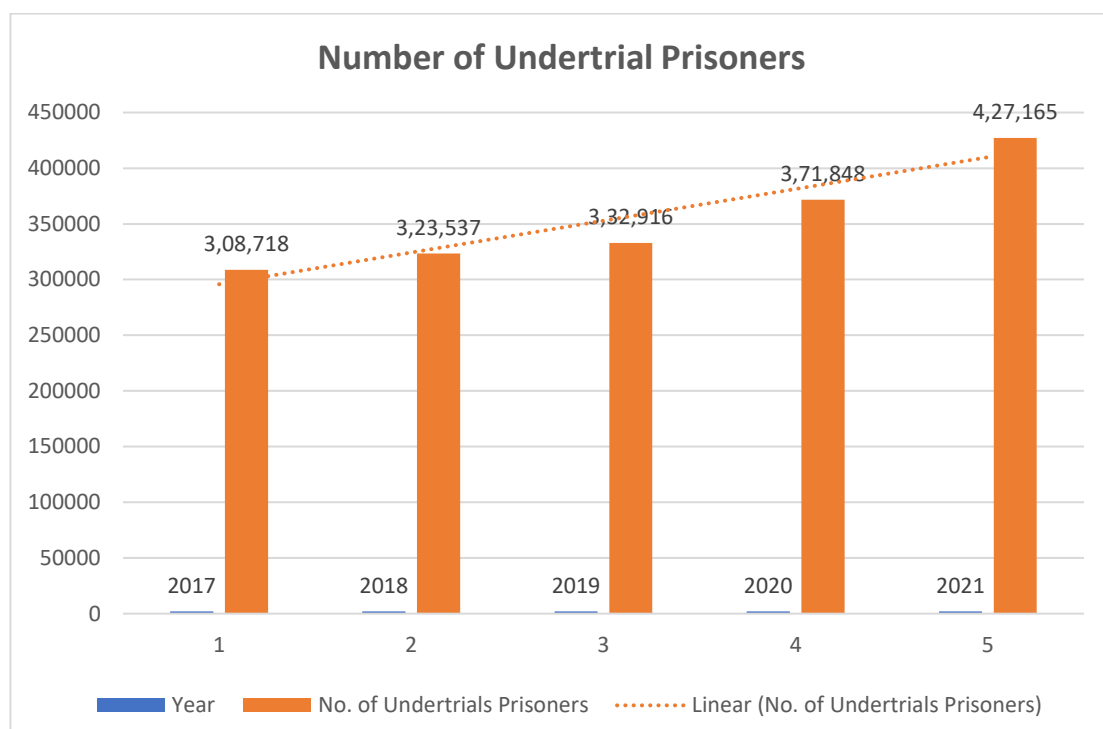
YEARS	CONVICT	UNDERTRIAL	DETENUES	OTHER INMATES	TOTAL PRISONERS
2017	1,39,149	3,08,718	2,136	693	4,50,696
2018	1,39,488	3,23,537	2,384	675	4,66,084
2019	1,44,125	3,32,916	3,223	681	4,81,387
2020	1,12,589	3,71,848	3,590	484	4,88,511
2021	1,22,852	4,27,165	3,470	547	5,54,034

Source: Prison Statistics India, 2021.

³⁸ Astha Thapliyal, “Voting Rights of Undertrial Prisoners: A Deprivation of Political Rights”, 3 *IJRPR* 173 (2022).

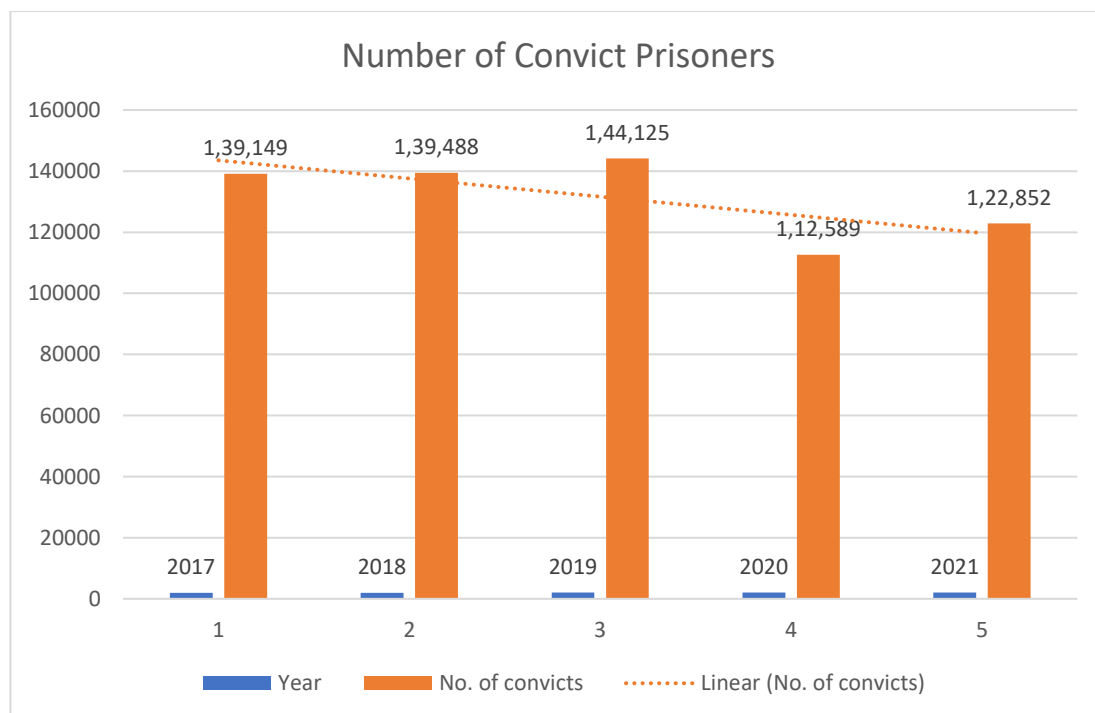
³⁹ Government of India, Prison Statistics India - 2021 Executive Summary (National Crime Records Bureau, 2019).

Figure 1: Under-trial Prisoners from 2017-2021



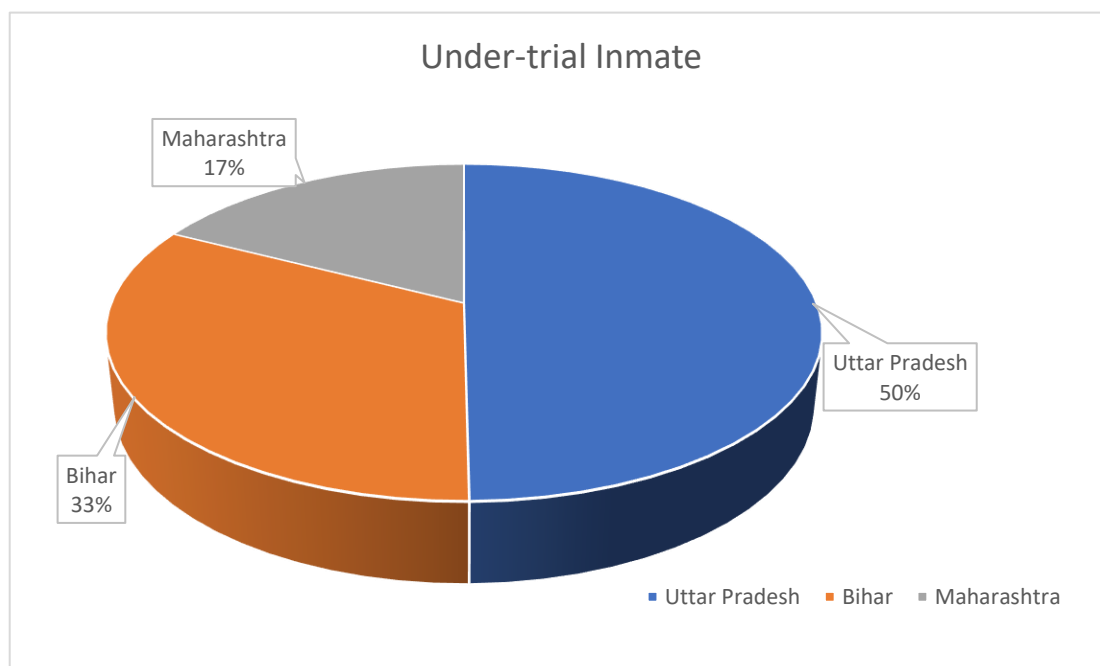
Source: Prison Statistics India, 2021.

Figure 2: Convicts Prisoners from 2017-2021



Source: Prison Statistics India, 2021.

Figure 3: Highest no. of undertrials in India according to the State Level



Source: Prison Statistics India, 2021.

1.5.2 Factors Contributing to the Growing Prison Population in India

The causes contributing to the proliferation of prisoners in India are multifaceted and cover several critical factors: - These are a backlog of ongoing cases, deficiencies in police and jail personnel, and inadequate legal assistance for the accused.

i. Backlog of Pending Cases: The primary cause of the increasing number of prisoners is the heavy workload faced by overburdened judges, resulting in a backlog of pending cases within the Indian judicial system. This backlog, stemming from the system's insufficient capacity, leads to prolonged periods without resolution for many cases, delaying justice or further punishment for inmates.

ii. Failure of Police and Jail Staff: There are instances where the police and jail staff fail to fulfill their duties effectively. Despite the Supreme Court's recognition in *Hussainara Khatoon v. Home Secretary, Bihar*⁴⁰ of the basic right of prisoners and accused individuals to a speedy trial under Article 21, many individuals continue to suffer even after being found innocent.

⁴⁰ (1980) 1 SCC 115.

iii. Lack of Legal Assistance: The majority of prisoners come from underprivileged, uneducated, or marginalized backgrounds, making it difficult for them to access legal aid, such as sureties or remand bail. The principle that "Bail is a Rule, Prison is an Exception" emphasizes that bail should be granted as the norm, with imprisonment reserved for exceptional circumstances. However, the consistent application of this principle remains a challenge within the flawed justice system.

The issues outlined underscore significant inequalities in civic participation and justice within the legal system. In India, the large population of undertrial and convicted prisoners faces serious challenges in exercising their voting rights. Many prisoners remain detained due to prolonged delays in their trials, which exacerbates their inability to participate in democratic processes. This inefficiency, tied with the denial of voting rights, highlights broader concerns about fairness and equity. The lack of timely legal resolution and inadequate representation further marginalize these individuals, preventing them from engaging in democratic rights. Addressing these issues is crucial for ensuring that all individuals, regardless of their legal status, are granted the opportunity to exercise their fundamental rights and participate in the democratic process.

1.6 STATEMENT OF THE PROBLEM

- i. No Voting Rights for Prisoners in India:** The current legal framework in India denies prisoners voting rights, raising concerns about the democratic values of inclusivity and representation.
- ii. Exclusion of a Significant Population:** Denying prisoners their right to vote excludes a considerable number of inmates from participating in the democratic process, limiting their ability to shape policies that influence their lives.
- iii. Infringement of Human Rights:** Preventing prisoners from voting can be seen as a breach of their fundamental human rights, such as the right to engage in political activities and express their opinions.
- iv. Inconsistent with International Standards:** India's stance on prisoners' voting rights is inconsistent with international standards, as many countries allow incarcerated individuals to cast or exercise their voting rights.

- v. **Constitutional Issues:** The denial of voting rights to prisoners raises potential violations of principles enshrined in the Indian Constitution, including the Right to Equality, Freedom of Speech and Expression, and the Right to Life and Personal Liberty. This prompts significant constitutional questions regarding the protection and inclusivity of all citizens' rights.
- vi. **Lack of Legislative and Policy Reform:** There is a significant gap in legislative efforts to address and reform the laws concerning prisoners' voting rights, indicating a neglect of this important democratic issue.
- vii. **Judicial Interpretations and Limitations:** Judicial interpretations have often upheld the disenfranchisement of prisoners, highlighting the need to review these decisions as evolving human rights standards and democratic principles.
- viii. **Public Awareness and Engagement:** There is limited public awareness and engagement regarding the issue of prisoners' voting rights, leading to a lack of pressure on lawmakers to enact necessary reforms.

1.7 OBJECTIVES OF THE STUDY

To enhance prisoners' voting rights in India, this research aimed to achieve the following Objectives:

- i. To study the origin of felony disenfranchisement and its social impact.
- ii. To review prisoners' voting rights in light of the International Human Rights Treaties.
- iii. To comprehend the legislative framework on prisoners' voting rights and the right to vote.
- iv. To explore the differences and similarities between Indian and International legal provisions on felony disenfranchisement.
- v. To examine judicial responses to Human Rights on felony disenfranchisement.
- vi. To conduct an empirical investigation on the issues and challenges of felony disenfranchisement and its administration in Himachal Pradesh.
- vii. To assess the level of awareness and participation regarding prisoners' right to vote in Himachal Pradesh.

- viii. To identify gaps in existing legal provisions regarding the human rights of prisoners and felony disenfranchisement, and to suggest reforms and remedial measures.

1.8 SCOPE OF THE STUDY

- i. The scope of this research study encompasses a comprehensive analysis of felony disenfranchisement, with a specific focus on the historical background, social impact, international human rights standards, legislative and constitutional framework, judicial role, and an empirical study with special reference to the state of Himachal Pradesh.
- ii. The study aims to provide insights into the significance of prisoners' voting rights, the challenges they face, and the potential implications for their reformation and rehabilitation.
- iii. The findings of this study contribute to the existing literature on felony disenfranchisement and provide recommendations for policymakers in the criminal justice system.

1.9 REVIEW OF LITERATURE

The researcher has explored various dimensions of the issues concerning felony Disenfranchisement. The available literature primarily focuses on the problem, policy perspectives, administrative processes, and legal aspects of prisoners' voting rights. All relevant literature has been analytically discussed below:

- Akashdeep Singh's study: "Denial of Right to Vote to the Prisoners in India: A Critical Analysis", an article in the *IJLMH* (2022), critically examines India's disenfranchisement laws for Prisoners. He argues that Section 62(5) RPA, 1951, which prohibits prisoners from voting, contradicts international human rights standards and constitutional principles of voting rights in India. Despite constitutional provisions guaranteeing voting rights to all citizens, Indian courts have upheld the validity of this disenfranchisement statute. Singh recommends legislative reforms to align India's policies with democratic principles and international norms.
- Shivangi Gangwar's study: "Another Prisoners' Dilemma: Voting Rights of the

Incarcerated”, an article in the *GMLU Journal of Law & Economics* (2021). The article examines prisoners' voting rights directly to human rights principles and constitutional law, emphasizing India's practice of disenfranchising prisoners. Gangwar briefly discusses decisions from international constitutional courts but primarily scrutinizes India's approach to depriving prisoners of voting rights. The article contributes to the literature by exploring legal and human rights implications, advocating for a reconsideration of India's stance on prisoners' voting rights within the framework of constitutional guarantees and international standards.

- Deepak Antil's study: "Should Prisoners be Treated as Equal Citizens: Right to Vote a Way Forward", an article by *IJLDAI* (2021). The author advocates for reconsidering India's stance on prisoners' voting rights, framing it as a matter of equitable citizenship and human dignity. By highlighting the hardships faced by prisoners and the importance of voting as a fundamental right, Antil contributes to the literature by advocating for policy reforms that align with democratic principles and human rights norms. His arguments underscore the broader implications for social justice and democratic participation within India's legal and political context.
- Shivam Mishra and Ayanti Mishra's study: "Right to Vote of Prisoners", an article in the *South Asia Journal* (2020), critiques India's current judicial stance on prisoners' voting rights, advocating for reforms that align with democratic principles and global human rights standards. By emphasizing the importance of recognizing prisoners' right to vote as a fundamental belief in a democratic society, the authors contribute to ongoing discussions on legal reform and social justice in India.
- Krishnesh Bapat and Meghna Jandu's Study: "Undertrials, Voting, and The Constitution", an article in the *Indian Constitutional Law Review* (2020), examines the voting rights of undertrials and detainees in India. The authors highlight that while the right to vote is recognized as a legal right in India, it is restricted by Section 62(5) of the RPA, 1951. This section prohibits individuals in prison,

including those under trial, from voting, which the authors argue is unconstitutional. They critique the arbitrary nature of this restriction and the flawed judicial application of the “reasonable classification test”. Additionally, the article discusses the right to vote in international agreements and judicial interventions in other jurisdictions to protect prisoners' voting rights.

- Shweta Mishra and Amit Kumar Pandey’s Study: “Prisoner’s Right to Vote is a Human Right”, an article in the *JHRLP* (2019), inspects the paradox of India's voting laws, where convicted individuals can stand for election but cannot vote. The authors argue that this discrepancy raises significant human rights concerns in a democratic society. They propose that the Indian government should pass laws to grant prisoners conditional voting rights, aligning with the principles of democratic participation and human rights.
- Kavya Jha and Palak Kapoor’s Study: “Felony Disfranchisement in a Democratic Nation”, an article in the *RGNUL Student Research Review* (2019), critiques the justification for denying prisoners the right to vote. The authors evaluate the shortcomings of the current jail system and discuss the global movement toward granting voting rights to prisoners. They conclude that denying prisoners the right to vote is unnecessary and undermines the democratic foundation of the nation. The study advocates for extending voting rights to incarcerated individuals to promote inclusion.
- Shivani Asthana’s Article, “Should India’s 400,000 Prisoners Get to Vote in the 2019 Election,” in *Quartz India* (2019), discusses the global trend of granting voting rights to prisoners, highlighting examples from Spain, Switzerland, Denmark, and Ireland. Asthana points out that voter disenfranchisement has a history of racism and oppression, particularly in the US and Canada. She argues that enfranchising prisoners is a progressive step in criminal justice reform, suggesting India should consider similar reforms for its 400,000 prisoners.
- Baljeet Kaur’s Article: “Prisoners’ Right to Vote: Citizen without a Vote in a Democracy has no Existence”, addresses the limitations on prisoners' voting rights, highlighting that while incarcerated individuals cannot vote, those awaiting

trial are similarly restricted. The article argues for maintaining voting rights for those under trial. Kaur emphasizes that depriving prisoners of the right to vote undermines rehabilitation and integration principles, which are essential to laws and policies concerning prisoners.

- K. D. Gaur's Book, "*The Indian Penal Code*" (Central Law Publications, 2019), provides a legal perspective on electoral offenses under the Indian Penal Code. It discusses penalties and consequences related to offenses such as bribery, undue influence, making false statements, and personation during elections. This legal framework is crucial for understanding the regulatory aspects governing electoral integrity and transparency in India.
- "The Representation of People Act, 1950 and 1951" (The Editorial Board of Professional Book Publishers, 2019) provides comprehensive guidelines and protocols for the conduct of elections in India. This legislation outlines the rules and procedures mandated by the Election Commission of India, covering various aspects such as voter qualifications, disqualifications, and the resolution of election-related disputes. It is a critical resource for understanding the legislative framework that governs India's electoral system, ensuring transparency, fairness, and adherence to democratic principles in electoral processes.
- Tripkovic Milena, "*Punishment and Citizenship: A Theory of Criminal Disenfranchisement*" (Oxford University Press, New York, 2018), examines the historical and current practices of disenfranchising criminals in European democracies. She argues that disenfranchisement is not merely a punishment but a measure to reduce the status and entitlements of certain criminals as citizens. The book explores the idea of citizenship and what is required to enjoy full rights within a society. Tripkovic suggests that only individuals who have fundamentally severed their moral ties with society, due to severe moral failures, should face voting restrictions. She also discusses the conditions under which these restrictions should be applied and why some countries might choose not to enforce them.
- Pablo Marshall, "*Voting from Prison: Against the Democratic Case for Disenfranchisement*" (2018), author critically challenges the justifications for disenfranchising prisoners. He argues that denying prisoners the right to vote

undermines democratic principles and citizenship. Marshall asserts that prisoners should be included in the democratic process as eligible voters to foster rehabilitation and reintegration into society. He contends that voting rights can enhance prisoners' sense of civic responsibility and engagement, which is crucial for their successful reentry into society. Marshall advocates for recognizing prisoners as democratic citizens and highlights the role of voting in promoting their rehabilitation.

- Shai Dothan's chapter in “*Comparative Views on the Right to Vote in International Law: The Case of Prisoners' Disenfranchisement*” (Oxford University Press, 2018), examines how different countries interpret the right to vote, especially regarding prisoners. It identifies three main perspectives first, the right to vote is inherent and inalienable, as a privilege not universally granted, and as a conditional right that can be revoked under certain conditions. Dothan highlights the challenges these varying views present to the ECHR in aligning with European nations through emerging treaties.
- M P Jain, “*Indian Constitutional Law*” (Lexis Nexis, 2018), provides an in-depth examination of the Election Commission's role in ensuring free and fair elections in India. The book explores the challenges and the scope of its authority. Jain's analysis, enhanced by insights from the Right to Information Act, offers an additional perspective on the Commission's functioning and its importance in upholding democracy in India.
- Adam Godwin, “*Should Prisoners be Allowed to Vote? A Comprehensive Evaluation of Prisoner Disenfranchisement*” (2017), author critically examines the ethical and practical dimensions of denying voting rights to convicted prisoners in the United Kingdom. The book evaluates the justifications for disenfranchisement and assesses whether this practice aligns with the core objectives of the criminal justice system.
- Aparna Chandra, Mrinal Satish, Ritu Kumar, and Suma Sebastian, “*Prisoners' Rights*” (Human Rights Law Network, New Delhi, 2017), provide an extensive overview of the judicial advancements in the realm of prisoners' rights in India.

The authors highlight significant progress in the legal framework concerning the protection and enforcement of prisoners' rights, with a particular emphasis on human rights. The book delves into relevant case law, examining how courts have shaped and reinforced the rights of inmates. Additionally, it addresses ongoing challenges and issues that continue to affect prisoners, offering a thorough review of both the advancements and persistent problems within the system. The work stands out as a comprehensive resource on the developments in prisoners' rights, showcasing the dynamic interaction between legal theory and judicial practice.

- Alicia Bianco, *"Prisoners' Fundamental Right to Read: Courts Should Ensure that Rational Basis is Truly Rational"* (Roger Williams University Law Review, 2016). Alicia Bianco explores the restrictions placed on prisoners' access to information. The article critiques the tendency of courts to excessively defer to government policies on censorship and emphasizes the need for a more objective evaluation of these regulations. Bianco argues that prisoners face political vulnerability and historical inequality, which contributes to their segregation from broader society. The paper underscores the importance of ensuring that legal standards for censorship are genuinely rational and fair.
- Mandeep K. Dhami, *"Prisoner Disenfranchisement Policy: A Threat to Democracy"* (Analyses of Social Issues and Public Policy, 2015), Mandeep K. Dhami argues that denying prisoners the right to vote undermines democratic principles and can lead to injustice. The article discusses how disenfranchisement conflicts with democratic values and explores the potential benefits of granting voting rights to convicts, including their rehabilitation and reintegration into society. Dhami also reviews various arguments surrounding the issue, examines public opinion, and highlights recent legislative changes worldwide. The article calls for further psychological research into the effects of disenfranchisement.
- Cormac Behan, *"Citizen Convicts: Prisoners, Politics, and the Vote"* (Manchester University Press, 2014), Cormac Behan explores the contentious issue of prisoner enfranchisement within modern democracies. The book focuses on the Republic of Ireland's approach to this issue, situating it within a broader comparative

context. Behan examines the theoretical arguments for and against allowing prisoners to vote, drawing on global jurisprudence and penal policy developments. The book highlights how the legal treatment of prisoner voting rights reflects broader historical, political, and social influences.

- Susan Easton et.al., In “*Should Prisoners Be Allowed to Vote*” (Criminal Justice Matters, 2012), authors explored the issue of voting rights for prisoners, focusing on recent legal and policy developments. The authors critically assess the justifications for disenfranchisement and advocate for the restoration of voting rights based on policy considerations and fundamental principles of justice
- Alec C Ewald and Brandon Rottinghaus, “*Criminal Disenfranchisement from an International Perspective*” (Cambridge University Press, 2009), authors provide a comprehensive examination of laws regulating voting rights for individuals with criminal convictions across different countries. The book investigates the reasons, consequences, and nature of disenfranchisement laws, highlighting the Countries' aspects, including democracy, constitutional values, and judicial authority. The book underscores that statutory law is influenced by political and historical contexts, not merely by formal legal doctrine, and aims to fill a gap in the comparative analysis of voting rights and election law.
- K. Neelima, in “Constitution and The Unwritten Right to Vote” (2008), the author questioned whether the Indian Constitution fundamentally guarantees the right to vote and examines this right interpretation by the judiciary. The paper employs a qualitative approach and legal analysis to explore these constitutional and judicial perspectives. Neelima’s study delves into the explicit and implicit aspects of voting rights within the Indian legal framework, providing insights into the broader implications of the constitutional interpretation of voter rights.
- Kavita Singh, in “Civil Death of Prisoner: Disenfranchising the Prisoner, in Reality, Causes His Civil Death”, an article in *NUJS Law Review* (2008), the author argues that refusing prisoners the right to vote effectively equates to treating them as civilly dead. Singh explores this notion by connecting various concepts, including universal suffrage, voting qualifications, and comparative international practices. The article highlights how disenfranchisement extends beyond mere

voting rights, impacting the broader recognition of prisoners as active members of society. Singh's analysis emphasizes the profound implications of voter denial on the civil status of incarcerated individuals.

- Roger Clegg, et. al., "The Case Against Felon Voting" (*University of St. Thomas Journal of Law and Public Policy*, 2008), Roger Clegg and colleagues discuss the widespread support across forty-eight states and the District of Columbia for laws that deny felons the right to vote. The authors argue that neither the U.S. Constitution nor the Voting Rights Act of 1965 provides sufficient grounds to challenge these felon disenfranchisement laws. Clegg et al. assert that overturning these laws through judicial intervention would be unjust, as it would contradict the decisions made by most of the states. They contend that the current laws reflect the democratic will of the people and that constitutional or legislative interpretations should not undermine these established practices.
- Cormac Behan and Ian O'Donnell, in their article "Prisoners, Politics and the Polls: Enfranchisement and the Burden of Responsibility" (*British Journal of Criminology*, 2008), examine the significant legislative reform introduced by the Irish Government in 2006, which granted voting rights to prisoners. The authors explore the broader implications of this legal change within the context of international jurisprudence and criminal justice developments. The authors note the minimal opposition from political and media sources, leading to the relatively inconspicuous passage of the reform through Parliament. By 2007, prisoners in Ireland were allowed to vote, with a small number of registered voters but a relatively high voter turnout. The authors raise a critical point about the intentions behind this reform. While restoring civic engagement among prisoners appears to be a well-meaning objective, it may promote law-abiding behavior and a sense of responsibility, rather than facilitating personal transformation or empowering prisoners to effect societal change.
- Grey Robins, "The Rights of Prisoners to Vote: A Review of Prisoner Disenfranchisement in New Zealand" (*NZJPL*, 2006), Grey Robins addresses the contentious issue of disenfranchisement, questioning whether it is a justifiable consequence of punishment or social contract theory. Robins argues that,

according to liberal democratic theory, the state should aim to establish a broad voter base to enhance its legitimacy. Disenfranchising individuals based on irrelevant offenses contradicts this principle. Robins further posit that prisoners should be acknowledged as members of society to validate their sentences. Excluding prisoners from the democratic system constitutes an unfair and arbitrary punishment, undermining the principles of justice and societal inclusion.

- Jeff Manza and Christopher Uggen, in their book *“Locked Out: Felon Disenfranchisement and American Democracy”* (Oxford University Press, 2006), investigate the paradox of the United States, a nation that prides itself on universal suffrage, denying a substantial portion of its population the right to vote. The authors analyze the consequences of this widespread disenfranchisement on election outcomes and public policy, revealing the significant racial factors that influenced the creation of these laws and their current political ramifications. Through compelling empirical evidence, Manza and Uggen advocate for reform, aiming to influence future policy and political discourse regarding the participation of criminals in the political process. Their work underscores the urgent need for inclusive voting policies to uphold democratic values and promote equitable political participation.
- Elizabeth A. Hull’s book, *“The Disenfranchisement of Ex-Felons”* (Temple University Press, Philadelphia, 2006), this book provides an extensive analysis of the historical context, characteristics, and wide-ranging sociological and political implications of denying voting rights to individuals with criminal records. Hull explores the arguments presented in courts, legislatures, and the media to justify such disenfranchisement practices. The book also highlights the efforts to reverse these legislative measures, arguing that the civil rights movement cannot be successful unless ex-felons, who have completed their societal obligations, are afforded the same rights as other American citizens. Hull’s work underscores the ongoing struggle for civil rights and the necessity of inclusive voting policies to ensure democratic equity.
- Ntusi Mbodla’s article, “Should Prisoners Have a Right to Vote” (*J. Afr. Law*, 2002), explores the complexities surrounding prisoners’ voting rights. Mbodla

emphasizes the government's responsibility to ensure equal access to voting rights in a democratic society. The paper delves into the various categories of prisoners and the importance of distinguishing between them when considering their right to vote. Additionally, the author examines the arguments against allowing prisoners to vote, providing a thorough analysis of the justifications for this contradiction. This study highlights the broader implications of disenfranchising prisoners and the need to reconsider such policies to uphold democratic principles.

- United Nations, *“The Human Rights Compilation of International Instruments, v. I Universal Instruments”* (United Nations Publications, New York, 2002) underscores the critical importance of human rights for human survival and harmonious cohabitation. The book highlights that promoting world peace and development is a fundamental goal of the United Nations, with human rights being universal, indivisible, and interrelated. The compilation recognizes the extensive efforts by governments to discuss, negotiate, and establish key principles and legislative measures aimed at promoting and protecting human rights. This resource provides a comprehensive overview of international human rights instruments, illustrating the collaborative global efforts to uphold these essential rights.
- Gokulesh Sharma, in his article “Voting Human Rights of Prisoners: He Can Be M.P. and MLA but Cannot Vote” (All India Reporter Pvt. Ltd. Nagpur, 1998), explores the contradictions within India's electoral laws. Sharma highlighted that while the Constitution of India and The Representation of the People Act form the core of the electoral system there is a significant inconsistency. Under the current legal framework, prisoners and undertrials are prohibited from voting in detention. However, these same individuals can stand for elections and hold positions such as Members of Parliament (M.P.), Members of the State Legislative Assembly (M.L.A.), or even Ministers. This paradox raises concerns about the equity and logic of the laws governing voting rights in India. Sharma's findings underscore the need for a reevaluation of these legal provisions to address the inconsistency and ensure that the principles of democracy are upheld.
- Paramjit Jaswal and Nistha Jaswal, *“Human Rights and the Law”* (APH Publishing

Corporation, New Delhi, 1996). In this book, the authors explain an analysis of the universal human rights laws, emphasizing their applicability to all individuals without discrimination. The authors highlight the importance of upholding these rights under all circumstances, regardless of political systems or situations. The book examines the legal structures surrounding human rights, including international conventions, treaties, and declarations. It also discusses the role of national laws and constitutional provisions in protecting human rights. Through detailed analyses of significant legal cases and landmark judgments, the authors offer insightful commentary on the implications of these decisions, enriching the understanding of human rights jurisprudence. The authors present complex legal concepts and principles in a clear and accessible manner, providing readers with a comprehensive overview of the legal framework governing human rights.

- Naresh Kumar's book, "*Constitutional Rights of Prisoners: A Study of Judicial Trends*" (Mittal Publications, 1986), offers an in-depth analysis of legal cases regarding prisoners' rights. The author highlights the significance of international human rights standards in shaping judicial decisions related to prisoners' rights. Through numerous case studies, Kumar demonstrates how international standards are applied to protect prisoners' rights by thoroughly understanding the judicial trends in this area. This book is a resource for examining how courts have interpreted and enforced prisoners' rights over time.

1.10 RESEARCH GAP

The researcher conducted a preliminary analysis of the current literature and identified a substantial research gap that requires further examination: -

- i. India, having ratified international treaties to ensure prisoners' rights, faces a notable disparity in the acknowledgment and enforcement of voting rights among inmates nationwide.
- ii. Despite the availability of various international legislation and legal frameworks aimed at safeguarding prisoners' voting rights, there is insufficient awareness and comprehension of the associated challenges and repercussions in India.

1.11 RESEARCH METHODOLOGY

Data was gathered from both primary and secondary legal sources for this research. To offer a comprehensive understanding and derive insightful conclusions, a comparative analysis of legislative frameworks from different jurisdictions, including India, the USA, the UK, and other relevant countries, was conducted.

1.11.1 Doctrinal Research

- i. The doctrinal part of the research involved a comprehensive review of various legal sources, including law books, research papers, judgments, magazines, newspapers, governmental and non-governmental reports, statutes, policies, plans, conventions, and more.
- ii. Graphs, charts, and tables were utilized to depict the data.

1.11.2 Empirical Research

- i. The State of Himachal Pradesh was the Universe for the empirical research.
- ii. Two Districts in Himachal Pradesh, Shimla and Hamirpur, were selected for an in-depth study.
- iii. A questionnaire method was adopted for data collection, using pre-structured questionnaires.
- iv. Four types of respondents were included.
 - **Prison Staff:** Respondents were prison staff from Model Central Jail in Shimla and District Jail in Hamirpur.
 - **Legal Fraternity:** Respondents included advocates, judges, and law experts from Himachal Pradesh.
 - **General Public:** Respondents were members of the general public in Himachal Pradesh.
 - **Prisoners:** Respondents were inmates from Model Central Jail (Shimla) and District Jail (Hamirpur).

1.11.3 Sources of Data

The research methodology outlines the sampling techniques and procedures for data

collection and analysis.

- i. **Qualitative Data Collection:** An online questionnaire was distributed to members of the legal fraternity and the general public.
- ii. **Fieldwork Data Collection:** Responses were collected from prisoners and police administrative staff through fieldwork at the Model Central Jail in Shimla and the District Jail in Hamirpur, Himachal Pradesh.
- iii. **Survey and Field Activities:** Primary data was gathered through surveys and field activities. A structured questionnaire was used to obtain relevant information.
- iv. **Personal Interactions:** Direct interactions were conducted with respondents, including prisoners and prison authority staff, in Shimla and Hamirpur. Information was collected through the distributed questionnaires.

Table 2: RESPONDENTS THROUGH ONLINE QUESTIONNAIRE

Serial No.	Category	Number of Respondents
1.	General Public	100
2.	Legal fraternity	50

Table 3: RESPONDENTS THROUGH FIELD SURVEY QUESTIONNAIRE

Serial No.	Category	Number of Respondents
1.	Prisoners	250
2.	Prison Authorities	100

Table 4: TOTAL NUMBER OF RESPONDENTS

Serial No.	Jails	Number of Respondents
1.	Prisoners (MCJ) Shimla	180
2.	Prisoners (District Jail) Hamirpur	70
3.	Prison Authority Shimla	75
4.	Prison Authority Hamirpur	25
5.	General Public	100

6.	Legal fraternity	50
	TOTAL	500

1.11.4 Sample Size

The sample size for the study was 500, distributed within Himachal Pradesh as follows:

- Prisoners: 250
- Prison authorities: 100
- General Public: 100
- Legal Fraternity: 50

1.11.5 Sampling Technique

A non-random sampling technique was employed for the survey.

- Interview Schedules with structured questions were used for prisoners and prison authorities.
- A questionnaire with open-ended questions was used to collect data from the general public and the legal fraternity.

1.11.6 Tools of Analysis

- Data was presented using bar graphs, pie charts, and similar visual aids.
- Analysis was conducted with SPSS, incorporating descriptive and cross-tabulation statistics.

1.11.7 Research Area

- Model Central Jail, Shimla
- District Jail, Hamirpur (within Himachal Pradesh limits)

1.11.8 Data Analysis

- Data was analyzed using SPSS, including both descriptive and cross-tabulation statistics.
- The Chi-square test was used under the Non-Parametric Test category to compare observed and expected results for various variables.
- Results were presented in tables, with graphical representation provided by graphs and pie charts.

- Percentages and averages were used to present the data clearly and effectively.

1.12 LIMITATIONS OF THE STUDY

- The research focused on felon disenfranchisement within the State of Himachal Pradesh, India, which may constrain the applicability of the findings to other geographical regions or legal frameworks.
- The Study primarily relies on questionnaire-based data collection methods, which could introduce response biases and limit the depth of qualitative insights that could be obtained through more diverse methodologies.

1.13 HYPOTHESES

- H1: There is a significant difference in public opinion on the extension of voting rights to prisoners between the general public of Shimla and Hamirpur districts in Himachal Pradesh.
- H0: There is no significant difference in the awareness of voting rights among prisoners in Shimla and Hamirpur districts of Himachal Pradesh.
- H2: There is a significant difference in the perception of the rehabilitative impact of voting rights among prisoners in Shimla and Hamirpur districts of Himachal Pradesh.

1.14 RESEARCH QUESTIONS

- To what extent is Indian society aware of prisoners' voting rights?
- Does the current legislative framework regarding the right to vote and prisoners' voting rights adequately safeguard fundamental constitutional rights?
- What are the similarities and differences among international legal provisions concerning prisoners' voting rights?
- Why does the Indian judiciary disregard the voting rights of prisoners, despite it being guaranteed as a fundamental human right?
- What modifications can be implemented in Section 62(5) of the Representation

of the People Act to incorporate voting rights for prisoners, in alignment with international human rights instruments?

1.15 CHAPTERISATION

Chapter I- Introduction

This chapter sets the foundation for the thesis, offering a comprehensive overview of the study on Felony Disenfranchisement. It articulates the statement of the problem, research objectives, and the rationale behind the investigation into felony disenfranchisement. The chapter highlights its significance and relevance in the broader context. It outlines the research questions and reviews the existing literature, thoroughly examining scholarly works related to the thesis. Additionally, the chapter details the research methodology employed throughout the study.

Chapter II- Historical Background of Felony Disenfranchisement and Its Social Impact.

This chapter explores the historical evolution of felony disenfranchisement, tracing its origins and the practices through which it has been applied across different historical periods. It investigates the social consequences of denying prisoners their fundamental right to vote, focusing on how this denial affects their sense of citizenship, representation, and participation in the democratic process. The chapter also examines shifts in attitudes toward prisoners' voting rights, highlighting progress made in various countries, such as the United States and the United Kingdom, in recognizing and expanding these rights. Through this comparative analysis, the chapter seeks to offer a thorough understanding of the historical context of felony disenfranchisement and the development of prisoners' rights across different nations.

Chapter III- International Scenario on Felony Disenfranchisement and Human Rights of Prisoners.

This chapter provides an international comparative analysis of prisoners' voting rights through the framework of fundamental human rights. It emphasizes the role of international treaties and the European Court of Human Rights in advancing the cause of prisoners' voting rights. These treaties and judicial decisions set standards for the humane treatment of prisoners and support their right to vote, though subject to

reasonable limitations. The study explores how these international agreements promote the recognition of prisoners' rights and outline the universally acknowledged right to vote. It examines the impact of these legal frameworks on promoting prisoners' inclusion in the democratic process and highlights the various approaches adopted by different countries to protect these rights. By analyzing the influence of international treaties and rulings of the ECHR, the chapter highlights the significance of these instruments in shaping national policies and practices. It also discusses how granting voting rights to prisoners can enhance their rehabilitation, reintegration, and sense of societal participation, advocating for alignment with international standards to ensure fair and just treatment.

Chapter VI- Legislative and Constitutional Framework on Felony Disenfranchisement

This chapter investigates the legislative and constitutional frameworks governing felony disenfranchisement in India and other jurisdictions. It critically examines the various legal provisions relevant to prisoners' voting rights, including laws, regulations, and constitutional implications. The emphasis is on understanding how these frameworks affect prisoners' reformation, rehabilitation, and reintegration into society. The study highlights the crucial role that voting rights play in the broader context of prisoners' rehabilitation and reintegration efforts. It highlights how legal and constitutional provisions can either support or hinder these processes, emphasizing the need for a framework that facilitates not just the rights of prisoners but also their successful reintegration into society. Through this analysis, the chapter aims to provide insights into how legislative and constitutional approaches can better support the reformation and reintegration of incarcerated individuals.

Chapter V – Indian Judiciary on Felony Disenfranchisement

This chapter examines the role of the Indian judiciary in safeguarding prisoners' human rights, with a particular focus on their right to vote. It underlines the Indian Supreme Court's consistent rejection of pleas for prisoners' voting rights. Additionally, the chapter examines international cases where judicial decisions have upheld these rights, offering a comparative analysis of how different countries' judiciaries have recognized and safeguarded prisoners' voting rights. It highlights the positive outcomes of such verdicts on prisoners' rehabilitation and reintegration into society. By studying these

international precedents, the chapter emphasizes the critical importance of judicial involvement in ensuring prisoners' voting rights. It also discusses the broader implications of these judicial actions within India and globally, advocating for a shift in the Indian judiciary's perspective to align with international standards and practices. Such an alignment would acknowledge and uphold prisoners' voting rights as a fundamental human right, promoting fair and equitable treatment and enabling their participation in the democratic process.

Chapter VI - Empirical Study on Felony Disenfranchisement with a Special Reference to the State of Himachal Pradesh

This chapter presents the findings from an empirical study on felony disenfranchisement, focusing specifically on the State of Himachal Pradesh. It begins with a brief overview of the total number of prisons and prisoners and then details the data collected from the districts of Shimla and Hamirpur. The study utilized questionnaires distributed to various respondents to capture their perspectives and insights on the issue of prisoners' voting rights. The chapter analyzes the collected data to provide a comprehensive understanding of felony disenfranchisement in the background of Himachal Pradesh.

Chapter VII – Conclusion and Suggestions

The final chapter of the thesis presents the study's findings, conclusions, and recommendations, based on the research conducted. It addresses criticisms of the current provisions on prisoners' voting rights and highlights existing gaps in Indian laws, as well as the reasons for the violation of prisoners' fundamental human rights. The study underlines that the primary goal of imprisonment is the reformation and rehabilitation of prisoners. It argues that depriving prisoners of their basic right to vote should be considered an additional form of punishment, undermining the principles of reformation and rehabilitation. Additionally, the chapter provides recommendations for legal reforms and policy adjustments to better align with international human rights standards and promote the fair treatment of prisoners.

CHAPTER - 2

HISTORICAL BACKGROUND OF FELONY DISENFRANCHISEMENT AND ITS SOCIAL IMPACT

2.1 INTRODUCTION

Humans are seen as political creatures.⁴¹ According to the philosopher Samuel Pufendorf, the purpose of law is to promote social harmony, which is crucial for maintaining stability in society.⁴² One way to uphold this harmony is by granting citizens the right to vote, enabling them to actively participate in the functioning of the governance of their society and express their opinions.⁴³ Throughout history, different groups within the polis have placed great importance on the ability to vote as a means of political engagement and influence.⁴⁴ In the Aristotelian connotation, voting symbolizes an act of active participation in the decision and governance of the polis. The word "politics" refers to citizens' participation as members of their entire society, prioritizing the collective interest over individual concerns.⁴⁵ In the past, voting has been prohibited to most people who could not participate in politics. Women, slaves, and black males were once unjustifiably excluded from the electoral process based on discrimination of color, gender, education, poverty, property ownership, or socio-economic position.⁴⁶ After a prolonged and thought-provoking struggle to extend voting rights to previously marginalized communities, the opportunity to vote eventually became a reality for mentally competent adult citizens in modern times. In this Era, this legal right of competent adults to vote is being denied to a specific group of people, those are, who have been accused of crimes. The voting rights for every individual did not come suddenly, it was the result of a gradual and ongoing struggle by historically oppressed groups.

In the past, voting rights were limited to wealthy white males. Only those who

⁴¹ Benjamin Jowett, *Aristotle's Politics* 5 (Batoche Books, Canada, 1999).

⁴² Samuel Pufendorf, *On the Duty of Man and Citizen* 16 (Cambridge University Press, United Kingdom, 1991).

⁴³ Michael Waldman, *The Fight to Vote* 6 (Simon & Schuster, New York, 2016).

⁴⁴ Susan Easton, *The Politics of the Prison and the Prisoner: Zoon Politikon* 1 (Kindle, New York, 2018).

⁴⁵ *Supra Note* at 41.

⁴⁶ Voting Rights: A Short History, available at: <https://www.carnegie.org/our-work/article/voting-rights-timeline/> (last visited on April 20, 2021).

were financially privileged and of white complexion were allowed to participate in political elections.⁴⁷ Throughout history, voting rights have consistently been a powerful tool and a product of societal struggles and conflicts. They continue to hold significant importance in the present times and will do so in the future. The freedom to vote is a unifying force that binds people together in a republic.⁴⁸ Felony disenfranchisement denotes the restriction of a person's ability to vote after being charged with a felony. The deprivation of voting rights is an immediate consequence of the punishment.⁴⁹ In some parts of the world, convicted prisoners are disqualified from voting, while others, such as undertrials or those on remand, may still retain their voting rights. However, in India, even under trial lost their right to vote. Disenfranchisement laws in certain countries, including states of the USA, may lead to a form of "civil death" for prisoners, where they permanently lose their voting rights throughout their incarceration.⁵⁰ Felony disenfranchisement has a long history that reflects the primary sentiments of discriminatory social exclusion. Disenfranchisement has remained and continues to be a side effect of a criminal conviction in today's time.⁵¹ Disenfranchisement has existed since the Greek classical period and has survived numerous changes in societal, political, and criminal standards.⁵² The origin of felony disenfranchisement can be traced back to the ancient period in Greece and Rome.⁵³ This study focuses on modern offenders, crimes, and their global societal impacts, with a particular emphasis on how voting rights for inmates are affected. It explores whether preserving inmates' ability to vote aids their rehabilitation and involvement in the formation of the government. The researcher examines key historical periods significant to the argument for felony disenfranchisement and its effects on prisoners' voting rights. The development of felony disenfranchisement will begin with a brief

⁴⁷ Politics and the New Nation, available at: <https://www.ushistory.org/us/23b.asp> (last visited on April 22, 2021).

⁴⁸ Alfred Marshall, *Citizenship and Social Class* 40 (Cambridge University Press, New York, 1950).

⁴⁹ Guy Padraic Hamilton-Smith and Matt Vogel, "The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism" 22 *La Raza L.J.* 408 (2015).

⁵⁰ Richard L. Lippke, "The Disenfranchisement of Felons" 20 *Law Philos* 554 (2001).

⁵¹ Michael Pinard, "Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity" 85 *NYU Law Review* 457 (2010).

⁵² Wendy C Hamblet, *Punishment and Shame: A Philosophical Study* 2 (Lexington Books, Maryland, 2011).

⁵³ Alec C. Ewald, "Civil Death: The Ideological Paradox of Criminal Disenfranchisement Law in the United States" *Wis. L. Rev.* 1059 (2002).

history of the earliest disenfranchisement and its growth as a punitive practice across time. Throughout the ancient Greek period and English medieval, the exercise of disenfranchisement began to spread from England to its colonies. This long history of disenfranchisement highlights the legal arguments to justify its practice in contemporary times. The denial of voting rights to inmates began in the procedure of civil disqualification during ancient times and has undergone significant changes over time, highlighting the interrelationship of citizenship and social inclusion. A comprehensive understanding of felony disenfranchisement necessitates an examination of the historical context of crime, its philosophical foundations, and the administration of punishment. Ultimately, leading to the establishment and enforcement of disenfranchisement laws during those times continued throughout contemporary history⁵⁴

2.2 EVOLUTION OF FELONY DISENFRANCHISEMENT

The evolution of felony disenfranchisement is divided into various stages from the ancient to the contemporary period.

2.2.1 Ancient Period

2.2.2 Medieval and Early Modern Period

2.2.3 Post-Civil War Era

2.2.4 Contemporary Developments

2.2.1 Ancient Period

Felony disenfranchisement dates back to Greek and Roman times.⁵⁵ During this period, democracy was uncommon in the ancient world, and slaves, women, and non-citizens were barred from the polis in these societies. Democracy was a well-planned, bad system of administration. Democracy was viewed as mob control by early thinkers. Plato asserted that democratic societies devolved into chaos, giving birth to despotism.⁵⁶ Aristotle defined democracy as control by individuals of poor descent, no

⁵⁴ Anthony Babington, *The Power to Silence: A History of Punishment in Britain* 3 (Robert Maxwell Publishing, London, 1968).

⁵⁵ What we can learn from the History of Felony Disenfranchisement, *available at*: [//www.democracydocket.com/analysis/what-can-we-learn-from-the-history-of-felony-disenfranchisement](http://www.democracydocket.com/analysis/what-can-we-learn-from-the-history-of-felony-disenfranchisement) (last visited on April 27, 2021).

⁵⁶ Political theorists have been worrying about mob rule for 2000 years, *available at*: <https://www.economist.com/international/2021/01/16/political-theorists-have-been-worrying-about-mob-rule-for-2000-years> (last visited on April 27, 2021).

property, and low status.⁵⁷

2.2.1.1 Ancient Greece

The Greek concept of honor and its role in maintaining social stability and control significantly impacted the approach to punishment.⁵⁸ Religious beliefs around the Greek warrior hero affected early views about crime, justice, and punishment. Victims, known as “atimos”, experienced a sense of dishonor as a result of the crime committed against them, which disrupted the social order. Justice aimed to restore equilibrium by redistributing honors through a practice of giving and taking.⁵⁹ The ancient concept of crime and punishment was characterized by a strong focus on the victim and an intense pursuit of revenge by warrior kings. Since the ancient Greek penalty of atimia, felony disenfranchisement has come to be widely acknowledged. The voting right was one of the countless human rights that individuals gave up as a result of the atimia, which criminals in ancient Greece were subjected to for illegal acts. This penalty was thought to strip individuals of various citizenship rights, including the ability to vote.⁶⁰

2.2.1.2 Ancient Rome

In Ancient Rome, a comparable custom called “infamy” punishment was maintained. Roman law enforced infamia, which comprised several penalties. The main punishments included the loss of reputation, the privilege of serving in the Roman state, or the right to participate in public affairs.⁶¹ The primary repercussions were the loss of voting rights and the obligation to participate in activities in the Roman Regions. The severity and harshness of the punishment differed depending on the seriousness of the crimes and the offenders' social status.⁶² In ancient Rome, only adult male residents

⁵⁷ Democracy in the Politics of Aristotle, *available at*: https://www.stoa.org/demo/article_aristotle_democracy@page=all&greekEncoding=UnicodeC.html (last visited on April 27, 2021).

⁵⁸ Katherine I Pettus, *Felony Disenfranchisement in America: Historical Origins, Institutional Racism, and Modern Consequences* 12 (LFB Scholarly Publishing, New York, 2005).

⁵⁹ Wendy C Hamblet, *Punishment and Shame: A Philosophical Study* 5 (Lexington Books, Maryland, 2011).

⁶⁰ Tripkovic Milena, *Punishment and Citizenship: A Theory of Criminal Disenfranchisement* 17 (Oxford University Press, New York, 2018).

⁶¹ Greg Robins, “The Rights of Prisoners to Vote: A Review of Prisoner Disenfranchisement in New Zealand” 4 *N.Z.J. Pub and Int’l L.* 166 (2006).

⁶² Voting Rights, a Library of Congress, *available at*: <https://www.loc.gov/collections/civil-rights-history-project/articles-and-essays/voting-rights/> (last visited on April 27, 2021).

were eligible to vote for the yearly judges, laws, and policies. In ancient society, these customs served as the foundations for voting rights limitations. They constituted one of the harshest penalties possible because individuals could easily lose their citizenship, including their right to vote.⁶³

The fact that these early instances of disenfranchisement highlight how social values significantly shape the types of penalties considered suitable. The main retributive aim of punishment was inextricably tied to the propriety of disenfranchisement as a sentence. This retributive reasoning persisted through the ages, helping to explain why disenfranchisement remained a form of punishment for many years.

2.2.2 Medieval and Early Modern Period

The origin of medieval disenfranchisement was based on ideas about social inclusion that were first developed in Ancient Greece. This reasoning was then modified to represent the social conditions of medieval England. The increase in personal property possession was the most notable aspect of medieval England. Soon after, property became the preferred way of discipline over less effective ones like fines and physical punishment. As a result of justice and punishment, feudal landowners soon gave way to more powerful officials and then to sovereigns. This new regulation will help transform state criminal tyranny from a form of local informal justice when combined with new legislation to stifle dissent.⁶⁴ Losing the ability to vote and forfeiting property were both requirements of civil mortality.⁶⁵ The issue with felony removal in medieval and ancient societies is that neither of these periods of society was renowned for advancing democracy. Tyrants or rulers controlled Greek societies, Caesars ruled Roman societies, and monarchs and nobility ruled medieval societies. Democracy was only available to the affluent few in the old world. Undesirable individuals of low birth, without property, engaging in vulgar work, having a poor image, or having a notorious character were prohibited from the polis.⁶⁶ Voter

⁶³ Jeff Manza, and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 41 (Oxford University Press Academic, New York, 2006).

⁶⁴ John Briggs, Christopher Harrison, et al., *Crime and Punishment in England: An Introductory History* 17 (University College London Press, London, 1996).

⁶⁵ Josh Weston, "A Ban Behind Bars: A Critical Analysis of Britain's Blanket Ban on Prisoner Voting" *Ordines* 71 (2017).

⁶⁶ Carter A Wilson and Ruth Watry, *Felony Disenfranchisement: A Literature Review*, Paper presented at the Southern Political Science Association Conference, New Orleans, Louisiana, January 2015.

suppression began during a time when racist laws were frequently implemented. All citizenship rights, such as the ability to talk in public, engage in civil society, serve on juries, bring legal action against another person, give evidence in court, enter into contracts, and buy property, are forfeited upon civil death. Voter suppression goes back to the "Civil Death" period, which was prevalent in Greek city-states and imposed on deviant aristocrats who committed crimes. Only a small group of individuals who held privilege, political power, or talent in society were granted voting rights during the "Civil Death" period.⁶⁷

2.2.2.1 English Common Law : The "elites" frequently opposed giving other groups, like women, young people, laborers, the impoverished, racial and ethnic groups, and others, the right to vote. Elites, however, might forfeit their right to vote if they engage in moral offenses that violate the theory of civic death. Under English Common Law and in the Colonies, the right to vote was not recognized as a fundamental aspect of citizenship. Instead, it continued the ancient and medieval practice of restricting political participation to wealthy males. Male landowners were the only ones who were allowed to vote. Laws banning felons from voting existed in the Colonies. These rules were, however, imprecise, frequently moral, and poorly defined. Disenfranchised individuals in committing "shameful and vicious crimes". Punishments like attainder, outlawry, and civil execution were used during the English Middle Ages to further the exclusionary reasoning that had originated in Greek societies.⁶⁸ Perhaps the practice that Greek civil exclusion has had the biggest impact on is outlawry. Land and all other property were immediately lost when someone was designated an outlaw, and "therefore the wrongdoer will become an astray with no more claim to live than a reptile or wild beast". Outlawry was more of a legal punishment than a criminal one. It is simple to see how Greek culture influenced outlawry. A harsh penalty for the offender was warranted because of the clear focus on society. Criminal outlawry persisted until 1938, but outlawry as a civil punishment was formally abolished in 1879. The Greek

⁶⁷ Angela Behrens, Christopher Uggen, et al. "Ballot Manipulation and the Menace of Negro Domination: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002" 109 *AJS* 559-605(2003).

⁶⁸ Christopher Uggen and Jeff Manza, "Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States" 67 *Am. Social. Rev.* 780 (2002).

infamy, formerly outlawry, had an extensive impact on attainder, a similar practice.⁶⁹ After being found guilty, a person was subject to these penalties, i.e., forfeiture of the property and loss of civil rights. The imposition of “civil death” was essential to attainder practice. Only those who perpetrated the most serious offenses were eligible for attainder. Although attainder was relatively prevalent in reality, the bar for a crime to qualify as a felony was low.⁷⁰ The Forfeiture Act of 1870 explained that the attainder as a penalty was outlawed.⁷¹ However, it's important to note that the forfeiture punishment persisted, as a result, anyone guilty of a felony automatically lost their land, and as a result, felons who were convicted of crimes automatically relinquished the voting rights that came with land possession.

2.2.3 Post-Civil War Era

During the Civil Rights Movement in the 1950s and 1960s, the 15th Amendment was ratified, providing the legal foundation for removing obstacles that prevented African Americans from exercising their right to vote. This led to the Voting Rights Act of 1965. Following this, in 1966, judges started making decisions regarding the wording relating to voting that was inserted into the Constitution. For instance, the California Supreme Court described notorious crimes as convictions for crimes involving moral corruption and dishonesty in its *Otsuka v. Hite*⁷² ruling classified individuals as dangers to the integrity of the election system, a designation consistently applied to felons excluded from voting. In Democratic Liberties, two historical revolutions, the American and French, which occurred in the 17th and 18th centuries, respectively, led to claims of democratic liberties. The ability to vote then became the foundation of democratic communities. Political rights were established as individual liberties in a modern democratic society, and the fight against oppression defined these momentous historical events. However, conventional wisdom maintains that the history of the vote and democracy has been one of linear progress, expanding democracy and progressively extending the ability to vote to groups that had previously been excluded:

⁶⁹ Michelle Edgely, “Criminals and Second-Class Citizenship” *Griffith Law Rev.* 405 (2010).

⁷⁰ *Ibid.*

⁷¹ Forfeiture Act 1870, UK Public General Act 1870 c.23, available at: <https://www.legislation.gov.uk/ukpga/Vict/33-34/23/enacted> (last visited on April 28, 2021).

⁷² 64 Cal. 2d 596 (1996).

- i. First to Property-less white males
- ii. Black males and
- iii. Finally, to women

2.2.3.1 Jacksonian Era: White males without land gradually gained the right to vote over a lengthy period. Early in the 19th century, the governments started to lift these limitations. During the Jacksonian period, which lasted from the 1820s to the 1860s, this process intensified, and this era is remembered for the growth of democracy and equity and the disappearance of the custom of showing respect to the wealthy, the learned, and the privileged. State governments also abolished the criteria for voting to own land and pay taxes, allowing white men to vote.⁷³ The practice of felonious exclusion was part of the history of the expansion of the right to vote. As the voting age rose, so did these regulations. States started adopting Constitutions between 1776 and 1821, or allowing state legislators to enact legislation that denied felons the right to vote.⁷⁴ Supporters of felony disenfranchisement laws believed that these laws were connected to democracy and unconnected to racial prejudices because they emerged simultaneously as white males were granted the right to vote. Many voter disenfranchisement statutes were enacted long before Black people could vote.⁷⁵ For several practical reasons, the wealthy classes who owned land and slaves conferred the right to vote on white men without property.

- i. First and foremost, the new Western country was settled primarily by White males. Those with the right to vote were expected to play a crucial role in establishing the foundations of these new nations.
- ii. Second, the military needed propertyless European males to fight overseas conflicts, control Native Americans, and put an end to slave uprisings.

Making propertyless white men members of the polis made it simpler for the privileged class to persuade them to sacrifice their blood and risk losing their lives and limbs while

⁷³ Politics of the Jacksonian Era, *available at*: <https://www.cliffsnotes.com/study-guides/history/us-history-i/jacksonian-democracy/politics-of-the-jacksonian-era> (last visited on April 27, 2021).

⁷⁴ Bridgett A. King and Laura Erickson, "Disenfranchising the Enfranchised: Exploring the Relationship Between Felony Disenfranchisement and African American Voter Turnout" 47 *J. Black Stud* 801 (2016).

⁷⁵ Holder Hearts Felons, *available at*: <https://www.wsj.com/articles/SB10001424052702304434104579379171406041000> (last visited on April 27, 2021).

serving in the military. As part of a larger agreement, privileged white men with property gave the right to vote to white men without property. Propertyless people were forced to serve in battles with Britain (1812), Mexico (1848), and Native Americans in return for the right to vote.⁷⁶

2.2.3.2 Ethnic Conservatism and Felony Disenfranchisement: Most significantly, it was essential to maintain population control and put an end to slave revolts by recruiting propertyless white men. There was a paradox when state lawmakers granted white men the right to vote while denying it to black men. An individual who may have been guilty of bribery, fraud, perjury, or any other major crime in 1819 was prohibited from voting.⁷⁷ Fears of black people grew as a result of the 1820s and 1830s slave revolts. These worries were linked to the emergence of anti-black legislation. Several Southern states enacted laws during the 1830s, 40s, and 50s forbidding free blacks from living within their borders. Compared to more contemporary laws passed after 1830, these early laws were restrictive. Between 1830 and 1865, black men lost the right to vote as white men acquired it, either directly through state laws that expressly prohibited voting for blacks or indirectly through state laws that limited the black vote to only those who could afford to pay a hefty bounty or who owned land. These states enacted more comprehensive contemporary felon disenfranchisement laws simultaneously with these ethnically discriminatory laws. This viewpoint holds that the effort to deny black electors and the growth of felon disenfranchisement laws were a result of the right to vote. People convicted of bribery or lying are essentially distinct from those convicted of stealing, breaking, armed robbery, embezzlement, forgery, drug possession, violence, murder, or other crimes. The former has a limited scope and only affects a few instances. The latter is much more extensive and has a much wider demographic effect. States became more ethnically conservative after 1830, and felony disenfranchisement statutes became more stringent.⁷⁸ Remarkably, the federal government barred blacks from voting in areas under its authority in 1857, and the

⁷⁶ Felony Disenfranchisement: A Literature Review, *available at*: https://commons.nmu.edu/cgi/viewcontent.cgi?article=1115&context=facwork_conferencepresentations (last visited on April 27, 2021).

⁷⁷ *Ibid.*

⁷⁸ George Brooks, "Felon Disenfranchisement: Law, History, Policy, and Politics," 32 *Fordham Urb. L. J.* 102 (2005).

United States Supreme Court held that blacks, free or slave, could not be residents of the United States.

2.2.4 Contemporary Developments

The tradition of felon disenfranchisement, which originated in medieval times and continued through England's colonial era, persisted into the nineteenth and twentieth centuries despite evolving criminal justice systems and penal practices. This study focuses on how England extended its disenfranchisement policies to its colonies and examines how these policies adapted post-independence. This Study investigated how retributive justifications underpinned the maintenance and reinforcement of disenfranchisement laws in Canada, Australia, and India. Additionally, it explores instances from South Africa and the United States of America to illustrate how ingrained societal biases, including racism, contributed to the exclusionary nature of felon disenfranchisement. In recent years, there has been increasing debate and reform efforts regarding felony disenfranchisement. Movements advocating for the restoration of voting rights to individuals with felony convictions reflect a shift towards more inclusive democratic practices.

2.2.4.1 South Africa and the United States of America

Felony disenfranchisement has origins in English colonialism and was further developed in South Africa and the United States. But unlike the Australian, Canadian, and other instances, disenfranchisement was more frequently used as a means of racialized societal exclusion. Felony disenfranchisement, when used in situations where there is a high likelihood of racial prejudice, has the potential to cause a genuine criminal to collapse. To this purpose, it is well known that among all the former English territories, the United States has the most repressive disenfranchisement system. In some jurisdictions, criminals who have completed their sentences are still being underprivileged of the right to vote, subjecting them to a lifetime of political exclusion.

⁷⁹ Because of the end of segregation and a renewed commitment to better defend human rights, these states now have restricted disenfranchisement.

i. South Africa: From the onset of Portuguese colonization in the sixteenth century

⁷⁹ Felony Disenfranchisement, *available at*: <http://www.sentencingproject.org/> (last visited on April 30, 2021).

through the settlement and political administration by the Dutch East India Company, South Africa endured prolonged foreign domination.⁸⁰ By the late 1600s, slavery was a widespread practice in South Africa, affecting both native and foreign people.⁸¹ Violence was a common aspect of the criminal justice system in Boer society, and at that time, justice was administered brutally. Common penalties that the system adopted from Holland were floggings, torture, mutilations, and executions. Any discretion in this system was more likely to be used for white people than native Black criminals. In 1815, the Dutch people of the East India Company's former dominion would become an English territory due to further expansion. Due to their unpleasant encounters with previous territories, the English decided to actively participate in the governance of this region. Slavery and racial discrimination were two Dutch practices that were actively maintained by this active control at that time. In the nineteenth century, the field of electoral law started, and in theory, it was supposed to be color-blind; in practice, it was discriminatory in Britain at the time, based on race and class. Many of the colonial-divided cities came together even after some degree of imperial independence had been given, but only among groups that shared the same color. After the two Anglo-Boer wars, there would be discussions about ruling a united South Africa under segregationist policies. When the National Party came to power in 1948 and established a formal policy, segregationist ideology reached its peak. During a period when the majority of common law states had expanded their suffrage, South Africa remained segregated, supporting white supremacy and the rule of European immigrants in all aspects of society.⁸² All non-white citizens lacked fundamental civil rights, i.e., the right to vote, because suffrage was given under extremely biased conditions. It would take until 1993 for a temporary constitution to be approved, guaranteeing all South African citizens identical civil and legislative rights without a racial difference.⁸³

ii. United States of America: When the United States gained independence from Great

⁸⁰ Ian Loveland, *By Due Process of Law: Racial Discrimination and the Right to Vote in South Africa* 1 (Hart Publishing, Portland, 1999).

⁸¹ *Id* at 2.

⁸² Daisy M Jenkins, "From Apartheid to Majority Rule: A Glimpse into South Africa's Journey to Democracy" 13 *Ariz. J. Int'l & Comp. L* 468 (1996).

⁸³ Constitution of the Republic of South Africa Act, 2000, available at: <https://www.gov.za/documents/constitution/constitution-republic-south-africa-act-200-1993-repealed-28-jan-1994> (last visited on April 28, 2021).

Britain in 1776, it made a show of rejecting the customs of the previous English colonial period. Most crimes were no longer punishable by attainder, loss of land, and the taint of blood. Criminal exclusion persisted in popularity, though. It was not long before legislation was approved in eleven states, and eventually in nearly all of them. By the time the Civil War began, exclusion laws had been enacted in about nineteen of the thirty-four states. Even though they lacked much statutory authority to do otherwise, courts also favored the concept of criminal disenfranchisement and based their defense of it on the notion of the integrity of the voting process. In January 1866, Senator Lyman Trumbull, who also authored the Thirteenth Amendment, introduced the Civil Rights Act 1866.⁸⁴ This Act was created to nullify state laws that denied freedmen their basic liberties.⁸⁵ Congress chose to treasure the Act as a constitutional amendment because they believed it could be easily overturned if the Democrats took control of the government. Section One of the Fourteenth Amendment originally stated, “Congress has the power to enact laws that are necessary and suitable to guarantee equal protection of life, liberty, and property to all people living in the various states, as well as to ensure that each state's citizens enjoy all the rights and protections enjoyed by their counterparts in other states”. This instantly sparked outrage among House Republicans and Democrats, who saw it as giving the federal government far too much authority. Soon after, the wording was changed to rectify unfair state legislation, and the Fourteenth Amendment was passed in 1868 and protected white and colored people's basic rights. Section One of the Fourteenth Amendment contains the Equal Protection Clause that guarantees lawful residents their life, liberty, and property.⁸⁶ However, Section Two of the Fourteenth Amendment, which permits equal disenfranchisement and voting for a sizable population, is one of the most potent provisions of the Constitution's basic laws. This clause allows those who took part in a revolt or other offenses to lose their right to vote.⁸⁷ It aims to force enfranchisement for all residents over twenty-one, regardless of ethnicity, educational level, or fiscal circumstance. For

⁸⁴ Alfred Avins, “State Action and the Fourteenth Amendment” 17 *Mercer L. Rev.* 352 (1966).

⁸⁵ *Id.* at 353.

⁸⁶ Fourteenth Amendment Equal Protection and Other Rights, *available at*: <https://constitution.congress.gov/browse/amendment-14/section-1/> (last visited on April 28, 2021).

⁸⁷ Fourteenth Amendment Rights Guaranteed Privileges and Immunities of Citizenship, Due Process, and Equal Protection, *available at*: <https://www.govinfo.gov/content/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-15.pdf> (last visited on April 28, 2021).

instance, it was determined in *Washington v. State*⁸⁸ that it is quite common to refuse the ability to vote to individuals who have been found guilty of infamous offenses in various American States. The obvious goal is to protect the integrity of the voting, the only firm basis for republican liberty, and it needs to be protected from corruption just as much as it does from ignorance, incompetence, or oppression. The infamous person who has been imprisoned for a crime or another serious offense that shows extreme moral turpitude is presumed to be unsuitable to practice the right to vote. This differs from the laws that seemed progressive during this early stage of freedom. For instance, the Constitution's Thirteenth Amendment ended slavery. All Americans are equal before the law, according to the Fourteenth Amendment. The Fourteenth Amendment of the United States of America reads: No state may deny any person within its jurisdiction equal protection under the laws.⁸⁹ The Fifteenth Amendment provides that no citizen's right to vote shall be denied or abridged by the United States or any state based on race, color, or previous condition of slavery and authorizes Congress to enforce this protection by appropriate legislation. No matter their background or gender, all Americans were guaranteed the right to vote by the Fifteenth Amendment.⁹⁰ In *Trop v. Dulles*⁹¹, Justice Warren declared that the growing moral standards that correspond with the advancement of a developing society need to serve as the foundation for interpreting the Amendment. It was emphasized that laws must adapt to align with society's evolving standards of decency. In an inherently discriminatory society, it was a fact that such rules did not apply to everyone and that the court was not required to uphold them. Jim Crow rules were enacted as a direct result of American culture.⁹² The nineteenth and twentieth centuries saw little improvement in the condition. The Voting Rights Act of 1965 marked a significant step toward imminent reform.⁹³ This legislation was meant to strengthen Fifteenth Amendment safeguards while also

⁸⁸ 75 Ala. 582 (1884).

⁸⁹ Fourteenth Amendment Equal Protection and Other Rights, *available at*: <https://constitution.congress.gov/browse/amendment-14/section-1/> (last visited on April 28, 2021).

⁹⁰ Fifteenth Amendment Right of Citizens to Vote, *available at*: <https://www.govinfo.gov/content/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-16.pdf> (last visited on April 29, 2021).

⁹¹ 356 U.S. 86 (1958).

⁹² Michael J Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* 3 (Oxford University Press, New York, 2004).

⁹³ The Voting Rights Act (1965), *available at*: <https://www.archives.gov/milestone-documents/voting-rights-act> (last visited on April 29, 2021).

ensuring equal access to the voting box. But as civil rights laws grew throughout the 1960s, the criminal justice system became a more legitimate source of policies suppressing minority populations, since bias appeared to be concealed beneath concerns about crime."

2.2.4.2 Canada

According to the Constitutional Act of 1791, a person cannot cast a ballot in any provincial election for a representative to the assembly if they have been condemned or charged with treason or a crime. Additionally, distinct houses Upper and Lower Canada were constituted by this legislation.⁹⁴ Over time, the disqualification persisted, and as it was not addressed by later election legislation, it was allowed to remain. Voters must be at least twenty-one years old to cast a ballot, and neither this Act nor any other Dominion of Canada statute should restrict a voter's ability to do so. This was established in the 1885 Electoral Franchise Act.⁹⁵ According to the 1898 Franchise Act, "any person who, at the time of an election, is a convict in a jail undergoing punishment for a criminal offense" was not entitled to vote". It also expressly forbade the disenfranchisement of prisoners. This exclusion remained in effect until 1982, when Canada's official Constitution, adopted "the Canadian Charter of Rights and Freedoms". "The right to vote was specifically recognized in the third section of the Canadian Charter, which states that Every citizen of Canada is entitled to vote in elections for the House of Commons or legislative assemblies and to be considered for membership."⁹⁶ Greater equality in franchise legislation would be a defining feature of the twentieth century in Canada.⁹⁷ Over time, suffrage was gradually expanded to include previously marginalized groups, such as women, non-Aboriginal ethnic communities, and indigenous people.⁹⁸ But until 1993, the exclusion of all

⁹⁴ The Constitutional Act (1791), *available at*: <https://www.uottawa.ca/about-us/official-languages-bilingualism-institute/clmc/linguistic-history/historic-documents/constitutional-act-1791> (last visited on May 2, 2021).

⁹⁵ [2000] 2 F.C. 117.

⁹⁶ Guide to the Canadian Charter of Rights and Freedoms, *available at*: <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html> (last visited on May 3, 2021).

⁹⁷ Chief Electoral Officer, *A History of the Right to Vote in Canada* 80 (Elections Canada, Ottawa, 2007).

⁹⁸ *Ibid.*

convicted criminals stood unaffected and unopposed.⁹⁹ The notion of the ideal voter was given a lot of attention in the early post-independence era, as evidenced by Canadian history. This individual adhered to the English model and was a devoted British subject, as well as one who possessed considerable money and land. Political policies and ideas of political inclusion and exclusion changed over the nineteenth and twentieth centuries in response to the social standards of community membership that were in vogue at the time.

2.2.4.3 Australia

The British Empire left a heritage of Felony disenfranchisement in Australia as well. The Australian Colonies Government Act of 1850 established Australia's geographical boundaries and included provisions for elected governments in these territories.¹⁰⁰ The electoral system in independent Australia progressed rapidly, with South Australia becoming the first territory to support universal male suffrage in 1856. The English standards were formed by Britain's use of Australia as a penal colony. Between 1895 and 1899, women over age of 21 were granted the right to vote in all territories. The ballot was not available to prisoners or Native Americans under the Commonwealth Franchise Act of 1902, which provided unrestricted adult franchises. Under this legislation, prisoners were explicitly prohibited from their right to vote for any offenses punishable by imprisonment for one year or more.¹⁰¹ Like in Canada, succeeding election legislation, such as the Commonwealth Election Act of 1918, had little effect on how prisoners could vote. A parliamentary amendment in 1983 made it clear that those who were "under sentence for an offense punishable under the law of the Commonwealth or of a State or Territory by imprisonment for five years or longer" were covered by the disenfranchisement provision. The length of the term that rendered a prisoner ineligible under this revision was the potential penalty for a type of offense done, not the sentence that was imposed. Only those who were serving a five-year or longer term were ineligible after this rule was altered in 1995.¹⁰² All inmates serving full-time custodial sentences are disqualified from voting in federal elections under a

⁹⁹ [1993] 2 SCR 438.

¹⁰⁰ The Right to Vote in Australia, *available at*: <http://www.aec.gov.au> (last visited on April 27, 2021).

¹⁰¹ Alec C Ewald and Brandon Rottinghaus, *Criminal Disenfranchisement in an International Perspective* 170 (Cambridge University Press, Cambridge, 2009).

¹⁰² *Id* at 171.

more recent law passed in 2006, which extended disenfranchisement protections and stopped the expansion of Australian suffrage legislation. In comparison to Canada, Australian election legislation was more progressive. During the early years of its freedom, onerous and discriminatory criteria for franchise registration were overturned. However, it is worth mentioning that Australia appeared to take a step backward with its 2006 legislation, which reaffirmed its commitment to disenfranchising criminals. This occurred even though such practices are increasingly uncommon in countries like Canada, South Africa, and Europe.

Thus, the histories of South Africa, the United States, Canada, and Australia demonstrated that disenfranchisement is a persistent legacy of the English empire. The way these former colonies modified this punishment to fit their communal norms and values separated them from one another. In virtually all cases, discriminatory ideas about gender, class, and race drove felon disenfranchisement. The disparities were a little obvious in Australia, but they are now more frequently employed as a political tactic to win over people in the modern day. Disqualifications created on gender and race remained gradually phased out in Canada throughout the twentieth century. Disqualification based on race was significantly far more pervasive in the United States than in South Africa. After a democratic government was established in the early 1990s, South Africa underwent a substantial shift from its colonial ideology to white supremacist ideology. After a democracy dedicated to protecting human rights developed over time, racial exclusions from voting were abolished in South Africa. However, the current state of affairs in the US serves as a reminder that racial and franchise exclusions still exist today. An underlying philosophy of social exclusion, reflected in criminal policies, is central to the colonial legacies of all these countries.¹⁰³ Although disenfranchisement laws have evolved, the principles have remained the same: penalizing those who conduct crimes is advantageous because the offense is not only against the victim but also against society as a whole. However, due to the discussion over voter disenfranchisement, the restoration of voting rights has become a subject in many conversations in the 21st century. This argument has also been openly expressed, with previous supporters believing that condemned criminals should regain

¹⁰³ *Supra Note* at 101.

their voting rights at some point, and many countries require offenders on probation or release to vote. The moment has come for the silent to speak up. There are numerous academic justifications for and against criminal disenfranchisement in the contemporary era. There are various justifications for exclusion. Some of the centers point to the idea that the penalty should include the death penalty, that voting integrity must be protected, and that discipline can help shape a person's character. These focus on subjects such as by what means the civil death penalty is antiquated and threatens the democratic polity, how electors shouldn't choose who will be on the ballot, prisoners will be less likely to obey the rules and laws that they had no input in making, and allowing prisoners and convicts to vote will be a step towards rehabilitation.

2.2.4.4 India

i. Colonial Era

Felony disenfranchisement in India has its roots in the colonial era, where British laws and policies significantly influenced the legal and penal systems. The British Raj implemented various legal frameworks that restricted the rights of individuals convicted of crimes. This included disenfranchisement, reflecting the broader colonial strategy of controlling and marginalizing certain groups. Before India's Independence, the privilege of participating in elections to the legislative bodies was restricted based on criteria such as landed property, educational qualifications, and payment of taxes.¹⁰⁴

ii. Post-Independence Period

After gaining independence in 1947, India inherited the legal structures established during British rule. However, the new nation also began to develop its own legal identity. Certain common laws were followed, including the Commonwealth Franchise Act, 1902 which barred those who had been sentenced from participating. The Commonwealth Electoral Act, of 1918 was passed with essential clauses, but the circumstances in India remained unchanged despite the passage of the RPA, of 1950 and 1951. In reality, the Motilal Nehru Committee, established by the All-Parties Conference to ascertain the fundamental tenets of the Indian Constitution, began

¹⁰⁴ V. S. Rama Devi and S K Mendiratta, *How India Votes: Election Laws, Practice and Procedure* 282 (Lexis Nexis, 2017).

advocating for universal adult suffrage in 1928. This was eventually adopted when drafting the Indian constitution, which grants the right to vote under Article 326 to all Indian citizens who are at least 18 years and above and are not otherwise disqualified by this constitution or any law passed by the relevant legislature.¹⁰⁵ Later, RPA, 1950 and 1951, became the cornerstone of electoral law in India, outlining the conditions under which individuals could be disenfranchised. According to Section 62(5) of RPA, 1951 states confined prisoners are not entitled to vote, whether they are under trial or convicted, except those held in preventive detention.

iii. Constitutional Background

The Indian Constitution, while guaranteeing fundamental rights, also allows for reasonable restrictions. Article 326 of the Constitution provides for adult suffrage but also permits restrictions based on certain conditions, including criminal convictions.¹⁰⁶ This constitutional framework supports the legislative provisions that disenfranchise prisoners. Even though voting can be seen as a form of expression under the Indian Constitution's Article 19(1)(a), the Supreme Court has ruled that the "right to vote is a pure and simple statutory right rather than a fundamental or common law right".¹⁰⁷ The court also argued that citizens entitled to exercise the "right to vote" are not entitled to the 'right to contest' in elections, as the 'right to contest' is subject to laws that prescribe both qualifications and disqualifications for candidates. The practice of disenfranchisement in India does not have the same racial origins as in the United States. However, many laws in India were influenced by British laws, with some modifications. Section 62(5) of the RPA, 1951 states that "no individual is allowed to vote in any election if they are imprisoned, whether under a sentence of imprisonment or transportation or are in the lawful custody of the police, except for a person subjected to preventive detention under any law currently in force".¹⁰⁸ India is among the few countries that entirely forbid all prisoners from taking part in elections. In India, the right to contest and the right to vote in the electoral list are not necessarily interconnected. The right to vote is very selective and personal, left to the citizens of India to exercise as they choose. However, the government cannot simply take away

¹⁰⁵ The Constitution of India, art. 326.

¹⁰⁶ *Ibid*

¹⁰⁷ *Rajbala and Ors. v. State of Haryana and Ors.*, (2015) 8 SCC 433.

¹⁰⁸ The Representation of the People Act, 1951, s.62(5).

such democratic rights; they must always be available, irrespective of whether the residents choose to use them. The right to vote is distinct from fundamental rights, as fundamental rights can be restricted through reasonable limitations, whereas the right to vote is more restricted based on eligibility, not on arbitrary government decisions. Democracy hinges on the choices made by individuals, and thus the right to vote remains a fundamental right regardless of government decisions.

iv. Contemporary Debate and Reforms

Recently, there has been increasing debate about felony disenfranchisement in India. Human rights activists and legal scholars contend that disenfranchisement undermines democratic principles and the rehabilitative aims of the penal system. They advocate for reforms that would restore voting rights to prisoners, emphasizing the importance of inclusive democracy. Despite these calls for change, there has been limited legislative or judicial movement towards altering the existing laws. The discourse continues, reflecting broader global trends toward re-evaluating the disenfranchisement of felons in the context of human rights and democracy. John Locke's observation that felons should not be allowed to vote has formed the basis for the idea of disenfranchisement in many nations worldwide.¹⁰⁹ This perspective argues that those who violate social norms should be excluded from society's decision-making process. Other views supporting this notion include the need to prevent electoral fraud, concerns that criminals would undermine the demand of the law, and the belief that felons lack the "moral competence" required to cast a ballot. Many of these beliefs are still prevalent in society today, and India continues to hold similar views. Therefore, some changes should be made to its legal system.¹¹⁰

2.3 EFFECTS OF FELONY DISENFRANCHISEMENT ON SOCIETY

Allowing prisoners to vote not only supports democratic principles but also aids in the improvement of resocialization, prison conditions, and the inclusion of minorities in politics. The presumption that inmates are distinct from the rest of society has been a prevalent foundation for felony disenfranchisement throughout history. However,

¹⁰⁹ Christopher Haner, "Felon Disenfranchisement: An Inherent Injustice" 26 *JCRED* 934 (2013).

¹¹⁰ Carter A. Wilson and Ruth Watry, *Felony Disenfranchisement: A Literature Review*, Paper presented at the Southern Political Science Association Conference, New Orleans, Louisiana, January 2015.

closer examination reveals that these presumptions employ flawed reasoning and alarming consequences.¹¹¹

- i. Firstly, a criminal sentence should not impact a person's legal right to vote. Denying someone their full citizenship rights due to a criminal conviction is unjustified, especially when prisoners are expected to adhere to social norms and fulfill citizen duties.
- ii. Secondly, allowing inmates to vote in a democratic nation would enable them to engage as active citizens and consider social issues and political ideas. Felony disenfranchisement policies, regardless of their implementation, are inherently undemocratic.

In 2004, the South African Constitutional Court ruled that all prisoners should be granted voting rights. This decision underscored voting as a fundamental aspect of democracy and that everyone has an equal right to vote.¹¹² Voting rights for inmates are beneficial for democracy and societal advancement. It enables the process of resocialization to be improved, jail conditions to be improved and protects minorities' involvement in politics, among other benefits. Allowing prisoners to vote enables the recognition of their rights and their inclusion as members of society. It is a manifestation of the political character of people and ensures that everyone, including those incarcerated, benefits from the freedom to vote.

The Effect of Felony Disenfranchisement on Society: -

- 2.3.1 Impact on Resocialization.
- 2.3.2 Impact on Prison Reform Efforts.
- 2.3.3 Impact on Minority Communities.

2.3.1 Impact of Felony Disenfranchisement on the Resocialization

Denying voting rights to felons is closely linked to the process of prisoners' recovery.¹¹³ In ingenious terms, this practice aligns with the Aristotelian thought, which

¹¹¹ Marc Mauer, "Voting Behind Bars: An Argument for Voting by Prisoners" 54 *Howard Law J* 554 (2011).

¹¹² Prisoners should have the Right to Vote, *available at*: <https://www.coe.int/en/web/commissioner/-/prisoners-should-have-the-right-to-vote-1> (last visited on April 30, 2021).

¹¹³ Susan Easton, "Electing the Electorate: The Problem of Prisoner Disenfranchisement" *MLR* 443(2006).

suggests that active involvement fosters a sense of responsibility towards one's society. This right to vote is a crucial aspect of promoting pro-social behavior and plays a significant role in combating crime. In today's complex societies, voting rights are seen as a vital tool for fostering social reform and bringing about positive changes in the prison systems worldwide.¹¹⁴ Therefore, reinstating the right to vote for prisoners could aid in their reintegration into society and mitigate the isolation and negative consequences of imprisonment. Voting rights and incarceration rates are negatively correlated. The likelihood of return decreases as the number of prisoners with voting rights increases. One of the essential components of an effective relocation is contact with the outside world. The ability to vote forces inmates to consider moral and legal principles in addition to the requirements of their families and communities. It serves as a social link between community life and the individual, who has been negatively impacted socially by the criminal justice system. The right to vote is nothing more than an open way of expression through which society can impart its values and ideas into prisoners' minds.

According to “the UN Office on Drugs and Crime,” asserts that worthwhile activities that direct inmates towards useful work and the re-entry procedure foster a supportive educational environment. The fact that voting rights are associated with recovery rates and political engagement is unmistakably related to reduced recidivism, is not unexpected.¹¹⁵ In general, due to "negative pedagogical effects," the current prison system renders inmates worse than they have ever been.¹¹⁶ True rehabilitation is impossible without a societal catalyst that engages the prisoner in civic duty. That is to say, the political tactic of populist punitiveness used by governments to win votes is the only societal advantage associated with isolating inmates.

“Prisoners would be encouraged to contemplate what is best for society and the responsibilities and benefits of citizenship by engaging in the political process leading

¹¹⁴ Felony Disenfranchisement: A Primer Sentencing Project, *available at*: <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> (last visited on April 30, 2021).

¹¹⁵ United Nations Office on Drugs and Crime, *Handbook on Strategies to Reduce Overcrowding: Criminal Justice Handbook Series 13*(United Nations Office, Vienna, 2013).

¹¹⁶ Eugenio Raul Zaffaroni and Edmundo Oliveira, *Criminology and Criminal Policy Movements 55* (University Press of America, 2013).

up to an election”.

The Canada Supreme Court held in the *Sauve* case, depriving incarcerated individuals of their right to vote works against respect for the law and democracy. The right to vote is the primary source of legitimacy for laws and the obligation to abide by them for all citizens. Denying prisoners, the power to vote would be a significant missed opportunity to impart political values and social responsibility to them. Essentially, the incapacity to vote obstructs social growth and challenges correctional tactics and inclusionary and rehabilitation-focused policies. Creating links between inmates allows for the propagation of new prisoners' ideals, which leads to prisoners considering the benefits of the relationships. That, in and of itself, is the recovery process. It must commence as soon as feasible, even while incarcerated. This novel method can broaden the scope of resocialization.

2.3.2 Impact of Felony Disenfranchisement on Prison Reform Efforts

Voting rights offer those who have been detained in bad conditions a vote in addition to encouraging social accountability and community involvement. This privilege encourages the relationship between politicians and inmates. It serves as motivation for arrangements that aim to better the degrading conditions of prisons. Once more, this is a crucial instrument that improves jails while reintegrating those imprisoned. Enfranchisement of felons has the effect of encouraging open discussion between contenders and inmates. Therefore, it is believed that disenfranchisement is a counterproductive public safety policy. Efforts to improve public safety are hindered when prison systems are creating proficient offenders who persist in criminal behavior from both inside and outside of prison cells, during and after their time in incarceration. The lack of social-political involvement among inmates negatively affects the development of the prison system, which has a flowing impact on societal development and safety. At that time, it became obvious that prisoners' voting rights should never have been revoked. In particular, within the moral limits of democratic countries, it is possible to see incarcerated prisoners by their right to vote as an expression of the basic social-political factors. Eventually, voting rights contribute to greater circumstances inside the jail system as well as the advancement of the resocialization process.

2.3.3 Impact of Felony Disenfranchisement on Minorities Communities

The ability to vote would likely have effects on ethnic groups in addition to the prison system. The percentages of disenfranchisement among different racial and ethnic communities around the globe range greatly. For example, Afro-Americans are disproportionately affected by disenfranchisement rules. Due to secondary effects, felony disenfranchisement in the US lowers the size of the black population and its political influence, even among those who have never been guilty of a crime.¹¹⁷ Similarly, some Dalits and members of the Muslim population in India are also suffering. The major problem as democracy progresses is whether the representative system which is based on the participation of many individuals and social groups, works as planned. Minority groups and election validity have both been major points of contention. Additionally, the issue concerns the chance for voters to choose officials for racial and cultural minorities. Minorities have historically been especially affected by felony revocation. The secondary consequences of disenfranchisement reduce the extent of minority political power. Denying someone the right to vote diminishes their ability to politically organize and support or challenge the current social structure. Felony disenfranchisement limits the effectiveness of the community and takes away the voice of the felon as well as the community as a whole. The United Nations Guide for Minorities claims that one of the rights that minorities value most is the ability to vote.¹¹⁸

2.4 JUSTIFICATIONS AND CRITICISM OF FELONY DISENFRANCHISEMENT

2.4.1 Lack of Trust: Anti-Legal Enforcement

Many proponents contend that those who have broken the law are inherently untrustworthy and should be barred from voting or participating in their country's future growth. Some supporters think that having detainees will make society less moral and difficult for citizens to live with. It seems unlikely to be the case, though. As mentioned

¹¹⁷ 6 million Lost Voters: State-Level Estimates of Felony Disenfranchisement 2016, *available at*: <https://www.sentencingproject.org/app/uploads/2022/08/6-Million-Lost-Voters.pdf> (last visited on May 1, 2021).

¹¹⁸ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, *available at* https://www.ohchr.org/sites/default/files/2021-09/guide-for-minorities-en_0.pdf (last visited on May 2, 2021).

earlier, the researcher justified this by stating that the right to vote has a more significant impact on a prisoner's life than on those outside the prison. Voting is not a dangerous threat that prisoners will use to harm society. On the contrary, it is a means through which society can impart its values and moral standards to the minds of prisoners. Prisoners will have the opportunity to vote and consider proposals from candidates elected by society, who will oversee the election process by democratic principles and established rules. It's important to note that any proposal would not be chosen solely by prisoners, but rather by the majority of the community. Prisoners cannot decide the future of the population, but they can help those in society who support policies that safeguard their families and communities, which are generally minorities and marginalized people. Moreover, preventing individuals from voting, regardless of their economic status, due to the fear that they might support an unsuitable candidate, will lead to going against the main principles of democracy. In essence, this is the myth of being anti-law enforcement: the belief that prisoners could sway elections and society is unfounded, with very little chance of success. There is no social science research suggesting that convicts would ever seek to alter legal standards. On the contrary, in a study conducted in the United States, when asked about the potential societal impact if the rule they had violated was not in place, inmates were more inclined to advocate for the laws rather than advocate for their elimination.¹¹⁹ The norms are more likely to be accepted as appropriate social behavioral patterns by the prisoners. There have been arguments, however, that individuals convicted of serious crimes or electoral offenses should be prohibited from participating in elections. However, the great majority of those behind bars have not been found guilty of any electoral offenses. Furthermore, the bulk of prisoners are accused of minor, non-violent offenses, just a small number of them have been found guilty of rape or terrorism. This proves beyond a shadow of a doubt that the voters' makeup would not be significantly, thoughtfully, or profoundly affected by their decisions. Someone who is acknowledged as a citizen with legal rights is significantly more likely to have a sense of devotion to society. A citizen's responsibilities allow inmates to perform the ostensibly necessary liability, making them more trustworthy for their lives after release. Indeed, depriving criminals of the right to

¹¹⁹ The Challenges of Prisoner Re-entry into Society, *available at*: <https://online.simmons.edu/blog/prisoner-reentry/> (last visited on May 4, 2021).

vote can hinder the process of rebuilding trust and reintegrating them into society. There is currently no convincing evidence that permitting convicts to vote would pose major dangers or have harmful repercussions. On the contrary, felony disenfranchisement is a punitive measure that not only harms prisoners but restricts their ability to engage in civic participation. It is important to recognize the importance of preserving the democratic principles giving rights to all individuals, to those who have committed crimes, to foster a more inclusive and just society.

2.4.2 Infringement of the Social Control

The social contract is a logical theory explaining how society came into being and justifies felon disenfranchisement.¹²⁰ Due to their inability to uphold society's laws, criminals are thus unfit to participate in society's social life. Does the social contract, in its principle, support felony disenfranchisement? How do limitations on a criminal's ability to vote justifiably fit under the headings of incapacitation, retribution, deterrence, and rehabilitation? Punishment has four main components: incapacitation, vengeance, warning, and rehabilitation. Even after carefully examining each one, it is remarkable that none of the four types of penalty can be observed in actuality or be used to support the present laws regarding disenfranchisement. The fundamental problem raised by modern democratic constitutions and the criminal justice system is the emphasis on rehabilitation rather than punishing measures for criminals. To incapacitate someone is to remove them from society to stop the offense from happening again. The offender should be removed from society to achieve the goal of incapacitation. Lawbreakers should be put to death, despite the state, because they are no longer regarded as citizens. Criminals ought to be exiled and kept out of society's affairs. However, refusing prisoners the right to vote does not render them incapable of committing crimes; rather, it renders society incapable of dealing with crime. As was already stated, the ability to vote serves only as a conduit for society to impose its values on the minds of prisoners. By preventing criminals from participating, the government was incompetent to stop criminals from hurting society. As was already mentioned, there is no real risk associated with permitting inmates to vote, and as a

¹²⁰ Eli L. Levine, "Does the Social Contract Justify Felony Disenfranchisement?" 1 *Wash. U. Jur. Rev.* 203 (2009).

result, there is no real incapacity associated with disenfranchisement.

Here, it is crucial to highlight two kinds of deterrence: specific and broad. These forms of deterrence serve different purposes in the criminal justice system. Particular deterrence aims to prevent individuals who have committed an offense from reoffending by imposing penalties or consequences specific to their case. General deterrence, on the other hand, seeks to deter potential offenders in the broader population by demonstrating the consequences faced by those who engage in criminal behavior. Today, it is difficult to think that being denied voting rights will deter someone from perpetrating an offense. Losing the election would seem to hold less appeal than the possibility of going to jail. Furthermore, deterrence can only be effective if individuals are aware of the potential consequences of losing a specific right. In the case of voting rights, it is unlikely that young people, especially those with limited education, would fully comprehend the consequences of losing their right to vote. This lack of awareness undermines the deterrent effect of disenfranchisement policies. The social contract theory holds that any discipline used for a purpose other than protection is cruel, unnecessary, and oppressive. The precise ratio between the offense and the unlawful deed must be maintained in the punishment. Laws that are too cruel must be changed, otherwise, lawlessness and chaos may prevail.¹²¹ Furthermore, illegal disqualification might be viewed as retaliation in and of itself. As society has evolved, discipline alone can no longer serve as a sufficient justification. The right to penalize someone solely for breaking a societal norm appears to be too archaic to stand on its own. Punishment won't make the societal problem go away. This reasoning seems flawed and supports the argument that the social contract requires revision. However, punishments for crimes should go beyond retaliation alone. The goal of criminal justice cannot be supported by purely punitive measures, even though this was the oldest form of punishment. For as long as the correctional system's current legislative mandates are focused on inmates' rehabilitation, the primary goal of penal punishment in any legislative framework is to concentrate on the preventive scope of culture. Furthermore, illegal disenfranchisement may be regarded as punishment in and of itself. However, with societal evolution, discipline alone no longer stands as a sufficient justification.

¹²¹ On Crimes and Punishment, *available at*: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/crimes-and-punishments> (last visited on May 4, 2021).

The right to punish based solely on a breach of societal rules appears to be too medieval to stand on its own. Retribution does not address the underlying societal problem. It appears to be flawed logic, but it lends support to the case that social control must be revised. Criminal punishments, on the other hand, would go beyond vengeance alone. The first system of discipline, unadulterated retributive measures, cannot justify the goal of criminal justice. Any legal framework for criminal punishment must prioritize prevention over punishment as long as the present legal requirements of the prison system are designed to aid convicts' reintegration into society. Disenfranchisement fails to contribute to rehabilitation as it does not provide educational or vocational training opportunities. Instead, it isolates prisoners from society and hinders their reintegration into the community. Disenfranchisement further isolates prisoners from society and impedes the formation of public morals; hence, it has no beneficial effect on rehabilitation. In the end, it results in apathy and societal deterioration. Because of this, the rehabilitative approach opposes the idea that criminals are essentially dishonest people and supports prison systems that put the preservation of citizenship first by creating suitable environments. Hence, there is no valid reason to use the theory of social contract to support the practice of felony disenfranchisement when it contradicts the concept of removing voting rights as a disciplinary measure. This outdated issue holds no importance for international organizations dedicated to protecting human rights. It is an unjust act that should not be accepted.

CONCLUSION

It is quite evident that felony disenfranchisement has persisted throughout history, reflecting discriminatory social exclusion. The periods mentioned above, from the Ancient to the Contemporary Period, highlighted the longevity of this issue. As in the Ancient Period, disenfranchisement was already present, indicating deep roots in societal and political structures. During the Medieval Period, it is likely that similar patterns emerged, with criminal convictions leading to the loss of voting rights. However, the post-Civil War era marked a significant turning point in the evolution of felony disenfranchisement. It is important to note that during this time, efforts were made to expand voting rights and address the discriminatory practices that had been prevalent. However, it seems that disenfranchisement persisted, albeit potentially in

different forms. Likely in the Contemporary Period, which includes the present day, felony disenfranchisement continues to be a side effect of criminal convictions. Despite societal, political, and legal challenges the issue remains unresolved. The history of felony disenfranchisement exposes a persistent pattern of social exclusion based on discrimination. It is important to consider this historical context when developing campaigns that address social issues and promote positive change. The idea of felony disenfranchisement has emerged through the penalties imposed on violent criminals over time. Due to their social position as prisoners, it is assumed that they are unfit to vote because they have broken the law, they represent a threat to society. However, today, there is an argument against criminal disenfranchisement. As the idea emerged in some places as a result of British colonization and further extended to other parts of the world, it did so as a means of maintaining white dominance and depriving black people of their democratic rights. The Apex of Indian Court provided a few justifications, for maintaining felony punishment. The idea has been contested in court several times in India as well. It is important to observe that in the past women did not have a voice in society even in the late 19th century. As a helpless minority, women had no equitable rights. They had to travel a long way to acquire the ability to affect their country's government, and by the 20th century, they had made some progress but still lacked equal rights. Historically, there were claims made that "women voting wasn't natural," as it was argued that it could have negative effects on family dynamics and pose potential risks to society. This chapter has been completed by looking at additional yet main elements that have contributed to the toughness of felon disenfranchisement with society's contemporary needs. It is crucial to recognize the impact of these historical factors on the target audience. Understanding the sentiments and experiences of individuals affected by felony disenfranchisement can inform advocates for change, promote inclusivity, and raise awareness about the issue.

CHAPTER - 3

INTERNATIONAL SCENARIO ON FELONY DISENFRANCHISEMENT AND HUMAN RIGHTS OF PRISONERS

3.1 INTRODUCTION

International human rights conventions provide the foundation for establishing and promoting global human rights standards. They create a framework for governments to ensure that basic human rights are respected and upheld across various jurisdictions. A core principle of democratic governance is that every citizen should be able to participate in their country's political process through voting. Safeguarding individuals' right to engage in socio-political processes and express their opinions in national governance is essential. International treaties, such as the UDHR and ICCPR, play vital roles in upholding these principles. By analyzing and comparing laws, policies, and practices related to prisoners' voting rights across different countries, this study aims to provide insights into equal access to voting for all individuals. It highlights the impact of international treaties on recognizing voting as a fundamental aspect of democratic governance.¹²² This approach ensures inclusivity, fairness, and the protection of democratic values, guaranteeing that the people's consent is expressed in periodic elections. Prisoners around the world often face significant barriers to exercising their voting rights due to their criminal convictions. In numerous countries, voting privileges for prisoners are limited and contingent upon certain conditions, while in others, these privileges are automatically suspended for convicts throughout their incarceration or even after they have completed their parole. It is worth mentioning that India, as opposed to many other nations, has disenfranchised both convicted inmates and those awaiting trial. The Commonwealth Franchise Act of 1902 operated to prohibit incarcerated individuals from voting. Even with the enactment of the RPA 1951, the situation remained unaltered.¹²³ Through an in-depth examination of prisoners' voting rights on a global

¹²² Human Rights and Elections, *A Handbook on the Legal, Technical and Human Rights Aspects of Elections* 8 (United Nations Publications, New York, 2021).

¹²³ Kavita Singh, "Civil death of Prisoner: Disenfranchising the Prisoner, in reality, causes his Civil Death" 1 *NUJS Law Review* 240 (2008).

scale, the researcher has acquired valuable knowledge regarding the diverse strategies taken by countries worldwide. Under international human rights standards, this comprehensive analysis enables the examination of the agreements on prisoners' voting rights and the practice of restricting voting privileges for criminals against the principle of Universal Suffrage. By conducting this international comparative study, the researcher's objectives are to clarify the intricate issues surrounding prisoners' voting rights and make a meaningful contribution to the ongoing discussion on the civil and human rights of those behind bars.

3.2 HUMAN RIGHTS FRAMEWORK AND INTERNATIONAL TREATIES VIS-À-VIS PRISONERS' VOTING RIGHTS

International conventions are pivotal to human rights by setting universal standards and norms. These documents express the principles that member states are expected to integrate into their national laws and practices, reflecting a global consensus on human rights and providing mechanisms for accountability and enforcement. By ratifying these international treaties, countries commit to ensure their domestic policies align with international norms. The importance of human rights laws is particularly evident when considering prisoners' right to vote. Core principles such as equality, non-discrimination, and dignity are fundamental to human rights and encompass civil, political, cultural, social, and economic rights. Everyone is entitled to these freedoms and civil liberties, regardless of nationality, culture, religion, or other status.¹²⁴ Voting rights are universally recognized as crucial components of a democratic society and are considered fundamental political rights. The right to vote empowers individuals to participate in decision-making processes and influence laws and policies that affect their daily lives, affirming their dignity and sense of belonging within the democratic framework. The debate surrounding inmates' voting rights is both complex and significant. Denying prisoners the right to vote can be seen as a violation of their human rights, restricting their ability to engage in democratic processes. The argument posits that fundamental rights should not be forfeited during incarceration. Prisoners' voting rights involve balancing several

¹²⁴ United Nations Human Rights, *available at*: <https://www.ohchr.org/en/what-are-human-rights> (last visited on September 14, 2021).

factors: the rights of the prisoners, societal needs for public safety, and the principles of justice. This balance is further complicated by variations in legal frameworks and societal values across different countries. While some jurisdictions implement broad restrictions on prisoners' voting rights, others may adopt more nuanced approaches that consider proportionality and individual circumstances. Eventually, the approach to prisoners' voting rights should reflect a commitment to human rights principles while addressing legitimate public safety and justice concerns. Ensuring that policies are reasonable and proportionate is crucial to align with national and international human rights standards. Among the various human rights protected by these international frameworks, the rights of prisoners are a critical area of focus. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights underscore the importance of democratic participation as a fundamental right, they establish that all individuals, including those in prison, should have the opportunity to engage in the electoral process and enjoy socio-political rights. International conventions set out norms for democratic participation by affirming the right to vote and be elected.¹²⁵ They emphasize that these rights should be accessible to all citizens without discrimination. For prisoners, the ability to participate in elections should be considered within the broader context of democratic rights. These frameworks advocate for comprehensive electoral practices, ensuring that even those incarcerated are not unjustly excluded from participating in the democratic process. The key international treaties, along with their roles, provisions, and implications for prisoners' voting rights, are detailed below:

3.2.1 Universal Declaration of Human Rights (UDHR)

The UDHR was adopted by the United Nations General Assembly in 1948. It is a cornerstone of international human rights law. Article 21 of the UDHR asserts that:

- i. "Everyone has the right to take part in the government of their country, directly or through freely chosen representatives".
- ii. "The legitimacy of a government derives from the will of the people, as expressed through regular and genuine elections".

¹²⁵ Paramjit Jaswal and Nistha Jaswal, *Human Rights and the Law* 51 (APH Publishing Corporation, New Delhi, 1996).

- iii. “Elections should be conducted by universal and equal suffrage, ensuring that all eligible individuals have the right to vote freely and without coercion. The voting process should be secret or conducted in a manner ensuring transparency and fairness”.¹²⁶

3.2.1.1 Implications for Prisoners' Voting Rights:

- i. **General Right to Participate:** The UDHR underscores that voting is a fundamental human right essential for democratic participation. While it does not explicitly mention prisoners, the principle that every person should participate in governance implies that even those incarcerated should retain this right. This broader interpretation suggests that, as part of human rights, prisoners should have the opportunity to vote.
- ii. **Impact on National Laws:** The UDHR serves as a guiding framework for countries developing national laws and policies on voting rights. It influences how democratic principles are interpreted and implemented within national legal systems. Some countries have leveraged the UDHR to advocate for the inclusion of prisoners in electoral processes, arguing that denying them the right to vote contradicts universal principles of equality and non-discrimination. On the contrary, other nations have chosen to restrict voting rights based on their legal interpretations or societal norms, reflecting diverse approaches to integrating UDHR principles into domestic legislation. The UDHR's emphasis on inclusive participation in governance has shaped international discussions and national policies, challenged restrictions, and promoted reforms. This ongoing influence contributes to a broader understanding of prisoners' rights and informs current debates and legal considerations regarding their electoral participation.

3.2.2 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was adopted by the United Nations General Assembly in 1966. Article 25 of the ICCPR asserts that:

- i. “Every person has the fundamental right to participate in the electoral process,

¹²⁶ The right of prisoners to vote: a global overview, *available at*: https://cdn.penalreform.org/wp-content/uploads/2016/08/The-right-of-prisoners-to-vote_March-2016.pdf pdf (last visited on June 14, 2021).

and this right should not be unjustly discriminated against based on factors such as gender, religion, race, or unreasonable limitations”.

- ii. “To participate in the governance of public affairs, either directly or through the election of chosen representatives”.
- iii. “To participate in and contest elections in regular elections with universal equal suffrage, secret ballot, and free expression of the people's will”.
- iv. “Everybody should be able to access national public services impartially”.¹²⁷

3.2.2.1 Implications for Prisoners' Voting Rights:

- i. **Reinforcement of Democratic Participation:** Article 25 of the ICCPR emphasizes the fundamental right of all citizens to participate in electoral processes. This right, which includes voting and contesting elections, suggests that democratic rights should extend to those who are incarcerated. By establishing this principle, the ICCPR supports the notion that prisoners, as citizens, should have the opportunity to engage in democratic processes.
- ii. **Standard for Inclusion and Equality:** The ICCPR’s commitment to equality and non-discrimination implies that restrictions on voting rights must be justified and not arbitrary. This principle of inclusivity and equal access to electoral processes has led to increased scrutiny of laws that disenfranchise prisoners. The Covenant’s emphasis on democratic participation encourages a broader interpretation that supports the inclusion of prisoners in the electoral process.
- iii. **Legal Challenges and Reforms:** The principles enshrined in Article 25 have been used to challenge national laws that impose extensive disenfranchisement on prisoners. Human rights advocates and legal experts argue that such restrictions may conflict with the ICCPR's emphasis on democratic inclusion. Consequently, courts and human rights bodies in various jurisdictions have examined and sometimes revised laws to align with international standards, which may lead to restoring voting rights to incarcerated individuals under certain conditions.
- iv. **Impact on National Legislation:** Countries that are parties to the ICCPR are

¹²⁷ U.S. Criminal Disenfranchisement Under International Human Rights Law, *available at*: <https://www.hrw.org/legacy/reports98/vote/usvot98o-06.htm> (last visited on September 14, 2021).

required to ensure their domestic laws comply with its provisions. This includes reevaluating laws that restrict prisoners' voting rights to ensure they do not contravene the principles of equality and democratic participation. The Covenant's broad mandate for democratic rights influences national legislation, prompting reforms to align with international standards and promote more inclusive voting practices.

- v. **Influence on Human Rights Discourse:** The ICCPR significantly shapes global human rights discourse by highlighting the importance of democratic participation. Its provisions influence debates and discussions about prisoners' voting rights, supporting the view that even individuals in prison should have the right to participate in elections. This influence extends to advocacy efforts aimed at expanding voting rights to include those who are incarcerated, based on principles of equality and democratic engagement. Human rights activists and legal scholars often interpret the ICCPR in a manner that extends its application to various contexts, including prisoners' voting rights. This broader interpretation helps address the complexities surrounding disenfranchisement and promotes a more inclusive approach to electoral participation.

3.2.2.2 Human Rights Committee of the United Nations

The United Nations Human Rights Committee, which interprets the ICCPR, underscores the significance of Article 25 in establishing a democratic government based on public consent. The Committee states “that any limitations on the ability to vote must have a rationale, i.e., on both objective and fairness.”¹²⁸

While Article 25 does not prohibit nations from taking non-discriminatory measures to restrict voting rights, including for those convicted of crimes, the UN Human Rights Committee has recently criticized a UK ruling that limits convicted individuals' voting rights. The Committee argued that such practices are outdated, considering them an additional punishment rather than contributing to the prisoner's rehabilitation. This criticism highlights a breach of Article 25 of the Covenant and Article 10, paragraph 3. Consequently, countries need to reassess legislation that denies voting rights to incarcerated individuals, emphasizing that rehabilitation should take

¹²⁸ *Supra Note* at 124.

precedence over punishment and deterrence. The principles recognized in the international agreements align with the approaches adopted by the United Kingdom and Canada following the Hirst case. This alignment may prompt courts in various countries to interpret constitutional obligations regarding popular choice, akin to universal suffrage.

Do you think it is acceptable to restrict individuals' right to vote based on their involvement in illegal activities, especially in light of the protections outlined in the UN human rights framework for voting rights?

3.2.3 European Convention on Human Rights (ECHR)

The ECHR was adopted by the Council of Europe in 1950. It establishes a framework for human rights and fundamental freedoms in Europe. Article 3 of Protocol No. 1 to the ECHR is relevant to prisoners' voting rights. This article states:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”.

3.2.3.1 Implications for Prisoners' Voting Rights:

- i. **General Right to Participate in Elections:** Article 3 of Protocol No. 1 guarantees the right to free elections, interpreted by the European Court of Human Rights (ECtHR) to include the general right to participate in elections. This provision underscores the importance of democratic participation as a fundamental right.
- ii. **Significant Legal Cases:** Hirst v. United Kingdom (No. 2): In this landmark case, the ECtHR ruled that the UK's blanket ban on prisoners' voting rights violated Article 3 of Protocol No. 1. The Court emphasized that any restriction on voting rights must be proportionate and pursue a legitimate aim, encouraging the UK to reconsider its legislation on this matter. Scoppola v. Italy (No. 3): This case further reinforced the ECtHR's stance on prisoners' voting rights. The Court found that Italy's automatic disenfranchisement of certain categories of prisoners was not compatible with the principles of the ECHR. The ruling advocated a more individualized approach, assessing each prisoner's case to determine whether

disenfranchisement was justified.

- iii. **Impact on National Laws and Reforms:** The rulings of the ECtHR have significant implications for national laws across Europe. Countries bound by the ECHR must ensure their domestic legislation aligns with the principles established by the Court. This has led to legal reforms in various jurisdictions to accommodate the voting rights of prisoners. For example, following the Hirst judgment, the UK Parliament has been under pressure to amend its laws to comply with the ECHR standards, and granting full compliance has been a matter of ongoing debate and legislative action.
- iv. **Influence on Human Rights Discourse:** The ECHR plays a crucial role in shaping human rights. Its principles, along with the interpretation of the ECtHR, have been instrumental in promoting the idea that democratic participation should be inclusive, extending to marginalized groups such as prisoners. The impact is evident in the efforts of human rights organizations and legal scholars who argue for the protection of prisoners' voting rights based on the standards set by the ECHR.

3.2.4 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The ICERD was adopted by the UN General Assembly in 1965, and force on January 4, 1969, represents a crucial step in the global effort to combat racial discrimination. This treaty, emerging from significant civil rights movements, mandates equality and non-discrimination across all spheres of life. Article 5(c) of ICERD underscores the importance of ensuring that every individual has the right to vote, irrespective of color, national or ethnic origin. As a signatory, India is committed to ensuring that all people have equal access to the voting process without racial discrimination. ICERD guarantees political rights including: -

- i. Everyone is granted political rights, the ability to vote, and the ability to contest elections, regardless of race, based on equal and universal suffrage
- ii. States must repeal, modify, or declare unconstitutional any legislation that

deepens the racial divide or upholds racial discrimination.¹²⁹

3.2.4.1 Implications for Prisoners' Voting Rights:

- i. **Principle of Non-Discrimination:** ICERD's focus on eliminating racial discrimination supports the argument that disenfranchising prisoners can be discriminatory, particularly if it disproportionately affects racial or ethnic minorities. This challenges laws or practices that exclude prisoners from voting on discriminatory grounds.
- ii. **Impact on National Laws:** States parties to ICERD are required to align their domestic laws with its principles, ensuring that electoral laws do not disproportionately disenfranchise prisoners, especially those from racial or ethnic minorities. ICERD thus directs legislative reforms to uphold voting rights for all citizens, including prisoners.
- iii. **Support for Advocacy Efforts:** ICERD provides a foundation for human rights advocates to contest discriminatory practices related to voting rights. By highlighting how disenfranchisement disproportionately impacts minority groups, ICERD supports arguments for more inclusive voting practices that encompass prisoners.
- iv. **Influence on Judicial Interpretations:** ICERD's provisions are frequently cited in legal challenges concerning prisoners' voting rights. Courts and human rights bodies reference ICERD to determine whether laws excluding prisoners from voting violate international standards of equality and non-discrimination.
- v. **International Pressure and Compliance:** ICERD's monitoring mechanisms exert international pressure on countries to address racial discrimination, including voting rights. This pressure motivates nations to review and amend laws that unjustly exclude prisoners, particularly those from racial or ethnic minorities, to relate to ICERD's standards.
- vi. **Promotion of Equality and Inclusion:** ICERD's emphasis on eliminating racial discrimination supports broader principles of equality and inclusion. It advocates

¹²⁹ The International Convention on the Elimination of All Forms of Racial Discrimination, 1965, art. 5.

for the right of all prisoners, regardless of racial or ethnic background, to participate in the democratic process, fostering a more inclusive electoral system.

3.2.5 Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD was adopted in 2006 and came into force on May 3, 2008. This treaty ensures that persons with disabilities have equal rights to participate in political and public life, including voting. It provides a framework for advocating the voting rights of prisoners, particularly those with disabilities. Article 29 of the CRPD guarantees that persons with disabilities can participate in political and public life with others, including the right to vote.¹³⁰

3.2.5.1 Implications for Prisoners' Voting Rights:

- i. **Inclusive Participation:** The CRPD emphasizes the right of persons with disabilities to participate in political and public life, including voting. This principle extends to incarcerated individuals with disabilities, affirming their right to vote.
- ii. **Impact on Electoral Systems:** Countries parties to the CRPD must adapt their electoral systems to ensure accessibility for persons with disabilities. This obligation includes making necessary adjustments for prisoners with disabilities to enable them to exercise their voting rights.
- iii. **Support for Legal Reforms:** The CRPD provides a framework for promoting changes in laws and policies to ensure that prisoners with disabilities can vote. This will encourage more inclusive and equitable electoral practices.

3.2.6 Standard Minimum Rules for the Treatment of Prisoners (SMR)

The SMR was adopted by the United Nations in 1955 and updated as the Nelson Mandela Rules in 2015. These rules recognize the inherent dignity of prisoners and emphasize that incarceration should focus on reform, rehabilitation, and eventual reintegration into society. The SMRs establish fundamental principles and treatment of prisoners, including respect for human rights and the promotion of dignity. They

¹³⁰ Convention on the Rights of Persons with Disabilities and Optional Protocol, *available at*: <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (last visited on January 1, 2022).

underline the importance of providing prisoners with opportunities for personal development and maintaining their connection to society, which includes preserving their ability to participate in sociopolitical processes.¹³¹

3.2.6.1 Implications for Prisoners' Voting Rights:

- i. Recognition of Dignity:** The SMRs affirm that prisoners should be treated with dignity and respect. This principle supports the argument that prisoners, as part of their human rights, should retain their sociopolitical rights, including the right to vote.
- ii. Focus on Rehabilitation:** The SMRs emphasize that the goal of imprisonment is not only punishment but also reform and rehabilitation. Allowing prisoners to vote can be part of this rehabilitative process, helping them stay connected to society and reinforcing their sense of citizenship.
- iii. Human Rights Framework:** The SMRs align with broader human rights frameworks that advocate for prisoners' rights. By upholding the principles of the SMRs, countries can ensure that their policies regarding prisoners' voting rights are consistent with international human rights standards.
- iv. Influence on Policy and Reform:** The SMRs provide a basis for advocating legal and policy reforms to include prisoners in the electoral process. This includes addressing legislative barriers that deny voting rights to prisoners. Promoting an inclusive approach to their participation in democratic processes is important.

3.3 COMPARATIVE REVIEW OF FELONY DISENFRANCHISEMENT PRACTICES

Numerous international treaties and legal frameworks emphasize the importance of voting rights and have reviewed cases involving disenfranchised prisoners. However, this right is not absolute and can be subject to certain limitations. States may impose restrictions on voting rights for those convicted of crimes, provided these restrictions are proportionate to the offense and not applied indiscriminately, as

¹³¹ The United Nations Standard Minimum Rules for the Treatment of Prisoners, The Nelson Mandela Rules, *available at*: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf (last visited on January 1, 2022).

stated in Article 25 of the ICCPR and existing jurisprudence.¹³²

3.3.1 Classification of Unreasonable Restrictions

The committee under Article 25 of the ICCPR acknowledged the existence of felony disenfranchisement legislation and made the following recommendations:

- i. Proportionality of Suspension: If a criminal conviction serves as a basis for the suspension of one's voting rights, the period of the termination and suspension must be proportionate to the seriousness of the offender's crime and the appropriate penalty. This means that more severe crimes might justify longer periods of disenfranchisement, but the duration must always be reasonable and directly related to the offense committed.¹³³
- ii. Restriction of Application: The committee has consistently limited the scope and relevance of disenfranchisement statutes. This involves ensuring that such laws are not overly broad and that they do not indiscriminately strip the voting rights of all convicted individuals. Instead, disenfranchisement should be narrowly applied in circumstances where it is justified by the nature and severity of the crime.¹³⁴

By making these recommendations, the committee emphasizes the importance of upholding democratic principles and human rights standards. It seeks to balance the need for lawful punishment with the priority to protect fundamental voting rights, advocating for a more evaluated and just approach to felony disenfranchisement. For instance, an absolute ban on prisoners' voting rights in India and imposing lifelong voting bans on ex-convicts in the United States are both arbitrary and unfair restrictions. In the United States, ex-felons are considered a "discrete and insular minority," which triggers the application of strict scrutiny to any laws that disenfranchise them.¹³⁵ This legal standard requires that the disenfranchisement must be narrowly made-to-order to serve a compelling state interest. These limitations on voting regardless of the offense

¹³² Reuven Ziegler, "Legal Outlier, again? U.S. Felon Suffrage: Comparative and International Human Rights Perspectives" 29 *B.U. Int'l L.J.* 243 (2011).

¹³³ Losing the vote- The impact of felony disenfranchisement laws in the United States, *available at*: <https://www.hrw.org/legacy/reports98/vote/index.html#TopOfPage> (last visited on January 1, 2022).

¹³⁴ *Ibid.*

¹³⁵ Elizabeth Hull, *The Disenfranchisement of Ex-Felons* 104 (Temple University Press, Philadelphia, 2006).

can be seen as violations of Article 25 of the ICCPR, indicating global governmental non-compliance. India has ratified the ICCPR, but its legal system has not been updated to align with Article 25. Indian courts acknowledge the importance of international human rights agreements in interpreting domestic laws. Moreover, India has also outlined procedures for implementing these Covenants, demonstrating its dedication to upholding them. Additionally, provisions akin to Article 25 of the ICCPR are found in other international treaties like the African (Banjul) Charter on Human and Peoples' Rights and the ECHR.¹³⁶ While there is no comprehensive official data on voting rights for inmates across all nations, a 2012 report by the BBC identified eighteen European nations that have granted complete voting rights to all convicts. This indicates a tendency towards increased inclusivity concerning inmates' involvement in the political sphere. On the contrary, several countries prohibit convicts from voting, and the laws vary from nation to nation. Some countries have specific categories of inmates who are denied the right to vote.¹³⁷

3.3.2 Global Disenfranchisement Approaches: Full Rights to Selective Restriction

When it comes to felony disenfranchisement, different countries have adopted various approaches to grant inmates the ability to vote.

- i. **Complete Voting Rights:** Some countries have chosen to award inmates complete voting rights without any constraints. This approach recognizes the importance of ensuring that all citizens, including those who are incarcerated, have the chance to participate in the democratic or election process. By allowing inmates to vote, these countries aim to uphold the principles of inclusivity and equal representation
- ii. **Selective Voting Rights:** In certain nations, voting is limited to people who have been convicted, but those who are still awaiting trial, known as undertrials, are eligible to vote. This approach recognizes that undertrials have yet to be convicted of a crime and are assumed innocent until proven guilty. By allowing undertrials to vote, these nations aim to safeguard the principle of innocence

¹³⁶ The European Convention on Human Rights, art.3.

¹³⁷ Mandeep K. Dhami, "Prisoner Disenfranchisement Policy: A Threat to Democracy?" *IASAP* 2 (2005).

until proven guilty and ensure that all individuals have a say in the political process.

- iii. **Restricted Voting Rights:** In some countries, the right to vote for inmates is subject to certain limitations. These limitations may be contingent upon factors such as the gravity of the offense or the duration of the prison term. This approach seeks to strike a balance by imposing restrictions on individuals convicted of serious crimes while allowing them to participate in the democratic process.

3.3.2.1 Countries where Voting is allowed for Prisoners

In several nations, the approach to prisoners' voting rights varies. In Albania, all convicts, regardless of their sentence length, are granted the right to vote without any restrictions. Likewise, in Bosnia and Herzegovina, prisoners are eligible to vote except if their offenses are connected to the post-Yugoslav war. Several other countries, including Finland, Croatia, Denmark, Sweden, Latvia, Spain, Ireland, Lithuania, Macedonia, Pakistan, Serbia, Switzerland, Iran, Israel, Ukraine, and the Czech Republic, also permit all incarcerated individuals to participate in voting.¹³⁸ Furthermore, many nations such as Botswana, Kenya, Canada, Ghana, and South Africa support the enfranchisement of prisoners in elections.¹³⁹

List of Countries where prisoners are allowed to vote:

- i. **Austria (2004)** –In *Frodl v. Austria*,¹⁴⁰ the ECHR concluded that the absolute restriction on prisoners' ballots violated the ECHR. This landmark ruling established a significant legal precedent in European nations, emphasizing the need to consider prisoner voting rights as human rights norms. The verdict sparked discussions and debates about prisoner voting rights throughout Europe and later affected legal and legislative developments.
- ii. **Belgium (2006)** – The ECtHR decision in *Hirst v. United Kingdom*¹⁴¹ declared

¹³⁸ Shweta Mishra and Amit Kumar Pandey, "Prisoner's Right to Vote is a Human Right," 2 *J. Hum. Rights Pract.* 37 (2019).

¹³⁹ Adem Kassie Abebe, "In Pursuit of Universal Suffrage: The Right of Prisoners in Africa to Vote" *CILSA* 413 (2013).

¹⁴⁰ [2010] ECHR 508.

¹⁴¹ [2005] ECHR 681.

that a complete prohibition on prisoner ballots in the UK breached the ECHR. This influential decision significantly impacted the legal landscape of prisoner voting rights in European countries. As a result of this ruling, Belgium, as a member and signatory of the Council of Europe, allowed prisoners to vote, aligning its practices with the principles outlined in the ECHR. This case sparked widespread discussions and policy changes regarding prisoner voting rights across various European countries, reflecting a growing trend to uphold the importance of upholding fundamental human rights standards.

- iii. **Bulgaria (2016)** - The case of Kulinski and Sabev mandated that Bulgaria must allow prisoners to exercise their right to vote in elections. In 2010, Bulgaria ruled that a blanket ban on prisoner voting rights was unconstitutional. The court stressed that restrictions on voting should be decided on a case-by-case basis, considering the circumstances of each case and the gravity of the committed offense. This legal development signifies a significant shift in prisoner voting rights in Bulgaria and reflects a growing emphasis on individualized consideration of voting rights within the country.¹⁴²
- iv. **Canada (2002)** - In the *Sauve* case, the Supreme Court of Canada held that the prohibition on prisoner voting was unconstitutional. The ruling underscored the significance of proportionality and personalized assessment in addressing limitations on prisoner voting rights. Subsequently, Canada revised its laws to permit certain prisoners to vote, aligning its practices with the principles outlined in the court's decision.¹⁴³
- v. **Czech Republic (2011)** - The Czech Constitutional Court announced a major verdict confirming inmates' voting rights. The court declared that a complete ban on prisoners' voting was unconstitutional. It emphasized that restrictions on prisoners' voting rights should be decided by viewing specific circumstances and the seriousness of the offense committed. This decision represented a notable

¹⁴² European Court of Human Rights, Prisoners' Right to Vote, Press Unit, *available at*: https://www.echr.coe.int/documents/d/echr/fs_prisoners_vote_eng (last visited December 16, 2021).

¹⁴³ *Sauve v. Canada* (2002)-Limits on Voting Rights for Prisoners, *available at*: <https://www.constitutionalstudies.ca/2010/05/sauve-v-canada-2002-limits-on-voting-rights-for-prisoners/> (last visited on June 14, 2021).

development in the recognition of prisoner voting rights in the Czech Republic, reflecting a growing emphasis on personalized consideration of voting rights for prisoners.¹⁴⁴

- vi. Croatia (2013)-** Croatia's Constitutional Court ruled it was unconstitutional to forbid prisoners from exercising their ballot in elections. The court stressed that restrictions on one's ability to vote should consider their circumstances and the seriousness of the offense committed.¹⁴⁵
- vii. Denmark (2015) -** In response to a ruling by the ECtHR, Denmark was obliged to guarantee their inmates' right to vote. The Danish Parliament established a bill allowing inmates to exercise their right to vote and participate in the election process.¹⁴⁶
- viii. Estonia (2012) -** The Supreme Court of Estonia in the Kalda case deemed the complete ban on prisoner voting unconstitutional. The court underlined that restrictions on the ability to vote should be decided individually, considering each person's situation and the seriousness of the offense committed.¹⁴⁷
- ix. Finland (2002)-** Finland has upheld the ruling held in the Hirst case. As a Council of Europe member, it granted all its inmates to apply or cast their right to vote.¹⁴⁸
- x. Germany (2009)-** A prohibition on prisoners' ability to vote was declared unlawful by the German Federal Constitutional Court in 2009. The court ruled that any limitations on the ability to vote should be determined by the case of the prisoners, depending on the seriousness of the offense, duration, and nature of the crime.¹⁴⁹

¹⁴⁴ Prisoners voting rights (2005 to May 2015), *available at*: <https://researchbriefings.files.parliament.uk/documents/SN01764/SN01764.pdf> (last visited on June 15, 2021).

¹⁴⁵ *Ibid.*

¹⁴⁶ Anette Storgaard, *The Right to Vote in Danish Prisons* 244 (Cambridge University Press, Cambridge, 2009).

¹⁴⁷ European Court of Human Rights, *available at*: [https://hudoc.echr.coe.int/fre# {%22itemid%22:\[%22001-221259%22\]}](https://hudoc.echr.coe.int/fre# {%22itemid%22:[%22001-221259%22]}) (last visited on December 16, 2021).

¹⁴⁸ Incarceration and the Right to Vote: An International Comparative Study, *available at*: <https://www.trincoll.edu/cher/blog/emma-hersom-incarceration/> (last visited on December 18, 2021).

¹⁴⁹ Nora V. Demleitner, "Continuing Payment on One's Debt to Society: The German Model of Felon Disenfranchisement as an Alternative" *Minn. Law Rev.* 759 (2000).

- xi. Ireland (2006)** - Ireland granted convicts the right to vote following a historic ruling by the ECtHR. In 2006, the Irish government enacted legislation allowing offenders to vote.¹⁵⁰
- xii. Israel (1999)** - A verdict by the Israeli Supreme Court upheld the ability of convicts to vote.¹⁵¹
- xiii. Latvia (2011)** - The Latvian Constitutional Court ruled in 2011, a total ban on prisoner voting was declared unconstitutional. The court underlined that restrictions on the ability to vote should be decided individually, allowing for each person's situation and the seriousness of the offense committed.¹⁵²
- xiv. Lithuania (2011)** - Inmate voting must be permitted in Lithuania, according to a ruling by the ECtHR. A complete restriction on prisoners to cast their ballot was declared unlawful by the Lithuanian Constitutional Court in the year 2011. According to the court's ruling, limitations on the ability to vote are contingent upon the circumstances and gravity of the offense.¹⁵³
- xv. Norway (2005)** - Norway accepted the ECtHR and permitted all its inmates to exercise their right to vote as one of the members of the Council of Europe. This decision is compatible with the ECtHR verdict in *Hirst*, which determined that the UK's broad limitation on prisoners' right to vote violated the ECHR.¹⁵⁴
- xvi. South Africa (2005)**- The Constitutional Court of South Africa held that inmates have the right to vote. The Court stressed the importance of rehabilitation and the effective reintegration of criminals into society.¹⁵⁵
- xvii. Portugal (2014)** - The Portuguese Constitutional Court ruled in 2014 that

¹⁵⁰ Cormac Behan and Ian O'Donnell, "Prisoners, Politics and the Polls Enfranchisement and the Burden of Responsibility" 48 *Brit. J. Criminol.* 319 (2008).

¹⁵¹ Laleh Ispahani, *Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and Other Democracies* 20 (American Civil Liberties Union, New York, 2006).

¹⁵² Prisoners' voting rights in European Parliament elections, *available at:* https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751459/EPRS_BRI_2023_751459_EN.pdf (last visited on June 14, 2023).

¹⁵³ *Ibid.*

¹⁵⁴ *Supra* at 152.

¹⁵⁵ The Right of Prisoners to Vote in Africa, *available at:* <https://dullahomarinstitute.org.za/acjr/resource-centre/fact-sheet-17-prisoners-vote.pdf> (last visited on November 12, 2022).

convicts are entitled to vote.¹⁵⁶

- xviii. Romania (2006)** – Following a ruling by the ECtHR, Romania allowed its inmates to vote.¹⁵⁷
- xix. Slovenia (2009)** - The Slovenian Constitutional Court ruled it illegal to deny prisoners the ability to vote. The court decided that restrictions on one's ability to vote should be evaluated individually, considering each person's circumstances and the seriousness of the offense committed.¹⁵⁸
- xx. Spain (2010)** - The Constitutional Court of Spain ruled that a blanket prohibition on prisoner voting rights was unconstitutional. The court emphasized that decisions regarding voting rights restrictions should be based on individual cases, considering the seriousness of the offense committed.¹⁵⁹
- xxi. Sweden (2010)** –The Swedish Parliament approved a law granting prisoners the right to vote.¹⁶⁰
- xxii. Switzerland (2006)** - The Swiss Federal Supreme Court declared that a complete prohibition on prisoner voting rights was unconstitutional. The court determined that any limitations on one's ability to vote should be evaluated individually, considering the gravity of the offense committed.¹⁶¹

3.3.2.2 Countries where voting is selective for Prisoners'

Many nations, including the United Kingdom, New Zealand, and Russia, have outlawed the ability of inmates to vote, depriving most of them of these privileges. Despite the severity of their offenses or the length of their sentences, a wide range of prisoners in these nations are subjected to restrictions. For example, in the UK, anyone

¹⁵⁶ Prisoners voting in Europe, *available at*: <https://insidetime.org/prisoner-voting-in-europe/> (last visited on December 15, 2021).

¹⁵⁷ Extending the Franchise: Prisoner Voting, *available at*: <https://www.gov.wales/sites/default/files/publications/2019-02/extending-the-franchise-prisoner-voting.pdf> (last visited on November 12, 2022).

¹⁵⁸ Access to Electoral Rights Slovenia, *available at*: <https://core.ac.uk/download/pdf/45683899.pdf> (last visited on November 12, 2022).

¹⁵⁹ Prisoners' Voting Rights, *available at*: <https://researchbriefings.files.parliament.uk/documents/SN01764/SN01764.pdf> (last visited on December 19, 2021).

¹⁶⁰ *Supra Note* at 152.

¹⁶¹ The Right of Prisoners to Vote: A Global Overview, Penal Reform International *available at*: https://cdn.penalreform.org/wp-content/uploads/2016/08/The-right-of-prisoners-to-vote_March-2016.pdf (last visited on December 19, 2021).

incarcerated or in violation of the law is prohibited in municipal or parliamentary elections.¹⁶² Indeed, the ECHR maintains that such a prohibition contradicts its charter and infringes upon fundamental human rights. In December 2013, the British prime minister expressed his opposition to granting inmates the right to vote and suggested limiting the authority of the ECHR to cases involving alleged illegal activities. Despite a court ruling acknowledging that denying inmates the right to vote violates their human rights, prisoners in the United Kingdom continued to be unable to exercise this right as of August 2014.¹⁶³ In 2010, the New Zealand government curtailed all inmates' right to vote in elections by prohibiting them from registering on the electoral roll. Although it is illegal under international law, no justification for the measure was presented.¹⁶⁴ This bill proposes an amendment to the 1993 Electoral Act to enable individuals serving sentences of less than three years in jail to participate in the nation's general elections. The prior rule, which was in force before late 2010, is reinstated by this legislation.¹⁶⁵ In the *Anchugov and Gladkov* case, the importance of ensuring that restrictions on inmates' ability to vote are not too onerous was highlighted by this ruling. The Russian Federation's total ban on inmates' ability to vote violated Article 3 of Protocol 1 of the ECHR. The Court held that even though the Constitution included a provision regarding voting rights limitations, the penal system should be organized in a way that certain criminal punishments restricting freedom would not automatically lead to the deprivation of voting rights. With this statute, convicts can now vote for themselves in local and municipal elections, putting an end to the prior blanket prohibition on prisoners' voting rights.¹⁶⁶ In selected countries, voting restrictions are subject to the prisoner's circumstances, such as the severity or nature of the offense. For example, in Australia, a person serving an imprisonment of three years or above is

¹⁶² Incarceration and Enfranchisement: International Practices, Impact, and Recommendations for Reform, *available at*: http://www.prisonpolicy.org/scans/08_18_03_Manatt_Brandon_Rottinghaus.pdf (last visited on January 28, 2022).

¹⁶³ Anyanwu Ikenna ESQ, "Prisoners' Fundamental Right to Vote: The UK Example" 3 *IIARD* 34 (2018).

¹⁶⁴ Alex Mackenzie, "Lock Them Up and Throw Away the Vote: Civil Death Sentences in New Zealand" 19 *Auckl. Univ. Law Rev.* 197 (2013).

¹⁶⁵ New Zealand: Bill to Restore Voting Rights for Some Prisoners Introduced, *available at*: <https://www.loc.gov/item/global-legal-monitor/2020-03-06/new-zealand-bill-to-restore-voting-rights-for-some-prisoners-introduced/> (last visited on February 2, 2022).

¹⁶⁶ A. Kh. Abashidze, Marianna Ilyashevich, et.al., "*Anchugov and Gladkov v. Russia*" 111 *Am. J. Int'l L.* 464 (2017).

ineligible to vote in federal elections, the only exception being Victoria State, where inmates with sentences exceeding five years are subject to this limitation. In China, voting is forbidden for Chinese death sentence convicts.¹⁶⁷ In the United States of America, the right to vote for prisoners varies significantly among states. In Maine and Vermont, all individuals, including inmates, have retained their right to vote, irrespective of their crime or criminal history.¹⁶⁸ However, in Kentucky and Virginia, individuals with felony convictions are permanently disenfranchised unless they receive individual, discretionary executive clemency. These two states are the only remaining ones that impose such restrictions on voting rights for citizens with felony convictions.¹⁶⁹

Table 5 shows the different approaches to voting rights for inmates¹⁷⁰

Sr. No.	No limits	Prohibition on Prisoner Voting	Restrictions after release	Selective constraints
1.	Spain	Argentina	Armenia	Australia
2.	Ireland	Armenia	Belgium	Austria
3.	Serbia	Brazil	Chile	Belgium
4.	Peru	Bulgaria	Finland	Finland
5.	Latvia	Chile	USA	France
6.	Finland	Estonia		Germany
7.	Ukraine	Hungary		Greece
8.	Croatia	India		Italy
9.	Slovenia	Luxembourg		Malta
10.	South Africa	Portugal		New Zealand
11.	Spain Bosnia	Romania		Norway
12.	Sweden			San Marino
13.	Switzerland			Russia
14.	Iceland			United Kingdom
15.	Poland			
16.	Czech Republic			
17.	Macedonia			
18.	Lithuania			
19.	Denmark			
20.	Israel			
21.	Canada			

¹⁶⁷ Incarceration and Enfranchisement: International Practices, Impact and Recommendations for Reform, *available at*: https://www.prisonpolicy.org/scans/08_18_03_Manatt_Brandon_Rottinghaus.pdf (last visited on November 12, 2022).

¹⁶⁸ Alicia Bianco, "Prisoners' Fundamental Right to Read: Courts Should Ensure that Rational Basis is Truly Rational" 21 *Roger Williams Univ. Law Rev.* 28 (2016).

¹⁶⁹ Restoring the Right to Vote, *available at*: https://www.brennancenter.org/sites/default/files/2019-08/Report_Restoring-the-Right-to-Vote.pdf (last visited on February 08, 2022).

¹⁷⁰ Laleh Ispahani, *Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and other Democracies* 6 (American Civil Liberties Union, New York, 2006).

3.4 EUROPEAN COURT OF HUMAN RIGHTS ON FELONY DISENFRANCHISEMENT (ECtHR)

The ECHR, through Article 3 of Protocol No. 1, mandates that signatory parties should conduct free and fair elections, ensuring that individuals can freely express their choices in selecting legislative representatives. This underscores the importance of examining the ECtHR's perspective on felony disenfranchisement within a global context.

- i. ***Hirst v. United Kingdom***¹⁷¹ - In this landmark case, the court interpreted restrictions on voting rights for inmates. The petitioner was barred from voting under Section 3 RPA, 1983, due to her criminal conviction. Section 3 of UK legislation prohibits voting by any convicted person detained in prison. The ECtHR found that this blanket ban violated the spirit of Article 3, Protocol No. 1. While acknowledging that states can impose certain restrictions, the ruling in *Hirst* applied specifically to broad, indiscriminate bans. The Court suggested that disenfranchisement should be based on a "specific judicial decision" and adhere to the principle of proportionality, emphasizing a need for a clear connection between the disenfranchisement policy and the offense committed.
- ii. ***Greens and M.T. v. United Kingdom***¹⁷² - The ECtHR declared that an absolute and indiscriminate ban on convicted individuals' voting rights is incompatible with the safeguards provided by Article 3, Protocol No. 1.
- iii. ***Anchugov and Gladkov v. Russia***¹⁷³ - In this case, the court considered the situation of convicts in Russia who were denied voting rights after receiving sentences of more than a year. The court found that the ban, not decided by a judge, lacked a specific link between the offense and the voting restriction, which rendered the prohibition unjustifiable.

¹⁷¹ A First Look at Prisoner Disenfranchisement by the European Court of Human Rights, *available at*: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/conjil21&div=20&id=&page=> (last visited on January 29, 2022).

¹⁷² Prisoner Voting and Human Rights in the UK, *available at*: <https://www.lse.ac.uk/sociology/assets/documents/human-rights/HRF2-PrisonerVotes.pdf> (last visited on June 14, 2023).

¹⁷³ Case Closed, but what about the Execution of the Judgement? The Closure of *Anchugov and Gladkov v. Russia*, *available at*: <https://www.ejiltalk.org/case-closed-but-what-about-the-execution-of-the-judgment-the-closure-of-anchugov-and-gladkov-v-russia/> (last visited on June 14, 2021).

- iv. ***Frodl v. Austria***¹⁷⁴ - The court held that denying convicted individuals the right to vote should occur only in exceptional circumstances. In this case, the refusal of voting rights was deemed a violation of the petitioner's rights.
- v. ***Scoppola v. Italy***¹⁷⁵ - In this case, the ECHR examined Italian legislation that prohibited individuals serving sentences of three years or more from voting. The Grand Chamber of the Court found that this law did not violate the petitioner's rights. The center of the Court was on the length of the sentence rather than whether the disenfranchisement was automatic or indiscriminate. Unlike in earlier cases such as *Hirst* and *Frodl*, where a proportionality test was applied to assess the fairness of disenfranchisement, the Grand Chamber in *Scoppola* did not use this test. Instead, it recognized that the Italian law was designed with legislative caution by linking disenfranchisement to the length of the sentence and the seriousness of offenses. However, the Court also acknowledged that automatic disenfranchisement, which does not involve judicial review or consideration of individual circumstances, could still present issues.
- vi. ***Sauve v. Canada***¹⁷⁶ - The Canadian Supreme Court rendered a landmark decision in 2002 in *Sauve v. Canada*, overturning a section of Canadian legislation that imposed an automatic and blanket prohibition on voting rights for all inmates. The Court determined that this prohibition was incompatible with the principle of proportionality, as it failed to consider individual circumstances and the severity of the crimes committed. The ruling emphasized the need for a detailed examination of prisoner disenfranchisement by the principles outlined in the Canadian Charter of Rights and Freedoms. In *Sauve v. Canada* (No. 2), a challenge was brought before the Court over a clause in the 2000 Canada Elections Act that prohibited prisoners serving terms of two years or more from participating in federal elections. Richard Sauve, a murderer serving a life sentence, argued that this section breached Section 3 of the Canadian Charter of

¹⁷⁴ Prisoners' voting rights in European Parliament elections, *available at*: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751459/EPRS_BRI_\(2023\)_751459_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751459/EPRS_BRI_(2023)_751459_EN.pdf) (last visited on June 14, 2023).

¹⁷⁵ Edward C Lang, "A Disproportionate Response: *Scoppola v. Italy* (No. 3) and Criminal Disenfranchisement in the European Court of Human Rights" *Am. U. Int'l L. Rev.* 854 (2013).

¹⁷⁶ [1993] 2 SCR 438.

Rights and Freedoms, which guarantees the right to vote. The Court found that the provision was an unfair restriction on the ability to vote within a democratic and free society, even if it only applied to more serious offenses. The ruling emphasized the vital role of universal suffrage in democracies, asserting that a government restricting voting to a small number of people loses its legitimacy and goes against the principles of representative democracy.¹⁷⁷ In addition to Canada, other countries have also been significantly impacted by the *Sauve v. Canada* decision. It was determined that the felon disenfranchisement provision was an unfair restriction on the ability to vote within a democratic and free society, even if it was only applied to more serious offenses. The Court highlighted the vital role that universal suffrage plays in democracies, ruling that a government that restricts voting to a small number of people loses its legitimacy as a means of representing all citizens and goes against the fundamental principles of representative democracy. The Court also found that because it failed to distinguish between serious and non-serious offenses, the restriction on disenfranchisement to those serving a term of two years or more violated the unreasonable proportionality test.¹⁷⁸

- vii. ***Minister of Home Affairs v. NICRO***¹⁷⁹ - The NICRO and two convicted parties presented arguments to the South African Constitutional Court about the legitimacy of a section of the Electoral Laws Amendment Act 34 of 2003. This clause made it illegal for those serving jail terms to register to vote, as it permitted their disenfranchisement without the possibility of a fine. The Court concluded that, by Section 36(1) of the South African Constitution, the rights protected by the Bill of Rights, including the right to vote, are not absolute. This allows for legitimate, acceptable legislative constraints in a free and democratic society. A proportionality investigation was conducted to evaluate the limitation on the right to vote. The Court rejected the government's justifications, which focused on logistics, expenses, and the state's image as being harsh on crime. All convicts'

¹⁷⁷ The Canadian Charter of Rights and Freedoms, s. 3.

¹⁷⁸ Michael Plaxton and Heather Lardy, "Prisoner Disenfranchisement: Four Judicial Approaches" 28 *Berkeley J Int'l L* 102 (2010).

¹⁷⁹ 2004 5 BCLR 445 (CC).

access to political involvement was restricted, but the administration was unable to offer a legitimate and logical rationale. In the case of *August v. Electoral Commission*¹⁸⁰, the South African Constitutional Court had previously tackled the issue of prisoners' voting eligibility. The Court emphasized that under the South African Constitution, it was the government's duty to enable every individual to exercise their universal right to vote, which was deemed essential for fostering national unity. Furthermore, the Court underscored the necessity for justifying any restrictions on rights and advocated for interpreting voting rights laws in a manner that promotes citizenship rather than disenfranchisement. From August's decision, the South African Constitutional Court, in the case of NICRO, found, by majority vote, that the general ban on prisoner voting was unlawful and unconstitutional. The court ordered all eligible voters, including inmates, to be registered to participate in the upcoming 2004 election.

- viii. *Roach v. Electoral Commission*¹⁸¹ - *In* this case, the Australian High Court examined the legality of felon disenfranchisement. The case involved an Aboriginal woman serving a six-year custodial sentence who challenged the constitutionality of the 2006 Act, which prohibited all inmates from voting in federal elections. The Court recognized that the right to vote encompasses principles of citizenship and community involvement, which persist even during imprisonment, as incarcerated individuals retain their status as citizens and members of society. Australian High Court concluded that the blanket prohibition was unconstitutional because it was not reasonably adequate, adaptable, or proportionate, drawing on precedents set by the *Sauvé* and *Hirst* cases. However, regarding the legality of the 2004 Act, which enforced disenfranchisement on individuals serving imprisonment terms of three years or more, the Court deemed it to be constitutionally lawful. This differed from the ruling in *Sauvé*, where the Court ruled against the general ban under the 2006 Act. The court found it appropriate that the convict's disenfranchisement under the 2004 Act was determined by the duration of their sentence. While the outcome did not benefit the petitioner, as she was incarcerated for six years, the ruling underscores a global

¹⁸⁰ 1999(4) BCLR 363 (CC).

¹⁸¹ (2007) 233 CLR 162.

consensus on the need for proportionality in criminal disenfranchisement statutes. It also highlights that the proportionality criterion varies across different states' conceptions of what is appropriate.¹⁸²

The ECtHR's rulings reflect an increasing recognition of voting rights as fundamental to democratic societies. The Court has emphasized that restrictions on these rights should be imposed only under exceptional circumstances. The treatment of prisoners' voting rights varies across European nations, while some countries impose restrictions on voting for inmates, others do not. However, a recent decision by the ECHR has led to the ending of some prohibitions on prisoner voting. In 2002, the Supreme Court of Canada ruled that any restriction on a prisoner's ability to vote was unconstitutional, as it was an unreasonable restriction on that right. This decision resulted in the cancellation of all provincial voting limitations for convicts and the partial removal of federal voting restrictions for those serving terms of less than two years. The ECHR declared that the United Kingdom's total ban on prisoner voting is excessive and violates the right to vote. Similarly, Australia's 2006 ban on prisoners voting was eventually overturned by the High Court, which found that the Constitution guaranteed prisoners a restricted right to vote. These occurrences highlight the ongoing controversy concerning voting rights for prisoners and the need to consider constitutional and human rights principles carefully.

3.4.1 Proportionality and Impartiality of Disenfranchisement Laws

Disenfranchisement is a serious action, and the Court has determined that adherence to the proportionality principle is crucial to ensure that any limitations on voting rights are reasonable and appropriate. This principle demonstrates a "distinguishable and adequate relationship between the sentence and the behavior and the circumstances of the individual involved." The necessity of a judicial ruling before disenfranchising individuals is emphasized to prevent arbitrary and blanket restrictions. The European Court of Human Rights deemed the automatic voting prohibition under the 1983 Act, which applied to all convicted individuals in prison, arbitrary and

¹⁸² Morgan Macdonald, "Disproportionate Punishment: The Legality of Criminal Disenfranchisement under the International Covenant on Civil and Political Rights" *Geo. Wash. Int'l L. Rev.* 1392(2009).

unconstitutional. The Grand Chamber concluded that indiscriminate disenfranchisement exceeds the permissible scope of state discretion and breaches Article 3 of Protocol No. 1. In the Hirst case, the judges unanimously agreed that prisoners should not be denied voting rights solely based on their incarceration under Article 3 of Protocol No. 1. They argued that the lack of a proportionality assessment rendered the provision unjustifiable and in violation of the ECtHR.¹⁸³ Determining the intent behind disenfranchisement legislation is complex, but efforts should be made to uphold democratic ideals by allowing rational convicts to participate in elections. For instance, in the Canadian case of *Sauve v. Canada*,¹⁸⁴ the court found that depriving criminals of two-year terms or more of voting rights lacked a rational connection to the goals of punishment. The decision in *New Crest Mining v. Commonwealth*¹⁸⁵ affirmed that common law and constitutional interpretations of the non-discrimination norm are equivalent, emphasizing that unjustified limitations or discriminatory practices in voting rights are prohibited. International agreements, such as the Declaration on the Elimination of Discrimination Against Women, 1967, Convention on the Elimination of All Forms of Discrimination Against Women, 1979, and Convention on the Political Rights of Women, 1953, underscore the prohibition of discriminatory practices in political participation.

International standards explicitly prohibit discriminatory practices that prevent prisoners or any individuals from participating in political activities. The right to political participation is inherently connected to freedom of expression, assembly, and association.¹⁸⁶ Political engagement emphasizes that the people are the source of a state's power and legitimacy. Therefore, enabling citizens to participate in public discussions and elections is essential for contributing to governance and decision-making processes.¹⁸⁷ Political participation aims to ensure that people can be recognized by the government and influence policy formulation with their interests

¹⁸³ The European Court of Human Rights, art.3.

¹⁸⁴ [2002]3SCR 519.

¹⁸⁵ (1997)190 CLR 513.

¹⁸⁶ UN Human Rights Committee (HRC), ICCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights, and the Right of Equal Access to Public Service, *available at*: <https://www.refworld.org/legal/general/hrc/1996/en/28176> (last visited on June 14, 2023).

¹⁸⁷ Gregory H Fox, "The Right to Political Participation in International Law" *Y JIL*.545 (1992).

through the electoral process. The right to vote is crucial as it allows elected representatives to truly reflect the electorate's will and holds them accountable, thereby reinforcing the democratic foundation.¹⁸⁸ Voting is a key mechanism for securing other essential rights from governments.¹⁸⁹ Universal suffrage is a fundamental aspect of democratic legitimacy recognized by the United Nations.¹⁹⁰ The principle that everyone has an inherent right to engage in national politics underpins the protection of universal suffrage in major international agreements. This right ensures that elected representatives genuinely represent the electorate, while the voters can hold them accountable for their actions.¹⁹¹

3.5 DOES DISENFRANCHISEMENT AS A PUNISHMENT UNDERMINE AN INDIVIDUAL'S DIGNITY

i. Denying convicts the right to vote is an additional penalty beyond incarceration, stripping them of citizenship, and diminishing their status and sense of belonging in society. By removing their voting rights, disenfranchisement reinforces the idea that prisoners are outsiders and keeps them from participating in democratic processes. This practice not only marginalizes individuals but also reinforces their feelings of alienation and stigmatization, making them feel excluded from society. Disenfranchised felons live in a society where the rules and decisions are made by those who do have voting rights. This creates a constant sense of exclusion for those who cannot vote. The exclusion experienced by disenfranchised individuals today echoes the exclusion faced by people in historical contexts, reflecting a continuity of marginalization in contemporary felon disenfranchisement practices.

ii. Historically, individuals deemed offenders faced a severe form of punishment known as "civil death," which involved their expulsion from the community and the complete deprivation of their rights. They were essentially treated as if they were legally dead, resulting in social exclusion and the loss of fundamental rights. While

¹⁸⁸ Guy S. Goodwin-Gill, *Free and Fair Elections* 73 (Inter-Parliamentary Union, Geneva, 2006).

¹⁸⁹ Debra Parkes, "Ballot Boxes Behind Bars: Toward the Repeal of Prisoner Disenfranchisement Laws" *Temp. Pol. & Civ. Rts. L. Rev.* 80 (2003).

¹⁹⁰ United Nations, available at: <https://www.un.org/en/global-issues/democracy> (last visited on June 14, 2023).

¹⁹¹ Human Rights and Elections: *A Handbook on the Legal, Technical, and Human Rights Aspects of Elections* 25 (United Nations Center for Human Rights, United Nations, 1994).

outright banishments are no longer common, the disenfranchisement of prisoners is a remnant of these medieval practices. This punishment lacks a justifiable or legal purpose beyond marginalizing and discriminating against those who are incarcerated. The humiliating aspect of disenfranchisement is evident not only during incarceration but also continues post-release, as ex-prisoners remain barred from political participation. This practice hinders their rehabilitation and reintegration into society, effectively demoting them to a lower status of citizenship. This degradation aligns with Article 7 of the ICCPR, which prohibits inhumane, cruel, or degrading treatment or punishment. Exclusion can be seen as a violation of the principle, undermining individuals' fundamental human right to participate in democratic elections.

3.6 SIGNIFICANCE OF VOTING RIGHTS AND THE EFFECTS OF DISENFRANCHISEMENT

- i. Democratic Participation:** The right to vote is crucial for democratic engagement, allowing individuals to contribute to the election process, shape national governance, and influence policies affecting their lives and welfare.
- ii. Representation:** Voting ensures citizens are represented in decision-making processes, integrating diverse perspectives and interests into governance.
- iii. Power and Stability:** Broad voter participation strengthens the legitimacy and stability of government, grounded in the principle of consent from the governed.
- iv. Inclusivity:** Disenfranchising prisoners undermines democratic inclusivity by excluding a significant portion of the population from the electoral process.
- v. Rehabilitation and Reintegration:** Granting voting rights to prisoners can support their reintegration and rehabilitation by fostering their engagement in civic life.
- vi. Human Rights:** International law recognizes the right to vote as a fundamental human right. Disenfranchisement of certain groups may violate their rights to political participation and equal treatment.
- vii. Social Cohesion:** Inclusive voting practices promote social unity by enhancing a sense of belonging and responsibility among all societal members.
- viii. Addressing Systemic Injustices:** Disenfranchisement disproportionately

impacts marginalized communities, perpetuating systemic injustices and obstructing efforts to rectify social and economic inequalities.

- ix. Trust in Democracy:** Excluding large segments of the population from voting can undermine public trust in the fairness and legitimacy of the democratic process.
- x. Progress and Change:** Allowing individuals with criminal records to vote provides them with a platform to be heard and contribute to societal progress and change.

CONCLUSION

The right to vote is a cornerstone of democracy, essential for empowering individuals and promoting societal cohesion. Disenfranchising prisoners undermines these democratic values, exacerbates inequality, and obstructs their rehabilitation and reintegration into society. A just and inclusive democracy must ensure that all citizens, including those with criminal records, have access to voting rights. Countries like Australia, Germany, and Iceland illustrate how prisoners can be granted voting rights under specific conditions, striking a balance between democratic principles and public safety. These examples show that it is possible to respect human rights while imposing reasonable restrictions based on the nature of offenses. Denying voting rights to prisoners raises important questions about the fairness and legitimacy of electoral systems and can hinder efforts to reintegrate former prisoners. Addressing these challenges requires exploring alternative approaches that emphasize rehabilitation, restorative justice, and civic engagement. Aligning disenfranchisement policies with international human rights standards is crucial for upholding the principles of freedom, equality, and justice. By advocating for inclusive electoral practices and encouraging policy reforms, we can move towards a more equitable society where all individuals, including those with criminal histories, can participate in the democratic process and influence decisions that affect their lives. A comprehensive and collaborative effort is needed to build a stronger, more inclusive society that embraces all its members.

CHAPTER - 4

LEGISLATIVE AND CONSTITUTIONAL FRAMEWORK ON FELONY DISENFRANCHISEMENT

4.1 INTRODUCTION

Each citizen's vote in an election ensures their dignity and personhood. India is regarded as the world's largest democratic Country¹⁹², where voting is one of the most important legal rights guaranteed by the government. As a democratic nation, India practices a reformatory ideology of punishment that upholds the fundamental human rights of its inmates, despite the fact it is mocking the absence of prisoners' voting rights. India has incorporated the concept of felony disenfranchisement into its legal system, forbidding prisoners from exercising their voting rights. In comparison, many European countries allow prisoners to vote and adhere to international treaties.¹⁹³ The major purpose of punishments worldwide is to deter, rehabilitate, and reintegrate criminals into society.¹⁹⁴ India is envisioned as a democratic republic in the preamble of the Indian Constitution.¹⁹⁵ Abraham Lincoln famously described a democratic government as "of the people, by the people, and for the people".¹⁹⁶ Article 326 of the Indian Constitution upholds the principle of universal suffrage, granting the right to vote to all citizens aged eighteen and above.¹⁹⁷ Democracy and the notions of free and fair elections are cornerstones of the Indian Constitution.¹⁹⁸ Before independence, voting rights in India were restricted based on factors such as educational attainment or property ownership, disenfranchising large sections of the population, including women, farmers, and laborers. Women's suffrage in the provincial elections of 1920-29 was a symbolic step towards granting women their voting rights. However, most

¹⁹² Akashdeep Singh, "Denial of Right to Vote to the Prisoners in India: A Critical Analysis" 5 *IJLMH* 1216 (2022).

¹⁹³ Dip Jyoti Bez, "Reformative and Rehabilitative Treatments of Offenders: A General Overview" 2 *JHSS* 72 (2018).

¹⁹⁴ Yamini Gurjar and Harsh Patel, "Felony Disenfranchisement: Politics and Polls for Prisoners in India" 6 *LMJ* 100 (2020).

¹⁹⁵ Durga Das Basu, *Introduction to the Constitution of India* 23 (Lexis Nexis, India, 2018).

¹⁹⁶ S.R. Myneni, *Political Science* 246 (Allahabad Law Agency, Faridabad, 2006).

¹⁹⁷ The Constitution of India, art. 326.

¹⁹⁸ J.N. Pandey, *Constitutional Law of India* 802 (Central Law Agency, Allahabad, 2021).

women were still unable to exercise this privilege.¹⁹⁹ Efforts were also made to introduce separate electorates for minorities, Scheduled Castes, and Scheduled Tribes, proposals were eventually replaced by the idea of a common electoral roll, aiming to provide equal voting rights to all individuals.²⁰⁰ Although progress has been made, there is still to be done to ensure that voting is recognized as a basic human right exercised by every citizen without discrimination. In history, individuals incarcerated for criminal convictions faced the loss of their fundamental rights due to the practice of felon disenfranchisement, rooted in the concept of civil death. However, this concept no longer aligns with the contemporary interpretations of Article 21 of India's Constitution. The Indian Constitution specifies the eligibility criteria for voting, and it is a matter that Parliament regulates periodically.²⁰¹

In the Indian context, voting is not universally regarded as a fundamental right, and the state is not legally bound to ensure it for every individual. Article 325 of Part XV of the Indian Constitution explicitly states on Elections that no person shall be disqualified or denied inclusion on the electoral roll based on race, religion, caste, or sex for any constituency of the State Legislature and the Parliament.²⁰² This grants the legislature the power to set the qualifications for voting and to impose restrictions to safeguard the integrity of the electoral system. The RPA and the Indian Constitution together form the cornerstone of India's electoral framework, overseen by the Chief Election Commission, which plays a pivotal role in supervising and upholding the fairness of the electoral processes in the country.²⁰³ The creation of the electoral roll is not a straightforward administrative procedure, as demonstrated by the election experience of the previous few decades. Governments have abused and manipulated state resources for their political ends, including adding and removing people from voter lists to sway the electorate's balance in favor of a certain candidate or party.²⁰⁴

¹⁹⁹ Praveen Rai, "Women's Participation in Electoral Politics in India: Silent Feminisation", 37 *South Asia Res.* 62 (2017).

²⁰⁰ Constituent Assembly of India Debates, *available at*: <https://loksabha.nic.in/writereaddata/cadebatefiles/C28081947.html> (last visited on March 9, 2022).

²⁰¹ The Constitution of India, art. 327.

²⁰² The Constitution of India, art. 325.

²⁰³ Gokulesh Sharma, "Voting Human Rights of Prisoners: He Can Be M.P. and MLA but Cannot Vote" *AIR* 1 (1998).

²⁰⁴ Malpractices alleged in a revision of electoral rolls, *available at*: <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/malpractices-alleged-in-revision-of-electoral-rolls/article4069478.ECE> (last visited on March 3, 2022).

Even the Election Commission of India has emphasized voter residency, appeals in removals, and petitions for additions while instructing Electoral Officers on how they create the lists.²⁰⁵

4.2 SIGNIFICANCE OF DEMOCRACY

The Constitution of India embodies the concept of the “basic structure”. In the Landmark case of *Keshavananda Bharti v. Union of India*²⁰⁶, the doctrine of the basic structure was upheld, with the Supreme Court ruling that certain fundamental principles and features of the Constitution are immune to amendment by Parliament. Another noteworthy decision supporting this idea is *Minerva Mills Ltd. v. Union of India*²⁰⁷, which reinforced the principle that Parliament's amending authority under Article 368 cannot be used to change or destroy the Constitution's core framework. Democracy is founded on the principle that voters choose politicians, rather than politicians selecting the voters. Democracy lies in the principle of adult franchise, which empowers individuals to exercise their will in governance. It grants every citizen a voice, making them an active participant in the democratic process. This process allows citizens to express their consent or dissatisfaction with government policies. The concept of adult franchise, which forms the basis for the legitimacy of voting rights in general elections, is explicitly mentioned in Article 326 of the Indian Constitution.²⁰⁸ While it imposes certain restrictions on this right, such as residency requirements, mental illness, criminal activity, and unethical or unlawful behavior, it is worth noting that voting is a form of political expression. Therefore, denying competent prisoners the right to vote could be viewed as a limitation on their freedom of political expression, as it prevents them from participating in the democratic process and expressing their political preferences. However, it can be argued that these restrictions do not justify the complete denial of voting rights to prisoners.²⁰⁹ The curtailment or denial of voting for individuals facing allegations violates the foundational principles of the Indian

²⁰⁵ Handbook for Electoral Registration Officers, Election Commission of India, *available at*: http://eci.nic.in/eci_main/ElectoralLaws/HandBooks/ERO_HANDBOOK_2012.pdf, (last visited on March 6, 2022).

²⁰⁶ AIR 1973 SC 1461.

²⁰⁷ AIR 1980 SC 1789.

²⁰⁸ The Constitution of India, art. 326.

²⁰⁹ The Constitution of India, *available at*: https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf (last visited on April 4, 2022).

Constitution and undermines essential elements of democratic governance. The concept of the basic structure ensures that Part III of the fundamental rights and principles of the Indian Constitution, together with the right to vote, are safeguarded and cannot be arbitrarily curtailed or abolished by legislative action. Denying voting rights to prisoners undermines the principles of equality and fairness, as it treats them as lesser citizens compared to others. This discrepancy in granting various fundamental and human rights while denying these rights to individuals accused of a crime raises concerns about the fairness and inclusivity of the democratic process. It is important to recognize the importance of upholding and maintaining the principles of democracy and ensuring that all individuals, irrespective of their legal status, can exercise and safeguard their right to vote.

4.3 CONSTITUTIONAL AND STATUTORY PROVISIONS OF ELECTORAL RIGHTS

The Indian Constitution, as the supreme law of the land, establishes the foundational principles for democratic governance, including the electoral process. Key articles relevant to voting rights include:

4.3.1 Constitutional Provisions²¹⁰

- i. **Article 325:** This article ensures that no person shall be disqualified from being included in electoral rolls based on race, religion, caste, or sex. It empowers the legislature to set qualifications for voters and impose necessary restrictions to preserve the integrity of the electoral system. This provision embodies the principle of universal suffrage, aiming to create an inclusive democratic process.
- ii. **Article 326:** This article lays down the principle of adult suffrage, stipulating that every citizen of India who is not disqualified by law has the right to vote in elections to the House of the People and the Legislative Assemblies of States. The disqualifications include non-residence, unsoundness of mind, crime, or corrupt or illegal practices. This provision underscores the commitment to broad-based democratic participation.

²¹⁰ The Constitution of India, arts. 325,326,14,19,21.

- iii. **Article 14:** Guarantees equality before the law and equal protection of the laws within the territory of India. This article forms the core of the Indian legal system, ensuring that all citizens are treated equally by the state and have equal access to legal protections.
- iv. **Article 19:** This article ensures various freedoms to Indian citizens, including the right to freedom of speech and expression. The right to express political opinions is integral to this freedom, as it allows an individual to participate in democratic processes, influence public policy, and hold the government accountable.
- v. **Article 21:** Guarantees the right to life and personal liberty. The Indian judiciary has interpreted this article to encompass the right to live with dignity and the right to a fair trial. This provision ensures that any deprivation of personal liberty is carried out through a fair, just, and reasonable legal procedure.

4.3.2 Statutory Provisions

The Representation of the People Act is a comprehensive legislation that, along with the Constitution, governs the conduct of elections in India. It delineates the qualifications and disqualifications for voters, the conduct of elections, and the resolution of electoral disputes. The Chief Election Commission, established under this Act ensures free and fair elections.

Section 62 of the RPA²¹¹:

- i. **Section 62(1):** “States that every person who is, for the time being, entered in the electoral roll of any constituency is entitled to vote in that constituency”. This clause reinforces the inclusivity of the electoral process by ensuring that all eligible voters listed on the electoral roll can exercise their right to vote.
- ii. **Section 62(2):** “States no person shall vote at an election if they are subject to any disqualifications under Section 16 of the RPA 1950”. These disqualifications may include being of unsound mind, being an undischarged insolvent, or holding an office of profit under the government, among others.

²¹¹ The Representation of the People Act, 1950, s. 62.

- iii. **Section 62(3):** Prohibits a person from voting in more than one constituency at a general election. If a person votes in multiple constituencies, all their votes are considered void. This provision is crucial to maintaining the principle of 'one person, one vote,' preventing multiple votes by a single individual.
- iv. **Section 62(4):** Prohibits an individual from voting more than once in the same constituency, even if their name appears multiple times on the electoral roll. Any such votes are rendered void, thereby preventing electoral fraud and ensuring the accuracy of the voting process.

4.4 PARAMETERS OF VOTING DISQUALIFICATIONS

A person may be disqualified from voting due to lack of citizenship, mental incapacity, or any other corrupt or criminal conduct related to the electoral process.²¹² Section 16 of the RPA 1950 outlines the provisions for disqualification from voting.²¹³

4.4.1 General Voting Disqualifications

- i. **Section 16(1)(c):** Disqualification due to conviction for certain offenses.²¹⁴
- ii. **Section 11A:** Persons convicted of bribery, undue influence, or personation during an election are prohibited from voting for six years.²¹⁵
- iii. **Sections 4 and 5 of RPA,1951:** Outline disqualification for participating in elections as a voter and a candidate.²¹⁶
- iv. **Section 62(5):** Prohibits prisoners from exercising their right to vote.²¹⁷

Consequently, while imposing penalties on corrupt and criminal activities in election processes may seem justifiable to protect the integrity of democracy, entirely denying voting rights to all Indian prisoners raises significant concerns that deserve a thorough examination. This research focuses on Section 62(5) of the RPA, 1951, which explicitly restricts voting rights who are incarcerated, serving a sentence, or in police custody.

²¹² Deepak Antil, "Should Prisoners Be Treated as Equal Citizens: Right to Vote a Way Forward" 7 *IJLDAI* 117 (2021).

²¹³ The Representation of the People Act, 1950, s.16.

²¹⁴ The Representation of the People Act, 1950, s.16(1)(c).

²¹⁵ The Representation of the People Act, 1950, s. 11A.

²¹⁶ The Representation of the People Act, 1950, ss.4 and 5.

²¹⁷ The Representation of the People Act, 1951, s.62(5).

4.4.2 Special Voting Provisions: Postal Ballot and Proxy Voting

These provisions ensure that individuals who are physically incapable of casting their ballots in person can still exercise their democratic voting rights. They provide alternate methods for qualified voters to participate in elections and express their opinions.²¹⁸

Eligibility for postal ballot and proxy voting includes: -

- i. **Military Personnel:** Individuals serving in the Military.
- ii. **Election Duty and Government Officials:** Individuals on election duty, displaced populations, and senior Government Ministers.
- iii. **Indian Diplomats Abroad:** Indian Diplomats stationed outside the country.
- iv. **Government Employees:** Employees of the Government.
- v. **Additional Eligible Groups:** Various other individuals may be eligible to vote for mail-in voting with the approval of the Election Commission, as outlined in Section 60(b) of the in conjunction with Section 60(d) of the RPA.
- vi. **Detained Individuals:** Under specific circumstances, individuals detained under laws such as the National Security Act (NSA), Narcotic Traffic Activities Act, the Conservation of Foreign Exchange and Prevention of Smuggling (COFEPOSA), and The Goondas Act are allowed to vote. They receive a special voting paper to cast their vote.

4.5 INDIAN PRISONERS ON VOTING RIGHTS

The right to vote is a cornerstone of democratic governance, symbolizing the inclusive nature of a society where every voice matters. However, the intersection of this fundamental right with the penal system poses complex legal and ethical questions, particularly regarding prisoners voting rights. Section 62 of the Representation of the People Act outlines every person's entitlement to vote. However, Section 62(5) imposes restrictions on prisoners' ability to vote. This provision states:

“No person shall vote at any election if he is confined in a prison, whether

²¹⁸ Election Commission of India, *available at*: https://ceodelhi.gov.in/PDFFolders/2024/Guidelines_on_Postal_Ballot_Papers30Apr2024.pdf (last visited on April 30, 2024).

under a sentence of imprisonment or transportation or otherwise or is in the lawful custody of the police: Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.”

Free and fair elections are a vital component of the Indian Constitution. The limitation on prisoners' voting rights has drawn criticism, particularly regarding the principle of the Right to Equality enshrined in Article 14 of the Constitution.²¹⁹ This raises a fundamental question- Is it against Indian law to deny convicted criminals and undertrial prisoners the right to vote? A crucial aspect of this debate is the presumption of innocence. Individuals awaiting trial are presumed innocent until proven guilty. This principle is foundational to the legal system, emphasizing that undertrial prisoners have not been convicted of the charges that led to their detention. According to the Law Commission's 78th Report, individuals in judicial custody or on remand during an investigation are considered undertrial. Despite being listed on the electoral rolls, undertrial inmates and those confined in jail are unable to vote. The most recent statistics from the National Crime Records Bureau indicate that there are currently 278,503 inmates in Indian jails awaiting trials, accounting for more than two-thirds of the total inmate population. This significant number highlights the widespread impact of the current legal restrictions.²²⁰ An Exclusion in Electoral Guidelines Chapter 43 of the Reference Handbook on the General Elections, 2014, published by the Election Commission of India, explicitly “excludes undertrial prisoners and persons confined in prison from voting in elections, even if their names are on the electoral rolls”.²²¹ This exclusion violates the constitutional ideals of self-government that the founding fathers of the Indian Constitution cherished.

4.5.1 Arbitrary Restrictions under Article 14

Section 62(5) of the RPA, 1951 presents a significant legal contradiction by permitting undertrials and detainees to contest elections but prohibiting them from voting. This inconsistency raises substantial concerns regarding fairness and equality under Article 14 of the Indian Constitution, which guarantees equality before the law.

²¹⁹ Shivam Mishra, “Right to Vote of Prisoners” *SAJ* 2 (2020).

²²⁰ National Crime Record Bureau, *available at*: <https://ncrb.gov.in/en/prison-statistics-india> (last visited on September 15, 2022).

²²¹ Felony Disenfranchisement in a Democratic Nation, *available at*: <https://www.rsrr.in/post/felony-disenfranchisement-in-a-democratic-nation> (last visited on September 15, 2022).

This exclusion was introduced through “the Representation of People (Amendment and Validation) Act, 2013”, a recent amendment clarified that individuals' voting rights are suspended, rather than terminated, during their time in prison.²²²

The Supreme Court's ruling in the *Chief Election Commissioner v. Jan Chaukidar*²²³ upheld the decision of the Patna High Court that individuals barred by Section 62(5) are not eligible to contest elections. To resolve the aforementioned matter, the Supreme Court and the Patna High Court interpreted Sections 4 and 5 of the RPA. In these sections, the requirements for entering a Parliamentary constituency are outlined, with an emphasis on being an "elector" to be eligible for membership in the House of People and the Legislative Assembly. Nonetheless, “the Representation of People (Amendment and Validation) Act, 2013” passed by the Parliament changed the foundation of the Chief Election Commissioner’s case ruling. This modification adds the second proviso to Section 62(5), which says that an individual whose name appears on the electoral roll would be regarded as an elector even when Section 62(5) prohibits them from voting.

In the case of Manohar Lal Sharma, the rule allowed the undertrials in lawful custody to contest elections but prohibited them from voting. The Delhi High Court upheld “the Representation of People (Amendment and Validation) Act, 2013” through this case. This rule allows undertrials in lawful custody to contest elections but prohibits them from voting. This discrepancy implies that undertrials are considered innocent for contesting elections but not for voting, solely based on their incarceration status. However, the ruling does not suggest a clear logic for why individuals in police custody, undertrials, and those serving a sentence should still be deprived or restricted.²²⁴ The Indian Constitution's Article 329 expressly prohibits the court from intervening in matters about elections, including delimitation and contests. The court emphasized that Parliament or the legislation has been empowered to enact a new law about these

²²² Krishnesh Bapat and Meghna Jandu, “Undertrials, Voting, and the Constitution” 10 *ICLRQ* 98 (2020).

²²³ 2013 7 SCC 507.

²²⁴ Anup Surendranath, for a more inclusive ballot, the Hindu, (Aug. 8, 2013), *available at*: <http://www.the-hindu.com/opinion/lead/for-a-more-inclusive-ballot/article5000188.ece>, (last visited on March 3, 2022).

issues.²²⁵ By the SC of India in the *Trivedi v. Raju*²²⁶ case, Article 327 gives Parliament the power to create laws regarding electoral rolls, including their preparation, which cannot be reviewed by one of the organs of the government judiciary.

The Indian Constitution, in Article 84 and Article 173, outlines the eligibility criteria for candidates seeking election to Parliament and the Legislatures. However, these provisions do not explicitly mandate that the candidate must be a registered voter. The voter requirement is specified in “the Representation of People Act, 1951, Part II, Chapter I”. It is important to note that these conditions, being part of a statute, can be modified by Parliament. Parliament has the authority to determine the method of election and the eligibility criteria for candidates. The right to vote is regulated by law rather than the Constitution, so there may be varying interpretations of this rule in the future, as has happened in the past. This study aims to investigate the claim that withholding the right to vote from undertrials and detainees is unconstitutional.²²⁷

In the *State of Andhra Pradesh v. Challa Ram Krishnan Reddy*²²⁸, the Court ruled that incarcerated individuals possess fundamental constitutional rights, recognizing their status as individuals deserving of legal protections. Even when detained in jail, whether under trial or convicted, they retain their inherent humanity and continue to possess the rights and dignity afforded to all human beings.²²⁹ The SC reiterated that the right to vote is purely statutory or special legislation, not inherent or common law. In the *Sangram Singh v. Union of India*²³⁰ case, voting and contesting elections are two ways that people can engage in elections controlled by laws and subject to restrictions and guidelines. The main argument against prisoner enfranchisement appears to be that allowing inmates to vote will result in the criminalization of politics. The Court used the purity of ballot principle to support

²²⁵ The Constitution of India, art.329. Article 329 of the Constitution bars courts from interfering in the delimitation of constituencies, and allotment of seats to such constituencies, and that election to Parliament or State Legislatures can be questioned only through election petitions before the designated authority.

²²⁶ 1974 SCR (1) 548.

²²⁷ The Constitution of India, arts. 84,173. Articles 84 and 173 of the Constitution state that for election to Parliament and State Legislatures a person should be a citizen of India and not less than thirty years of age in case of State Legislatures and for the House of People, not less than twenty-five years of age.

²²⁸ AIR 2000 SC 2083.

²²⁹ Paridhi Verma, “Rights of Prisoners under Indian Law” 2 *Pen Acclaims* 3 (2018).

²³⁰ 1955 SCR (2)1.

prisoner disenfranchisement in *S. Radhakrishnan v. Union of India*.²³¹ The fundamental reason for such a viewpoint of the Hon'ble Court is that a "ballot box" should be devoid of corruption, which is exactly what prisoner enfranchisement may result in. The idea behind this is to keep a person with criminal ties out of the electoral process because he is unfit for society, and hence, the rule demanding a person to vote for the limit cannot be considered unjust.

4.5.2 India's Critics of Voting Rights of Prisoners

In a democratic society, prisons should not symbolize oppressive or unfair treatment. Instead, they should be viewed as places where individuals are detained according to the legal system, whether under trial or have been found guilty of a crime. The main idea is that prisons should function within the boundaries of justice and fairness, rather than being seen as tools of authoritarian control or sources of injustice. In *Anukul Pradhan v. Union of India*,²³² the court ruled that individuals who are incarcerated and deprived of their liberty cannot claim the same rights as those who are not in prison. It was also argued that granting voting rights to prisoners could potentially lead to the criminalization of politics. Therefore, prisoners are deprived of their right to vote to prevent such circumstances. The primary matter before the Supreme Court concerned the constitutionality of Section 62(5) of the RPA, which enforces a complete prohibition on the voting rights of prisoners. The question was whether this provision violated Article 14 of the Constitution. Article 14 permits classification but prohibits legislation that targets specific classes. For a classification to be deemed reasonable, it must satisfy two conditions:

- i) It must be based on an intangible differentia: There needs to be a concrete justification for denying inmates the same voting rights as law-abiding citizens.
- ii) The difference must have a rational connection with the objective of classification: The distinction between inmates and non-prisoners regarding voting rights must be pertinent to the purpose to the purpose of the statute

Arguments are made that Section 62(5) is unreasonable for the following reasons:

- i. This claim draws attention to the unequal treatment of various groups of people, of

²³¹ (2019) 10 SCC 467.

²³² AIR 1997 SC 2814.

incarcerated individuals, concerning their ability to vote. While those incarcerated under trial or in legitimate police custody cannot vote, any person in preventive detention by any current legislation can do so.

- ii. Individuals who have been convicted and sentenced but are released on bail are allowed to vote, creating an arbitrary distinction between those who can vote and those who cannot.
- iii. Section 62(5) conflicts with Section 8(3) of the RPA 1951, which declares that a person convicted and imprisoned for two years is qualified to contest an election.

This situation creates confusion where prisoners are deemed to be civilly dead and are denied the right to vote and choose their representatives in elections. However, if they meet the conditions outlined in Section 8(3), they can contest elections and become representatives themselves. This distinction implies that prisoners are treated as lesser citizens even before their guilt has been established. In the *Praveen Kumar Chaudhary v. Election Commission & Ors.*,²³³ the petitioner contested Section 62(5) of the RPA as unconstitutional, claiming that it went against the fundamental principles of the Indian Constitution. The petitioner also requested that prisoners be provided with adequate facilities to vote from jail during elections. The Supreme Court addressed the potential infrastructural challenges and violations that could arise if prisoners were allowed to vote. The Hon'ble Supreme Court, in its judgment, held that the right to vote is neither a fundamental right nor a constitutional right, but a mere common right imposed through common law statutes. The court referred to the *S. Radhakrishnan v. Union of India & Ors.*,²³⁴ where it was determined that Section 62(5) of the RPA is constitutional. The court made it clear that the ability to vote is a statutory right, not a fundamental or constitutional one, and that it is subject to the restrictions outlined in the relevant legislation. Recently, a public interest litigation was filed by three law students, requesting differentiation between prisoners convicted of heinous crimes and those convicted of petty offenses dismissed by the court based on previous judgments. The researcher's argument is not that Section 62(5) is wholly unconstitutional, but

²³³ No Voting Rights for Prisoners reaffirms High Court, *available at*: <https://www.latestlaws.com/latest-news/no-voting-rights-for-prisoners-reaffirms-high-court> (last visited on March 10, 2022).

²³⁴ (1999) 2 SCC 707.

rather that it should be construed so as not to unduly impair the ability of undertrials and convicted individuals to vote. The decisions held in *Praveen Kumar Choudhary & Others* emphasized two broad points:

- i. The right to vote is a legal Statute, consistent with the position taken by Constitutional Courts in prior cases. Since the right to vote is conferred by law, the law has the power to impose restrictions on it.
- ii. The validity of Section 62(5) was affirmed without confronting the voting rights of undertrials and inmates directly. The court analyzed the Representation Act within the framework of Article 14 of the Constitution. Following the precedent set by the three-judge Supreme Court bench's decision in *Anukul Chandra Pradhan v. Union of India*.²³⁵ The Court determined that the distinction between those incarcerated and those was not justified.

Chief Justice J.S. Verma's ruling in this case has influenced instances involving the voting rights of convicts. The court found that the distinction between those in and out of jail was acceptable, treating all prisoners as a separate class regardless of the status of their convictions. The RPA, Section 62(5) was found to be constitutional by stating that individuals in prison, due to their conduct, cannot demand the same rights and liberties as those outside of prison. Additionally, the exclusion of individuals with criminal backgrounds from the electoral process was seen as a means to prevent the infiltration of politics by such individuals. The Court noted that restricting prisoners' voting rights was a matter of administrative ease, as allowing all prisoners to vote would require significant security arrangements and resources during elections. This landmark decision has been influential in subsequent cases addressing prisoners' right to vote. However, there are precise insufficiencies in the justification of this verdict that need to be rectified. It indicates the lack of significance attributed to prisoners' voting rights by the Court. The critique in this study focuses solely on the use of the reasonable classification test established by the Supreme Court in the *State of West Bengal v. Anwar Ali Sarkar*.²³⁶ In this instance, the Supreme Court stated that for a classification to be permissible, two conditions must be met. First, the classification must be based

²³⁵ (1996) 6 SCC 354.

²³⁶ 1952 SCR 284.

on an intelligible differentia that sets apart those included in the group from those excluded. Second, this difference must be rationally related to the objectives intended to be achieved by the Act. The differentiation upon which the classification is built and the objective of the Act are distinct, and what is imperative is the existence of a nexus between them.

Under the reasonable classification test, two issues arise concerning the judgment in Anukul Chandra Pradhan.

- i. **Court's Classification of all incarcerated individuals:** The Court's determination that all individuals in prison constitute a single class for the Right to vote lacks a discernible difference. The classification proposed by the Court in Anukul Chandra Pradhan outlines that all incarcerated individuals form one group, while those outside prison constitute another. The petitioner in this case contested the irrationality of this classification, highlighting that all persons in jail, including convicts, under-trials, and detainees, cannot be uniformly categorized.
- ii. **The objective of Section 62(5):** Even if there is a differentiation between the classes, it does not correspond to the objective envisaged by Section 62(5) RPA, 1951

The Court dismissed this argument and advanced the classification, premised on certain assumptions:

- i. First, a convicted individual outside prison (e.g., on parole or furlough) is in a comparable position to one who has not committed a crime and therefore equally entitled to vote.
- ii. Second, every incarcerated person is equally unworthy of the right to vote.

The classification based on these assumptions, particularly the latter, lacks a discernible difference, as there exist substantial disparities between under-trials, detainees, and convicts. Most significantly, under-trials have not been convicted of any offense, a distinction recognized in previous judicial pronouncements. The notion that under-trials, detainees, and convicts belong to the same category is problematic and may stem from a common perception that indiscriminately lumps all prison inmates together. Additionally, the Court's classification overlooks the rationale behind the reasonable

classification test.

Article 14 stipulates that equality before the law or equal protection of laws does not mandate treating everyone uniformly. Instead, it signifies that equals must be treated equally, while those who are unequal must be treated differently. The reasonable classification test ensures that those who are unequal are not treated alike. In the *Anukul Chandra Pradhan* case, the Court endorsed a provision that treats unequal individuals as equal. Under-trials, detainees, and convicts belong to distinct categories and should not be amalgamated into one. Furthermore, this classification unfairly disadvantages those unable to afford bail, as anyone capable of posting bail can exercise their voting rights. Thus, the Court failed to satisfy the initial condition of the reasonable classification test, as the established classification is essentially arbitrary and lacks a discernible difference between incarcerated and non-incarcerated individuals. Concerning the second aspect, even if it is assumed that there exists a discernible difference between those in prison and those out of prison, the second condition of the reasonable classification test remains unmet. The objective of Section 62(5) is to prevent the infiltration of criminal factors into politics. However, as incarceration is not always indicative of criminality, depriving every person in prison of the right to vote does not serve the purpose of preventing the criminalization of politics.

4.6 SHOULD PRISONERS BE ENTITLED TO VOTE IN INDIA

The principles of reformatory and rehabilitation theory of justice emphasize treating offenders in a manner that promotes their reform and reduces criminal behavior. This theory includes the following key points:

- i. **Focus on Treatment:** The theory advocates for providing treatment to offenders to reduce criminal behavior. It views offenders as individuals who, despite having strayed from societal norms, can benefit from rehabilitation and positive change.
- ii. **Role of Various Factors:** The theory suggests that reforming offenders can help deter future offenses. It recognizes that criminal behavior is influenced by a range of factors, including social, psychological, and environmental conditions, rather than being purely a rational choice. A significant challenge, however, is that offenders often face the same conditions upon reintegration into society that initially contributed to their criminal behavior.

- iii. **Maintaining Reformed Behavior:** It is crucial to ensure that individuals who have undergone rehabilitation continue to maintain their reformed behavior when they reintegrate into society.

Despite these principles, Section 62(5) of the RPA, which denies prisoners the right to vote, seems to contradict the goals of criminal justice. The key issues are:

- i. **Conflict with Rehabilitation Goals:** Denying prisoners the right to vote undermines the objectives of rehabilitation. In modern democratic societies, prisons are meant to be places of care and rehabilitation. However, they are often overcrowded and marked by harsh conditions. Prisoners are marginalized, and their rights can fluctuate with changing governmental policies.
- ii. **Universal Suffrage and Current Exclusions:** Voting is a fundamental human right that has been secured through long struggles for universal suffrage. Nonetheless, prisoners are excluded from this right. This exclusion raises questions about fairness and suggests that economic factors, such as the inability to secure bail, might be contributing to this disparity.
- iii. **Discrimination in Voting Rights:** While prisoners who are granted bail can vote, those who remain confined are unable to exercise their voting rights. This discrepancy highlights concerns about the fairness and justification of such policies, questioning whether they reflect the realities faced by reformed individuals or adequately support their reintegration into society.

The current policy of denying prisoners the right to vote appears to be at odds with the principles of rehabilitation and justice, indicating a need for a reevaluation of the policy to better align with the goals of criminal justice.

4.6.1 Outcome of not Allowing Prisoners to Vote

The prohibition on prisoners voting leads to two significant outcomes.

- i. **Diminished Citizenship Value:** Denying prisoners the right to vote undermines their citizenship, as voting rights are closely tied to the concept of being a full citizen. This denial creates a sub-class within the broader citizenry, effectively marginalizing prisoners and depriving them of a fundamental democratic right.
- ii. **Impact on Electoral Participation and Reforms:** Excluding prisoners from

voting affects their ability to participate in the electoral process and choose representatives. This exclusion not only diminishes their electoral influence but also reduces the incentive for legislators to focus on necessary prison reforms. The lack of electoral participation by prisoners can lead to a diminished emphasis on addressing the systemic issues within the prison system.

4.7 COMPARATIVE STUDY ON LEGAL PROVISIONS DEALING WITH FELONY DISENFRANCHISEMENT

Legal conventions establish key principles for upholding human rights and ensuring fair treatment for inmates. The ICCPR, ratified by 168 states, highlights the importance of voting rights and mandates that these rights be exercised without discrimination based on language, color, origin, sex, religion, race, property, nationality, political opinion, or any other status. Additionally, SMR first approved in 1955, and the United Nations ECOSOC in 1977, set standards for humane treatment, emphasizing that individuals awaiting trial should be presumed innocent, as outlined in Rule 84(2). This principle is exemplified by distinct national practices like the United Kingdom denying voting rights to incarcerated, and Israel allowing imprisoned felons to vote. The argument that elections will require significant police forces does not justify the blanket denial of voting rights, as historical practices, such as allowing detainees to vote by personal ballots, show that accommodations can be made without additional security measures. The International Bill of Human Rights, particularly Article 25(b), guarantees the right to vote and participate in elections, advocating for legitimate, regular elections with secret ballot voting and universal, equal suffrage. Article 21 reinforces the importance of universal and equal suffrage as an essential element for protecting citizens' rights, highlighting a global need for consistent standards that respect prisoners' voting rights while balancing practical considerations.

4.7.1 United Kingdom

Voting in parliamentary or local government elections is not permitted for anyone serving a term that includes incarceration, as stated in Section 3 of the RPA, 1983.²³⁷ The United Kingdom's stance on prisoners' voting rights underwent a

²³⁷ Adam Godwin, *Should Prisoners be Allowed to Vote? A Comprehensive Evaluation of Prisoner Disenfranchisement* 2 (Kindlee Books, 2017).

significant shift following the ECHR case of *Hirst*.²³⁸ The case focused on the interpretation of Article 3 of the First Protocol to the ECHR was at the heart of this case. Consequently, current regulations in the United Kingdom prohibit convicts serving their sentences from participating in elections for municipal or parliamentary administration. The initial challenge to the UK's voting laws was brought before an English domestic court in *Hirst v. Attorney General*.²³⁹ Lord Justice Kennedy ruled that a prisoner's enfranchisement, or right to vote, could only be restricted if a legitimate cause is specified in Article 3 of the ICCPR. He concluded that it was the legislature's responsibility to determine whether the justifications for disenfranchisement in this instance were legitimate. When the case was presented to the ECHR, seven judges found that the UK's blanket ban on prisoners voting violated Article 3 of the ICCPR. The court ruled that the disenfranchisement of prisoners, regardless of the severity of their offenses, breached their fundamental human right to participate in free elections. The Lord Chancellor clarified that not all convicts would be granted the right to vote because of the court's decision, emphasizing that exceptions could apply for legitimate reasons. John Hirst, the former prisoner whose right to vote was at the center of the case, argued that his disenfranchisement was discriminatory and violated the Human Rights Convention. Initially, the High Court denied Hirst's request to abolish the voting prohibition, citing the RPA 1983 as consistent with the Human Rights Convention. However, the Strasbourg court ultimately concluded, by a majority of 12 to 5, that the UK's blanket ban on prisoner voting was a violation of the Convention. The Prison Reform Trust highlighted the importance of allowing inmates to take responsibility for their actions, plan for reintegration, and defend their rights, including the right to vote. This decision was seen as promoting civic duty and respect for the law among prisoners, aligning with broader goals of rehabilitation and reintegration into society.²⁴⁰

4.7.2 Canada

The Canadian Charter of Rights and Freedoms explicitly protects the right to vote, ensuring that all Canadian citizens can participate in elections and seek membership in legislative bodies, subject to reasonable limitations imposed by law. In

²³⁸ (2005) ECHR 681.

²³⁹ (2001) QBD 17.

²⁴⁰ *Sauve v. Canada* [2002] 3 SCR 519.

the case of *Barczewski v. The Queen*²⁴¹, the central issue revolved around the right to vote and the constitutionality of imposed limitations. The court scrutinized Section 51(e) Canada Elections Act, which prohibited individuals serving sentences in penal institutions from voting for any offense. This provision was deemed unconstitutional under Section 3 of the Charter, which guarantees the right to vote. The relief sought by the plaintiffs was granted in the initial ruling. Following the Belozowski decision, the Canadian legislature introduced a new provision disqualifying individuals from voting if they were incarcerated for a period of two or more years. This amendment was subsequently upheld in 1995. In 2002, the Supreme Court of Canada issued a groundbreaking decision on the voting rights of incarcerated individuals. Initially considered to violate Section 3 Canadian Charter of Rights and Freedoms, the provision was struck down by a narrow majority of five to four in the Supreme Court of Canada. The minority perspective argued for the provision's constitutional validity based on philosophical, political, and social considerations, asserting Parliament's prerogative in determining social and political philosophy. However, the majority opinion, led by the Chief Justice, found that the section of the Canada Elections Act, which disenfranchised inmates serving sentences of more than two years in federal elections, contravened the Canadian Charter of Rights and Freedoms. Consequently, this ruling granted all incarcerated individuals in Canada the right to vote in federal elections and referendums. The Canada Elections Act was amended to include provisions facilitating prisoners' enfranchisement, ensuring their active participation in the democratic process. As a result of this landmark decision, approximately 35,000 inmates in Canada became eligible to exercise their right to vote in 2006.

4.7.3 Australia

The Australian Constitution does not explicitly promise universal suffrage and does not impose restrictions on prisoners' voting rights. However, it ensures that those eligible in state elections are considered in federal elections. This requirement might oblige the Commonwealth Parliament to set electoral qualifications in line with the most permissive state provisions. Section 41 of the Australian Constitution, concerning federal disenfranchisement, could be viewed as problematic because it bars South

²⁴¹ [1993] 2SCR 438.

Australian prisoners from participating in federal elections. The High Court has interpreted this provision to apply only to those who are qualified to vote. This interpretation has been reaffirmed in subsequent decisions, making it unlikely that the High Court would reconsider its stance on the Constitution's impact on prisoner disenfranchisement, whether implicitly or as a legislative limitation. The structure and text of the Australian Constitution include provisions for a representative governance system. Justice Isaacs emphasized that the Constitution is intended to foster representative governance and lacks provisions that alter its core characteristics. Sections 7 and 24 of the Australian Constitution call for representative government by stating that members of the Senate and House of Representatives, respectively, will be “directly chosen by the people,” establishing a representative government framework. In the case of *Australian Capital Television Pvt. Ltd v. The Commonwealth*,²⁴² the High Court acknowledged the vital importance of freedom of communication in public affairs and political discourse, suggesting its inherent inclusion in the Constitution. One perspective considers voting as the primary mode of political expression, implying that the right to vote is implicitly encompassed within the Constitutional framework established in *ACT v. The Commonwealth*. However, considering the phrase 'chosen by the people,' it appears probable that the right to vote can be directly deduced from the constitutional mandate for representative government. Chief Justice Mason's comments highlighted the inherent connection between representative government and democracy, emphasizing that governance by elected representatives reflects the will of the people. Justices Deane and Toohey assert that governmental authority stems from the governed, emphasizing the role of the people in the Commonwealth. Justice Kirby suggests the possible existence of an implicit fundamental right to vote within the Australian Constitution, though this right would not be absolute due to the explicit authorization for the Commonwealth Parliament to regulate voter qualifications.

The phrase “chosen by the people” implies two criteria:

- i. The capacity for meaningful choice and
- ii. Qualification as a member of the relevant electorate.

While historical exclusions from suffrage, like women, may suggest broad

²⁴² (1992) 117 CLR 106.

parliamentary authority to restrict voting rights, there are indications that the High Court may interpret this phrase in a more contemporary context. The understanding of who constitutes 'the people' may evolve, potentially rendering exclusions inconsistent with the intended meaning of the phrase. Determining whether a member is 'chosen by the people' is nuanced and depends on prevailing notions of voter eligibility. Universal adult suffrage, long established as a fundamental principle, may now shape interpretations of what constitutes genuine choice by the people. Similar sentiments were expressed by Justice McHugh in the McGinty case. In *Langer v. The Commonwealth*,²⁴³ Justice Gaudron argued that the historical context of restricted voting rights in 1901 would render the current state of affairs inconsistent with the original intent behind senators and members of the House of Representatives being "chosen by the people," as outlined in Sections 7 and 24 of the Constitution. Denying certain groups, such as women or racial minorities, the right to vote or subjecting them to specific requirements would not align with this principle. Had the Court adopted this perspective, it might have determined the contemporary definition of a choice made by the people by considering relevant international laws, principles, and local regulations.

4.7.4 Germany

Germany upholds the principle of universal suffrage, guaranteeing that every individual can exercise their fundamental right to participate in elections. The government is responsible for facilitating automatic registration for all citizens and coordinating the electoral process. Universal suffrage is enshrined in Article 38 of the German Constitution, also known as the Basic Law. The Federal Election Act outlines stringent eligibility criteria for voting, including German citizenship, being 18 years of age or older, residency in the country for at least three months, and absence of disenfranchisement by judicial decree. Judicial disenfranchisement is only possible if an individual is under custodial supervision for legal or financial matters or institutionalized in a psychiatric facility. Germany's approach to felon enfranchisement remains relatively inclusive compared to other nations. According to the German Penal Code, prisoners may lose their voting rights as a form of punishment, but this decision requires a judicial ruling and is reserved for specific offenses deemed detrimental to

²⁴³ (1996) 134 ALR 400.

democratic order, such as election fraud, treason, or rebellion. Disenfranchisement, if imposed usually lasts for two to five years and must be ordered by the sentencing judge. However, the practical impact of disenfranchisement as a penalty in Germany is minimal compared to many other countries. In fact, in 2003, only two defendants were subject to disenfranchisement. Germany has received recognition from international organizations, including the European Council on Human Rights, for the fairness and proportionality of its enfranchisement policy. Germany places significant emphasis on political participation for all segments of society, as evidenced by its historically high voter turnout rates. The proportional representation electoral system ensures that each vote carries considerable weight, fostering a sense of meaningful impact for citizens. Moreover, Germany's historical experiences have underscored the importance of democracy, contributing to a strong culture of political engagement within the country. The Basic Law underscores the democratic nature of the state and emphasizes the derivation of power from the people. Consequently, while Germany's approach to prisoner enfranchisement may be restrictive, it nonetheless reflects a commitment to inclusivity and political participation, evident in its robust electoral practices and efforts to ensure universal suffrage.²⁴⁴

4.7.5 South Africa

In South Africa, the right of prisoners to vote has been a significant issue. The Constitutional Court of South Africa emphasized that "the vote of every individual or citizen of its nation counts or represents a badge of individual dignity and personhood." This ruling asserted that prisoners, like all other citizens, deserve the right to vote. The South African Constitution, Section 19 of the Bill of Rights, enshrines the right to vote. This section guarantees every citizen the right to free, fair, and regular elections for any legislative body established in terms of the Constitution. The Electoral Act 73 of 1998 further details the provisions for the conduct of elections and the registration of voters, ensuring that even those in prison are not excluded from the democratic process. Since August's case decision, the government was required to make provisions for prisoners to vote. The court's judgment led to changes in the Electoral Act, mandating the

²⁴⁴ Jamie Fellner and Marc Mauer, "Losing the Vote: The Impact of Felony Disenfranchisement Laws" *HRW* 17(1998).

Independent Electoral Commission to facilitate the registration and voting processes for incarcerated individuals. This includes the logistics necessary to ensure that all eligible voters, including those in correctional facilities, can participate in elections. Despite these legal provisions, there were ongoing debates about the extent of prisoners' voting rights. Some argue that while all prisoners should have the right to vote, certain restrictions could apply to those convicted of the most heinous crimes. The rationale is that granting the vote to all prisoners underscores the importance of universal suffrage and aligns with the nation's commitment to human rights and rehabilitation. However, practical challenges such as security concerns and the logistics of organizing voting within prisons remain. The legal framework of South Africa, supported by the Constitution and the Electoral Act, upholds the voting rights of prisoners, this reflects the nation's commitment to inclusive democracy and the recognition of voting as a fundamental human right, crucial to individual dignity and personhood.²⁴⁵

4.7.6 In Brazil, there are restrictions on voting rights that are justified on ethical grounds. It is said for a person with a criminal background to engage in politics inside the nation be it voting or contesting elections is wrong.²⁴⁶

4.7.7 In Iceland, there are restrictions on the electoral laws on the rights of offenders, particularly targeting those convicted of crimes perceived as more serious than minor offenses by the general public and are of age 18 or older at the time of the offense, and received a minimum 4-year jail term without the possibility of release.²⁴⁷ There are a few countries like Slovenia, and Ireland the government of these countries have given all prisoners their voting rights. It was in the year of 2006 that the Irish government declared the right to vote for its prisoners without any controversy or violence among the public.²⁴⁸

4.7.8 In Uganda, the constitution of Uganda safeguards their ability to vote without distinguishing between convicts and those outside the penitentiary. However, the Prisons Act makes no mention of voting rights, confirming that inmates' voting rights

²⁴⁵ Ntusi Mbodla, "Should Prisoners Have a Right to Vote?" 46 *J. Afr. Law* 92 (2002).

²⁴⁶ The right of prisoners to vote: a global overview, *available at*: https://cdn.penalreform.org/wp-content/uploads/2016/08/The-right-of-prisoners-to-vote_March-2016.pdf v19i2a2 (last visited on November 16, 2022).

²⁴⁷ *Ibid.*

²⁴⁸ *Supra Note* at 246.

are constitutionally protected. In actuality, there is no mechanism to ensure that their voting rights are upheld and exercised.²⁴⁹

4.7.9 New Zealand

The Electoral Act of 1993 was challenged in *Taylor v. Attorney General*.²⁵⁰ The court concluded that individuals serving a sentence of three years or more, as declared by a competent judge, are disenfranchised from the start of their sentence. This decision aligns with Section 80(1)(d) of the Electoral Act, which orders that those imprisoned for three years or more are not eligible to vote. This legislation was enacted as part of a broader effort to balance the integrity of the electoral system with the recognition of prisoners' rights. However, the Act also includes provisions for the re-enfranchisement of prisoners upon the completion of their sentences, thereby allowing them to participate in future elections once they have served their time. This case highlighted the ongoing debate in New Zealand about the balance between punitive measures and the protection of democratic rights, ultimately leading to significant legal and societal discussions about the role of prisoner enfranchisement in a democratic society.

4.7.10 United States of America

In certain states like Kentucky, Florida, and Iowa, individuals who have been previously incarcerated can regain their voting rights if they are granted restoration by their respective state governors. However, in other states within the United States, former prisoners are unable to have their voting rights reinstated even after their release. The landmark 1974 decision of *Richardson v. Ramirez*²⁵¹ established that inmates in the United States are not entitled to vote. A California statute that deprived voters of their ability to vote after a conviction for a major crime was affirmed by the Supreme Court. This law covers both individuals who are incarcerated and those who have served their time and been released. The ruling was primarily based on the Fourteenth Amendment to the US Constitution, specifically Article 2, which allows for the

²⁴⁹ Prisoners' right to vote in Uganda - comment on *Kalali Steven v Attorney General and the Electoral Commission*, available at: <https://journals.co.za/doi/abs/10.20940/JAE/2020/v19i2a2> (last visited on November 19, 2022).

²⁵⁰ [2015] NZHC 1706.

²⁵¹ 418 US 24 (1974).

exclusion of inmates who have committed crimes such as rebellion or other offenses. The majority opinion considered this matter to be within the legislative domain and acknowledged arguments from respondents and amicus curiae that these perspectives may be outdated. They argued that a more contemporary viewpoint recognizes the importance of rehabilitating ex-felons and reintegrating them as fully participating citizens in society once they have completed their sentences. It is essential to acknowledge and consider these arguments in the legislative arena, where they can be properly evaluated and weighed against the current constitutional provisions in California. As a court, it is not our role to favor one set of values over another. If the arguments put forth by respondents are valid and represent a more enlightened and sensible perspective, likely, the people of California will eventually adopt that viewpoint. Conversely, if they do not, it can be seen as evidence that there are valid arguments on both sides of the debate and that a reasonable limit on voting rights is appropriate in a society that is free and democratic. The court had to determine whether or not it was acceptable to restrict an inmate's ability to vote. The state argued that to preserve the integrity of the electoral process and ensure that those who violate social norms are held accountable, the government must strike a compromise between the right of convicts to vote and other considerations. The state also emphasized the importance of protecting the integrity of voting rights since law-abiding, responsible individuals are essential to a democratic society.

The Appeals Courts declared that the statute failed to achieve its intended purposes and rejected all of the Crown's suggested objectives. They said that the law is both too broad and too restrictive if the intention is to foster an honorable and responsible society. It is overly broad in that it covers both murderers and those incarcerated for no other reason than the nonpayment of fees. The severity or crime of the offense punishable appears to not influence the law's stated objective of punishment.

4.7.11 Sweden

In Sweden, prisoners enjoy the right to vote without any restrictions. They can exercise this right either through in-prison polling places or by proxy voting. This legal change was implemented in 1937 as part of a broader expansion of universal suffrage. Before 1937, prisoners were not allowed to vote due to a perceived loss of civic confidence. However, the Swedish Electoral Law now explicitly allows prisoners to

vote.²⁵² Granting voting rights to prisoners in Sweden was part of a larger trend of expanding suffrage in the country. The movement for universal suffrage began in the late 19th century, driven by the impact of industrialization. Sweden experienced industrialization later than other European nations, but it brought about significant economic, social, and geographical changes. The motivation for allowing prisoners to vote in Sweden was also rooted in improving their social status. Legislators expressed concerns about the stigmatizing effects of disenfranchisement on prisoners, fearing that it would isolate the entire community of prisoners and hinder their rehabilitation efforts. They believed that voting was an integral aspect of community participation in elections and that denying prisoners this right would further emphasize their past wrongdoings and impede their reintegration into society. This approach aligns with Sweden's rehabilitative view of penal policy.²⁵³ Thus, the enfranchisement of prisoners in Sweden reflects the country's shift towards a more inclusive democracy, emphasizing equal and full political participation for all individuals.

Table 6: Global Comparison of Prisoners' Voting Rights

Country	Voting Rights	Relevant Law/Provisions
India	No voting rights	Section 62(5) of the RPA, 1951, prohibits prisoners from voting while serving their sentences.
Canada	Full voting rights	The Canadian Charter of Rights and Freedoms, supported by the Supreme Court's ruling in <i>Sauvé v. Canada</i> (Chief Electoral Officer), ensures that all prisoners retain the right to vote regardless of their sentence length.
Australia	Selective disenfranchisement	Section 93(8AA) of the Commonwealth Electoral Act 1918 and the High Court's

²⁵² The Acceptance of Party Unity in Sweden 1985 to 2010, *available at*: [https:// doi.org/ 10.1093/oso/9780198805434.003.0004](https://doi.org/10.1093/oso/9780198805434.003.0004) (last visited on November 19, 2022).

²⁵³ A Comparative Study of Prisoner Disenfranchisement in Western Democracies, Wesleyan University, 2014, *available at*: <https://digitalcollections.wesleyan.edu/object/ir-1669> (last visited on November 19, 2022).

		ruling in <i>Roach v. Electoral Commissioner</i> , disenfranchises prisoners serving terms of three years or more.
Germany	Most prisoners can vote	The German Basic Law and Federal Election Act, with the German Penal Code, allow disenfranchisement for specific serious crimes against the state or democracy.
South Africa	Full voting rights	The Constitution of South Africa, supported by the Electoral Act 73 of 1998 and the Constitutional Court's ruling in <i>August v. Electoral Commission</i> , grants prisoners the right to vote.
Iceland	Full voting rights	General Elections Act No. 24/2000 ensures all prisoners have the right to vote.
United Kingdom	Selective disenfranchisement	The RPA, 1983, interpreted by the ECHR in <i>Hirst v. United Kingdom (No. 2)</i> , generally disenfranchises prisoners, with some exceptions.
United States	Varied by state	Based on state laws and the Court's decision in <i>Richardson v. Ramirez</i> , voting rights range from no rights to rights after completing the sentence, with some states allowing in-prison voting.
New Zealand	Selective disenfranchisement	The Electoral Act 1993, supported by the court ruling in <i>Taylor v. Attorney General</i> , disenfranchises prisoners serving sentences of three years or more.
France	Selective disenfranchisement	The French Penal Code allows judges to impose disenfranchisement as part of a

		prisoner's sentence.
Sweden	Full voting rights	Swedish Electoral Law, encouraged by suffrage expansion legislation in 1937, grants all prisoners the right to vote.
Norway	Full voting rights	The Norwegian Constitution guarantees voting rights to all prisoners, regardless of their sentence length.

CONCLUSION

Democracy hinges on the authorization of individuals with the right to vote, which not only fortifies but also upholds democratic governance systems worldwide. However, in contemporary society, the issue of disenfranchisement of the imprisoned remains a contentious and unresolved matter across different nations. Some countries, such as Australia, the USA, Germany, and Iceland, have adopted a middle ground by allowing prisoners to vote with certain restrictions, considering factors like the duration of their sentence and the nature of their crime. Even Russia revised its laws in 2017 to permit specific categories of prisoners to participate in federal elections. In a country like India, where statutory bodies emphasize the protection of fundamental civil rights, it is imperative to ensure and demand, if not already provided, that prisoners' rights to vote are upheld and safeguarded. A blanket prohibition on prisoners' voting should be avoided, as it constitutes an additional penalty by restricting voting rights solely based on the severity of the committed crime. The existing laws in India concerning prisoners' voting rights do not conform to international treaties that safeguard human rights standards on behalf of prisoners. Therefore, it is vital to establish a rational classification system based on factors such as the seriousness or nature of the offense, as well as other social and psychological considerations, to ensure fairness and inclusivity in granting voting rights to prisoners. In contrast, the Hon'ble Delhi High Court affirmed the Representation of People (Amendment and Validation) Act, 2013, which added the second proviso to section 62(5) RPA, 1951. In that instance, the court discriminated between prisoners and undertrials based on the 'innocent until proven guilty' premise, and undertrials were entitled to contest in elections. However, such logic ignores the

categorization of voters in jail and reinforces the myth that voting is more difficult than contesting elections. In the Indian legislative context, the law that restricts prisoners from voting under Section 62(5) RPA, 1951, necessitates clear amendment. This provision exceeds the legislative authority conferred by Article 326 and violates the fundamental principles of Article 14 of the Constitution. Despite numerous opportunities for the courts to rectify the illegality of this provision by narrowing its scope, a reasonable classification to limit the restriction under this provision has not been established yet. The courts have refrained from limiting the scope of Section 62(5) to exclude undertrials and detainees from voting, arguing that the electoral process must remain free from any association with criminality.

CHAPTER - 5

INDIAN JUDICIARY ON FELONY DISENFRANCHISEMENT

5.1 INTRODUCTION

The Indian judiciary has played a pivotal role in the jurisprudence of fundamental human rights by expanding its interpretation within the framework of Part III of the Indian Constitution. Through its rulings and interpretations, the judiciary has broadened the scope of fundamental rights, ensuring their relevance to a wider spectrum of individual rights and their protection. This expansion has led to the recognition and protection of various rights, including the right to life and personal liberty²⁵⁴, equality²⁵⁵, dignity²⁵⁶, and freedom of speech and expression.²⁵⁷ One significant contribution of the judiciary has been the introduction of Public Interest Litigation (PIL), which enables groups of individuals to approach the courts on behalf of those whose rights have been violated or are incapable of seeking legal recourse independently. PIL is an active process for providing access to justice for marginalized and vulnerable segments of society, empowering them to seek redress for human rights violations. It has facilitated the judiciary's engagement in addressing systemic issues and promoting social justice.²⁵⁸ The Indian courts have an important impact on human rights jurisprudence, ensuring the preservation of fundamental human rights for all citizens. They have gained recognition for their commitment to protecting these rights through the provisions in the Indian Constitution.

In *Ajay Hasia v. Khalid Mu Jibe*²⁵⁹, the Supreme Court of India recognized its distinct role and responsibility in expanding the scope of Part III, which comprises fundamental rights and the basic principles of human rights law. The Court emphasized its obligation to interpret and apply the Constitution in ways that promote and preserve human rights. This decision demonstrated the Court's commitment to provide an

²⁵⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

²⁵⁵ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

²⁵⁶ *National Legal Services Authority v. Union of India*, AIR 2014 SC 1863.

²⁵⁷ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

²⁵⁸ Public Interest Litigation and the Protection of Human Rights in India, available at: <https://vakilsearch.com/blog/public-interest-litigation-and-the-protection-of-human-rights-in-india/> (last visited on November 20, 2022).

²⁵⁹ AIR 1981 SC 487.

interpretation of basic rights, prioritizing concepts such as the right to justice, political participation, and equality.

In *Chairman, Railway Board, and others v. Chandrima Das*²⁶⁰, the Supreme Court of India referred to the Universal Declaration of Human Rights (UDHR) as an important standard for human rights. The Court acknowledged that international declarations like the UDHR provide essential moral guidelines and should be considered when interpreting and applying Indian laws. The decision highlighted the Court's commitment to align Indian law with global human rights standards, showing that international principles can help shape and improve domestic legal practices to better protect human rights in India.

From the Supreme Court to State High Courts, the Indian judiciary has frequently relied on precedents from international treaties promoting human rights. These references have helped safeguard and ensure equal fundamental rights under Part III of the Indian Constitution, defining specific obligations and duties outlined in Part IV. Moreover, the judiciary has consistently directed the federal and state governments to uphold and promote human rights with the principles outlined in international declarations. This highlights the judiciary's commitment to parallel national laws with global human rights standards and ensuring their implementation.²⁶¹

5.2 POLITICAL EQUITY REQUIRES THE RIGHTS OF THE VOTER

Democracy is the Government of the people, where individuals elect their representatives with the expectation that they will act in the public's best interest by creating beneficial policies. Although the Indian Constitution does not explicitly designate the right to vote as a fundamental right, its significance is undeniable. Voting allows citizens to choose their representatives, influence public policies, and participate in democratic processes. The right to vote is crucial for ensuring political equality, fostering accountability, and upholding democratic principles.²⁶² Voting is closely intertwined with other fundamental rights enshrined in the Indian Constitution. It is linked to the freedom of expression of every resident to express their political

²⁶⁰ AIR 2000 SC 265.

²⁶¹ Study Guide: The Right to Vote, *available at*: <http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html> (last visited on November 20, 2022).

²⁶² Right to vote: A Fundamental Right, *available at*: <https://www.drishtias.com/blog/right-To-vote-a-fundamental-right> (last visited on November 20, 2022).

preferences and opinions. Additionally, it is connected to the right to equality, ensuring that all citizens have an equal opportunity to participate in the electoral process. The right to vote is not an essential fundamental right, but its significance in democracy cannot be understated. It empowers citizens, fosters democratic values, and upholds principles of equality. The right to vote is a crucial civic duty that instills a sense of belonging among individuals toward the governance of their nation in a democratic framework. When citizens collectively elect a representative, it reaffirms the belief that people are accountable for their government through voluntary participation. Whether individuals actively engage in voting or not, enfranchisement binds them to the social fabric of society. Therefore, the cornerstone of democracy lies in the structured practice of voting.²⁶³ The right to vote, granted to citizens, is a vital component of democracy, as recognized by the Supreme Court of India in the case of *State NCT of Delhi v. Union of India*.²⁶⁴ It is considered one of the most fundamental and necessary rights in a democratic society. This statement highlights the crucial role of voting rights in upholding democratic values. It affirms that they are fundamental rights that ensure citizens' active participation in the political process rather than merely fulfilling a legal obligation. By recognizing voting rights as essential, the Supreme Court highlights their importance in defending democracy, political equality, and citizen empowerment. This affirmation reinforces the idea that voting is not just a privilege but a basic human right essential to democratic governance.

5.3 INDIAN JUDICIARY IN SAFEGUARDING PRISONERS' RIGHTS

The judicial system of India plays a crucial role in establishing and enforcing laws that all citizens are obligated to follow. This includes setting rules and restrictions for individuals who have violated the law and are incarcerated. However, it is important to note that being a prisoner does not mean one forfeits all rights guaranteed by the Indian Constitution. The Indian judiciary is directive in protecting the fundamental and other constitutional rights of prisoners and other citizens within the government framework. The judiciary addresses systemic challenges and breaches of inmates' rights through judicial activism and public interest litigation, upholding the values of justice, fairness, and human dignity. There is a need for the judiciary to support prisoners'

²⁶³ Joshua A. Douglas, "The Foundational Importance of Voting: A Response to Professor Flanders" 66 *Okla. L. Rev.* 81 (2013).

²⁶⁴ (2018) 8 SCC 501.

voting rights to ensure that inmates receive due process and fair trials, monitor prison conditions, address custodial violence and abuse, and support rehabilitation and reintegration programs by prioritizing extending these safeguards to include the right to vote for prisoners.

Here are some landmark cases in India that have emphasized the rights of prisoners and the importance of treating them with dignity and respect:

- i. ***Charles Sobhraj v. Superintendent***,²⁶⁵ the Supreme Court of India addressed the fundamental rights of prisoners, affirming that incarceration does not strip individuals of their constitutional rights under Part III, including the right to life and dignity (Article 21). The case highlighted the need for humane treatment, condemning any form of cruel, inhumane, or degrading treatment as a violation of prisoners' constitutional rights. The Court emphasized that prisoners must be treated with humanity and kindness and scrutinized prison conditions to ensure they align with constitutional mandates, including proper living conditions, access to medical care, and rehabilitation opportunities. The judgment underscored the state's duty to protect prisoners' rights and called for a shift towards a rehabilitative approach rather than purely punitive measures, encouraging the treatment of prisoners with dignity to facilitate their reintegration into society. This landmark case established the judiciary's role in overseeing prison conditions, spurred significant prison reforms, and bolstered human rights advocacy, reinforcing that prisoners retain their fundamental rights and must be treated humanely.
- ii. ***Prem Shankar Shukla v. Delhi Administration***,²⁶⁶ the Supreme Court of India reinforced the principle that prisoners retain their fundamental rights guaranteed under the Constitution, even while incarcerated. This case emphasized the constitutional mandate that prisoners are entitled to basic human rights and should not be subjected to inhumane or degrading treatment. The Court highlighted the necessity of upholding principles of justice, equity, and respect for human dignity within the criminal justice system. The ruling underscored that the state's responsibility does not end with imprisonment but extends to ensuring the humane

²⁶⁵ AIR 1980 SC 565.

²⁶⁶ 1980 SCR (3) 855.

treatment of those incarcerated. The judgment addressed the broader implications of prisoner rights, calling for fair treatment and safeguards against any form of abuse or mistreatment. The Supreme Court stressed that justice should be administered in a manner that respects the inherent dignity of every individual, including prisoners. This case reinforced the judiciary's commitment to maintaining the integrity of the criminal justice system by ensuring that the fundamental rights of all individuals, irrespective of their status as prisoners, are protected and upheld. The judgment played a role in advocating for prison reforms and human rights protections within the Indian penal system.

- iii. ***Sunil Batra v. Delhi Administration***,²⁶⁷ the Supreme Court held that any form of cruel, inhuman, or degrading treatment of prisoners is unconstitutional and must be prevented. The ruling highlighted the state's obligation to ensure that the conditions of detention respect the dignity of the individual and do not subject them to unnecessary hardship or suffering. This case played a crucial role in shaping prison reform in India, urging authorities to adhere to humane treatment standards and safeguard the rights of those incarcerated. The judgment underscored the judiciary's role in protecting human rights within the criminal justice system, reinforcing the principles of justice and humanity extend to all individuals, including prisoners. The Court's decision served as a significant step towards improving prison conditions and upholding the fundamental rights of prisoners in India.
- iv. ***Hussainara Khatoon v. State of Bihar***,²⁶⁸ this landmark case addressed the prolonged detention of undertrial prisoners. The Supreme Court ruled that the right to a speedy trial is a fundamental right guaranteed to all individuals, including those awaiting trial. This case underscored the importance of protecting prisoners' rights and ensuring the judicial process is fair and expeditious. It highlighted the judiciary's role in safeguarding fundamental rights and holding the government accountable for any lapses in the legal system. The ruling emphasized the need for systemic reforms to address delays in the judicial process and ensure that prisoners,

²⁶⁷ AIR 1980 SC 1597.

²⁶⁸ AIR 1979 SC 1369.

despite their incarceration, are treated with dignity and their basic human rights are upheld. By recognizing the right to a speedy trial, the case reinforced the broader principle that prisoners retain their fundamental rights and should be treated fairly and justly within the criminal justice system.

- v. ***Manoj Narula v. Union of India***,²⁶⁹ the Supreme Court reaffirmed a fundamental principle of criminal law, that inmates are presumed innocent until proven guilty. This principle is essential to the criminal justice system and is embedded in Indian legislation. The Court's acknowledgment of this presumption underscores the necessity of safeguarding the rights of those accused of crimes, ensuring they are treated fairly and without discrimination until their guilt is established. This principle protects against unjust convictions and upholds the ideals of justice and fairness, reinforcing the rule of law. The Supreme Court's affirmation of the presumption of innocence highlighted the importance of a robust and equitable legal system.
- vi. ***Hussainara Khatoon v. Home Secy.***²⁷⁰ the Court emphasized the critical distinction between individuals awaiting trial and those already convicted. It highlighted that failing to recognize this difference undermines the fundamental principle of "innocent until proven guilty," which is crucial for undertrials. The Court stressed that individuals undergoing a trial should be treated differently from those, who have been convicted of their crimes, as their legal status and associated rights are distinct. This differentiation is not only a key principle in Indian law but is supported by international standards, such as those outlined in the 1966 International Covenant on Civil and Political Rights. The case underscores the importance of adhering to this principle to ensure that all individuals receive fair treatment and that their rights are respected throughout the judicial process.
- vii. ***A.K. Gopalan v. State of Madras***²⁷¹ is a pivotal case in Indian constitutional law that addressed the scope of preventive detention and fundamental rights. The Supreme Court, in this case, dealt with the detention of A.K. Gopalan, a political activist, under the Preventive Detention Act (1950). Gopalan challenged the

²⁶⁹ (2014) 9 SCC 1.

²⁷⁰ (1980) 1 SCC 115.

²⁷¹ AIR 1950 SC 88.

constitutionality of his detention, arguing that it infringed upon his fundamental rights to personal liberty and due process. The Court upheld the validity of the Preventive Detention Act, interpreting the Constitution's provisions on individual freedom and detention narrowly. It concluded that preventive detention did not violate fundamental rights if it complied with the procedural requirements outlined in the law. The Court's decision emphasized a restrictive interpretation of Article 21 (right to life and personal liberty). It validated the legal framework for preventive detention, setting a precedent for balancing personal freedoms with state security concerns in India. This case remains significant for its impact on the interpretation of fundamental rights and the limits of constitutional protections against preventive detention.

These cases highlight the Supreme Court's commitment to upholding the rights and dignity of prisoners and ensuring their fair and humane treatment within the criminal justice system. Despite these significant protections, the issue of prisoners' voting rights remains inadequately addressed. Existing laws treat both undertrial and convicted inmates equally to preserve their well-being and maintain election integrity. However, with undertrials significantly outnumbering convicted individuals, the current restriction on voting rights for those whose guilt has yet to be determined compromises fundamental democratic principles. It is crucial to explore this issue and advocate for legislative reforms that align prisoners' voting rights with the democratic values enshrined in the Indian Constitution. This approach ensures that the principles of justice, fairness, and inclusivity are upheld for all individuals, regardless of their legal status.

5.4 LEGAL PRECEDENTS VIS-À-VIS RIGHT TO VOTE

To address the broader implications of felony disenfranchisement and its impact on democratic values, it is crucial to examine landmark cases that have shaped the discourse on voting rights. These cases highlight the statutory restrictions and the fundamental principles of democracy and human rights. The Indian Supreme Court has consistently ruled that the right to vote is a statutory right, not a fundamental or common law right. This distinction is crucial in understanding the limitations and scope of voting rights, particularly when considering the case of prisoners.

5.4.1 Statutory Rights

- i. In *N.P. Ponnuswami v. Returning Officer*,²⁷² the Supreme Court clarified that the term "election" used in Article 329(b) of the Indian Constitution applies to the entire electoral process, from the declaration of the election to the announcement of the results. The Court asserted that once the election process has commenced, the courts do not have the jurisdiction to intervene. This ruling reinforced the autonomy of the electoral process and emphasized the separation of powers, ensuring that the judiciary does not interfere with ongoing elections. Furthermore, the Court highlighted that the ability to vote and contest elections is a statutory right subject to restrictions and limits set out by applicable laws, rather than a civil right. This suggests that to exercise one's right to vote or challenge an election, one must abide by the rules and limitations outlined in the relevant laws. By drawing this distinction, the Supreme Court upheld that electoral processes are subject to specific laws and regulations and that courts must adhere to legislatively established boundaries when handling election-related issues.
- ii. In *Jagannath v. Jaswant Singh*,²⁷³ the Supreme Court ruled that elections are statutory processes, distinct from common law standards. Unlike actions at law or suits in equity, elections in India are governed by specific statutes and regulations, functioning within a diverse legal framework. The Court emphasized that the procedures, rights, and remedies associated with elections are determined by relevant statutory provisions rather than common law principles. By illustrating elections as a statutory procedure, the Supreme Court highlighted the uniqueness of the electoral process and the necessity to interpret and apply the relevant statutes to resolve any disputes or issues that may arise during elections. This ruling reinforces the understanding that elections in India are primarily governed by specific legislation enacted by the legislature, rather than being subject to common law principles.
- iii. In *Jyoti Basu v. Debi Ghosal*,²⁷⁴ the Supreme Court of India clarified that the right

²⁷² (1952) SCR 218.

²⁷³ AIR 1954 SC 210.

²⁷⁴ (1982) 1 SCC 691.

to vote is not considered a fundamental or common law right. Instead, the Court highlighted that voting rights are statutory rights, meaning they are established and regulated by specific laws. The court emphasized that the right to vote or contest for election is not inherent or self-contained; rather, it exists within the confines set by legislation. Therefore, the ability to vote and contest elections depends on the existence and enforcement of relevant legal provisions.

- iv. In *C. Narayanaswamy v. Jaffer Sharief*,²⁷⁵ the Supreme Court held that the sections of the RPA, based on the eligibility to vote or contest an election, are a "pure and simple statutory right." This indicates that the specific laws and rules listed in the Act are essential requirements for voting and participating in elections. The Supreme Court's decision clarified that exercising this privilege is contingent upon meeting the requirements set forth by the law. In other words, the ability to vote and hold public office is not a natural or inalienable right, rather, it is a privilege conferred and controlled by the legal framework created by the RPA.

These rulings collectively highlight that voting rights in India are not fundamental or inherent but are governed by statutory regulations. Despite this, it is crucial to consider principles of justice, equity, and rehabilitation when discussing prisoners' voting rights. Allowing prisoners to vote aligns with the democratic values of inclusivity and participation, ensuring that even marginalized voices are represented. This inclusion also aids in the reintegration of prisoners into society, respecting their inherent dignity and fostering a sense of belonging and responsibility. Recognizing that voting rights are governed by statutes, supporting legislative changes to include prisoners would help the Indian judiciary maintain democratic principles and uphold human rights. This approach ensures that the electoral process remains inclusive and insightful of the values enshrined in the Indian Constitution.

5.4.2 Constitutional Rights

- i. In the landmark case of *Mohinder Singh Gill v. The Chief Election Commissioner*²⁷⁶, the Supreme Court of India addressed the crucial role of voting in a democracy. The Court emphasized that voting is a fundamental aspect of

²⁷⁵ AIR 1994 SC 975.

²⁷⁶ (1978) 1 SCC 405.

democratic governance, integral to the functioning of a democratic society. By referencing Winston Churchill's famous assertion about the importance of the "little man's" vote, the Court highlighted that every individual's vote holds significant value and impact within the democratic process. This ruling affirmed that every Indian citizen is constitutionally entitled to vote and contest elections. This constitutional right is pivotal for ensuring the democratic process remains representative and inclusive. However, the Court also acknowledged that voting is a fundamental right, it is not absolute, and may be subject to legal limitations established by statutory laws. These constraints are designed to regulate and administer the electoral process, ensuring it operates smoothly and fairly while respecting the overall democratic framework. The case underscored that while the right to vote is fundamental, it must be exercised within the limits of legal regulations. This approach ensures that the electoral process remains orderly and that the democratic principles enshrined in the Constitution are upheld.

- ii. In *N.P. Ponnuswami v. Returning Officer*,²⁷⁷ the Supreme Court reaffirmed that voting is a constitutional right. However, it acknowledged that legislative restrictions on this right are permissible. The Court stressed that such restrictions must align with the human rights principles outlined in legislation. These limitations should be treated with the same level of importance and respect as fundamental rights. While restrictions on the right to vote can be imposed, they must be justified and consistent with the human rights standards established in Indian law.

5.4.3 Fundamental Rights

- i. In the case of *Union of India v. Association of Democratic Reforms and Others*²⁷⁸, the Supreme Court of India affirmed that the right to vote is fundamentally linked to the basic right to freedom of expression, thereby classifying it as a fundamental right. This ruling highlighted the importance of voting for democratic participation and individual expression. Justice Shah figured the need for continuous interpretation and revision of Part III of the fundamental rights. He noted that the freedoms and rights guaranteed under the Constitution, including equality, are not rigid but dynamic. The Court has interpreted Articles 14, 19, and 21 in various

²⁷⁷ AIR 1952 SC 64.

²⁷⁸ AIR 2002 SC 2112.

contexts to enhance relevance and support a justly democratic society. Justice Reddi recognized that while voting was not initially deemed a fundamental right, the accomplishment of casting a ballot is an exercise of freedom of expression. He explained that voting, which involves selecting one candidate over another, fundamentally represents an individual's expression of opinion and choice. Therefore, the act of voting embodies the essence of freedom of expression.

- ii. The Indian Supreme Court has consistently affirmed the recognition of voting rights as fundamental rights in various cases. One notable case is *Kuldip Nayar v. Union of India and Others*²⁷⁹, where the Court acknowledged the importance of implementing appropriate limitations to safeguard the unity, integrity, and fairness of the voting process, particularly in the context of the open ballot procedure used in indirect elections to the Council of States. This ruling highlights the balance between protecting voting rights as a fundamental right and allowing for necessary measures to maintain the legitimacy and transparency of the electoral process.

The researcher highlighted that while the right to vote is recognized as a fundamental right in democratic participation and freedom of expression, it is also rooted in constitutional provisions. Specifically, the freedom to vote is closely tied to the right guaranteed under Article 19(1)(a) of the Constitution. This freedom, however, is subject to reasonable restrictions as outlined in Article 19(2). Despite this understanding, there is specific legislation that restricts the voting rights of inmates. The Supreme Court's historic rulings have emphasized that voting is an essential expression directly linked to individual dignity. Given these principles, the rationale behind denying prisoners the ability to exercise this right remains uncertain.

5.5 JUDICIAL OVERSIGHT ON FELONY DISENFRANCHISEMENT: LEGAL CHALLENGES AND CONSTITUTIONAL PERSPECTIVES

Section 62(5), RPA states that all prisoners in India, including the convicted and those awaiting trial, are not allowed to vote. This longstanding legislation has faced criticism for its impact on the human rights of inmates. The blanket denial of voting rights to all prisoners, irrespective of their legal status, raises significant concerns about

²⁷⁹ (2006) 7 SCC 1.

the protection of fundamental democratic rights and human dignity. In the Indian judiciary, fewer cases have addressed the issue of prisoners' voting rights, often resulting in the denial of these rights based on reasons that do not promote equality and human rights.

Here are some notable cases where the denial of voting rights to prisoners has been contested:

- i. In *Anukul Chandra Pradhan v. Union of India*,²⁸⁰ the Supreme Court addressed the issue of whether prisoners who are serving sentences should be allowed to exercise their voting rights. The petitioner challenged the legality of excluding prisoners from voting in elections. He argued that denying prisoners the right to vote is a violation of their constitutional and fundamental rights. The Supreme Court clarified the following reasons for denying prisoners the ability to vote on the following grounds: - firstly, the court stated that inmates have abandoned their right to equal freedoms of expression, speech, and movement since they are confined and cannot claim the same rights as non-incarcerated citizens. Secondly, the court also underlined the practical problems of conducting voting in jails. They cited a lack of infrastructure and police personnel as a constraint to implementing the essential security procedures for jail voting. The decision was based on the argument that prisoners' confinement justifies the refusal of their voting rights. Additionally, the Court deemed the logistical issues related to voting in prisons significant enough to warrant this denial. The petitioner's attorney argued that while an individual convicted and sentenced to jail but released on bail can vote, someone in a similar situation who cannot afford bail is disenfranchised. This discrepancy raises concerns under Article 14, which states that treating equals unequally is as unjust as treating unequals equally.
- ii. In *Mahendra Kumar Shastri v. Union of India*,²⁸¹ the Supreme Court upheld the restrictions on prisoners' voting rights under Section 62(5), ruling that such restrictions are not unconstitutional and align with the public interest in India. The Court affirmed that the right to vote for adult citizens is guaranteed under Article

²⁸⁰ (1997) 6 SCC 1.

²⁸¹ (1984) 2 SCC 442.

326 of the Indian Constitution. Section 62(5) is treated as compatible with Article 326, which permits the legislature to enact laws that disqualify citizens from voting based on specific criteria, such as criminal conduct or involvement in illegal activities. The Court observed that Section 62(5) does not differentiate between various categories of incarcerated prisoners, except those under preventive detention. The decision reinforced that the legal provisions restricting voting rights for prisoners are within the scope of constitutional rights and reflect a balance between individual rights and legislative measures aimed at the public interest.

- iii. In *R.C. Cooper v. Union of India*,²⁸² the Court held that the focus should be on the result of the legislation, rather than its intent. This approach was found to violate Article 14 of the Indian Constitution. The Court noted that there is no rational connection between the classification of individuals into those who can and cannot vote and the effect of the law that grants voting rights to those who can afford bail while denying them to those who cannot.
- iv. Is it justified on the “Surety of Bail” to exercise the right to vote? In the case of *Motiram v. State of Madhya Pradesh*,²⁸³ Justice Krishna Iyer argued that the Supreme Court should be more lenient in releasing individuals who are poor and can only provide bonds, rather than cash bail. Justice Iyer raised several significant questions about the monetary basis of bail and its impact on access to justice.
- v. In *Election Commission of India v. Mukhtar Ansari*,²⁸⁴ the Delhi High Court recognized that a person could contest an election even while in prison. However, the court clarified that filing a nomination as a candidate from jail does not automatically grant the right to be released for campaign activities. If bail is denied, the individual may still contest the election while in custody. This raises the question of why a person can contest an election from prison but cannot exercise their right to vote. This inconsistency highlights the lack of logical reasoning behind the disenfranchisement of prisoners and underscores the necessity to grant them the right to vote. Allowing prisoners to vote would not

²⁸² AIR 1970 SC 1318.

²⁸³ (1978) 4 SCC 47.

²⁸⁴ (2018) 1 SCC 760.

undermine democracy; rather, it would uphold the principle of equal participation in the electoral process.

- vi. In *Rama Prasad Sarkar v. The State of West Bengal & Ors.*,²⁸⁵ is a case where the Calcutta High Court addressed the issue of voting rights for prisoners. In this case, the petitioner challenged the denial of voting rights to inmates, arguing that such denial was arbitrary and violated their fundamental rights under the Indian Constitution. The Calcutta High Court recognized that inmates might be denied voting rights. The court upheld that prisoner, while serving their sentences, could be subjected to certain restrictions, including disenfranchisement. The court reasoned that the confinement of prisoners justified certain limitations on their freedoms, including the right to participate in the electoral process. This case is significant because it aligns with the broader judicial perspective in India that upholds the constitutionality of disenfranchising prisoners. The court's decision reinforced the principle that voting rights, while important, are subject to legislative control and can be restricted for specific categories of individuals, such as convicts, to maintain the integrity of the electoral process.²⁸⁶
- vii. In *Jan Chankidar (People's Watch) v. Union of India & Ors*²⁸⁷, the case exclusively deals with the issue of voting rights for prisoners. The petition challenged the legal provisions that disenfranchised prisoners, arguing that such provisions were arbitrary and violated fundamental rights under the Indian Constitution. The primary issue was whether Section 62(5) RPA, 1951, which prohibits prisoners from voting, was constitutional. The Supreme Court upheld the constitutionality of Section 62(5). The Court ruled that the right to vote is a statutory right, not a fundamental right, and that it is within the realm of the legislature to impose reasonable restrictions on this right. The Court held that disenfranchising prisoners serves a legitimate purpose and is not arbitrary or discriminatory. The Court emphasized that the right to vote is a statutory right created by law, not a fundamental right inherent to all citizens. The Court affirmed that the legislature has the authority to impose restrictions on voting rights,

²⁸⁵ W.P No. 209 of 2011.

²⁸⁶ Parvinder Kaur and Jai Mala, "Prisoner's Voting Rights in India: An Overview" 2 *DJMR* 7 (2023).

²⁸⁷ (2013) 7 SCC 507.

including disenfranchising prisoners, to maintain the integrity and efficacy of the electoral process. The Court found that such restrictions imposed by Section 62(5) are reasonable and serve a legitimate state interest in preventing crime and maintaining public order. The ruling reinforced the principle that voting rights are subject to legal and legislative regulations. The court emphasized the judiciary's adherence to legislative judgments on the rules of electoral procedures. The imposition of limitations on specific groups of people, such as convicts, was also confirmed. This decision is noteworthy because it affirms the legal framework that disenfranchises inmates and clarifies the statutory character of voting rights in India

- viii. In *Praveen Kumar Chaudhary v. Election Commission*,²⁸⁸ In this case, Section 62(5) RPA, which completely prohibits individuals held in custody, including those awaiting trial, from casting votes, was challenged. This section, however, does not apply to individuals under preventive detention. This restriction is to prevent prisoners with criminal backgrounds from potentially disrupting the electoral process and undermining democracy. The petitioners, three law students, argued that Section 62(5) violated Articles 14 (Right to Equality), 19(1)(a) (Right to Freedom of Speech and Expression), and 21 (Right to Life and Personal Liberty) of the Indian Constitution. They contended that the provision was arbitrary, unreasonable, and unfair, as it excluded prisoners from voting while allowing them to contest elections. They highlighted an inconsistency with Section 8(3) of the RPA, which does not disqualify a person from contesting elections if they have been convicted and sentenced to imprisonment for less than two years. This discrepancy was seen as evidence of unfair treatment, as prisoners could stand for contesting elections but were barred from voting. The petitioners also called for the provision of suitable services and facilities to enable prisoners to vote from prison, arguing that the denial of voting rights was contrary to the principles of universal adult franchise, which is vital for democracy and individual dignity. The Delhi High Court dismissed the petition, referring to previous legal precedents and noting that the government applies uniform restrictions to all prisoners, regardless

²⁸⁸ W.P. (C) 2336/ 2019.

of their custody status. The Supreme Court later reviewed the case and confirmed the Delhi High Court's decision. It provided a detailed explanation, reiterating that voting is a statutory right subject to limitations under Section 62(5) of the RPA, rather than a fundamental right. The Court upheld the validity of the restrictions on prisoners' voting rights, affirming that the provisions are consistent with legislative authority and necessary to maintain the integrity of the electoral process.

5.6 NEED FOR RECOGNITION OF FELON ENFRANCHISEMENT

In *Indira Gandhi v. Raj Narain*,²⁸⁹ the Supreme Court highlighted the fundamental importance of free and fair elections as a cornerstone of the Indian Constitution. The Court emphasized that maintaining the integrity of elections is crucial for upholding democratic principles. It affirmed that elections must be conducted in a manner that reflects the true will of the people, thereby safeguarding the democratic fabric of the nation. This landmark decision established a precedent for the judiciary's role in ensuring that electoral processes are free from corruption and align with constitutional values.

Similarly, in *PUCL v. Union of India*,²⁹⁰ the Supreme Court emphasized the fundamental importance of free and fair elections in strengthening democracy. The court stressed the need for transparency and fairness in elections, ensuring that all citizens have an equal opportunity to participate and that the electoral process remains free from corruption or unfair practices. The ruling reaffirmed the principle that the integrity of elections is paramount for democratic progress and emphasized that any compromise on the fairness of the electoral process undermines the very foundation of democracy. By insisting on the standards of electoral conduct, the Court aimed to ensure that every election reflects the true will or choice of the people and upholds democratic values. In *Prabhakar Pandurang v. State of Maharashtra*,²⁹¹ the Supreme Court recognized the right of prisoners to personal liberty, which includes the freedom to write and publish a book. This ruling underscored that prisoners retain certain

²⁸⁹ AIR 1975 SC 2299.

²⁹⁰ (2003) 4 SCC 399.

²⁹¹ AIR 1966 SC 424.

fundamental rights even while incarcerated. However, it is argued that the justices in this case did not fully consider the implications of this ruling on prisoners' voting rights. Voting is a crucial aspect of political expression and democratic participation. The exclusion of prisoners from voting raises questions about the consistency of denying this fundamental right, given the recognition of other personal liberties. The case highlights a potential inconsistency in how rights are applied to prisoners, suggesting that if prisoners are allowed personal liberties such as writing and publishing, the denial of voting rights may be questioned from a human rights perspective.

Upholding everyone's fundamental rights, regardless of prison status, aligns with democratic values. Allowing inmates to vote makes the electoral process more inclusive and impartial, leading to fairer outcomes. However, the reality of felony disenfranchisement presents a significant barrier to these principles. Felony disenfranchisement laws exclude a substantial portion of the population, particularly those incarcerated for felonies, from participating in the electoral process. This disenfranchisement has profound implications, including its disproportionate impact on marginalized communities, the reinforcement of social inequalities, and the perpetuation of a cycle of exclusion. The concept of "fair" implies equal opportunities for all individuals, including prisoners, to participate in the electoral process. Denying this population their right to vote undermines the democratic values of equality, inclusivity, and representation. Ensuring universal suffrage, regardless of prison status, is critical to preserve democratic norms. The court has construed the right to vote differently throughout time, declaring it statutory in certain circumstances and constitutional in others. While recognized as a legislative right, it is critical that the Representation of the People Act which sets restrictions, be consistent with Article 326 of the Constitution. Individuals who engage in unlawful or corrupt acts are barred from voting under Article 326. However, restricting voting rights to people in detention who have not yet been convicted goes against the "innocent until proven guilty" premise and lacks legitimacy. Moreover, the court did not distinguish between prisoners and justified that individuals cannot assert the same rights as those not in jail because their incarceration results from their actions. The court also found that insufficient police and resources were available to hold elections for convicts. Therefore, the court is unable to provide them with such privileges.

As a result, segregation is observed rather than reintegration occurring for prisoners. A prisoner will only be denied those rights that are incidental to imprisonment, as stated in *Charles Sobraj v. Superintendent of Tihar*.²⁹² However, losing the ability to vote is not a consequence of being imprisoned, rather, it is an additional penalty. Likewise, Article 21 highlights that the right to life is essential to human dignity and must be upheld to ensure more than mere survival. Section 62(5) contradicts this principle. In *Sunil Batra v. Delhi Administration*,²⁹³ the Supreme Court reiterated that prisoners are entitled to a dignified existence. Denying prisoners the right to vote undermines their dignity and hinders their reintegration into society. Therefore, it is imperative to reevaluate and reform the laws surrounding prisoners' voting rights to align with constitutional values and principles of justice and equality. In *Ankur Pradhan v. Union of India*²⁹⁴, the legitimacy of Section 62(5) vis-a-vis Article 19(1)(a) was not thoroughly examined. The researcher contends that the Supreme Court's foundation for this decision was unsustainable and weak for several reasons:

- i. First and foremost, the implementation of rights, including the right to vote, cannot be delayed or suspended indefinitely due to a lack of resources.
- ii. Furthermore, as per the ruling in *PUCL v. Union of India*,²⁹⁵ Article 19(1)(a) guarantees freedom of expression, including the right to vote, to all citizens, which is also protected by the statute. Therefore, confinement should not restrict the absolute prisoners in custody from casting a ballot.

The restriction imposed by Section 62(5) is considered to breach the principle of unreasonable classification under Article 14 of the Indian Constitution, which guarantees "equality before the law" and "equal protection of the laws." This principle prohibits the state from denying individuals equal protection or treating them unequally based on caste, religion, race, gender, place of birth, etc. While Article 14 prohibits class legislation, it allows for reasonable classification if there is a genuine objective to achieve and a clear connection between the classification and the legislative aim.²⁹⁶ In

²⁹² (1978) 4 SCC 104.

²⁹³ (1978) 4 SCC 494.

²⁹⁴ AIR 1997 SC 2814.

²⁹⁵ (2003) 4 SCC 399.

²⁹⁶ *All India Sainik Schools Employees' Assn. v. Sainik Schools Society*, 1989 Supp (1) SCC 205.

this case, the court accepted the distinction between an accused in custody and one who is not, arguing that it aims to ensure fair elections. However, denying prisoners the right to vote solely because it might criminalize the election process is deemed unreasonable, especially given that undertrials are presumed innocent until proven guilty under the Indian justice system. This classification must be carefully examined to determine whether it genuinely serves the intended objective and aligns with constitutional principles of equality.

The researcher contends that the limitation fails these criteria for many reasons:

- i. The goal of this categorization is invalid as it results in a breach of fundamental rights.
- ii. There is an inconsistency regarding prisoners' voting rights. For instance, a prisoner held for a criminal offense like murder can vote upon release, whereas a prisoner convicted of a civil offense may be deprived of this right. This disparity raises questions about the fairness and justification of categorizing prisoners and denying them the right to vote.
- iii. Voting rights are statutory rights that the government may give or revoke. The categorization distinguishes between someone who is incarcerated and someone who is not. As a result, an innocent person in prison would be denied such rights, whereas a criminal accused individual on bail may vote. This is clear prejudice, and the classification seems contrary to the court's acknowledged goal.

Section 436 of the CrPC states procedures on whether a prisoner is eligible for release once they have served half of the maximum penalty if convicted. However, in 2016, out of 1557 eligible prisoners, only 929 were released. This discrepancy arose because many prisoners were unaware of their legal rights, including their right to vote, thus depriving them of this fundamental right.

Unfortunately, the judiciary did not consider the fundamental reasons for the sentences on the following points while providing such a justification:

- i. **Rehabilitation and Reintegration:** According to the Government's Model Prison Manual 2016, the goal of the penalty under Indian law will be first to rehabilitate

the prisoners and ensure their reintegration into society through their conduct.²⁹⁷

- ii. **Nelson Mandela Rules:** The Nelson Mandela Rules specify the treatment and circumstances of confinement required for inmates as outlined in Articles 57, 58, 60, and 61. These articles demonstrate the goal of incarceration is to protect each prisoner's integrity and dignity while rehabilitating and reintegrating them into society.²⁹⁸
- iii. **Support for Reformation:** The belief that incarceration should be the only punishment for a criminal and that the system shouldn't worsen the suffering of inmates is further supported by the SMR for the care of prisoners. Furthermore, confinement should be viewed as a means to an end, with the ultimate objective of reintegrating the prisoner into society as a law-abiding citizen. The SMR for the Treatment of Prisoners strongly recommends that imprisonment be used as a place for reform, rehabilitation, and social reintegration. The core of the reformatory idea is to return a prisoner to society as a responsible citizen.²⁹⁹
- iv. **Enfranchisement and Rehabilitation:** Extending voting rights to prisoners acknowledges their potential for change and recognizes their status as citizens with a stake in the democratic process. It promotes the idea that the loss of liberty and confinement itself is a form of punishment, with the additional goal of facilitating the prisoners' reintegration into society. Enabling inmates to use their voting rights sends a message of inclusivity, empowerment, and belief in their capacity for positive transformation. This approach can contribute to humane and effective justice, emphasizing rehabilitation rather than punitive measures. It also helps address the issue of discrimination, as denying voting rights to prisoners awaiting trial can disproportionately affect marginalized and vulnerable members of society. Supporting the enfranchisement of prisoners aligns with the values of justice and equality, offering them the chance to exercise their rights, including the

²⁹⁷ Model Prison Manual 2016, *available at*: <https://sites.google.com/site/jailorup/Model-Prison-Manual-2016> (last visited on June 14, 2021).

²⁹⁸ Guidance Document on the Nelson Mandela Rules, *available at*: https://cdn.penalreform.org/wp-content/uploads/2018/07/MR_Guidance_Doc.pdf (last visited on June 14, 2021).

²⁹⁹ The United Nations Standard Minimum Rules for the Treatment of Prisoners, *available at*: https://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf (last visited on June 14, 2021).

ability to vote.

5.7 DOES THE RIGHT TO VOTE CONFLICT WITH CONTEMPORARY NOTIONS OF FUNDAMENTAL RIGHTS

A decision in the *Nagendra Chandra Dam*,³⁰⁰ case directed the federal government to grant electronic voting rights to all non-resident Indians. This shows that the government and the Election Commission are in favor of extending voting rights to a larger group of Indian citizens, about 11 million in number, who would otherwise be denied these rights. The administration made a significant and commendable move by including these people in the election process. However, this raises questions about the justification for the restrictions on prisoners' voting rights imposed by legislation. In the case of *Kalyan Chandra Sarkar v. Rajesh Ranjan aka Pappu Yadav*,³⁰¹ the accused was transferred from their current prison to another facility in a different state, despite this move not being explicitly mentioned in the jail manual. The court determined it had the authority to order this transfer under Article 142 of the Indian Constitution. The Supreme Court of India has decided in several cases whether the right to vote should be regarded as a fundamental right or if it can be upheld as a statutory right, a privilege, a constitutional right, or even as a component of the basic right to free speech. Administrative difficulties and the belief that enrolling every eligible voter is practically impossible are the main reasons for not entitling the right to vote as a fundamental right. Modern technology, which was not available during the time of Constitution-making, could potentially ease the administrative burden of implementing the right to vote if recognized as a fundamental right.

In the *PUCCL v. Union of India*³⁰², voting at the polls was recognized as a voter's exercise of their right to free speech. The ability to vote is seen as a constitutional right and a statutory one, specifically a component of the basic right guaranteed by Article 19(1)(a). The right to vote is still subject to reasonable restrictions as stated in Article 19(2) because it is a basic right.³⁰³ The Supreme Court of India, in the *Kuldip Nayar v.*

³⁰⁰ Susanta Kumar Shadangi, "Right to vote: A selected choice" 2 *International Journal of Trend in Scientific Research and Development* 1517 (2018).

³⁰¹ (2005) 3 SCC 284.

³⁰² (2003) 2 SCR 1136.

³⁰³ The Constitution of India, art. 19(2). Article 19 (2) of the Indian Constitution states that the State may impose reasonable restrictions on the freedoms in the interest of sovereignty and integrity of India,

Union of India & Ors.,³⁰⁴ case accepted that voting is recognized as a basic right and that reasonable constraints can be placed on it. The court examined the open ballot method in the indirect election to the Council of States, highlighting the violation of prisoners' human rights in India concerning Section 62(5) of the RPA.

5.8 COMPARATIVE JUDICIAL PRECEDENTS ON FELONY DISENFRANCHISEMENT

Voting is a fundamental means of influencing government decisions.³⁰⁵ Article 2(1) of the ICCPR mandates that voting rights must be exercised without discrimination.³⁰⁶ Consequently, a blanket ban on inmates' voting rights represents an "unreasonable limitation" that violates this international treaty obligations. When evaluating the suspension of prisoner's voting rights, the Human Rights Committee emphasizes the principle of proportionality.³⁰⁷ It asserts that any restriction must be appropriate to the offense committed, the penalty imposed, and the duration of the suspension. This means the limitations should be reasonable and not excessively restrictive, extending into the circumstances of each case. The Committee warns against outright and irreversible denial of voting rights without a case-by-case analysis, as this may violate principles of proportionality and non-discrimination. The Committee stresses that the denial of voting rights should be carefully considered to align with the legitimate goals of the criminal justice system, avoiding arbitrary or disproportionate measures. To deprive an individual of a human right, such as voting, due to incarceration is unjustifiable. International human rights standards support the proportionality test, which ensures that any punishment, including the denial of voting rights, is commensurate with the offense committed and should not be disproportionate. A comprehensive analysis of court judgments in the US, UK, South Africa, Canada, Australia, and New Zealand provides a thorough perspective on prisoner voting rights.

the security of the State, friendly relations with the Foreign States, public order, decency or morality or about contempt of court, defamation or incitement to an offense.

³⁰⁴ (2006) 7 SCC 1.

³⁰⁵ International Covenant on Civil and Political Rights, art. 25.

³⁰⁶ International Covenant on Civil and Political Rights, art. 2(1).

³⁰⁷ General Comment No. 25: The right to participate in public affairs, voting rights, and the right of equal access to public service, Office of the High Commissioner for Human Rights (1996), *available at*: <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>. (last visited on June 12, 2022).

These nations have developed diverse strategies and legal precedents regarding whether prisoners should have the right to vote. The researcher's comparative analysis of several nations provides useful insights into the possible benefits of extending voting rights to prisoners, which may be applied in the Indian context. The study demonstrates how varied methods of prisoner enfranchisement, including qualifying requirements and the scope of voting rights, might impact rehabilitation and reintegration efforts. For instance, the United States has a complex and varied approach to granting voting rights to prisoners, with different state laws governing the issue. While some states impose restrictions or outright bans on voting by prisoners, others permit it. Moreover, decisions by the European Court of Human Rights have played a role in reinstating voting rights for inmates in various jurisdictions. Many countries have addressed prisoner voting rights, including Australia, South Africa, Canada, and New Zealand. Their legislative frameworks recognize the importance of felon enfranchisement, viewing it as a means to support rehabilitation and foster a sense of civic duty among inmates. By examining the court decisions in these nations, the researcher brings international perspectives to the discussion, offering insights that could inform potential reforms in the Indian context. This comparative analysis will help to understand how voting rights for prisoners can aid in their rehabilitation and reintegration.

5.8.1 UNITED STATES OF AMERICA

Felony disenfranchisement policies have been the subject of extensive legal and academic debate.³⁰⁸ In Maine and Vermont, all prisoners retain voting rights, emphasizing the importance of civic duties. The restrictions on voting rights for prisoners who are incarcerated, on parole, on probation, or have completed their sentences differ depending on state laws.³⁰⁹ Different states in the US have varying policies regarding the disenfranchisement of prisoners. In 48 states, inmates are disenfranchised³¹⁰. This decentralized approach has led to significant variations in the

³⁰⁸ Roger Clegg et al., "The Case Against Felon Voting" 2 *U. St. Thomas J.L. & Pub. Pol'y* 1 (2008).

³⁰⁹ The Sentencing Project, Felony Disenfranchisement, *available at*: <https://www.sentencingproject.org/publications/felony-disenfranchisement-laws-in-the-united-states/> (last visited on July 15, 2020).

³¹⁰ Felon Voting Rights, National Conference of State Legislatures, *available at*: <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (last visited on July 15, 2020).

restrictions placed on inmates' ability to vote across the United States.³¹¹ A challenge was made to the validity of state statutes prohibiting ex-offenders from voting in the case of *Richardson v. Ramirez*³¹². In a petition, three formerly incarcerated individuals argued that they should be granted the right to vote. However, the California Constitution's ban on ex-offenders enfranchisement was upheld. This ruling maintained states' powers to restrict voting rights for those with criminal histories. Previous legal rulings in the USA have raised the issue of whether convicts should lose their voting rights. These rulings reflect two primary concerns:

- i. In *Green v. Board of Elections*³¹³, there was a concern that allowing inmates to vote could potentially influence or manipulate the nature of the crime and application of the law.
- ii. In *Kronlund v. Honstein*³¹⁴, there was a belief that inmates should be prohibited from voting to prevent instances of vote fraud and other election-related violations.

These concerns have contributed to the ongoing debate surrounding the voting rights of individuals who are incarcerated. In *Carrington v. Rash*,³¹⁵ it was argued that it is unconstitutional to exclude a certain segment of people from voting rights based on how they may vote. The California Supreme Court initially declared that this practice violated Section 1 of the Fourteenth Amendment, which originally forbade prisoners who had completed their terms and were released from exercising their enfranchisement. The Supreme Court concluded that a person's criminal background would be considered in deciding whether they are eligible to vote. The USA's creation and implementation of its felony disenfranchisement rules were held to the reasonableness requirement to incorporate the Second Amendment.³¹⁶ States may pass "felony disenfranchisement laws," which set down the circumstances in which

³¹¹ Guy Padraic Hamilton-Smith and Matt Vogel, "The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism" 22 *Berkeley La Raza LJ* 407 (2015).

³¹² 418 US 24 (1974).

³¹³ [2010] ECHR 645.

³¹⁴ Amy Heath, "Cruel and Unusual Punishment: Denying Ex-Felons the Right to Vote" 25 *JGSPL* 349 (2017).

³¹⁵ Lexis Nexis Law School Case Brief, available at: <https://www.lexisnexis.com/community/casebrief/p/casebrief-richardson-v-ramirez> (last visited on July 15, 2022).

³¹⁶ Abigail M. Hinchcliff, "The Other Side of Richardson v. Ramirez: A Textual Challenge to Felon Disenfranchisement" 121 *Yale Law J.* 196 (2011).

individuals with felony convictions may or may not exercise their voting rights.³¹⁷ According to Justice Thurgood Marshall's dissent, voting is essential to a democratic society, and any restrictions on it jeopardize representative government.³¹⁸ Indeed, the debate over formerly incarcerated people's ability to vote was spurred by the results of the 2000 presidential election between George W. Bush and Al Gore; if ex-felons had been allowed to vote, the election outcome might have been different. This highlights the potential impact of disenfranchisement on election results and the importance of considering the inclusion of this population in the democratic process.³¹⁹

5.8.2 UNITED KINGDOM

In case of *Pearson and Martinez v. Secretary of State for the Home Department*,³²⁰ the justice concluded that Parliament could decide to take away certain rights, like voting, from individuals who have been convicted or detained as part of their punishment or as a consequence of being in prison. In the *Hirst v. United Kingdom* case, the European Court of Human Rights highlighted the importance of organizing free and fair elections under Article 3 of the First Protocol. The ruling emphasized the significance of upholding the principles of equality and the right to vote in democracies. While limitations on voting rights are acceptable, excluding all convicted individuals was deemed unreasonable and arbitrary by the ECHR's decision.³²¹ The court affirmed the ruling, stating that "voting is not a privilege." It deemed the blanket prohibition on voting, which applies to all offenders regardless of the gravity of their crimes, to be unreasonable.³²²

In *Scoppola v. Italy*,³²³ the European court ruled that Italy had violated the convention by enacting a ban on inmates' ability to vote. The court found that the prohibition was

³¹⁷ Marc Mauer, "Voting Behind Bars: An Argument for Voting by Prisoners" 54 *Howard Law J.* 549 (2011).

³¹⁸ Ishita Chowdhury, *Criminal Disenfranchisement Policies Across Democracies: The Impact of Democracy, Punishment and Race* (2017) (Unpublished LL.M dissertation, University of Alabama).

³¹⁹ George Brooks, "Felon Disenfranchisement: Law, History, Policy, and Politics" 32 *Fordham Urb. L. J.* 101 (2005).

³²⁰ Human Rights Law, available at: <https://www.lawgazette.co.uk/news/human-rights-law/34048.article> (last visited on August 20, 2022).

³²¹ The European Convention of Human Rights, art. 3.

³²² Cormac Behan, "Punishment, Prisoners and the Franchise" *HLPR* 20 (2015).

³²³ [2012] ECHR 868.

unjustified and that the idea of punishment among prisoners was overlooked. This case clarified that nations must adopt a more balanced approach regarding prisoners voting rights. In *McHugh and Others v. UK* case, The ECHR cited a violation of Article 3 concerning the enfranchisement of prisoners. In 2017, the Council of Europe accepted a request allowing criminals to vote while on temporary release, nearly ten years after the Hirst case.³²⁴ In *Greens and MT v. United Kingdom*³²⁵, the ECHR declared the United Kingdom had violated the convention by enacting a general prohibition on inmates' ability to vote. The court emphasized that the prohibition was overly inclusive and did not distinguish between various prisoner classifications, highlighting the importance of proportionality when imposing such limitations. In *Frodl v. Austria*³²⁶, the court ruled that there was a violation of the convention, by enacting a prohibition on inmates' ability to vote. The court stressed that voting is a key component of democracy and that the prohibition should be applied sparingly. This case further supported the idea that inmates should not be automatically denied the right to vote. In *Firth and Others v. United Kingdom*³²⁷, the ECHR decided that the UK's ban on prisoners' ballots was a breach of the convention. The court reiterated that the principle of individualized punishment was disregarded and that the restriction was arbitrary. The case highlighted the need for the nation to reconsider its stance on inmates' voting rights and to implement more targeted limitations.

5.8.3 SOUTH AFRICA

In the case of *August v. Electoral Commission*³²⁸, the issue of prisoners' voting rights brought attention to the ongoing struggle in South Africa, the court emphasized that the ability to vote is a fundamental characteristic of dignity and citizenship. The court recognized that voting is not only a legal right but also a reflection of one's identity and participation in the democratic process. This decision highlighted the status of upholding the voting rights of all prisoners, ensuring the principles of equality, dignity, and citizenship in a democratic society. It serves as a reminder that denying prisoners

³²⁴ Prisoners' Voting Rights: Developments Since May 2015 (House of CommonsLibrary 2020), available at: <https://researchbriefings.files.parliament.uk/documents/CBP-7461/CBP7461.pdf> accessed (last visited on August 20, 2022).

³²⁵ [2010] ECHR 1826.

³²⁶ [2010] ECHR 508.

³²⁷ [2017] ECHR 1012.

³²⁸ 1999 3 SA 1 (CC).

the ability to vote can be seen as a violation of their dignity and undermines their status as citizens. It was determined that even though the legislature did not impose any restrictions, the electoral commission's decision to delay the registration and permitting of voting by convicts curtailed the rights granted. The court denied that the electoral commission's delay, rather than legislative action, was to blame for the restriction on inmates' ability to vote. It was unknown if the right to vote would pass the proportionality test and the Section 36 test because there was no statute regarding voting while incarcerated.

When the legislature changed the Electoral Act to deny voting rights to persons serving jail sentences without the possibility of a fee, the two justifications cited for this amendment were a lack of finances and the fact that they were imprisoned because of their conduct and thus unable to vote. This amendment was introduced to increase deterrence against the nation's high rate of crimes. However, because the Government was unable to support its claims with sufficient evidence and statistics, the court dismissed both arguments.³²⁹ Additionally, it was decided that the amendment violated Section 36 of the Constitution and that depriving prisoners of their right to vote as a measure to reduce crime was excessive and an inappropriate approach to the problem. Furthermore, limiting inmates' rights in this way increases the risk of strongmen suppressing elections. The South African court issued this concerning remark against such a limitation in the matter of *Home Minister v. Nicro*.³³⁰

5.8.4 CANADA

In *Sauve v. Canada*³³¹, the court ruled that denying prisoners serving terms of two years or more the right to vote violated the Canadian Charter of Rights and Freedoms. Financial arguments for permitting prisoners to vote were considered. Chief Justice McLachlin argued that disenfranchisement "imposes negative costs on prisoners and the penal system administration" instead of deterring crime. The court rejected similar arguments in this judgment, describing them as "vague, symbolic, and contrary to basic rights. The court decided against disenfranchising convicts, emphasizing voting as a

³²⁹ Prisoners' Right to Vote in India, *available at*: <https://indconlawphil.wordpress.com/2020/04/09/guest-post-prisoners-right-to-vote-in-india/> (last visited on August 20, 2022).

³³⁰ 2004 5 BCLR 445 (CC).

³³¹ [2002] 3 SCR 519.

critical component of democracy.

5.8.5 AUSTRALIA

The Australian High Court considered whether the interpretation of felony disenfranchisement statutes was constitutional in the case of *Roach v. Electoral Commissioner*.³³² Before the 2006 Amendment, the amended Commonwealth Act forbade voting for all prisoners charged with serving a sentence of three years or more. In the Roach case, the High Court relied on earlier decisions like *Sauve* and *Hirst*, highlighting how crucial it is to defend the right to vote. However, the Court did not conduct an economic analysis of the policy in question. The Court ruled that it was unlawful to forbid all convicted persons from voting, but it was decided that shorter jail terms should be the boundary. Overall, the case demonstrated the necessity of establishing a balance between the rights of convicted individuals and the lawful legitimate aims of felon disenfranchisement laws, ultimately leading to a more nuanced approach to voting rights for prisoners in Australia.

5.8.6 NEW ZEALAND

In *Taylor v. Attorney-General*,³³³ the court addressed the issue of disenfranchisement of all convicts. The challenged clause was found to violate guaranteed basic rights. Citing the *Sauvé* and *Hirst* cases, the Court focused on the statement of inconsistency and remedies stemming from a violation of fundamental rights, rather than taking an economic approach to the subject. Prisoners in New Zealand who have received imprisonment for less than three years or below will be allowed to vote in the election process.

TABLE 7: Courts on Felony Disenfranchisement³³⁴

Court	Cases	Decision
Canada	<i>Sauve v. Canada</i>	Removing a pathway to social growth and rehabilitation is one consequence

³³² (2007) 233 CLR 162.

³³³ [2015] NZHC 1706.

³³⁴ Laleh Ispahani, *Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and other Democracies* 11 (American Civil Liberties Union, New York, 2006).

		of denying convicts the opportunity to vote. It undermines laws and policies related to corrections and diminishes the effectiveness of rehabilitation and integration-focused initiatives.
South Africa	August and Another v. Electoral Commission and Others	It is a fundamental right that should be upheld and respected, recognizing the inherent dignity and personhood of every citizen.
Israel	Hilla Alrai v. Minister of the Interior	The court emphasized the fundamental views of democracy as safeguarding the right to free speech and the expression of other viewpoints. It emphasizes the need for a democratic state to uphold these principles even in the aspect of dissenting or minority viewpoints, ensuring that all voices are heard and respected in the democratic process.
ECtHR	Hirst v. United Kingdom	The UK's total prohibition was ruled to violate the right to a free and fair election by the European Court of Human Rights. Permitted remand or trial inmates to register to vote.
New Zealand	Taylor v. the Attorney-General	The court ruled that the ability to vote is an essential component of political engagement and cannot be arbitrarily limited. It stressed that rather than a general prohibition, denying voting rights to convicts should be based on

		circumstances and proportionality.
Australia	Roach v. Electoral Commissioner	The Court held that it would be unlawful to forbid all convicted persons from voting and it was decided that shorter jail terms should be the limit.

CONCLUSION

Allowing legal engagement in civil society and enfranchisement of inmates can positively impact social acquaintances and the development of social responsibility. As a result, denying prisoners the ability to vote is considered undesirable in today's society, particularly in light of constitutional provisions such as Article 19, which guarantees freedom of speech and expression, and Article 21, which protects personal liberty. The Indian Constitution enshrines fundamental rights in Part III, i.e., the right to freedom of speech and expression. Voting is an important way to express political beliefs and should be considered a fundamental right. Section 62(5) of RPA forbids those accused of a crime or engaged in corrupt practices from voting, which violates the principles of the Indian Constitution. In the Indira Gandhi case, the court highlighted the awareness that the right to vote for all citizens is an essential factor of democracy, emphasizing the need for free and fair elections. Refusing inmates, the opportunity to vote undermines the objective of rehabilitation and deflects public outrage away from the repeal of civil rights. "Articles 60 and 61 of the SMR with the Treatment of Prisoners" highlighted the significance of allowing inmates to remain connected to society and reintegrate into it. The legitimacy of democracy is weakened when prisoners are denied the right to vote, as it undermines democratic self-determination. Democracy has shaped the country by granting its citizens the right to participate through voting, ensuring equal participation among all individuals. Eliminating the disparity between voting rights for incarcerated individuals and the right to contest elections is crucial. To facilitate the voting process among prisoners, polling stations can be established within prisons, reducing the need for a large police presence during elections. Granting voting rights to inmates demonstrates the government's support for civil liberties, fundamental human rights, and democratic

transformation. Additionally, addressing the difficulties faced by convicts upon reintegration into society can be achieved by treating them equally. While the social contract theory supports punishment for crimes, it does not justify the denial of voting rights. John Locke's perspective suggests that punishment should be sufficient to deter offenders and others from committing the same acts. Therefore, it is unjustified and goes against the ideas of democracy and rehabilitation to deny prisoners the ability to vote on the grounds of their detention. This aims to understand the concept of the judicial aspect of felony Disenfranchisement, India's current perspective, the United States, the United Kingdom, South Africa, and other international countries addressing this issue dealing with it, and gives an argument in favor of and an urgent need to switch to one of the theories called reformatory approach, i.e., prisoners' enfranchisement.

CHAPTER - 6

EMPIRICAL STUDY ON FELONY DISENFRANCHISEMENT WITH A SPECIAL REFERENCE TO THE STATE OF HIMACHAL PRADESH

6.1 INTRODUCTION

The significance of this research lies in its potential to shed light on an often-overlooked aspect of prisoners' voting rights and the broader issue of democratic inclusivity. By examining the current state of prisoners' voting rights in India, this empirical chapter contributes to ongoing criminal justice reform and fundamental human rights, specifically focusing on Himachal Pradesh. The study focuses on the districts of Shimla and Hamirpur to provide a detailed perspective and capture the unique dynamics and challenges of the region. This research was intended to explore the perspectives of various respondents, including prisoners, the general public, the legal fraternity, and police administrative staff, on prisoners' voting rights. The study seeks to gather perceptions from these respondents to develop a thorough understanding of their views on the matter.

These aspects include:

- i. To gain insights into knowledge, experiences, and views related to voting.
- ii. To analyze perspectives on the acceptability and fairness of disenfranchising prisoners.
- iii. To evaluate and identify the level of awareness of prisoners regarding their right to vote in elections.

The study was conducted using primary data collection by selecting a sample of 500 respondents from the districts of Shimla and Hamirpur. The Questionnaire method was used to gather data and obtain results. For this study, four different sets of questionnaires were framed for all respondents. The data collected from respondents played a vital role in support for and against the research hypotheses. **Tables 8 and 9** illustrate the distribution of the respondents and selected districts for the data collection undertaken for this empirical research.

TABLE 8: DISTRIBUTION OF RESPONDENTS

Serial No.	Category	Number of Respondents
1.	General Public	100
2.	Legal fraternity	50
3.	Prisoners	250
4.	Prison Authorities	100

TABLE 9: DISTRICT WISE RESPONDENTS

	Prisoners	Prison Authority	Legal Fraternity	General Public	Total
District Shimla	180	75	25	50	330
Hamirpur	70	25	25	50	170
Total	250	100	50	100	500

Due to time limitations, data from the general public and the legal fraternity were gathered using questionnaires distributed via Google Forms, limited to residents of Shimla and Hamirpur districts in Himachal Pradesh. Meanwhile, collecting data from prisoners and police administrative staff proved to be quite challenging. At Model Central Jail, Shimla, and District Jail of Hamirpur the researcher gave the details on the research topic and discussed how voting is important for an individual, how you see voting for the prisoners, as the law prohibits the same, and what is their take with a valid justification and answer the researcher's questions. In this study Questionnaire method was used to get the results. The questionnaire was prepared in Hindi as well as in English, keeping in view the literacy of the prisoners. As compared to police administrative staff, the prisoners were quite active and interested in knowing about the purpose, motive, relevance, and usefulness of the study. All the prisoners (Convicted and under trial) were approached with a request to answer the questionnaire. The prisoners were made into groups, and one by one, prisoners were asked to come to the desk of the researcher, and the discussion started on the specific issues of their crime, arrest, police treatment, production before a Magistrate, bail, and other issues with prisoners. The majority of the women prisoners were reluctant

to share their experiences and, consequently were not properly answering the questions and it took some time to convince them and to explain the motive, relevance, and usefulness of the study while the males were active and interested to know how it could be used and thought that the law need be changed concerning voting rights of prisoners. As the maximum number of prisoners were charged for false accusations and neither the judiciary did justice for many of the prisoners. The researcher came across that the number of prisoners were qualified and had a knowledge of Indian politics. In addition, it was a more difficult task for those illiterate prisoners to make them understand the purpose and relevance of this research study, but their numbers were very low as compared to the literate prisoners. For this study, special permission was required from the Additional Director General of Prisons and Correctional Services, from the State of Himachal Pradesh. After being satisfied with the relevance of the study and thorough understanding of the abstract and questionnaire of the research work and on the production of an authority letter from the University of Lovely Professional, Punjab, founding the identity of the researcher, issued necessary permission to visit and survey the prisoners and police authorities subject to certain restrictions from 12th to 25th April 2023 (Annexure -1).

6.2 Brief on the Department of Prisons in the State of Himachal Pradesh

The Director General of Prisons supervises the Department of Prisons and acts under the State Government's directions. The Director General has overall administration and oversight over all prisons in the state of Himachal Pradesh. **Table 10** provides an overview of the prison facilities in Himachal Pradesh, categorized by type and location. There are a total of 16 prisons in the state. This includes 2 Model Central Jails located in Shimla and Nahan, and 9 District Jails spread across various places like Dharmshala, Chamba, and Hamirpur, among others. Additionally, there is 1 Open Air Jail in Bilaspur, 1 Borstal Jail in Mandi, and 3 Sub Jails situated in Nurpur, Nalagarh, and Rampur. **Table 11** provides detailed information on the number of prisoners in various jails across Himachal Pradesh. It includes the capacity of each jail, the number of inmates currently lodged, and a categorization of the prisoners into convicts and undertrials, further divided by gender. Model Central Jail, Kanda

Shimla, and Model Central Jail, Nahan have the highest inmate populations, with both exceeding their designated capacities. The Open-Air Jail in Bilaspur currently has no inmates, while other districts and sub-jails like those in Kaithu and Dharamshala have significant numbers of both convicts and undertrials. The total jail capacity across all facilities is 2,560, while the total number of inmates is 2,773, indicating an overall overcrowding situation. The total number of convicts is 914, and undertrials make up the remaining 1,859 inmates, showing a higher proportion of undertrials in the prison population. The data underscores the strain on the prison infrastructure and highlights the ongoing challenge of managing a growing inmate population in the state's correctional facilities. The table also reveals the gender distribution within the prison population, with a much smaller number of female inmates compared to males.

TABLE 10: PRISONS IN HIMACHAL PRADESH

Sr. No.	Name of the Prisons	Places	No. of Prison
1.	Model Central Jails	Shimla Nahan	02
2.	District Jails	Dharmshala Chamba Bilaspur Mandi Kullu Hamirpur Solan Shimla (Kaithu) Una.	09
3.	Open Air Jail	Bilaspur	01

4.	Borstal Jail	Mandi	01
5.	Sub Jails	Nurpur Nalagarh Rampur	03
	Total		16

Source: Directorate of Prisons & Correctional Services-Himachal Pradesh

TABLE 11: NUMBER OF PRISONERS IN HIMACHAL PRADESH³³⁵

Name of the Jail	Jail Wise capacity			Number of inmates lodged in the Jail			Number of Convicts			Number of Undertrials			G.Total (Convict +U/T)
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	
Model Central Jail, Kanda Shimla	408	30	438	519	22	541	263	11	274	256	11	267	541
Model Central Jail, Nahan	456	15	471	469	20	489	294	11	305	175	9	184	489
Open Air Jail, Bilaspur	80	0	80	0	0	0	0	0	0	0	0	0	0
District Air Jail, Bilaspur	154	10	164	169	4	173	1	0	0	168	4	172	173
District Jail, Chamba	128	19	147	136	6	142	60	1	61	76	5	81	142
Lala Lajpat Rai, District, Open-Air Correcti	315	40	355	395	13	408	152	4	156	243	9	252	408

³³⁵ Prisons in Himachal Pradesh, available at: <https://hpprisons.nic.in/Home/Prisons> HP (last visited on January 15, 2023).

onal Home Dharam shala													
District Jail, Hamirp ur	58	9	67	70	2	72	9	1	10	61	1	62	72
District Jail, Kullu	28	5	33	42	5	47	4	0	4	38	5	43	47
District Jail, Kaithu	173	10	183	246	6	252	32	0	32	214	6	220	252
District Jail, Mandi	113	12	125	197	14	211	13	0	13	184	14	198	211
Sub Jail, Nurpur	26	3	29	31	2	33	5	0	5	26	2	28	33
District Jail, Solan	90	12	102	152	12	164	9	0	9	143	12	155	164
District Jail, Una at Bangarh	166	8	174	197	4	201	27	0	27	170	4	174	201
Sub Jail, Nalagar h	150	16	166	11	0	11	11	0	11	0	0	0	11
Sub Jail, Kalpa	20	6	26	29	0	29	6	0	6	23	0	23	29
Total	236 5	195	256 0	266 3	110	277 3	886	28	914	177 7	82	185 9	2773

6.3 REASONS FOR CHOOSING THE DISTRICTS

The selection of Shimla and Hamirpur as focus areas for data collection was based on several key considerations. These districts were chosen strategically to ensure a comprehensive understanding of prisoners' voting rights by incorporating diverse perspectives from different categories of respondents. The primary reasons for selecting these districts are as follows:

1. Variation in Prisoner Demographics and Institutional Framework

Shimla and Hamirpur offer distinct prison environments, providing a comparative framework for analyzing prisoners' perspectives on voting rights. The Model Central Jail, Shimla, is a high-security facility that houses individuals convicted of serious

offenses. Its inclusion allowed for an in-depth exploration of the perspectives of long-term and high-risk prisoners, whose experiences with the legal system and disenfranchisement may differ from those of other inmates. Whereas District Jail, Hamirpur primarily accommodates individuals charged with less severe offenses, including undertrials. Their perspectives on disenfranchisement and rehabilitation may contrast with those of convicted prisoners, offering a broader understanding of how voting rights are perceived within different incarceration backgrounds. By selecting prisons with different security levels and inmate categories, the study ensured that responses were not limited to a homogeneous group but reflected a range of experiences based on the nature of imprisonment, duration of incarceration, and legal status (convicts vs. undertrials).

2. Geographic, Administrative, and Research Feasibility

Shimla, as the capital of Himachal Pradesh, serves as a legal, administrative, and judicial hub, housing major courts, government offices, and legal practitioners. Engaging with legal experts, policymakers, and police administrative staff in Shimla provided access to informed perspectives on the legal framework governing prisoners' voting rights. Hamirpur, on the other hand, has a legal structure influenced by its distinct socio-economic composition and localized administrative mechanisms. While it lacks the extensive judicial infrastructure of Shimla, it has a well-established district court system that operates in a setting where legal awareness and access to justice may differ. Studying this district provided insights into how prisoners' voting rights are perceived in areas with a decentralized legal framework and fewer legal resources compared to the state capital. Additionally, familiarity with these locations facilitated smooth data collection by enabling effective engagement with key respondents.

3. Social-Political and Public Perception Contrast

Shimla and Hamirpur exhibit contrasting socio-political landscapes, making them ideal for comparative analysis. Shimla, being largely urban, has a higher degree of legal and political engagement due to the presence of courts, legal institutions, and a politically aware population. This enabled insights from legal experts, policymakers, and judicial officers regarding the legal and constitutional dimensions of prisoners' voting rights. Hamirpur, with its mix of rural and semi-urban areas, provided perspectives on how communities outside major legal and administrative hubs perceive the voting rights of

prisoners. The study of this region helped assess the level of awareness and social acceptance regarding electoral participation by incarcerated individuals, particularly in regions where civic engagement and access to legal discourse might be limited.

The selection of Shimla and Hamirpur thus enabled a multidimensional exploration of the subject, ensuring that the findings reflect diverse institutional and social perspectives. By incorporating these factors, the study was designed to provide a comprehensive assessment of prisoners' voting rights within the legal and administrative framework of Himachal Pradesh while contributing to broader discussions on electoral inclusion at the national level.

6.4 ANALYSIS OF DATA

The study collected data from a diverse group of respondents across two key districts in Himachal Pradesh i.e., Shimla and Hamirpur to ensure a comprehensive analysis of the issues related to prisoners' voting rights and criminal justice reform. In Shimla district, the sample size included 330 individuals: 180 prisoners, 75 prison authorities, 25 members of the legal fraternity, and 50 from the general public. In Hamirpur district, the sample consisted of 170 individuals: 70 prisoners, 25 prison authorities, 25 from the legal fraternity, and 50 from the general public. Overall, the study gathered perspectives from a total of 500 respondents, comprising 250 prisoners, 100 prison authorities, 50 legal professionals, and 100 members of the general public. This diverse sampling allowed the study to capture a broad spectrum of viewpoints, ensuring a thorough understanding of the factors influencing prisoners' voting rights, criminal justice reform, and public attitudes in these regions.

TABLE 12: DESCRIPTIVE STATISTICS

DISTRICTS		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Shimla	330	66.0	66.0	66.0
	Hamirpur	170	34.0	34.0	100.0
	Total	500	100.0	100.0	

Source: *Field Work and Survey*

The analysis of respondents' distribution by district reveals that the majority of participants in the study are from Shimla, accounting for 66% of the total sample, with 330 respondents. In contrast, Hamirpur contributes 34% of the respondents, amounting

to 170 individuals. This distribution indicates a predominant representation from Shimla, which is crucial for understanding regional perspectives on felony disenfranchisement. The cumulative percentage reaches 100% when combining both districts, reflecting a comprehensive inclusion of views from these two key areas in Himachal Pradesh.

FIGURE 4

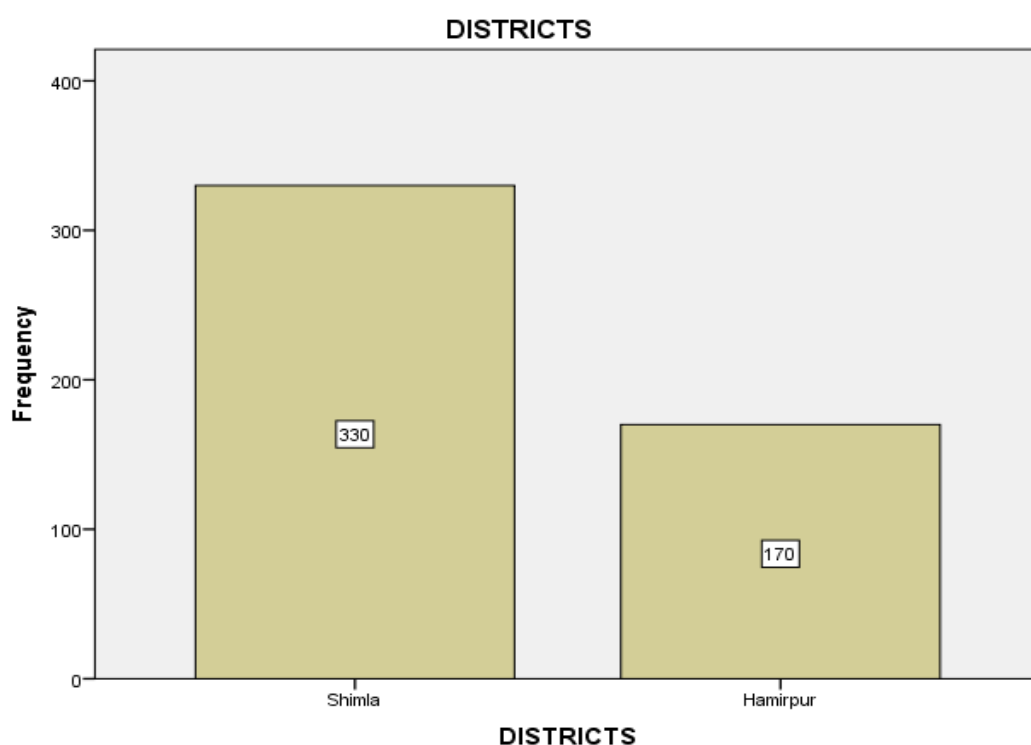


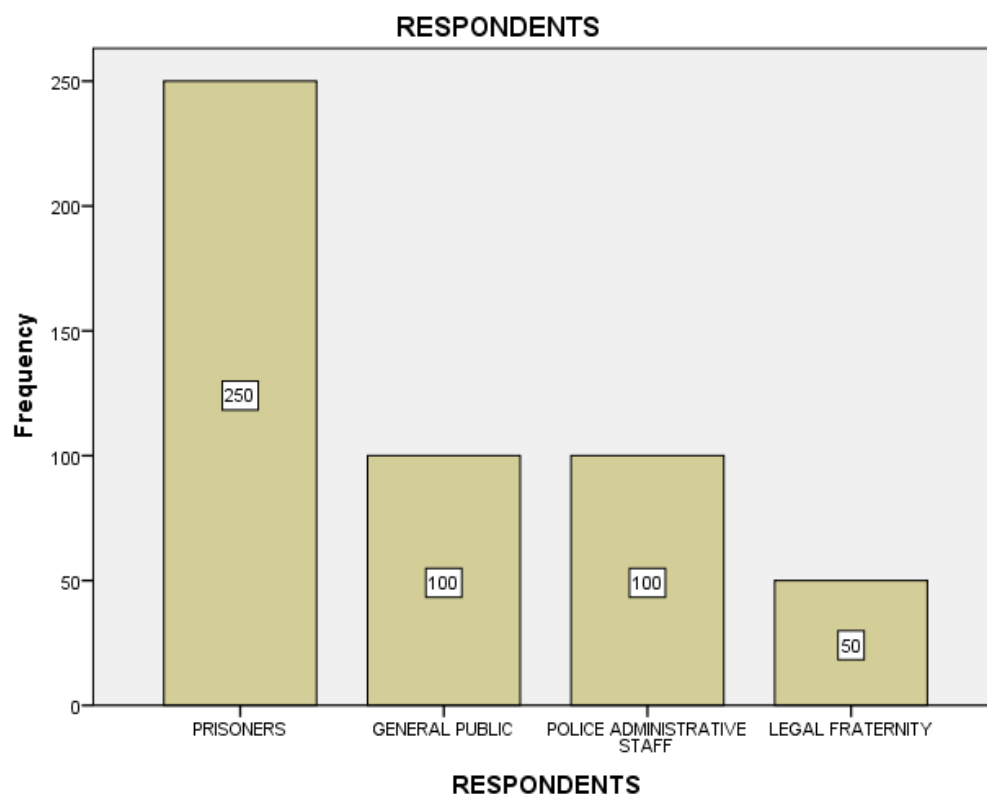
TABLE 13: Descriptive Statistics

RESPONDENTS					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	PRISONERS	250	50.0	50.0	50.0
	GENERAL PUBLIC	100	20.0	20.0	70.0
	POLICE ADMINISTRATIVE STAFF	100	20.0	20.0	90.0
	LEGAL FRATERNITY	50	10.0	10.0	100.0
	Total	500	100.0	100.0	

Source: Field Work and Survey

The data reveals that prisoners are half of the total sample, with 250 respondents, representing 50%. This significant proportion highlights a strong focus on the incarcerated population's views on felony disenfranchisement. The general public and police administrative staff each contribute 100 respondents, i.e., 20% of the sample respectively. This balance ensures that perspectives from both law enforcement and the community are well-represented. The legal fraternity, with 50 respondents, comprises 10% of the total, insights from legal professionals. The cumulative percentage reaches 100% when combining all groups, reflecting a comprehensive inclusion of diverse viewpoints in the study.

FIGURE 5



6.4.1 RESPONSES FROM THE PRISONERS

6.4.1.1. Voting Strengthens the Nation: The responses to the question "Do you believe voting strengthens the Nation?" were documented by prisoners in both districts under study. A total of 250 respondents replied to the question, with 180 responses from Shimla Model Central Jail and 70 responses from Hamirpur District Jail. In

Shimla, the observed values were 109 for "Yes" and 71 for "No." In Hamirpur, the observed values were 56 for "Yes" and 14 for "No."

Table 14 shows a Crosstabulation of districts based on the responses from prisoners to the question: Does voting strengthen the nation?

District * Crosstabulation

			Do you believe voting strengthens the Nation		Total
			Yes	No	
District	Shimla	Count	109	71	180
		Expected Count	118.8	61.2	180.0
		% within District	60.6%	39.4%	100.0%
		% of Total	43.6%	28.4%	72.0%
	Hamirpur	Count	56	14	70
		Expected Count	46.2	23.8	70.0
		% within District	80.0%	20.0%	100.0%
		% of Total	22.4%	5.6%	28.0%
Total	Count	165	85	250	
	Expected Count	165.0	85.0	250.0	
	% within District	66.0%	34.0%	100.0%	
	% of Total	66.0%	34.0%	100.0%	

Source: Field Survey

Table 15 displays the Chi-square test used to determine whether the perceptions of Prisoners in the two districts under investigation were similar or different.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	8.492 ^a	1	.004		
Continuity Correction ^b	7.647	1	.006		

Likelihood Ratio	9.011	1	.003		
Fisher's Exact Test				.004	.002
Linear-by-Linear Association	8.458	1	.004		
N of Valid Cases	250				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 23.80.

Table 16 illustrates the execution of a Phi Cramer's V significance test in support of the conclusion.

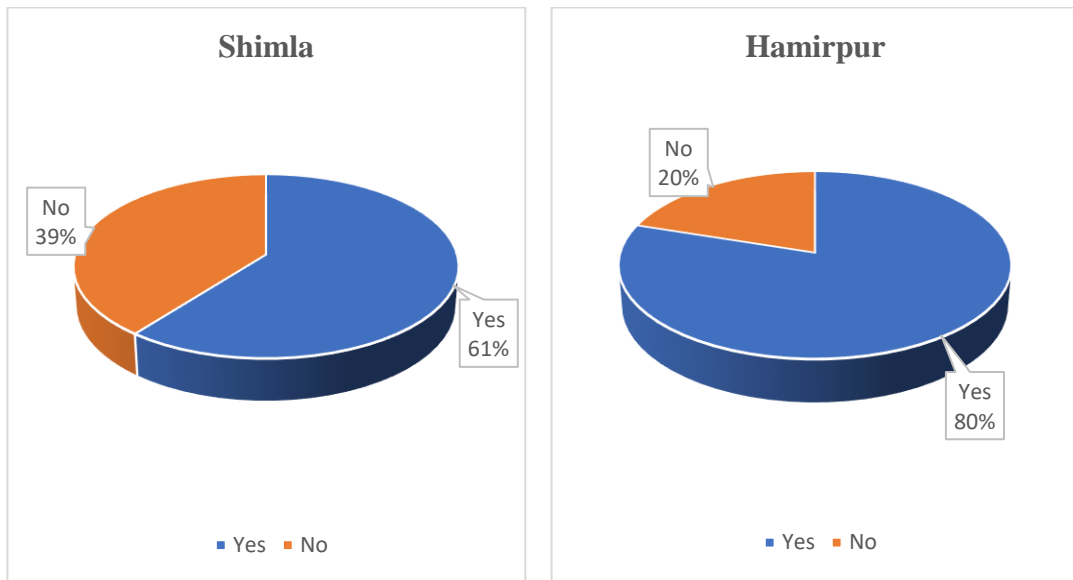
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	-.184	.004
	Cramer's V	.184	.004
N of Valid Cases		250	

A Chi-square test was used to determine whether respondents in the two districts under study had similar or different perceptions of the causes. With 1 degree of freedom, the computed significance value (.004) is less than 0.05 (i.e., $(.004) < 0.05$), indicating a statistically significant difference between the districts. Therefore, the alternative hypothesis was accepted and the null hypothesis was rejected, showing that respondents in both districts had different opinions. Further support for this conclusion is provided by the significance of Phi Cramer's V (.004).

FIGURE 6

Responses to the question "Do you believe voting strengthens the nation?" were gathered from prisoners in both districts under study. In Shimla, 60.6% of prisoners answered "Yes" and 39.4% answered "No". In Hamirpur, 80% of prisoners responded "Yes" and 20% responded "No".



6.4.1.2. Importance of Voting in an Election: The importance of voting in an election is paramount, as it is a fundamental human right and a cornerstone of a democratic society. Responses from prisoners in Shimla Model Central Jail and Hamirpur District Jail provide valuable insights into their views on this matter. Out of 250 respondents, 180 prisoners from Shimla Model Central Jail and 70 from Hamirpur District Jail shared their opinions. In Shimla, 123 prisoners answered "Yes" when asked about the importance of voting, while 57 prisoners answered "No." In Hamirpur, 44 prisoners responded with "Yes," and 25 prisoners responded with "No." These varied responses reflect the diverse perspectives among prisoners regarding voting. Despite divergent opinions formed by personal beliefs and circumstances, voting remains a crucial avenue for citizens to influence their country's governance and shape its future.

Table 17 presents the crosstabulation of districts and emphasizes the importance of voting in elections.

District * Crosstabulation

			Is it important in your opinion to vote in an election		Total
			Yes	No	
District	Shimla	Count	123	57	180
		Expected Count	114.5	65.5	180.0

		% within District	68.3%	31.7%	100.0%
		% of Total	49.2%	22.8%	72.0%
	Hamirpur	Count	36	34	70
		Expected Count	44.5	25.5	70.0
		% within District	51.4%	48.6%	100.0%
		% of Total	14.4%	13.6%	28.0%
Total	Count	159	91	250	
	Expected Count	159.0	91.0	250.0	
	% within District	63.6%	36.4%	100.0%	
	% of Total	63.6%	36.4%	100.0%	

Source: Field Survey

Table 18 displays a Chi-square test used to determine if respondents' perceptions are similar or different between the two study districts among Prisoners.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	6.221 ^a	1	.013		
Continuity Correction ^b	5.513	1	.019		
Likelihood Ratio	6.100	1	.014		
Fisher's Exact Test				.019	.010
Linear-by-Linear Association	6.197	1	.013		
N of Valid Cases	250				

0 cells (0.0%) have expected count of less than 5. The minimum expected count is 25.48.

Table 19 provides further evidence supporting this entitlement based on the relevance of Phi Cramer's V.

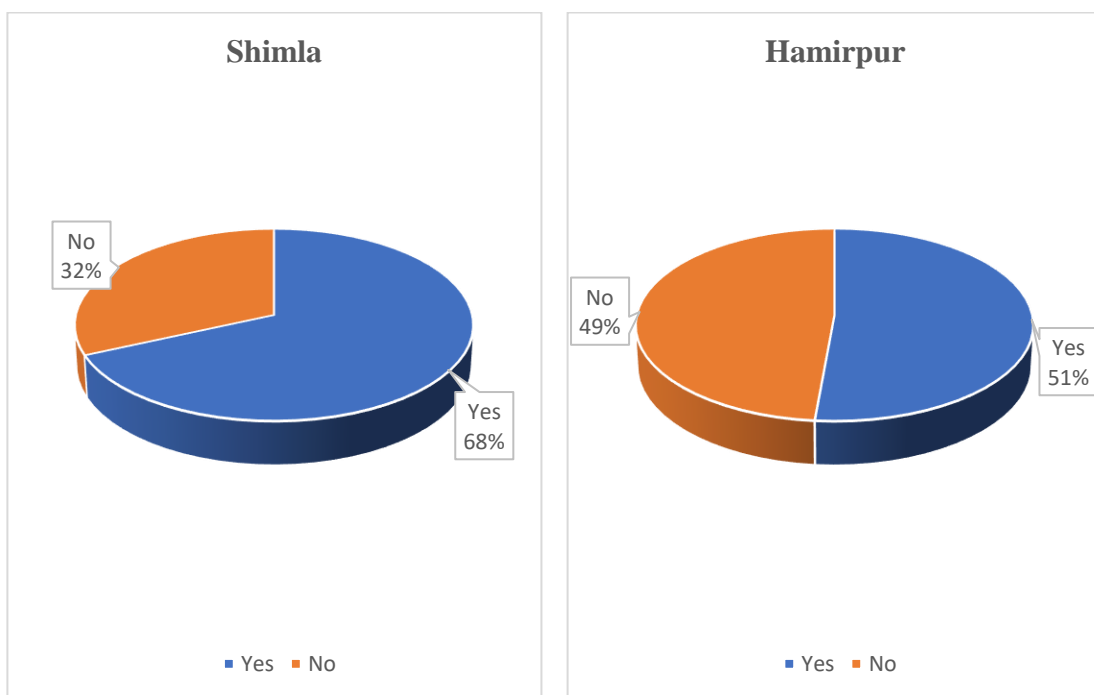
Symmetric Measures

		Value	Approx. Sig.
Nominal by	Phi	.158	.013

Nominal	Cramer's V	.158	.013
N of Valid Cases		250	

A Chi-square test was used to determine if respondents of the two districts under investigation differed significantly. The calculated significance value (0.013) is less than 0.05, or (0.013) is < 0.05 . With a significance level of 5% and degrees of freedom = 1, thus, respondents' perceptions in the two districts differ statistically significantly from one another. Respondents in each district have different causes for their perceptions, supporting the alternative hypothesis' acceptance and the null hypothesis' rejection. Further proof for this conclusion comes from the significance of Phi Cramer's V (0.013).

FIGURE 7



The responses to the question "Is it important in your opinion to vote in an election?" were gathered from prisoners in both districts under study. In Shimla, the prisoners responded with "Yes" (68.33%) and "No" (31.67%). Similarly, in Hamirpur, the response was "Yes" (51.43%) and "No" (48.57%).

6.4.1.3 Awareness of prisoners' voting rights: A total of 250 respondents participated in the study, with 180 responses from Shimla Model Central Jail and 70 from Hamirpur District Jail. In Shimla Model Central Jail, 153 out of 180 respondents answered "Yes" when asked about their awareness of voting rights, while 27 answered "No." In Hamirpur District Jail, 57 out of 70 respondents answered "Yes," and 13 answered "No." These figures represent the observed values for each jail, showing the number of respondents who were aware and unaware of their voting rights in each district.

Table 20 presents a crosstabulation of prisoners' awareness of their voting rights by examining responses to the question: "Are you aware of your voting rights?" The table compares data from two districts to highlight differences in awareness levels among prisoners.

District * Crosstabulation

			Are you aware of your voting rights?		Total
			Yes	No	
District	Shimla	Count	153	27	180
		Expected Count	151.2	28.8	180.0
		% within District	85.0%	15.0%	100.0%
		% of Total	61.2%	10.8%	72.0%
	Hamirpur	Count	57	13	70
		Expected Count	58.8	11.2	70.0
		% within District	81.4%	18.6%	100.0%
		% of Total	22.8%	5.2%	28.0%
Total		Count	210	40	250
		Expected Count	210.0	40.0	250.0
		% within District	84.0%	16.0%	100.0%
		% of Total	84.0%	16.0%	100.0%

Source: Field Survey

Table 21 displays a Chi-square test used to determine whether there were variations in respondents' perceptions between the two districts under examination.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	.478 ^a	1	.489		
Continuity Correction ^b	.249	1	.617		
Likelihood Ratio	.467	1	.494		
Fisher's Exact Test				.565	.304
Linear-by-Linear Association	.476	1	.490		
N of Valid Cases	250				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.20.

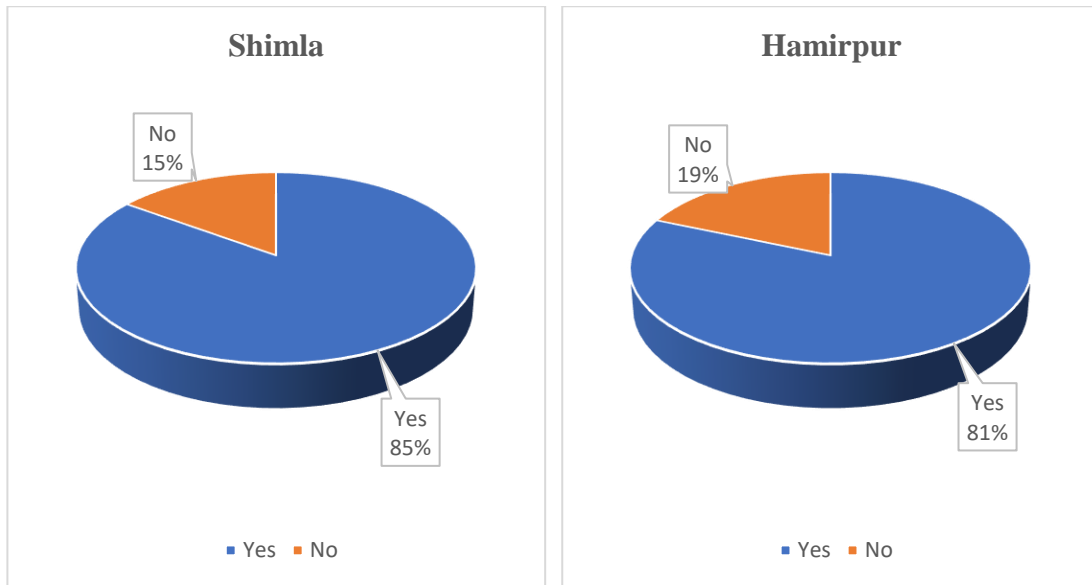
Table 22 shows that the significance of Phi and Cramer's V further supports this conclusion

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.044	.489
	Cramer's V	.044	.489
N of Valid Cases		250	

The Chi-square test was used to determine whether respondents' perceptions in the two districts under study were similar or different. With 1 degree of freedom and a significance level of 5%, the calculated significance value was 0.489, which is greater than 0.05 (i.e., $0.489 > 0.05$). This indicates that there are no significant differences between the districts. Therefore, the null hypothesis was accepted and the alternative hypothesis was rejected, suggesting that respondents from both districts have similar perspectives on the subject. The significance value of 0.489 for Phi and Cramer's V further supports this conclusion.

FIGURE 8 Responses on voting rights awareness: Shimla (85% "Yes", 15% "No"), Hamirpur (81.43% "Yes", 18.57% "No").



6.4.1.4 Human Rights Violation: Prisoners from both districts were asked, "Do restrictions on prisoners' right to vote go against their basic human rights?" Out of 250 total respondents, 180 were from Shimla Model Central Jail and 70 from Hamirpur District Jail. In Shimla, 106 prisoners answered "Yes," and 74 answered "No." In Hamirpur, 43 prisoners responded "Yes," and 27 responded "No."

Table 23 presents the cross-tabulation of responses from both districts regarding the question: "Is the restriction on prisoners' right to vote a violation of their human rights?"

District * Crosstabulation

			Is the restriction on prisoners' right to vote a violation of their Human Rights		Total
			Yes	No	
District	Shimla	Count	106	74	180
		Expected Count	107.3	72.7	180.0
		% within District	58.9%	41.1%	100.0%
		% of Total	42.4%	29.6%	72.0%

	Hamirpur	Count	43	27	70
		Expected Count	41.7	28.3	70.0
		% within District	61.4%	38.6%	100.0%
		% of Total	17.2%	10.8%	28.0%
Total		Count	149	101	250
		Expected Count	149.0	101.0	250.0
		% within District	59.6%	40.4%	100.0%
		% of Total	59.6%	40.4%	100.0%

Source: Field Survey

Table 24 shows the results of a Chi-square test used to compare responses from the two districts.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	.135 ^a	1	.713		
Continuity Correction ^b	.050	1	.823		
Likelihood Ratio	.135	1	.713		
Fisher's Exact Test				.775	.413
Linear-by-Linear Association	.134	1	.714		
N of Valid Cases	250				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 28.28.

Table 25 shows that the significance of Phi and Cramer's V (0.713) further supports this conclusion.

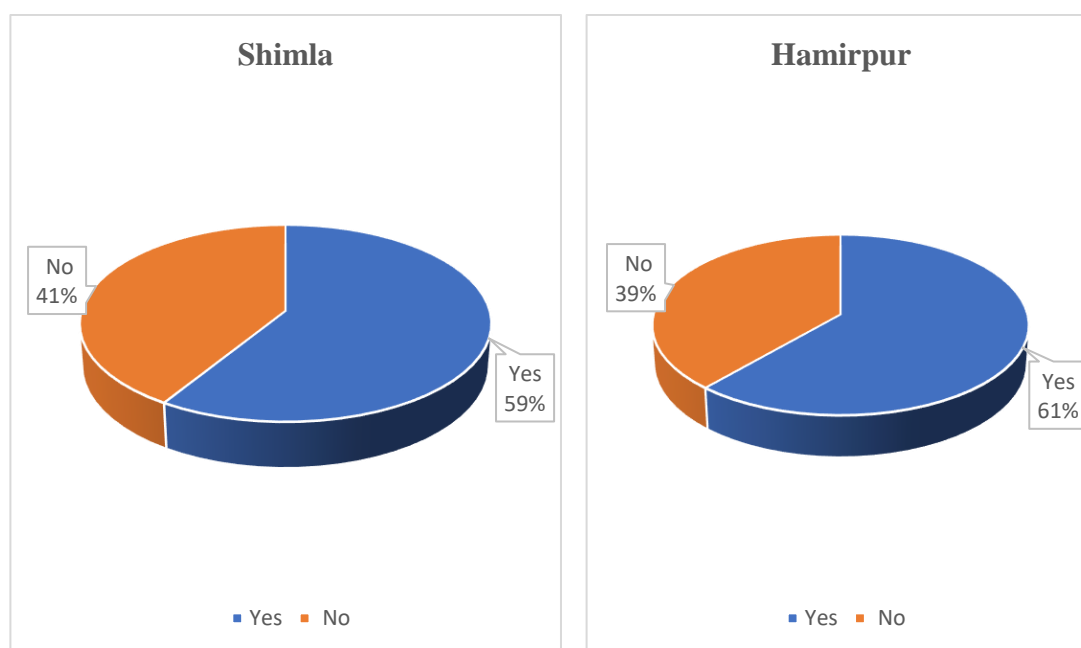
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	-.023	.713
	Cramer's V	.023	.713
N of Valid Cases		250	

To determine whether respondents' perceptions in the two districts under study were similar or different, a Chi-square test was conducted. With 1 degree of freedom and a

5% significance level, the calculated significance value was 0.713 (i.e., $0.713 > 0.05$). This result indicates that there are no significant differences between the districts. Therefore, the null hypothesis was accepted, and the alternative hypothesis was rejected, suggesting that respondents from both districts have comparable perspectives. The significance value of 0.713 for Phi Cramer's V further supports this conclusion.

FIGURE 9



The responses from the prisoners of both districts under study who were asked the question, "Does the restriction on prisoners' right to vote go against their basic human rights?" "In Shimla, the prisoners responded with 'Yes' (58.89%) and 'No' (41.11%). Similarly, in Hamirpur, the response was "Yes" (61.43%) and "No" (38.57%).

6.4.1.5 Equal Voting Rights for Prisoners: Prisoners from both districts were asked, "Do you believe prisoners in India should have equal voting rights as other citizens?" A total of 250 respondents participated, with 180 from Shimla Model Central Jail and 70 from Hamirpur District Jail. In Shimla, 133 prisoners answered "Yes," and 47 answered "No." In Hamirpur, 51 prisoners responded "Yes" and 19 responded "No."

Table 26 presents the cross-tabulation of responses from the districts regarding the question: "Do you believe that the right to vote for prisoners in India should be made equal to other citizens?"

District * Crosstabulation

			Do you believe that the right to vote for prisoners in India should be made equal to other citizens?		Total
			Yes	No	
District	Shimla	Count	133	47	180
		Expected Count	132.5	47.5	180.0
		% within District	73.9%	26.1%	100.0%
		% of Total	53.2%	18.8%	72.0%
	Hamirpur	Count	51	19	70
		Expected Count	51.5	18.5	70.0
		% within District	72.9%	27.1%	100.0%
		% of Total	20.4%	7.6%	28.0%
Total		Count	184	66	250
		Expected Count	184.0	66.0	250.0
		% within District	73.6%	26.4%	100.0%
		% of Total	73.6%	26.4%	100.0%

Source: Field Survey

Table 27 shows the results of a Chi-square test used to determine whether respondents' perceptions in the two districts under study are similar or different.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	.028 ^a	1	.868		
Continuity Correction ^b	.000	1	.995		
Likelihood Ratio	.028	1	.868		
Fisher's Exact Test				.874	.493

Linear-by-Linear Association	.028	1	.868		
N of Valid Cases	250				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 18.48.

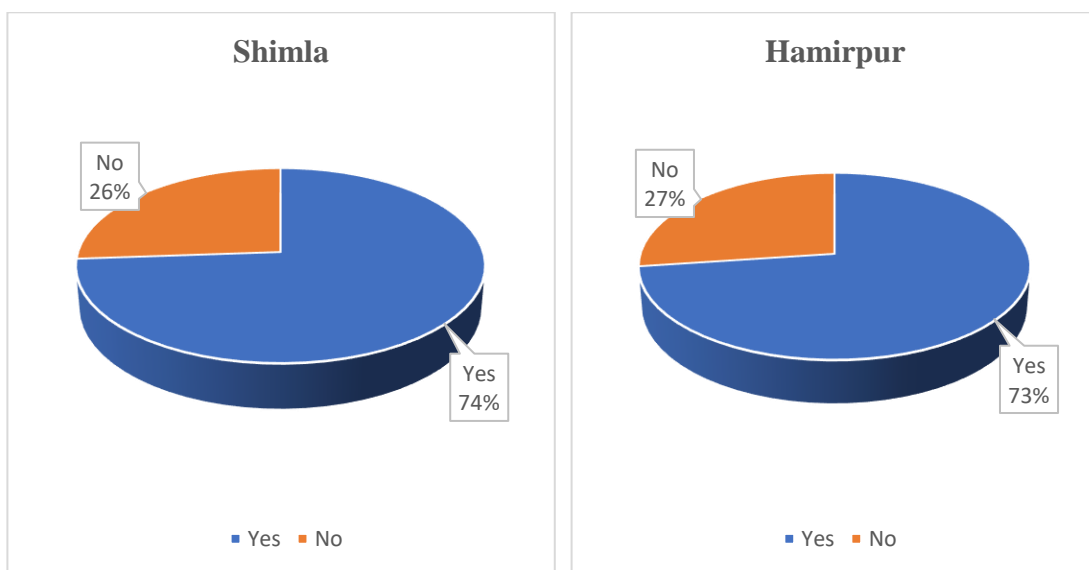
Table 28 shows that the significance value for Phi Cramer's V supports this conclusion.

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.011	.868
	Cramer's V	.011	.868
N of Valid Cases		250	

To determine whether respondents' perceptions in the two districts under study were similar or different, a Chi-square test was conducted with 1 degree of freedom at a 5% significance level. The calculated significance value was 0.868 (i.e., $0.868 > 0.05$), indicating that there are no significant differences between the districts. Therefore, the null hypothesis was accepted, and the alternative hypothesis was rejected, suggesting that respondents from both districts have comparable perspectives. The significance value of 0.868 for Phi and Cramer's V further supports this conclusion.

FIGURE 10



The prisoners from both districts were asked, "Do you believe prisoners in India should have equal voting rights as other citizens?" In Shimla, 73.89% of prisoners answered "Yes," while 26.11% answered "No." In Hamirpur, 72.86% of prisoners responded "Yes," and 27.14% responded "No."

6.4.1.6 Voting Rights and Rehabilitation: The question "Do you believe your voting rights can help in your rehabilitation?" was posed to prisoners in both Shimla Model Central Jail and Hamirpur District Jail. Out of 250 total respondents, 180 were from Shimla and 70 from Hamirpur. In Shimla, 83 prisoners answered "Yes" and 97 answered "No." In Hamirpur, 45 prisoners responded "Yes" and 25 responded "No."

Table 29 presents the cross-tabulation of responses from the two districts regarding the question: "Do you believe your voting rights can help in your rehabilitation?"

District * Crosstabulation

			Do you believe your voting Rights can help in your rehabilitation		Total
			Yes	No	
District	Shimla	Count	83	97	180
		Expected Count	92.2	87.8	180.0
		% within District	46.1%	53.9%	100.0%
		% of Total	33.2%	38.8%	72.0%
	Hamirpur	Count	45	25	70
		Expected Count	35.8	34.2	70.0
		% within District	64.3%	35.7%	100.0%
		% of Total	18.0%	10.0%	28.0%
Total		Count	128	122	250
		Expected Count	128.0	122.0	250.0
		% within District	51.2%	48.8%	100.0%
		% of Total	51.2%	48.8%	100.0%

Source: Field Survey

Table 30 shows the results of a Chi-square test used to determine whether there are differences in the perceptions of respondents between the two districts under study.

Chi-Square Tests					
	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	6.663 ^a	1	.010		
Continuity Correction ^b	5.955	1	.015		
Likelihood Ratio	6.741	1	.009		
Fisher's Exact Test				.011	.007
Linear-by-Linear Association	6.636	1	.010		
N of Valid Cases	250				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 34.16.

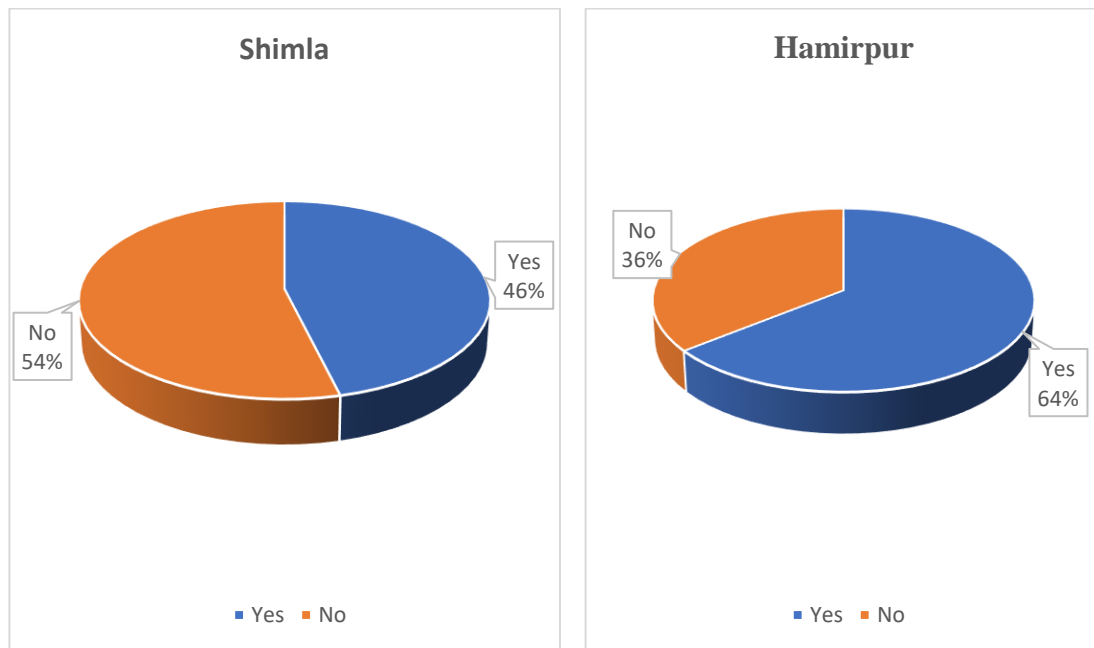
Table 31 shows that the significance of Phi Cramer's V provides further support for this conclusion.

Symmetric Measures			
		Value	Approx. Sig.
Nominal by Nominal	Phi	-.163	.010
	Cramer's V	.163	.010
N of Valid Cases		250	

To determine if respondents' perceptions varied between the two districts under study, a Chi-square test was conducted with 1 degree of freedom and a 5% significance level. The calculated significance value was 0.010 (i.e., $0.010 < 0.05$), indicating a statistically significant difference between the districts. This suggests that respondents in the two districts have different perspectives on the issue, leading to the acceptance of the alternative hypothesis and rejection of the null hypothesis. The significance value of 0.010 for Phi and Cramer's V further supports this conclusion.

FIGURE 11 shows the responses to the question, "Do you believe your voting rights can help in your rehabilitation?" In Shimla, 46.11% of prisoners answered "Yes" and 53.89% answered "No." In Hamirpur, 64.29% of prisoners responded "Yes" and

35.71% responded "No."



6.4.1.7 Voting on Bail/Parole: The voting preferences of prisoners on bail or parole were surveyed in two districts. A total of 250 respondents participated, with 180 from Shimla Model Central Jail and 70 from Hamirpur District Jail. In Shimla, 80 prisoners answered "Yes" and 100 answered "No." In Hamirpur, 32 prisoners responded "Yes" and 38 responded "No."

Table 32 shows the cross-tabulation of districts based on the voting preferences of prisoners on bail or parole.

District * Crosstabulation

			If you are on bail/parole, will you vote?		Total
			Yes	No	
District	Shimla	Count	80	100	180
		Expected Count	80.6	99.4	180.0
		% within District	44.4%	55.6%	100.0%
		% of Total	32.0%	40.0%	72.0%
	Hamirpur	Count	32	38	70

		Expected Count	31.4	38.6	70.0
		% within District	45.7%	54.3%	100.0%
		% of Total	12.8%	15.2%	28.0%
Total		Count	112	138	250
		Expected Count	112.0	138.0	250.0
		% within District	44.8%	55.2%	100.0%
		% of Total	44.8%	55.2%	100.0%

Source: Field Survey

Table 33 shows the cross-tabulation of districts based on the voting preferences of prisoners on bail or parole.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	.033 ^a	1	.856		
Continuity Correction ^b	.002	1	.968		
Likelihood Ratio	.033	1	.856		
Fisher's Exact Test				.888	.483
Linear-by-Linear Association	.033	1	.856		
N of Valid Cases	250				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 31.36.

Table 34 shows that the significance of Phi and Cramer's V further supports this conclusion.

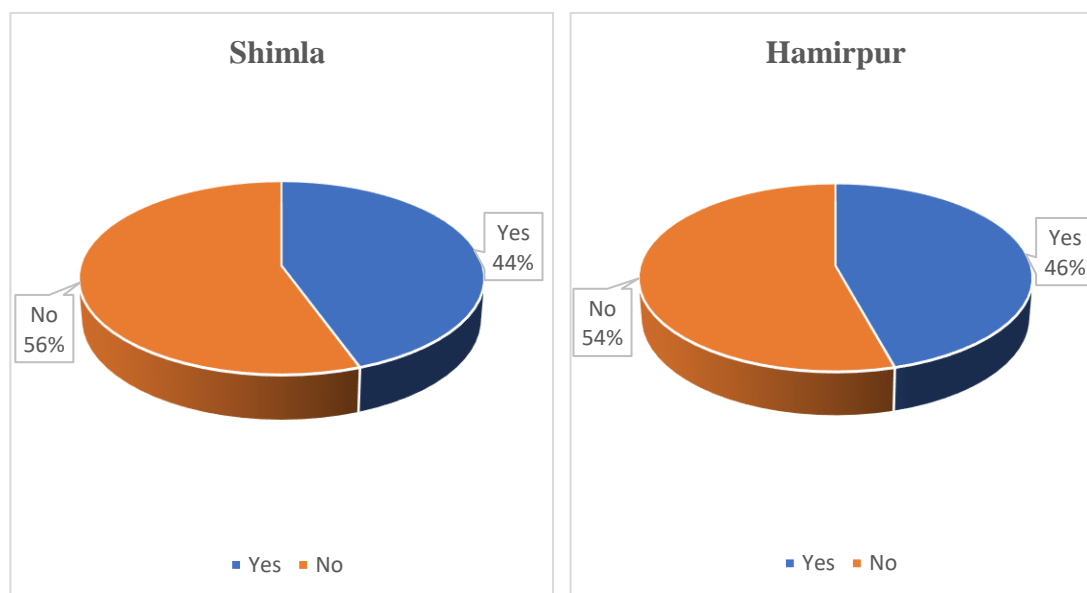
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	-.011	.856
	Cramer's V	.011	.856
N of Valid Cases		250	

To determine whether respondents' perceptions in the two districts under study were

similar or different, a Chi-square test was conducted with 1 degree of freedom and a 5% significance level. The calculated significance value was 0.856 (i.e., $0.856 > 0.05$), indicating that there are no significant differences between the districts. This suggests that respondents from both districts have comparable perspectives on the issue, leading to the acceptance of the null hypothesis and rejection of the alternative hypothesis. The significance value of 0.868 for Phi and Cramer's V further supports this conclusion.

Figure 12 shows the responses to the question on the voting preferences of prisoners on bail or parole. In Shimla, 55.56% of prisoners answered "Yes" and 44.44% answered "No." In Hamirpur, 45.71% of prisoners responded "Yes" and 54.29% responded "No."



6.4.1.8 Voting Rights of Under-Trials: Prisoners from both districts were asked, "Do you believe that those who are under-trial should at least be allowed to vote?" Out of 250 total respondents, 180 were from Shimla Model Central Jail and 70 from Hamirpur District Jail. In Shimla, 89 prisoners answered "Yes" and 91 answered "No." In Hamirpur, 21 prisoners responded "Yes" and 49 responded "No." The responses are presented below.

Table 35 shows a cross-tabulation of districts based on the question, "Do you believe that those who are under-trial should at least be allowed to vote?" among prisoners.

District * Crosstabulation

			Do you believe that those who are under-trials should at least be allowed to vote		Total
			Yes	No	
District	Shimla	Count	89	91	180
		Expected Count	79.2	100.8	180.0
		% within District	49.4%	50.6%	100.0%
		% of Total	35.6%	36.4%	72.0%
	Hamirpur	Count	21	49	70
		Expected Count	30.8	39.2	70.0
		% within District	30.0%	70.0%	100.0%
		% of Total	8.4%	19.6%	28.0%
Total	Count	110	140	250	
	Expected Count	110.0	140.0	250.0	
	% within District	44.0%	56.0%	100.0%	
	% of Total	44.0%	56.0%	100.0%	

Source: Field Survey

Table 36 presents the Chi-square test analysis comparing respondents' opinions between the two districts under consideration.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	7.734 ^a	1	.005		
Continuity Correction ^b	6.965	1	.008		
Likelihood Ratio	7.933	1	.005		
Fisher's Exact Test				.007	.004
Linear-by-Linear Association	7.703	1	.006		
N of Valid Cases	250				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 30.80.

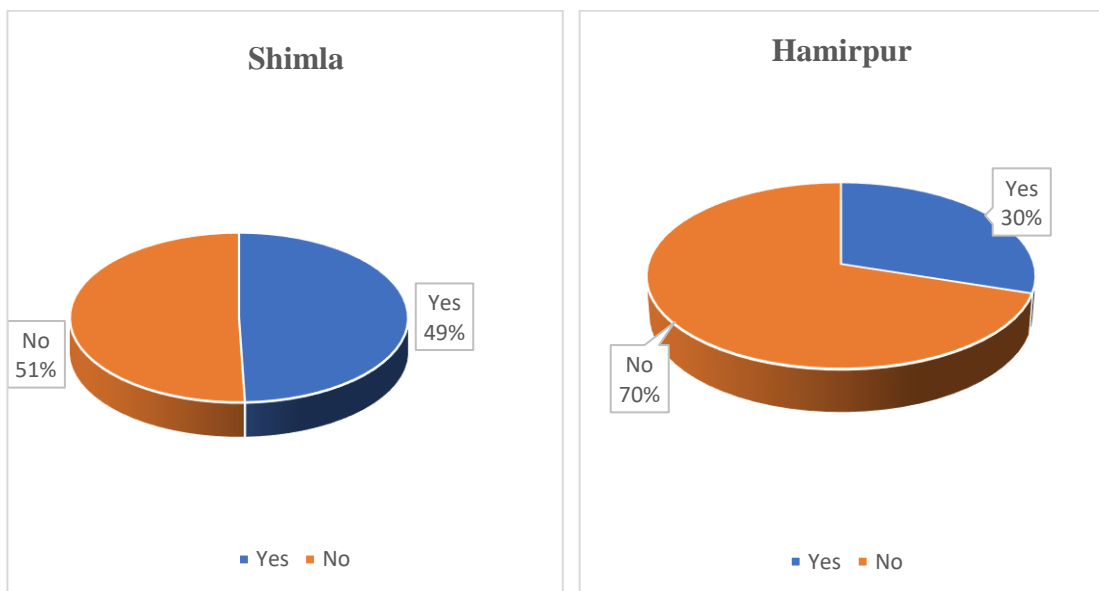
Table 37 shows that the relevance of Phi and Cramer's V supports this finding.

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.176	.005
	Cramer's V	.176	.005
N of Valid Cases		250	

To determine if respondents' perceptions differed between the two districts under study, a Chi-square test was conducted with 1 degree of freedom and a 5% significance level. The calculated significance value was 0.005 (i.e., $0.005 < 0.05$), indicating a statistically significant difference between the districts. This suggests that respondents from the two districts have distinct perspectives on the issue, leading to the acceptance of the alternative hypothesis and rejection of the null hypothesis. The significance value of 0.005 for Phi and Cramer's V further supports this conclusion.

Figure 13



The responses to the question, "Do you believe that those who are under-trial should at least be allowed to vote?" In Shimla, 49.44% of prisoners answered "Yes" and 50.56% answered "No." In Hamirpur, 30% of prisoners responded "Yes" and 70% responded "No."

6.4.1.9 Prisoners as Contestants: Prisoners from both districts were asked, "Prisoners can't be voters but contestants?" Out of 250 total respondents, 180 were from Shimla Model Central Jail and 70 from Hamirpur District Jail. In Shimla, 83 prisoners responded "Unfair" and 97 responded "Fair." In Hamirpur, 55 prisoners answered "Unfair" and 15 answered "Fair."

Table 38 shows the crosstabulation of responses from prisoners in both districts regarding the question, "Prisoners can't be voters but contestants?"

District * Crosstabulation

			Prisoners can't be voters but contestants. Fair or unfair		Total
			Unfair	Fair	
District	Shimla	Count	83	97	180
		Expected Count	99.4	80.6	180.0
		% within District	46.1%	53.9%	100.0%
		% of Total	33.2%	38.8%	72.0%
	Hamirpur	Count	55	15	70
		Expected Count	38.6	31.4	70.0
		% within District	78.6%	21.4%	100.0%
		% of Total	22.0%	6.0%	28.0%
Total		Count	138	112	250
		Expected Count	138.0	112.0	250.0
		% within District	55.2%	44.8%	100.0%
		% of Total	55.2%	44.8%	100.0%

Source: Field Survey

Table 39, a Chi-square test was conducted to determine whether respondents perceive differently or in the same manner across both districts under study.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	21.474 ^a	1	.000		
Continuity Correction ^b	20.182	1	.000		
Likelihood Ratio	22.681	1	.000		
Fisher's Exact Test				.000	.000
Linear-by-Linear Association	21.388	1	.000		
N of Valid Cases	250				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 31.36.

Table 40 shows that the conclusion is further supported by the significance of Phi Cramer's V.

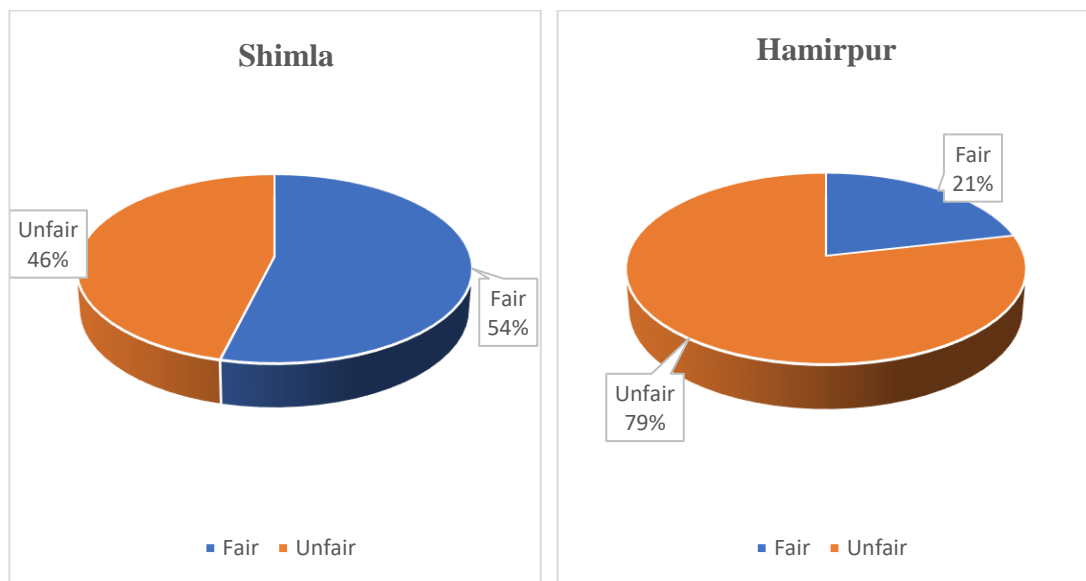
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	-.293	.000
	Cramer's V	.293	.000
N of Valid Cases		250	

To determine if respondents' perceptions varied between the two districts under study, a Chi-square test was conducted with 1 degree of freedom and a 5% significance level. The calculated significance value was 0.000 (i.e., $0.000 < 0.05$), indicating a statistically significant difference between the districts. This result suggests that respondents from the two districts have distinct perceptions, leading to the acceptance of the alternative hypothesis and rejection of the null hypothesis. The significance value of 0.000 for Phi Cramer's V further supports this conclusion.

FIGURE 14

The respondents in both districts were asked about the statement, "Prisoners can't be voters but contestants." In Shimla, the responses were "Unfair" (46.11%) and "Fair" (53.89%). In Hamirpur, the responses were "Unfair" (78.57%) and "Fair" (21.43%).



6.4.1.10 New Law on Prisoners' Voting Rights: The prisoners in both districts were asked whether they favor the enactment of a new law allowing prisoners to exercise their right to vote. Out of 250 respondents, 180 were from Shimla Model Central Jail and 70 from Hamirpur District Jail. In Shimla, 83 respondents answered "Yes" and 97 answered "No." In Hamirpur, 14 respondents answered "Yes" and 25 answered "No."

Table 41 shows the cross-tabulation of responses from prisoners in both districts regarding the question: "Do you favor the enactment of a new law that would allow prisoners to exercise their right to vote?"

District * Crosstabulation

			Do you support a new law on the right of prisoners to vote		Total
			Yes	No	
District	Shimla	Count	83	97	180
		Expected Count	93.6	86.4	180.0
		% within District	46.1%	53.9%	100.0%
		% of Total	33.2%	38.8%	72.0%
	Hamirpur	Count	14	25	70
		Expected Count	36.4	33.6	70.0

		% within District	67.1%	32.9%	100.0%
		% of Total	18.8%	9.2%	28.0%
Total		Count	130	120	250
		Expected Count	130.0	120.0	250.0
		% within District	52.0%	48.0%	100.0%
		% of Total	52.0%	48.0%	100.0%

Source: Field Survey

Table 42 shows the results of a Chi-square test conducted to determine if there were differences in the perceptions of respondents between the two districts.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	8.932 ^a	1	.003		
Continuity Correction ^b	8.109	1	.004		
Likelihood Ratio	9.088	1	.003		
Fisher's Exact Test				.003	.002
Linear-by-Linear Association	8.896	1	.003		
N of Valid Cases	250				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 33.60.

Table 43 highlights the relevance of Phi Cramer's V, further supporting the conclusion derived from the Chi-square test, indicating the relationship between the respondents' perceptions in the two districts.

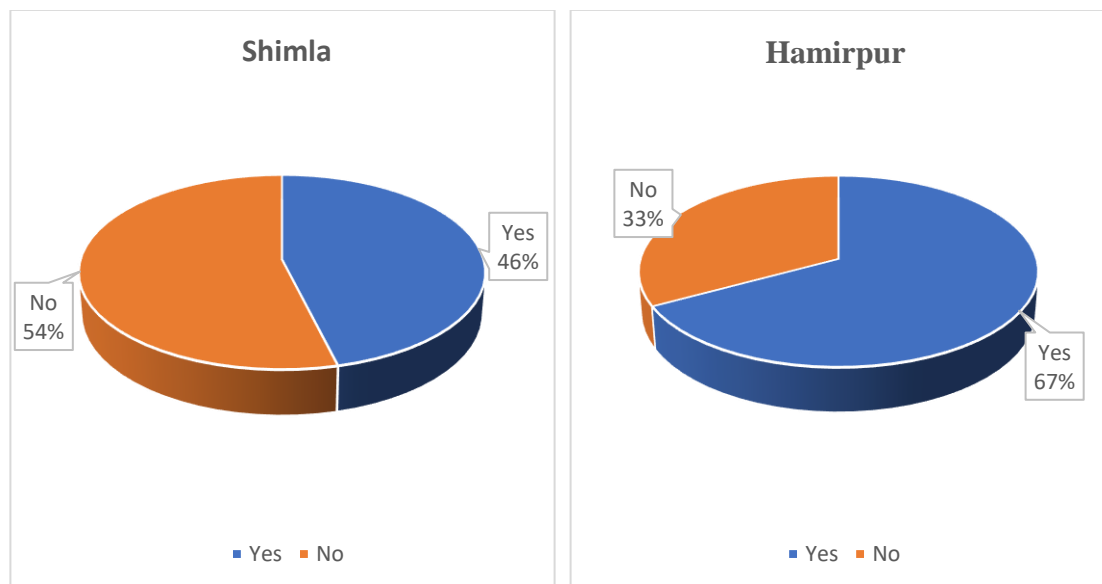
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	-.189	.003
	Cramer's V	.189	.003
N of Valid Cases		250	

The study conducted a Chi-square test to examine differences in respondents' perceptions across the two districts under investigation. With 1 degree of freedom and a 5% level of significance, the calculated significance value was (0.003), which is less than 0.05 ($0.003 < 0.05$). This result indicates statistically significant differences in the perceptions of respondents in the two districts. As a result, the alternate hypothesis is accepted, and the null hypothesis is rejected, suggesting that respondents in the two districts have distinct perspectives on the causes. The significance of Phi Cramer's V (0.003) further supports this conclusion, providing additional evidence of the statistically significant variation between the districts.

FIGURE 15

The respondents were asked whether they support a new law enabling prisoners to exercise their right to vote. In Shimla, the prisoners responded with "Yes" (46.11%) and "No" (53.89%). Similarly, in Hamirpur, the response was "Yes" (67.14%) and "No" (32.86%).



6.4.2 RESPONSES FROM PUBLIC AUTHORITIES

6.4.2.1 Essential Human Rights: The police administrative staff from both districts under study were asked the question, "Do you regard the right to vote as an essential human right?" A total of 100 respondents provided their answers, with 75 responses from Shimla and 25 from Hamirpur. In Shimla, 49 respondents answered "Yes" and 26 answered "No." In Hamirpur, 7 respondents answered "Yes" and 18 answered "No."

Table 44 presents the cross-tabulation of districts, where the police administrative staff from both districts under study were asked the question, "Do you consider the right to vote a human right?"

District * Crosstabulation

			Do you consider the Right to vote a Human Right		Total
			Yes	No	
District	Shimla	Count	49	26	75
		Expected Count	42.0	33.0	75.0
		% within District	65.3%	34.7%	100.0%
		% of Total	49.0%	26.0%	75.0%
	Hamirpur	Count	7	18	25
		Expected Count	14.0	11.0	25.0
		% within District	28.0%	72.0%	100.0%
		% of Total	7.0%	18.0%	25.0%
Total		Count	56	44	100
		Expected Count	56.0	44.0	100.0
		% within District	56.0%	44.0%	100.0%
		% of Total	56.0%	44.0%	100.0%

Source: Field Survey

Table 45 presents the results of a Chi-square test conducted to determine if there were differences in the perceptions of respondents between the two districts.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	10.606 ^a	1	.001		
Continuity Correction ^b	9.145	1	.002		
Likelihood Ratio	10.734	1	.001		
Fisher's Exact Test				.002	.001
Linear-by-Linear Association	10.500	1	.001		
N of Valid Cases	100				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.00.

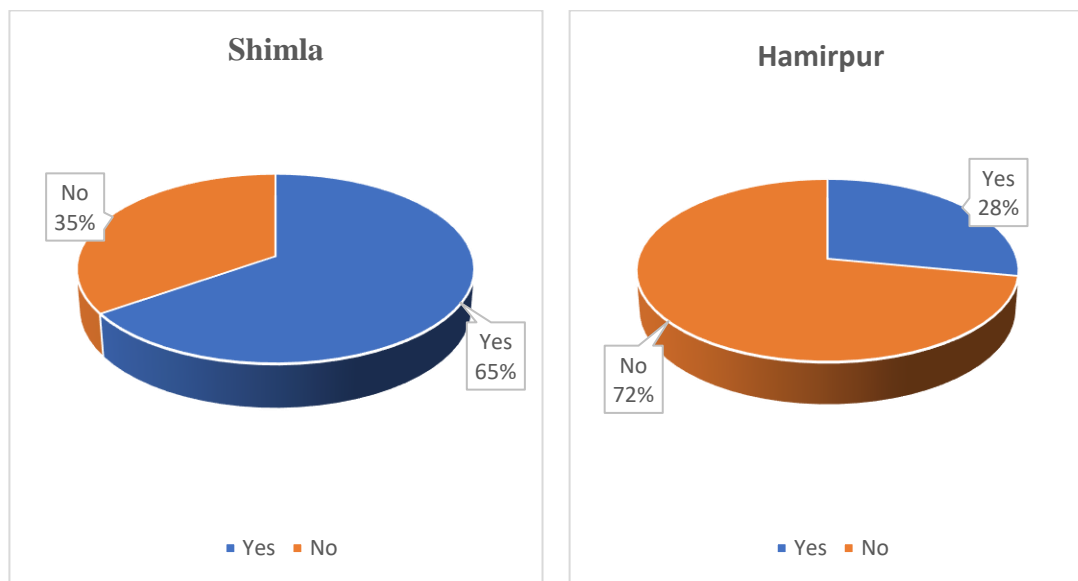
Table 46 highlights the relevance of Phi Cramér's V, further supporting the conclusion and emphasizing the significance of the association between the variables.

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.326	.001
	Cramer's V	.326	.001
N of Valid Cases		100	

A Chi-square test was conducted to examine differences in respondents' perceptions across the two districts under investigation. With 1 degree of freedom and a 5% level of significance, the test revealed a calculated significance value of 0.001, which is less than 0.05 ($0.001 < 0.05$). This indicates a statistically significant difference in perceptions between the two districts, leading to the rejection of the null hypothesis and acceptance of the alternate hypothesis. The significance of Phi Cramér's V (0.001) further supports this conclusion, providing additional evidence of the variation between the districts.

FIGURE 16: Respondents were asked whether they consider the right to vote an essential human right. In Shimla, 65.33% of the Police Administrative Staff responded with “Yes,” while 34.67% responded with “No.” Similarly, in Hamirpur, 28% responded with “Yes,” and 72% with “No.”



6.4.2.2 Extending Voting Rights to Prisoners: The Police Administrative Staff from both districts under study were asked, "Should prisoners in India have the right to vote?" A total of 100 respondents provided their answers, with 75 from Shimla and 25 from Hamirpur. In Shimla, 22 respondents answered "Yes" and 53 answered "No." In Hamirpur, 16 respondents answered "Yes" and 9 answered "No."

Table 47 presents the cross-tabulation of districts, where the Police Administrative Staff from both districts under study were asked the question, "Should prisoners in India have the right to vote?"

District * Crosstabulation

			Should Prisoners in India have the Right to Vote		Total
			Yes	No	
District	Shimla	Count	22	53	75
		Expected Count	28.5	46.5	75.0
		% within District	29.3%	70.7%	100.0%
		% of Total	22.0%	53.0%	75.0%
	Hamirpur	Count	16	9	25
		Expected Count	9.5	15.5	25.0

		% within District	64.0%	36.0%	100.0%
		% of Total	16.0%	9.0%	25.0%
Total		Count	38	62	100
		Expected Count	38.0	62.0	100.0
		% within District	38.0%	62.0%	100.0%
		% of Total	38.0%	62.0%	100.0%

Source: Field Survey

Table 48 presents the results of a Chi-square test used to determine whether the respondents' perceptions differ between the two districts under investigation.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	9.564 ^a	1	.002		
Continuity Correction ^b	8.149	1	.004		
Likelihood Ratio	9.376	1	.002		
Fisher's Exact Test				.004	.002
Linear-by-Linear Association	9.469	1	.002		
N of Valid Cases	100				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 9.50.

Table 49 highlights the relevance of Phi and Cramér's V, further supporting this finding.

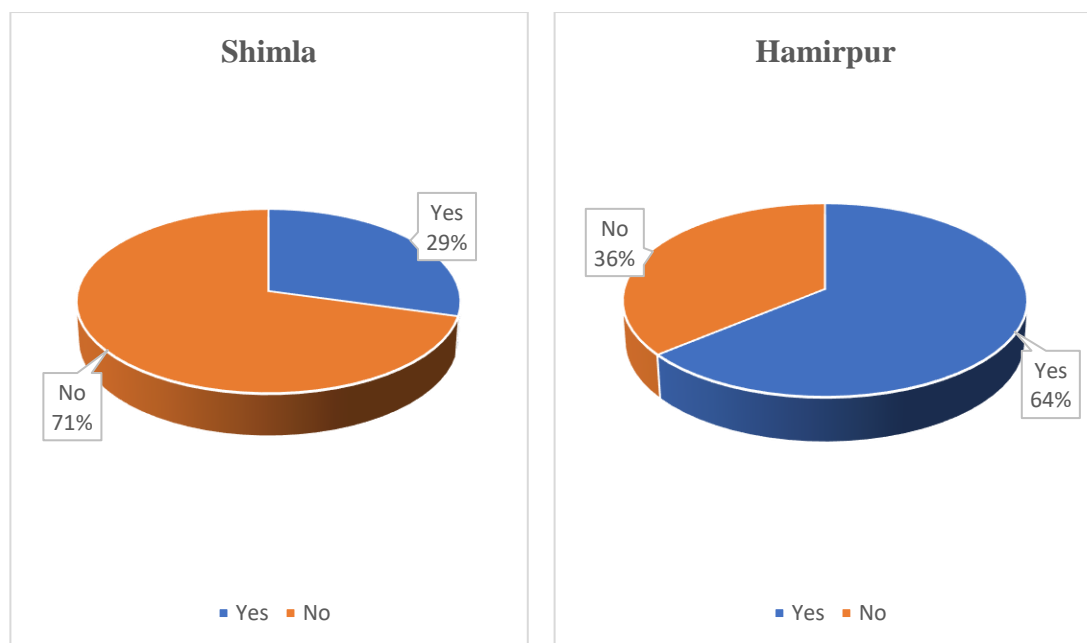
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	-.309	.002
	Cramer's V	.309	.002
N of Valid Cases		100	

A Chi-square test was conducted to examine differences in respondents' perceptions across the two districts under investigation. With 1 degree of freedom and a 5% level

of significance, the test revealed a calculated significance value of 0.002, which is less than 0.05 ($0.002 < 0.05$). This indicates a statistically significant difference in perceptions between the two districts, leading to the rejection of the null hypothesis and acceptance of the alternate hypothesis. The significance of Phi Cramér's V (0.002) further supports this conclusion, providing additional evidence of the statistically significant variation between the districts in Himachal Pradesh.

FIGURE 17: The respondents were asked whether prisoners in India should have the right to vote. In Shimla, 29.33% of the Police Administrative Staff responded "Yes" and 70.67% responded "No." In Hamirpur, 64% responded "Yes" and 36% responded "No."



6.4.2.3 Prisoners Voting: Under-trials and Convicted: The Police Administrative Staff in both districts under study were asked, "If you are in favor of prisoners' voting rights in India, to whom should it be provided?" A total of 100 respondents provided their answers, with 75 from Shimla and 25 from Hamirpur. In Shimla, the observed values are 7 for Under-trials, 7 for Convicted, and 16 for Both. In Hamirpur, the observed values are 6 for Under-trials, 6 for Convicted, 5 for Both, and 8 for None of the Above.

Table 50 presents the cross-tabulation of districts, where the Police Administrative Staff from both districts under study were asked, "If you are in favor of prisoners' voting rights in India, to whom should it be provided?"

District * Crosstabulation

			If you are in favor of prisoners' voting rights in India, whom out of the following it should be provided to		
			Under-trials	Convicts	Both
District	Shimla	Count	7	7	16
		Expected Count	9.8	9.8	15.8
		% within District	9.3%	9.3%	21.3%
		% of Total	7.0%	7.0%	16.0%
	Hamirpur	Count	6	6	5
		Expected Count	3.3	3.3	5.3
		% within District	24.0%	24.0%	20.0%
		% of Total	6.0%	6.0%	5.0%
Total	Count	13	13	21	
	Expected Count	13.0	13.0	21.0	
	% within District	13.0%	13.0%	21.0%	
	% of Total	13.0%	13.0%	21.0%	

District * If you are in favor of prisoners' voting rights in India, whom out of the following should be provided to Crosstabulation

				Total
			None of the above	
District	Shimla	Count	45	75
		Expected Count	39.8	75.0
		% within District	60.0%	100.0%
		% of Total	45.0%	75.0%
	Hamirpur	Count	8	25

		Expected Count	13.3	25.0
		% within District	32.0%	100.0%
		% of Total	8.0%	25.0%
Total		Count	53	100
		Expected Count	53.0	100.0
		% within District	53.0%	100.0%
		% of Total	53.0%	100.0%

Source: Field Survey

Table 51 presents the results of a Chi-square test used to determine if there were any notable variations in respondents' perceptions between the two districts.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	8.995 ^a	3	.029
Likelihood Ratio	8.544	3	.036
Linear-by-Linear Association	8.293	1	.004
N of Valid Cases	100		

2 cells (25.0%) have expected count less than 5. The minimum expected count is 3.25.

Table 52 provides further evidence for this conclusion through the significance of Phi Cramér's V.

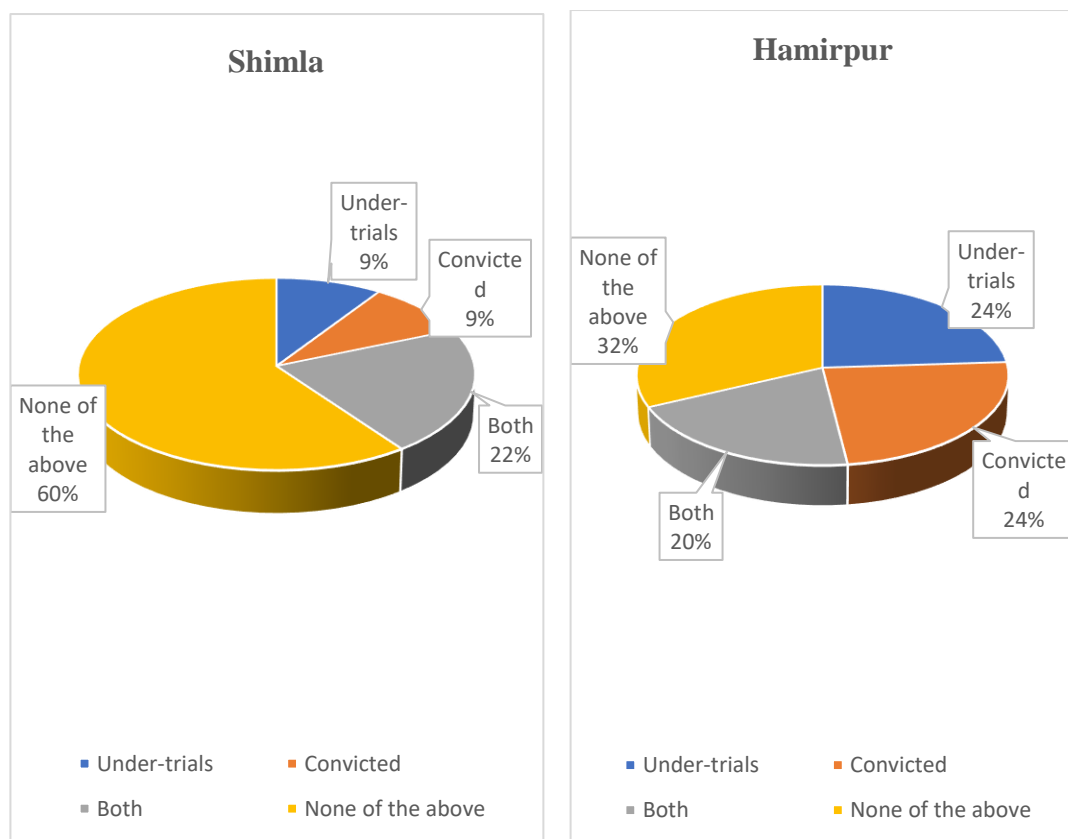
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.300	.029
	Cramer's V	.300	.029
N of Valid Cases		100	

A Chi-square test was conducted to examine differences in respondents' perceptions across the two districts under investigation. With 3 degrees of freedom and a 5% level

of significance, the test revealed a calculated significance value of 0.002, which is less than 0.05 ($0.002 < 0.05$). This indicates a statistically significant difference in perceptions between the two districts, leading to the rejection of the null hypothesis and acceptance of the alternate hypothesis. The significance of Phi Cramér's V (0.002) further supports this conclusion, providing additional evidence of the statistically significant variation between the districts.

FIGURE 18: The respondents were asked, "If you support prisoners' voting rights in India, to whom should it be granted?" In Shimla, the General Public responded as follows: "Under-trials" (9.33%), "Convicted" (9.33%), "Both" (21.33%), and "None of the Above" (60%). In Hamirpur, the responses were "Under-trials" (24%), "Convicted" (24%), "Both" (20%), and "None of the Above" (32%).



6.4.2.4 Prisoners on Bail/Parole: The Police Administrative Staff in both districts under study were asked, "Do you consider it fair or unfair that prisoners on bail/parole are eligible to cast their votes, while prisoners with petty offenses who cannot seek bail

are not considered eligible?" A total of 100 respondents provided their answers, with 75 responses recorded from Shimla and 25 from Hamirpur. The observed values for Shimla are 19 for " Unfair " and 56 for " Fair." In Hamirpur, the observed values are 13 for "Unfair" and 12 for "Fair."

Table 53 presents the cross-tabulation of districts, where the Police Administrative Staff from both districts under study were asked, "Do you consider it fair or unfair that prisoners on bail/parole are eligible to cast their votes, while prisoners with petty offenses who cannot seek bail are not considered eligible?"

District * Crosstabulation

District			Cross-tabulation		
			Prisoners on bail /parole are eligible to cast their votes, while prisoners with petty offenses who cannot seek bail are not considered eligible to cast their votes. Isn't that unfair		Total
			Unfair	Fair	
District	Shimla	Count	19	56	75
		Expected Count	24.0	51.0	75.0
		% within District	25.3%	74.7%	100.0%
		% of Total	19.0%	56.0%	75.0%
	Hamirpur	Count	13	12	25
		Expected Count	8.0	17.0	25.0
		% within District	52.0%	48.0%	100.0%
		% of Total	13.0%	12.0%	25.0%
Total	Count	32	68	100	
	Expected Count	32.0	68.0	100.0	
	% within District	32.0%	68.0%	100.0%	
	% of Total	32.0%	68.0%	100.0%	

Source: Field Survey

Table 54 presents the results of a Chi-square test conducted to determine whether respondents in the two districts had similar or different perceptions regarding the fairness of voting rights for prisoners.

Chi-Square Tests					
	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	6.127 ^a	1	.013		
Continuity Correction ^b	4.963	1	.026		
Likelihood Ratio	5.861	1	.015		
Fisher's Exact Test				.024	.014
Linear-by-Linear Association	6.066	1	.014		
N of Valid Cases	100				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 8.00.

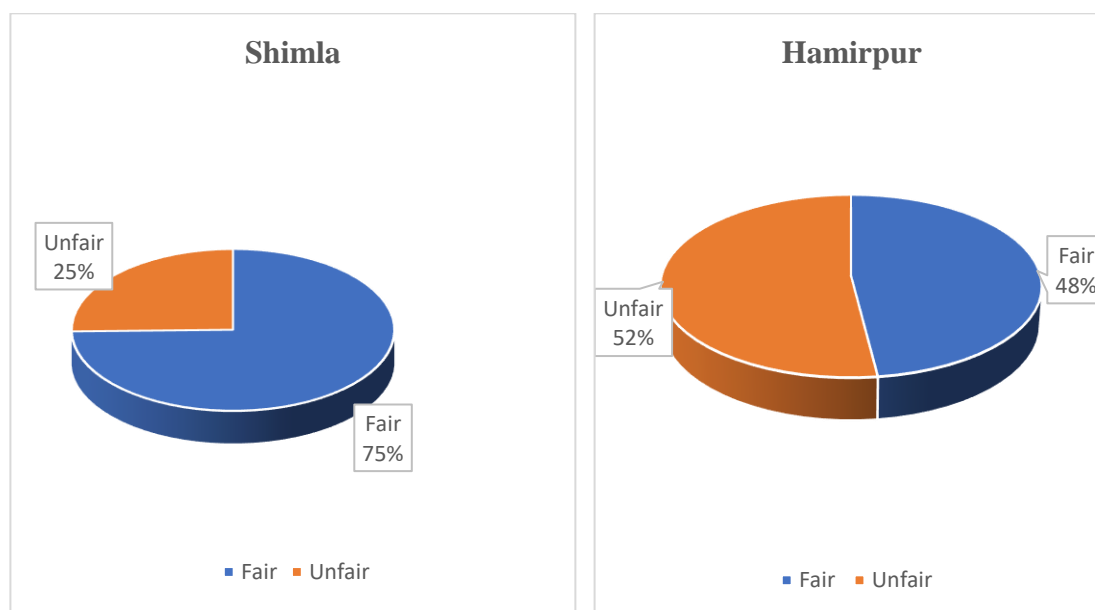
Table 55 highlights the relevance of Phi Cramér's V and provides further support for this hypothesis.

Symmetric Measures			
		Value	Approx. Sig.
Nominal by Nominal	Phi	-.248	.013
	Cramer's V	.248	.013
N of Valid Cases		100	

A Chi-square test was conducted to examine differences in respondents' perceptions across the two districts under investigation. With 1 degree of freedom and a 5% level of significance, the test revealed a calculated significance value of 0.01, which is less than 0.05 ($0.01 < 0.05$). This indicates a statistically significant difference in perceptions between the two districts, leading to the rejection of the null hypothesis and acceptance of the alternate hypothesis. The significance of Phi Cramér's V (0.01) further supports this conclusion, providing additional evidence of the statistically significant variation between the districts.

FIGURE 19

The respondents were asked about the eligibility of prisoners on bail/parole to vote, while prisoners with minor offenses who cannot seek bail are not considered eligible. In Shimla, the Police Administrative Staff responded as follows: "Unfair" (25.33%) and "Fair" (74.67%). In Hamirpur, the responses were "Unfair" (52%) and "Fair" (48%).



6.4.2.5 No Discrimination Based on the Crime for Prisoners Voting: The Police Administrative Staff in both districts under study were asked, "Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes, or should there be no discrimination based on crime for voting?" A total of 100 respondents provided their answers, with 75 from Shimla and 25 from Hamirpur. In Shimla, the observed values are 30 for "Murder and Rape," 14 for "Theft and Robbery," 22 for "Election Fraud," and 9 for "No Discrimination Based on Crime." In Hamirpur, the observed values are 5 for "Murder and Rape," 5 for "Theft and Robbery," 6 for "Election Fraud," and 9 for "No Discrimination Based on Crime."

Table 56 presents the cross-tabulation of districts, where the Police Administrative Staff in both districts were asked about their views on whether prisoners should be allowed to vote without discrimination based on the crime they have committed.

District * Crosstabulation

			Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes or there should be no discrimination based on crime for voting		
			Murder and Rape	Theft and Robbery	Election Fraud
District	Shimla	Count	30	14	22
		Expected Count	26.3	14.3	21.0
		% within District	40.0%	18.7%	29.3%
		% of Total	30.0%	14.0%	22.0%
	Hamirpur	Count	5	5	6
		Expected Count	8.8	4.8	7.0
		% within District	20.0%	20.0%	24.0%
		% of Total	5.0%	5.0%	6.0%
Total	Count	35	19	28	
	Expected Count	35.0	19.0	28.0	
	% within District	35.0%	19.0%	28.0%	
	% of Total	35.0%	19.0%	28.0%	

District * Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes or there should be no discrimination based on crime for voting Crosstabulation

			No discrimination based on Crime	Total
District	Shimla	Count	9	75
		Expected Count	13.5	75.0
		% within District	12.0%	100.0%
		% of Total	9.0%	75.0%

	Hamirpur	Count	9	25
		Expected Count	4.5	25.0
		% within District	36.0%	100.0%
		% of Total	9.0%	25.0%
Total		Count	18	100
		Expected Count	18.0	100.0
		% within District	18.0%	100.0%
		% of Total	18.0%	100.0%

Source: Field Survey

Table 57 presents the results of a Chi-square test used to determine whether respondents in the two districts viewed the causes similarly or differently.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	8.351 ^a	3	.039
Likelihood Ratio	7.808	3	.050
Linear-by-Linear Association	5.759	1	.016
N of Valid Cases	100		

a. 2 cells (25.0%) have expected count less than 5. The minimum expected count is 4.50.

Table 58 provides further evidence for this conclusion through the significance of Phi and Cramér's V.

Symmetric Measures

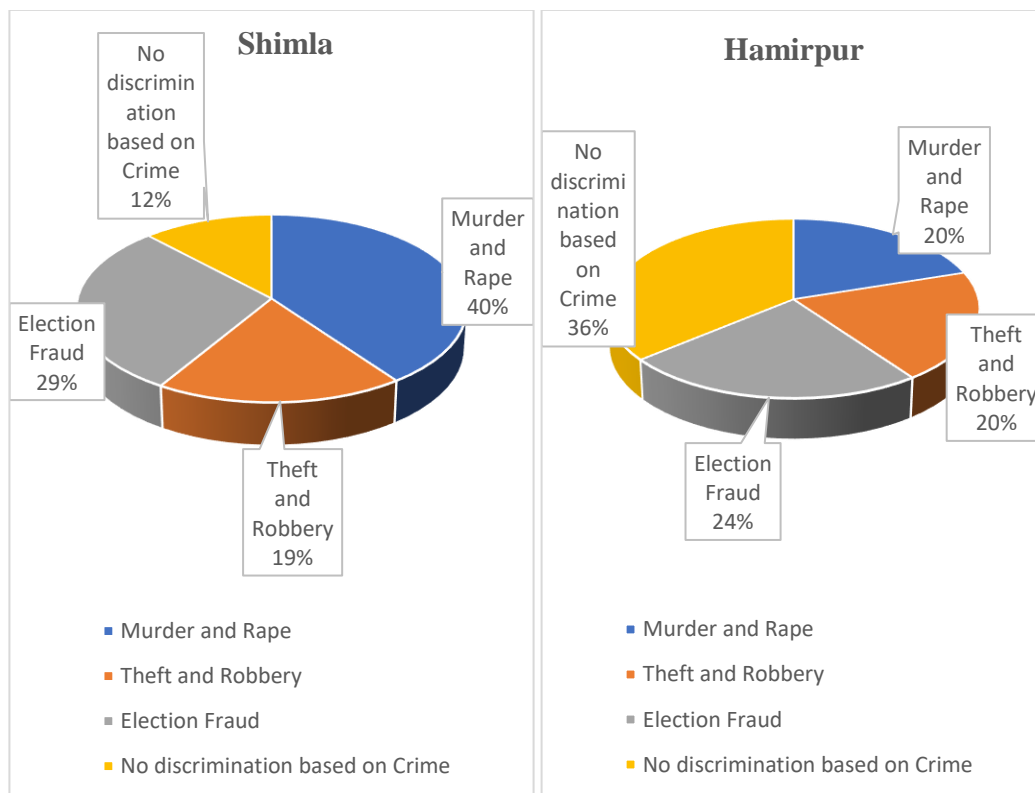
		Value	Approx. Sig.
Nominal by Nominal	Phi	.289	.039
	Cramer's V	.289	.039
N of Valid Cases		100	

A Chi-square test was conducted to examine differences in respondents' perceptions across the two districts under investigation. With 3 degrees of freedom and a 5% level

of significance, the test yielded a significance value of 0.03, which is less than 0.05 ($0.03 < 0.05$). This indicates a statistically significant difference in perceptions between the two districts, leading to the rejection of the null hypothesis and acceptance of the alternate hypothesis. The significance of Phi and Cramér's V (0.03) further supports this conclusion, providing additional evidence of the statistically significant variation between the districts.

FIGURE 20

The respondents were asked, "Should some prisoners be denied the right to vote based on their crimes, or should there be no discrimination based on crime for voting, even though each prisoner has committed a different offense?" In Shimla, the Police Administrative Staff responded with 40% for "Murder and Rape," 18.67% for "Theft and Robbery," 29.33% for "Election Fraud," and 12% for "No Discrimination Based on Crime." In Hamirpur, the responses were 20% for "Murder and Rape," 20% for "Theft and Robbery," 24% for "Election Fraud," and 36% for "No Discrimination Based on Crime."



6.4.2.6 Prisoners Voting by ETPB: The Police Administrative Staff in both districts were asked, "Do you support allowing prisoners to vote by Electronically Transmitted Postal Ballots (ETPB)?" A total of 100 respondents participated, with 75 from Shimla and 25 from Hamirpur. In Shimla, the observed values were 6 for "Strongly Agree," 9 for "Agree," 29 for "Neutral," and 31 for "Disagree." In Hamirpur, the observed values were 6 for "Strongly Agree," 6 for "Agree," 7 for "Neutral," and 6 for "Disagree."

Table 59 presents the cross-tabulation for the question, "Do you support allowing prisoners to vote by Electronically Transmitted Postal Ballots (ETPB)?" for the Police Administrative Staff in both districts.

District * Crosstabulation

			Do you support allowing prisoners to vote by Electronically Transmitted Postal Ballots (ETPB)		
			Strongly Agree	Agree	Neutral
District	Shimla	Count	6	9	29
		Expected Count	9.0	11.3	27.0
		% within District	8.0%	12.0%	38.7%
		% of Total	6.0%	9.0%	29.0%
	Hamirpur	Count	6	6	7
		Expected Count	3.0	3.8	9.0
		% within District	24.0%	24.0%	28.0%
		% of Total	6.0%	6.0%	7.0%
Total	Count	12	15	36	
	Expected Count	12.0	15.0	36.0	
	% within District	12.0%	15.0%	36.0%	
	% of Total	12.0%	15.0%	36.0%	

District * Do you support allowing prisoners to vote by Electronically Transmitted Postal Ballots (ETPB) Crosstabulation

		Total
	Disagree	

District	Shimla	Count	31	75
		Expected Count	27.8	75.0
		% within District	41.3%	100.0%
		% of Total	31.0%	75.0%
	Hamirpur	Count	6	25
		Expected Count	9.3	25.0
		% within District	24.0%	100.0%
		% of Total	6.0%	25.0%
Total	Count	37	100	
	Expected Count	37.0	100.0	
	% within District	37.0%	100.0%	
	% of Total	37.0%	100.0%	

Source: *Field Survey*

Table 60 presents the results of a Chi-square test conducted to determine whether the responses from the two districts differed significantly.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	7.915 ^a	3	.048
Likelihood Ratio	7.374	3	.061
Linear-by-Linear Association	6.986	1	.008
N of Valid Cases	100		

a. 2 cells (25.0%) have expected count less than 5. The minimum expected count is 3.00.

Table 61 provides additional evidence for this conclusion through the significance of Phi Cramér's V.

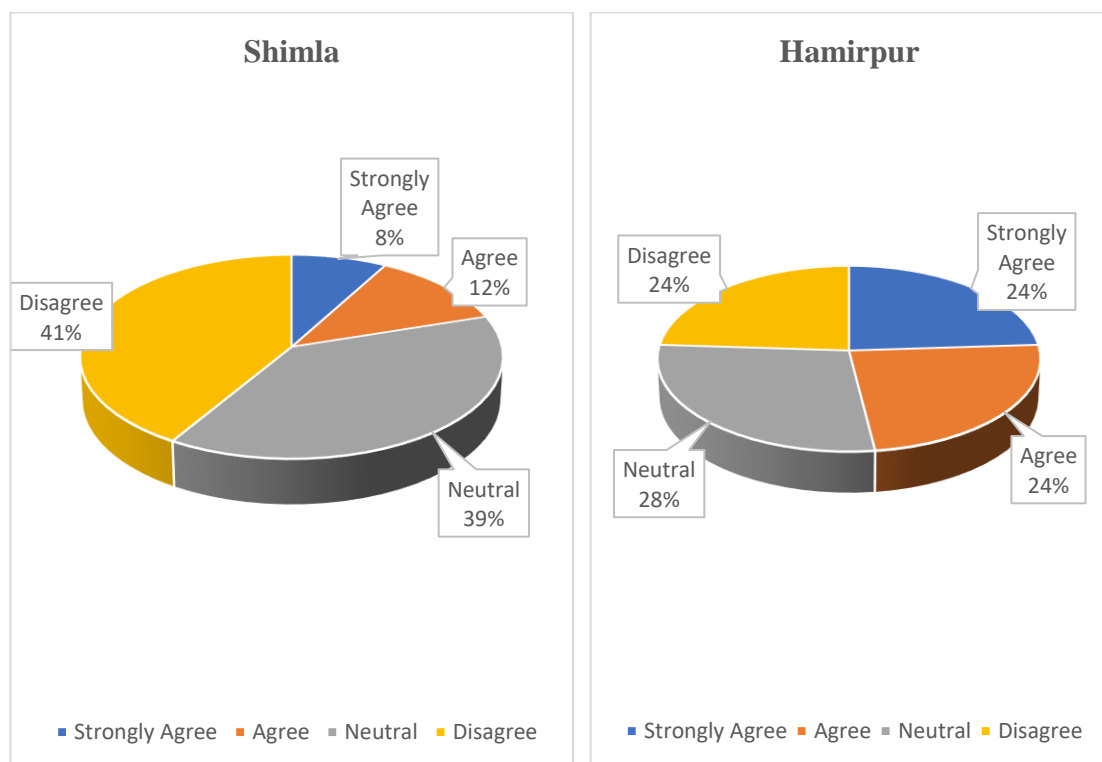
Symmetric Measures

		Value	Approx. Sig.
Nominal by	Phi	.281	.048

Nominal	Cramer's V	.281	.048
N of Valid Cases		100	

A Chi-square test was used to determine if there were significant differences between the respondents from the two districts. With a significance value of 0.048, which is less than 0.05 ($0.048 < 0.05$), and with 3 degrees of freedom at a 5% significance level, the results indicate that respondents' perceptions differ statistically significantly between the two districts. This supports the acceptance of the alternative hypothesis and the rejection of the null hypothesis, showing that respondents in each district have distinct views. Additional evidence for this conclusion is provided by the significance of Phi Cramér's V (0.048).

FIGURE 21



The respondents were asked whether they support allowing prisoners to vote by Electronically Transmitted Postal Ballots (ETPB). In Shimla, the general public responded as follows: "Strongly Agree" (8%), "Agree" (12%), "Neutral" (38.67%), and "Disagree" (41.33%). In Hamirpur, the responses were: "Strongly Agree" (24%),

"Neutral" (28%), and "Disagree" (24%).

6.4.2.7. Better Administration: The Police Administrative Staff in both districts were asked, "Do you believe that granting voting rights to prisoners will help improve the administration of prisons?" A total of 100 respondents participated, with 75 responses from Shimla and 25 from Hamirpur. In Shimla, the observed values were 30 for "Yes" and 45 for "No." In Hamirpur, the observed values were 16 for "Yes" and 9 for "No."

Table 62 presents the cross-tabulation of responses from the Police Administrative Staff in both districts regarding the question, "Do you believe that granting voting rights to prisoners will help improve the administration of prisons?"

District * Crosstabulation

District			Cross-tabulation		
			Do you believe if prisoners are given their voting rights, it will help to make a better administration of prisons		Total
			Yes	No	
District	Shimla	Count	30	45	75
		Expected Count	34.5	40.5	75.0
		% within District	40.0%	60.0%	100.0%
		% of Total	30.0%	45.0%	75.0%
	Hamirpur	Count	16	9	25
		Expected Count	11.5	13.5	25.0
		% within District	64.0%	36.0%	100.0%
		% of Total	16.0%	9.0%	25.0%
Total		Count	46	54	100
		Expected Count	46.0	54.0	100.0
		% within District	46.0%	54.0%	100.0%
		% of Total	46.0%	54.0%	100.0%

Source: Field Survey

Table 63 presents the results of a Chi-square test conducted to determine whether the respondents' perceptions in the two districts differed significantly.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	4.348 ^a	1	.037		
Continuity Correction ^b	3.435	1	.064		
Likelihood Ratio	4.366	1	.037		
Fisher's Exact Test				.063	.032
Linear-by-Linear Association	4.304	1	.038		
N of Valid Cases	100				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.50.

Table 64 shows the relevance of Phi and Cramér's V, which supports the reliability of this hypothesis.

Symmetric Measures

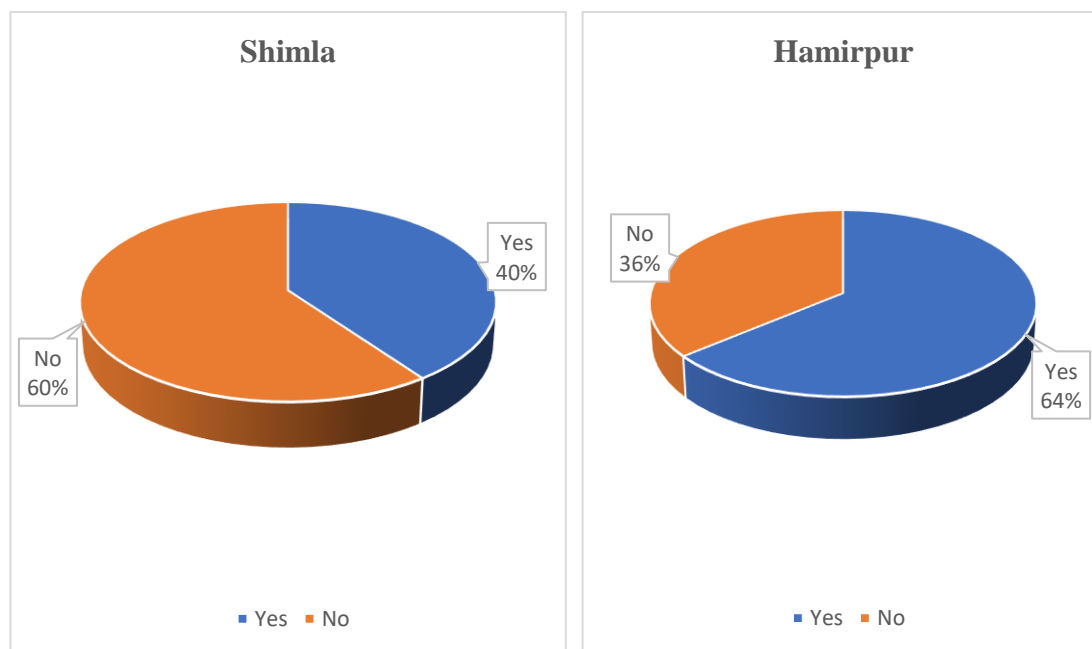
		Value	Approx. Sig.
Nominal by Nominal	Phi	-.209	.037
	Cramer's V	.209	.037
N of Valid Cases		100	

The study conducted a Chi-square test to examine differences in respondents' perceptions across the two districts under investigation. With 1 degree of freedom and a 5% level of significance, the test yielded a significance value of 0.03, which is less than 0.05 ($0.03 < 0.05$). This indicates a statistically significant difference in perceptions between the two districts, leading to the acceptance of the alternate hypothesis and rejection of the null hypothesis. The significance of Phi and Cramér's V (0.03) further supports this conclusion, providing additional evidence of the statistically significant variation between the districts.

FIGURE 22

The respondents were asked whether they believed that granting prisoners their voting rights would help improve the administration of prisons. In Shimla, 40% of the general public responded with "Yes," while 60% responded with "No." In Hamirpur, 64% of

the respondents answered "Yes," and 36% answered "No."



6.4.2.8 Practicality: The Police Administrative Staff in both districts were asked, "Do you think prisoners' voting rights are impractical?" A total of 100 respondents participated, with 75 from Shimla and 25 from Hamirpur. In Shimla, the observed values were 36 for "Strongly Agree," 25 for "Agree," 9 for "Neutral," and 5 for "Disagree." In Hamirpur, the observed values were 7 for "Strongly Agree," 6 for "Agree," 7 for "Neutral," and 5 for "Disagree."

Table 65 shows the cross-tabulation of responses from the Police Administrative Staff in both districts regarding the question, "Do you think prisoners' voting rights are impractical?"

District * Crosstabulation

			Do you think prisoners' voting rights are impractical?			
			Strongly Agree	Agree	Neutral	Disagree
District	Shimla	Count	36	25	9	5
		Expected Count	32.3	23.3	12.0	7.5

		% within District	48.0%	33.3%	12.0%	6.7%
		% of Total	36.0%	25.0%	9.0%	5.0%
	Hamirpur	Count	7	6	7	5
		Expected Count	10.8	7.8	4.0	2.5
		% within District	28.0%	24.0%	28.0%	20.0%
		% of Total	7.0%	6.0%	7.0%	5.0%
		Total	Count	43	31	16
Expected Count	43.0		31.0	16.0	10.0	
% within District	43.0%		31.0%	16.0%	10.0%	
% of Total	43.0%		31.0%	16.0%	10.0%	

District * Do you think prisoners' voting rights are impractical? Crosstabulation

			Total
District	Shimla	Count	75
		Expected Count	75.0
		% within District	100.0%
		% of Total	75.0%
	Hamirpur	Count	25
		Expected Count	25.0
		% within District	100.0%
		% of Total	25.0%
Total	Count	100	
	Expected Count	100.0	
	% within District	100.0%	
	% of Total	100.0%	

Source: Field Survey

Table 66 presents the results of a Chi-square test used to determine if there were significant differences in responses between the two districts under investigation.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	8.604 ^a	3	.035
Likelihood Ratio	8.005	3	.046
Linear-by-Linear Association	7.400	1	.007
N of Valid Cases	100		

a. 2 cells (25.0%) have expected count less than 5. The minimum expected count is 2.50.

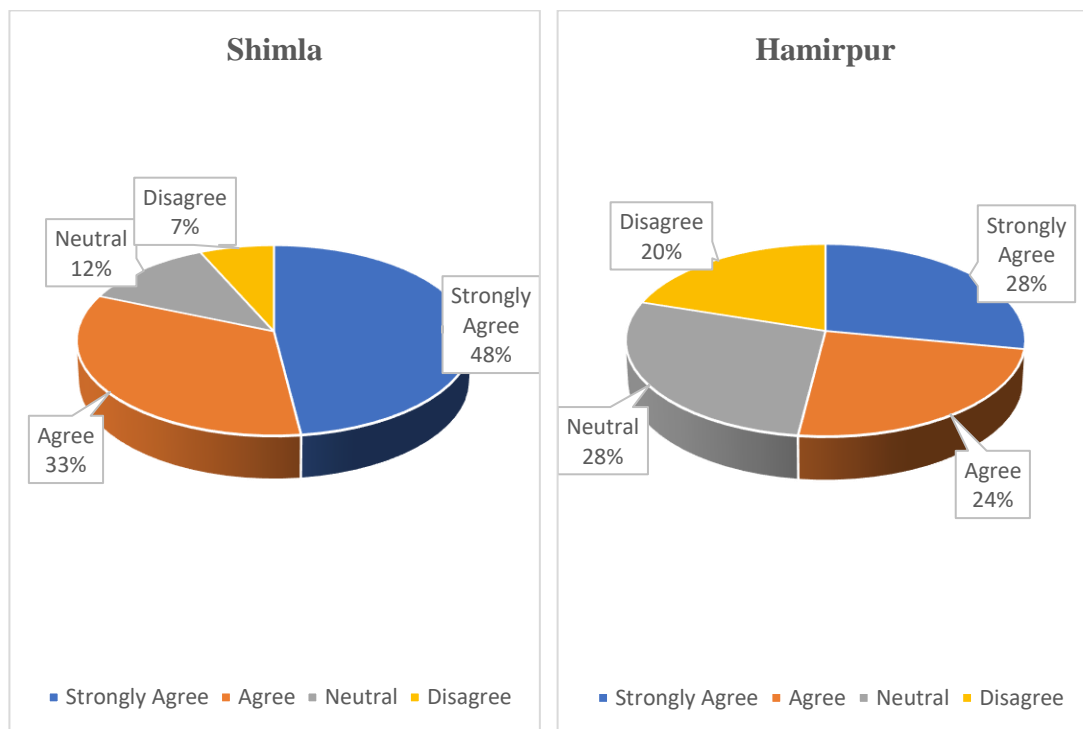
Table 67 provides further evidence for this conclusion through the significance of Phi Cramér's V.

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.293	.035
	Cramer's V	.293	.035
N of Valid Cases		100	

The study conducted a Chi-square test to examine differences in respondents' perceptions across the two districts under investigation. With 3 degrees of freedom and a 5% level of significance, the test yielded a significance value of 0.03, which is less than 0.05 ($0.03 < 0.05$). This indicates a statistically significant difference in perceptions between the two districts, leading to the acceptance of the alternate hypothesis and rejection of the null hypothesis. The significance of Phi and Cramér's V (0.03) further supports this conclusion, providing additional evidence of the statistically significant variation between the districts.

Figure 23: The respondents were asked whether they think prisoners' voting rights are impractical. In Shimla, the general public responded as follows: "Strongly Agree" (48%), "Agree" (33.33%), "Neutral" (12%), and "Disagree" (6.67%). Similarly, in Hamirpur, the responses were "Strongly Agreed" (24%), "Agree" (24%), "Neutral" (28%), and "Disagree" (24%).



6.4.2.9 Law-abiding citizens: The Police Administrative Staff in both districts were asked, "Do you think the right to vote can make prisoners law-abiding citizens?" A total of 100 respondents participated, with 75 from Shimla and 25 from Hamirpur. In Shimla, the observed values were 12 for "Strongly Agree," 11 for "Agree," 38 for "Neutral," and 14 for "Disagree." In Hamirpur, the observed values were 5 for "Strongly Agree," 5 for "Agree," 5 for "Neutral," and 10 for "Disagree."

Table 68 shows the cross-tabulation of districts. The Police Administrative Staff in both districts were asked, "Do you think the right to vote can make prisoners law-abiding citizens?"

District * Crosstabulation

			Do you think the right to vote can make prisoners law-abiding citizens?		
			Strongly Agree	Agree	Neutral
District	Shimla	Count	12	11	38
		Expected Count	12.8	12.0	32.3

		% within District	16.0%	14.7%	50.7%
		% of Total	12.0%	11.0%	38.0%
	Hamirpur	Count	5	5	5
		Expected Count	4.3	4.0	10.8
		% within District	20.0%	20.0%	20.0%
		% of Total	5.0%	5.0%	5.0%
Total	Count		17	16	43
	Expected Count		17.0	16.0	43.0
	% within District		17.0%	16.0%	43.0%
	% of Total		17.0%	16.0%	43.0%

District * Do you think the right to vote can make prisoners law-abiding citizens? Crosstabulation

				Total
			Disagree	
District	Shimla	Count	14	75
		Expected Count	18.0	75.0
		% within District	18.7%	100.0%
		% of Total	14.0%	75.0%
	Hamirpur	Count	10	25
		Expected Count	6.0	25.0
		% within District	40.0%	100.0%
		% of Total	10.0%	25.0%
Total	Count	24	100	
	Expected Count	24.0	100.0	
	% within District	24.0%	100.0%	
	% of Total	24.0%	100.0%	

Source: Field Survey

Table 69: The Chi-square test was used to determine if the respondents' perceptions in the two districts under investigation differed significantly.

Chi-Square Tests			
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	8.166 ^a	3	.043
Likelihood Ratio	8.482	3	.037
Linear-by-Linear Association	.117	1	.732
N of Valid Cases	100		

a. 2 cells (25.0%) have expected count less than 5. The minimum expected count is 4.00.

Table 70: This conclusion is further supported by the significance of Phi Cramer's V.

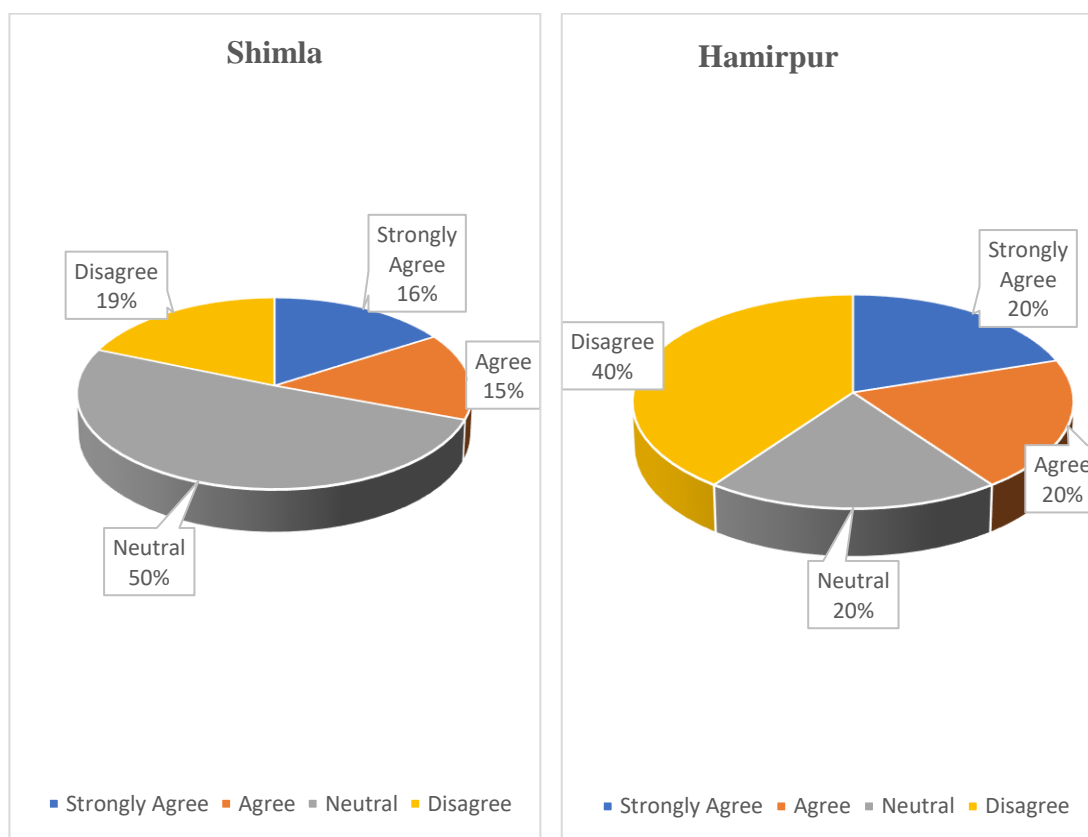
Symmetric Measures			
		Value	Approx. Sig.
Nominal by Nominal	Phi	.286	.043
	Cramer's V	.286	.043
N of Valid Cases		100	

The study conducted a Chi-square test to examine differences in the respondents' perceptions across the two districts. With a degree of freedom = 3 and a 5% level of significance, the test yielded a calculated significance value of 0.043, which is less than 0.05 ($0.043 < 0.05$). This indicates a statistically significant difference in perceptions between the two districts. Consequently, the alternate hypothesis is accepted, and the null hypothesis is rejected. The significance of Phi Cramer's V (0.043) further supports this conclusion, providing additional evidence of the statistically significant variation between the districts.

FIGURE: 24

The respondents were asked whether they think the right to vote can make prisoners law-abiding citizens. In Shimla, the general public responded as follows: "Strongly Agree" (16%), "Agree" (14.67%), "Neutral" (50.67%), and "Disagree" (18.67%). In Hamirpur, the responses were: "Strongly Agree" (20%), "Agree" (20%), "Neutral"

(20%), and "Disagree" (40%).



6.4.3 RESPONSES FROM THE LEGAL FRATERNITY

6.4.3.1 Voting Strengthens Democracy: In both districts under study, the Legal Fraternity was asked, "Do you agree that voting strengthens democracy?" A total of 50 respondents participated, with 25 responses recorded from Shimla and 25 from Hamirpur. In Shimla, the observed values were 19 for "Yes" and 6 for "No." In Hamirpur, the responses were 9 for "Yes" and 16 for "No."

Table 71 shows the cross-tabulation of responses from the Legal Fraternity in both districts regarding the question, "Do you agree that voting strengthens democracy?"

District * Crosstabulation

			Do you agree that voting strengthens Democracy		Total
			Yes	No	
District	Shimla	Count	19	6	25

		Expected Count	14.0	11.0	25.0
		% within District	76.0%	24.0%	100.0%
		% of Total	38.0%	12.0%	50.0%
	Hamirpur	Count	9	16	25
		Expected Count	14.0	11.0	25.0
		% within District	36.0%	64.0%	100.0%
		% of Total	18.0%	32.0%	50.0%
	Total	Count	28	22	50
		Expected Count	28.0	22.0	50.0
		% within District	56.0%	44.0%	100.0%
		% of Total	56.0%	44.0%	100.0%

Source: Survey

Table 72 presents the results of a Chi-square test used to determine whether respondents in the two districts understood the question differently or similarly.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	8.117 ^a	1	.004		
Continuity Correction ^b	6.575	1	.010		
Likelihood Ratio	8.368	1	.004		
Fisher's Exact Test				.010	.005
Linear-by-Linear Association	7.955	1	.005		
N of Valid Cases	50				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.00.

Table 73 shows that the significance of Phi Cramer's V supports this finding.

Symmetric Measures

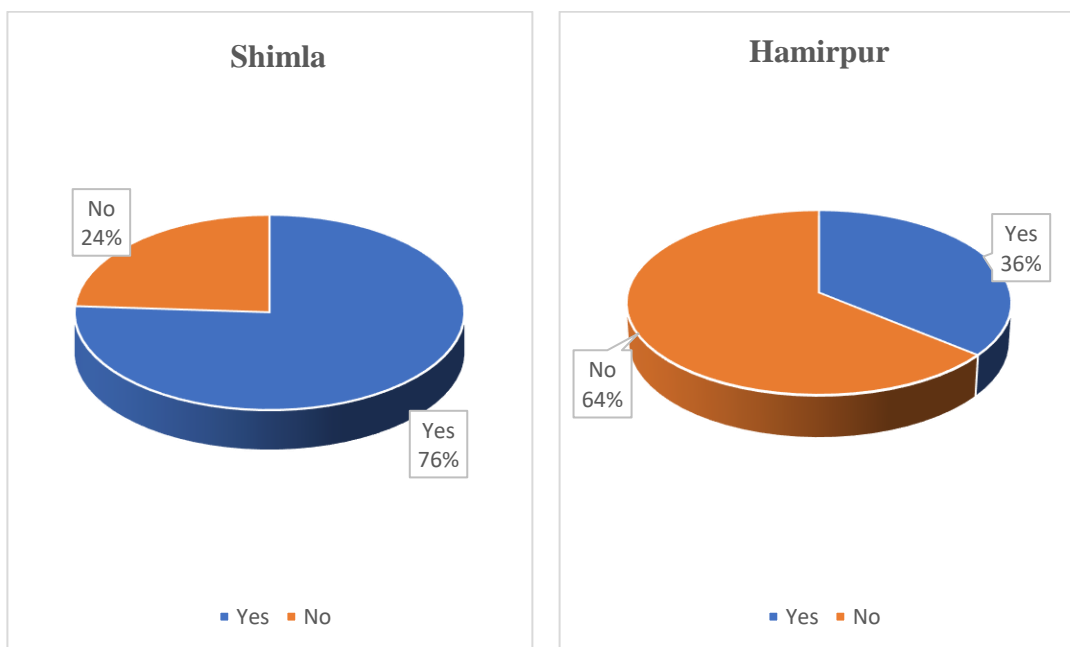
		Value	Approx. Sig.
Nominal by	Phi	.403	.004

Nominal	Cramer's V	.403	.004
N of Valid Cases		50	

The study conducted a Chi-square test to examine differences in respondents' perceptions across the two districts under investigation. With a degree of freedom = 1 and a 5% level of significance, the test yielded a significance value of 0.004, which is less than 0.05 ($0.004 < 0.05$). Thus, respondents' perceptions in the two districts differ statistically significantly from one another. This indicates that respondents in the two districts have distinct perspectives, as the alternative hypothesis is accepted and the null hypothesis is rejected. The significance of Phi Cramer's V (0.004) further supports this conclusion, providing additional evidence for the statistically significant variation between the districts.

FIGURE 25

The respondents were asked whether they agree that voting strengthens democracy. In Shimla, the legal fraternity responded with 76% "Yes" and 24% "No," while in Hamirpur, the responses were 36% "Yes" and 64% "No."



6.4.3.2 Constitutional Right: The Legal Fraternity in both districts under study was asked, "Is voting in India seen as a constitutionally guaranteed right?" A total of 50

respondents participated, with 25 responses from Shimla and 25 from Hamirpur. The observed values for Shimla are 19 for "Yes" and 6 for "No," while in Hamirpur, the values are 9 for "Yes" and 16 for "No."

Table 74 shows the cross-tabulation of responses from the Legal Fraternity in both districts, addressing the question, "Is voting in India considered a constitutionally guaranteed right?"

District * Crosstabulation

			Is the Right to vote a Constitutional Right in India		Total
			Yes	No	
District	Shimla	Count	19	6	25
		Expected Count	14.0	11.0	25.0
		% within District	76.0%	24.0%	100.0%
		% of Total	38.0%	12.0%	50.0%
	Hamirpur	Count	9	16	25
		Expected Count	14.0	11.0	25.0
		% within District	36.0%	64.0%	100.0%
		% of Total	18.0%	32.0%	50.0%
Total		Count	28	22	50
		Expected Count	28.0	22.0	50.0
		% within District	56.0%	44.0%	100.0%
		% of Total	56.0%	44.0%	100.0%

Source: Survey

Table 75 shows the results of the Chi-square test used to determine whether respondents in the two districts under investigation interpreted the question similarly or differently.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)

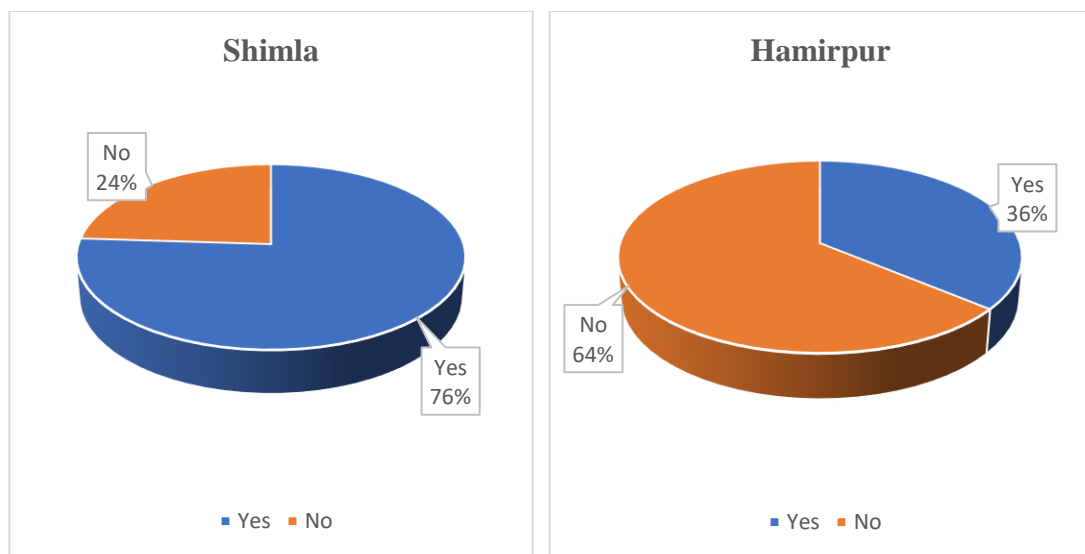
Pearson Chi-Square	8.117 ^a	1	.004		
Continuity Correction ^b	6.575	1	.010		
Likelihood Ratio	8.368	1	.004		
Fisher's Exact Test				.010	.005
Linear-by-Linear Association	7.955	1	.005		
N of Valid Cases	50				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.00.

To determine whether respondents in the two districts under investigation interpreted the question similarly or differently, a Chi-square test was conducted. The calculated significance value (0.004) is less than 0.05 at a 5% significance level and degrees of freedom of 1. Therefore, it can be concluded that the two districts differ statistically significantly. This indicates that respondents in both districts have distinct perspectives, leading to the acceptance of the alternative hypothesis and rejection of the null hypothesis. This finding is further supported by the significance of Phi Cramer's V (0.004).

FIGURE: 26

The respondents were asked whether voting in India is seen as a constitutionally guaranteed right. In Shimla, the legal fraternity responded with 76% "Yes" and 24% "No." In Hamirpur, the responses were 36% "Yes" and 64% "No."



6.4.3.3 Voting Rights for Prisoners: The Legal Fraternity in both districts under study was asked, "Should prisoners in India have the right to vote?" A total of 50 respondents provided their responses, with 25 responses from Shimla and 25 from Hamirpur. The observed values for Shimla are 18 for "Yes" and 7 for "No," while in Hamirpur, the observed values are 11 for "Yes" and 14 for "No."

Table 76 shows the cross-tabulation of districts where the Legal Fraternity in both districts under study was asked the question, "Should prisoners in India have the right to vote?"

District * Crosstabulation

			Should Prisoners in India have the Right to Vote		Total
			Yes	No	
District	Shimla	Count	18	7	25
		Expected Count	14.5	10.5	25.0
		% within District	72.0%	28.0%	100.0%
		% of Total	36.0%	14.0%	50.0%
	Hamirpur	Count	11	14	25
		Expected Count	14.5	10.5	25.0
		% within District	44.0%	56.0%	100.0%
		% of Total	22.0%	28.0%	50.0%
Total		Count	29	21	50
		Expected Count	29.0	21.0	50.0
		% within District	58.0%	42.0%	100.0%
		% of Total	58.0%	42.0%	100.0%

Source: Survey

Table 77 shows that a Chi-square test was used to determine if the respondents' answers from the two districts under analysis differed from one another.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	4.023 ^a	1	.045		
Continuity Correction ^b	2.956	1	.086		
Likelihood Ratio	4.085	1	.043		
Fisher's Exact Test				.085	.042
Linear-by-Linear Association	3.943	1	.047		
N of Valid Cases	50				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 10.50.

Table 78 shows that further evidence for this conclusion comes from the significance of Phi Cramer's V.

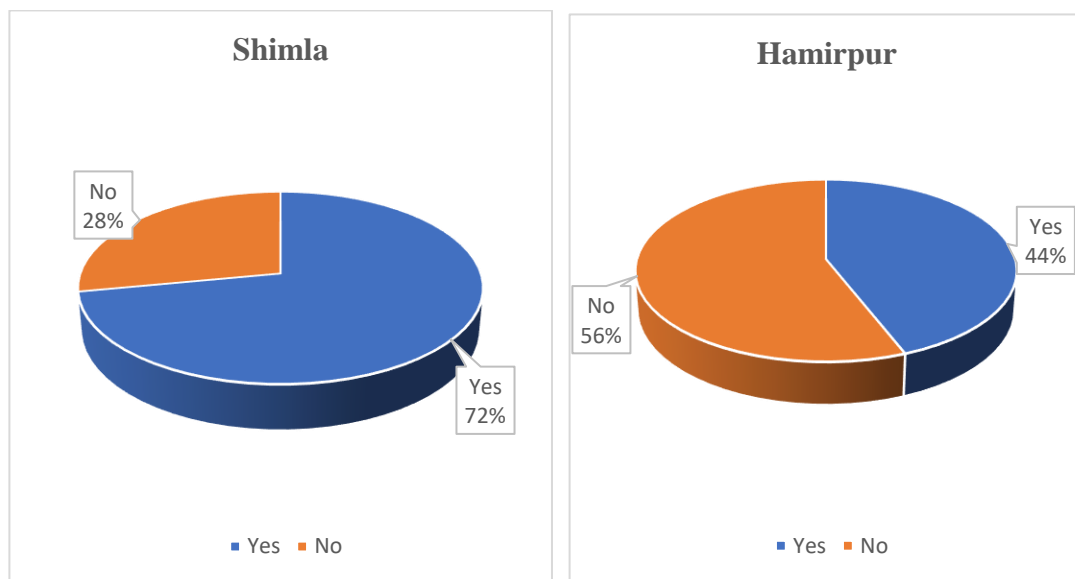
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.284	.045
	Cramer's V	.284	.045
N of Valid Cases		50	

To determine if the responses from the two districts differed significantly, a Chi-square test was conducted. The calculated significance value was 0.045, with degrees of freedom = 1, which is less than the 5% significance level. This indicates a statistically significant difference between the two districts. The acceptance of the alternative hypothesis and the rejection of the null hypothesis provide evidence that respondents from the two districts had differing perspectives on the issue. Additionally, the significance of Phi Cramer's V (0.045) supports this conclusion, offering further proof of the observed differences.

FIGURE 27

The respondents were asked whether prisoners in India should have the right to vote. In Shimla, the legal fraternity responded with “Yes” (72%) and “No” (28%). In Hamirpur, the responses were “Yes” (44%) and “No” (56%).



6.4.3.4 Prisoners' Voting Rights: The Legal Fraternity in both districts under study was asked the question, "If you support prisoners' voting rights in India, whom should it be provided to?" A total of 50 respondents participated, with 25 responses from Shimla and 25 from Hamirpur. In Shimla, the observed values were 5 for Under-trials, 5 for Convicts, 10 for Both, and 5 for None of the above. In Hamirpur, the observed values were 7 for Under-trials, 5 for Convicts, 8 for Both, and 5 for None of the above.

Table 79 shows the cross-tabulation of responses from the Legal Fraternity in both districts under study regarding the question, "If you are in favor of prisoners' voting rights in India, to whom should it be provided?"

District * to Crosstabulation

			If you are in favor of prisoners voting rights in India, whom out of the following it should be provided to		
			Under-trials	Convicts	Both
District	Shimla	Count	5	5	10
		Expected Count	7.0	5.0	8.0
		% within District	20.0%	20.0%	40.0%
		% of Total	10.0%	10.0%	20.0%
	Hamirpur	Count	9	5	6
		Expected Count	7.0	5.0	8.0

		Expected Count	7.0	5.0	8.0
		% within District	36.0%	20.0%	24.0%
		% of Total	18.0%	10.0%	12.0%
Total		Count	14	10	16
		Expected Count	14.0	10.0	16.0
		% within District	28.0%	20.0%	32.0%
		% of Total	28.0%	20.0%	32.0%

District * If you are in favor of prisoners voting rights in India, whom out of the following it should be provided to Crosstabulation

				Total
			None of the above	
District	Shimla	Count	5	25
		Expected Count	5.0	25.0
		% within District	20.0%	100.0%
		% of Total	10.0%	50.0%
	Hamirpur	Count	5	25
		Expected Count	5.0	25.0
		% within District	20.0%	100.0%
		% of Total	10.0%	50.0%
Total		Count	10	50
		Expected Count	10.0	50.0
		% within District	20.0%	100.0%
		% of Total	20.0%	100.0%

Source: Survey

Table 80 shows the results of a Chi-square test conducted to determine if there is a statistically significant difference between the perspectives of the two districts under study.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	2.143 ^a	3	.543
Likelihood Ratio	2.170	3	.538
Linear-by-Linear Association	1.040	1	.308
N of Valid Cases	50		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.00.

Table 81 shows that the value of Phi Cramer's V further supports this conclusion.

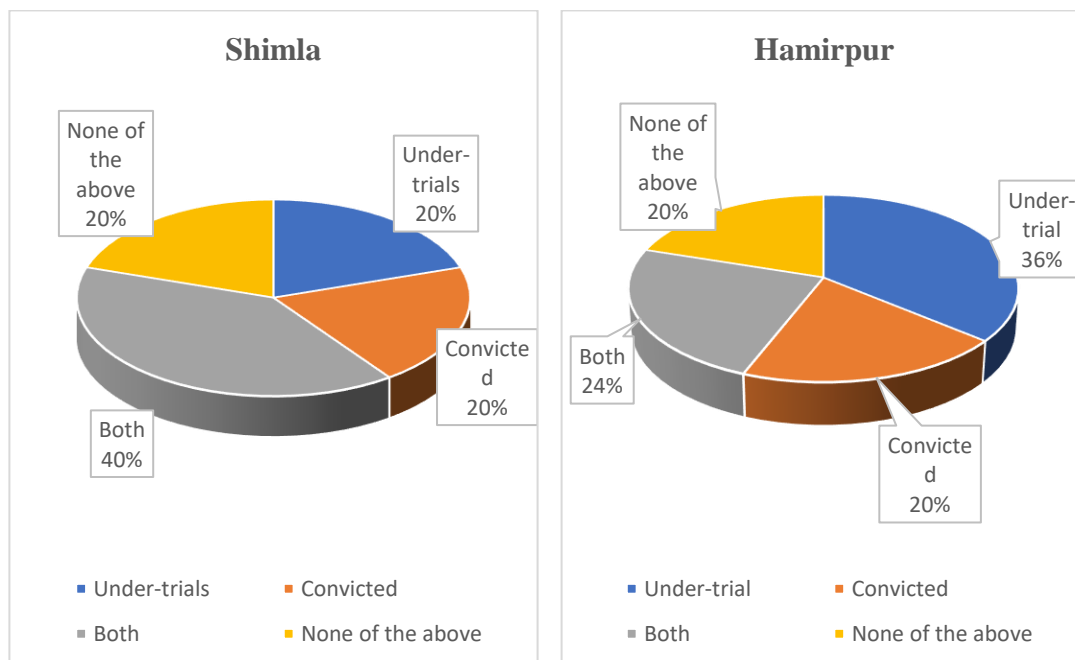
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.207	.543
	Cramer's V	.207	.543
N of Valid Cases		50	

To ascertain whether respondents' perceptions in the two districts under study are comparable or different, a Chi-square test was conducted. With 1 degree of freedom and a significance level of 5%, the calculated significance value (0.543) is greater than 0.05 ($0.543 > 0.05$). Consequently, it can be concluded that there are no notable differences between the districts. In other words, the respondents from both districts have comparable perspectives on the subject matter, leading to the acceptance of the null hypothesis and rejection of the alternative hypothesis. The significance value of 0.543 for Phi Cramer's V further supports this conclusion.

FIGURE 28

Respondents were asked, "If you are in favor of prisoners' voting rights in India, to whom out of the following should it be provided?" In Shimla, the legal fraternity responded with 20% for "Under-trials," 20% for "Convicts," 40% for "Both," and 20% for "None of the above." Similarly, in Hamirpur, the responses were 36% for "Under-trials," 20% for "Convicts," 24% for "Both," and 20% for "None of the above."



6.4.3.5 Prisoners on Bail/Parole: The legal fraternity in both districts under study was asked, "Prisoners on bail/parole are eligible to vote, while prisoners with petty offenses who cannot seek bail are not considered eligible to vote?" A total of 50 respondents participated, with 25 responses from Shimla and 25 from Hamirpur. The observed values for Shimla were 17 for "Unfair" and 8 for "Fair." In Hamirpur, the observed values were 6 for "Unfair" and 19 for "Fair."

Table 82 shows the cross-tabulation of districts where legal professionals were surveyed with the question: "Prisoners on bail/parole are allowed to vote, while prisoners with minor offenses who cannot seek bail are not granted the right to vote is fair or unfair?"

District * Crosstabulation

			Prisoners on bail /parole are eligible to cast their votes, while prisoners with petty offenses who cannot seek bail are not considered eligible to cast their votes. Isn't that unfair		Total
			Unfair	Fair	
District	Shimla	Count	17	8	25

		Expected Count	11.5	13.5	25.0
		% within District	68.0%	32.0%	100.0%
		% of Total	34.0%	16.0%	50.0%
	Hamirpur	Count	6	19	25
		Expected Count	11.5	13.5	25.0
		% within District	24.0%	76.0%	100.0%
		% of Total	12.0%	38.0%	50.0%
	Total	Count	23	27	50
		Expected Count	23.0	27.0	50.0
		% within District	46.0%	54.0%	100.0%
		% of Total	46.0%	54.0%	100.0%

Source: Survey

Table 83 shows that a Chi-square test was conducted to determine whether there were differences in the perceptions of respondents between the two districts under study

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	9.742 ^a	1	.002		
Continuity Correction ^b	8.052	1	.005		
Likelihood Ratio	10.097	1	.001		
Fisher's Exact Test				.004	.002
Linear-by-Linear Association	9.548	1	.002		
N of Valid Cases	50				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.50.

Table 84 shows that this finding is further supported by the significance of Phi Cramer's V.

Symmetric Measures

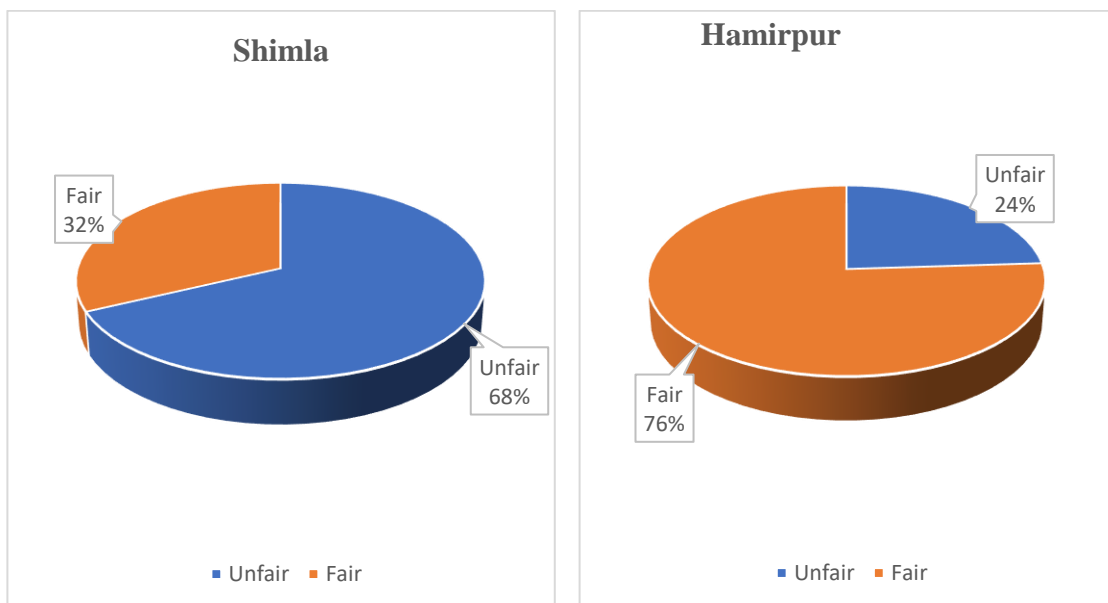
		Value	Approx. Sig.
Nominal by	Phi	.441	.002

Nominal	Cramer's V	.441	.002
N of Valid Cases		50	

The study conducted a Chi-square test to examine differences in respondents' perceptions between the two districts under investigation. With 1 degree of freedom and a 5% significance level, the test found a significance value of 0.002, which is less than 0.05 ($0.002 < 0.05$). This indicates a statistically significant difference in perceptions between the districts. The results suggest that respondents in the two districts have distinct perspectives, supporting the acceptance of the alternative hypothesis and the rejection of the null hypothesis. Additionally, the significance of Phi Cramer's V (0.002) provides further evidence of the significant variation between the districts.

FIGURE:29

The participants were asked, "Prisoners on bail/parole are eligible to vote, while prisoners with petty offenses who cannot seek bail are not considered eligible to vote?" In Shimla, the legal fraternity responded with 68% stating "Unfair" and 32% stating "Fair." In Hamirpur, 24% responded "Unfair" and 76% responded "Fair."



6.4.3.6 Unfair Exclusion: The legal fraternity in both districts under study was asked, "Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes, or should there be no discrimination based on crime for voting?" A total of 50 respondents provided their answers, with 25 responses from Shimla and 25 from Hamirpur. The observed values for Shimla were 10 for "Murder and Rape," 5 for "Theft and Robbery," 5 for "Election Fraud," and 5 for "No Discrimination Based on Crime." In Hamirpur, the observed values were 5 for "Murder and Rape," 5 for "Theft and Robbery," 10 for "Election Fraud," and 5 for "No Discrimination Based on Crime."

Table 85 shows the cross-tabulation of districts. Legal professionals in both districts under study were asked whether they believe certain prisoners should be disqualified from voting based on their crimes or if there should be no discrimination based on crime for voting.

District * Crosstabulation

District			Cross-tabulation		
			Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes or there should be no discrimination based on crime for voting		
			Murder and Rape	Theft and Robbery	Election Fraud
District	Shimla	Count	10	5	5
		Expected Count	7.5	5.0	7.5
		% within District	40.0%	20.0%	20.0%
		% of Total	20.0%	10.0%	10.0%
	Hamirpur	Count	5	5	10
		Expected Count	7.5	5.0	7.5
		% within District	20.0%	20.0%	40.0%
		% of Total	10.0%	10.0%	20.0%
Total		Count	15	10	15

	Expected Count	15.0	10.0	15.0
	% within District	30.0%	20.0%	30.0%
	% of Total	30.0%	20.0%	30.0%

District * Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes or there should be no discrimination based on crime for voting Crosstabulation

				Total
			No discrimination based on crime	
District	Shimla	Count	5	25
		Expected Count	5.0	25.0
		% within District	20.0%	100.0%
		% of Total	10.0%	50.0%
	Hamirpur	Count	5	25
		Expected Count	5.0	25.0
		% within District	20.0%	100.0%
		% of Total	10.0%	50.0%
Total		Count	10	50
		Expected Count	10.0	50.0
		% within District	20.0%	100.0%
		% of Total	20.0%	100.0%

Source: Survey

Table 86 shows the cross-tabulation of districts. Legal professionals in both districts were asked whether they believe that prisoners should be disqualified from voting based on their crimes or if there should be no discrimination based on crime for voting.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.333 ^a	3	.343
Likelihood Ratio	3.398	3	.334
Linear-by-Linear Association	1.581	1	.209
N of Valid Cases	50		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.00.

Table 87: The value of Phi Cramer's V further supports this hypothesis.

Symmetric Measures

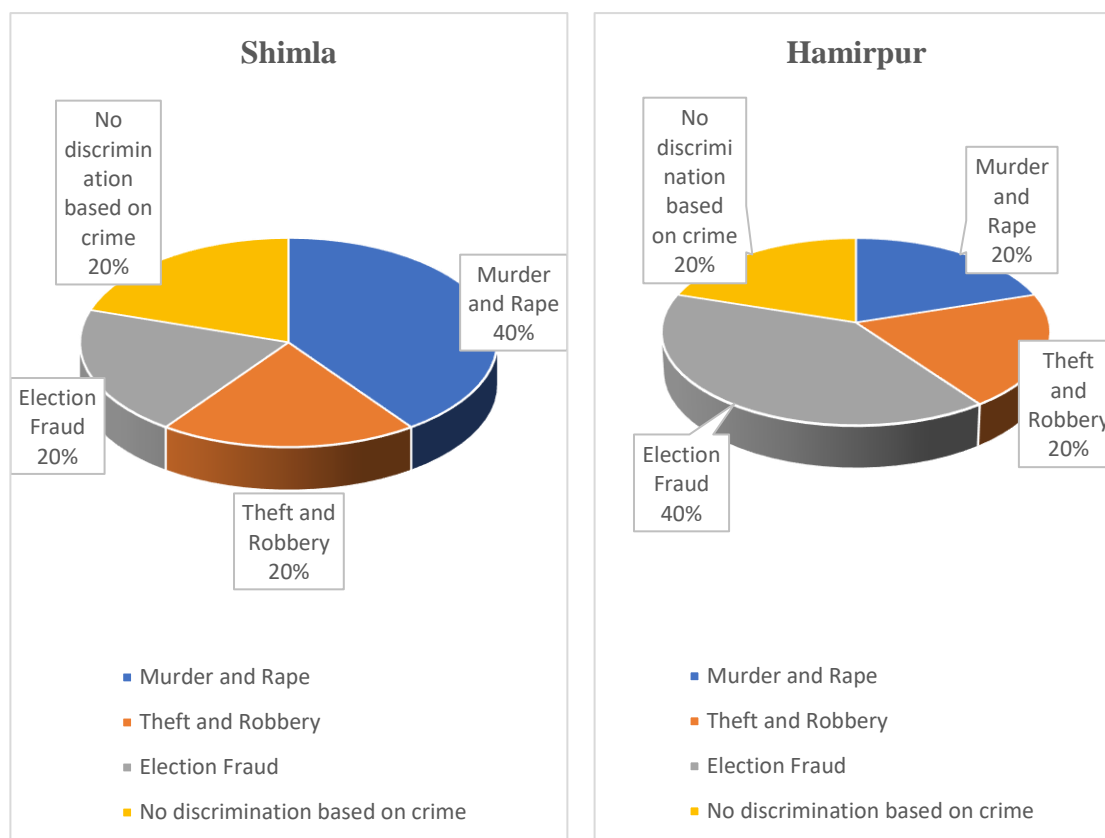
		Value	Approx. Sig.
Nominal by Nominal	Phi	.258	.343
	Cramer's V	.258	.343
N of Valid Cases		50	

To ascertain whether respondents' perceptions in the two districts under study are comparable or different, a Chi-square test was conducted. With 3 degrees of freedom and a significance level of 5%, the test yielded a calculated significance value of 0.343. Since 0.343 is greater than 0.05, it indicates that there are no significant differences between the districts. Therefore, it can be concluded that the respondents from both districts have comparable perspectives on the subject matter, leading to the acceptance of the null hypothesis and rejection of the alternative hypothesis. Additionally, the significance value of 0.343 for Phi Cramer's V further supports this conclusion.

FIGURE:30

The respondents were asked whether they believe that some prisoners should be disqualified from voting based on their crimes or if there should be no discrimination based on crime for voting. In Shimla, the legal fraternity's responses were as follows: 40% indicated that voting rights should be denied for those convicted of "Murder and Rape," 20% for "Theft and Robbery," 20% for "Election Fraud," and 20% for "No discrimination based on crime." In Hamirpur, the responses were 20% for "Murder and

Rape," 20% for "Theft and Robbery," 40% for "Election Fraud," and 20% for "No discrimination based on crime."



6.4.3.7 International Support for Enfranchising: The legal fraternity in both districts under study was asked the question, "Do you agree with supporting the proposed revisions to Section 62(5) of the Representation of the People Act, 1951, by international treaties advocating for granting voting rights to prisoners?" A total of 50 respondents participated, with 25 responses from Shimla and 25 from Hamirpur. The observed values for Shimla were 5 for "Strongly Agree," 10 for "Agree," 5 for "Neutral," and 5 for "Disagree." For Hamirpur, the observed values were 8 for "Strongly Agree," 5 for "Agree," 7 for "Neutral," and 5 for "Disagree."

Table 88 shows the cross-tabulation of districts. Legal professionals in both districts under study were asked whether they support the proposed changes to Section 62(5) of the Representation of the People Act, 1951, in light of international treaties advocating for the enfranchisement (voting rights) of prisoners.

District * Crosstabulation

			The International treaties support enfranchising (voting rights) of prisoners, do you agree to support the changes to Section 62(5) of the Representation of the People Act,1951?		
			Strongly Agree	Agree	Neutral
District	Shimla	Count	5	10	5
		Expected Count	6.5	7.5	6.0
		% within District	20.0%	40.0%	20.0%
		% of Total	10.0%	20.0%	10.0%
	Hamirpur	Count	8	5	7
		Expected Count	6.5	7.5	6.0
		% within District	32.0%	20.0%	28.0%
		% of Total	16.0%	10.0%	14.0%
Total	Count	13	15	12	
	Expected Count	13.0	15.0	12.0	
	% within District	26.0%	30.0%	24.0%	
	% of Total	26.0%	30.0%	24.0%	

District * The International treaties support enfranchising (voting rights) of prisoners, do you agree to support the changes to Section 62(5) of the Representation of the People Act,1951. Crosstabulation

				Total
			Disagree	
District	Shimla	Count	5	25
		Expected Count	5.0	25.0
		% within District	20.0%	100.0%
		% of Total	10.0%	50.0%
	Hamirpur	Count	5	25

		Expected Count	5.0	25.0
		% within District	20.0%	100.0%
		% of Total	10.0%	50.0%
Total		Count	10	50
		Expected Count	10.0	50.0
		% within District	20.0%	100.0%
		% of Total	20.0%	100.0%

Source: Survey

Table 89: A Chi-square test was employed to examine whether the respondents' perceptions in the two districts under investigation varied.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	2.692 ^a	3	.442
Likelihood Ratio	2.732	3	.435
Linear-by-Linear Association	.017	1	.896
N of Valid Cases	50		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.00.

Table 90: Further evidence for this conclusion is provided by the significance of Phi Cramer's V.

Symmetric Measures

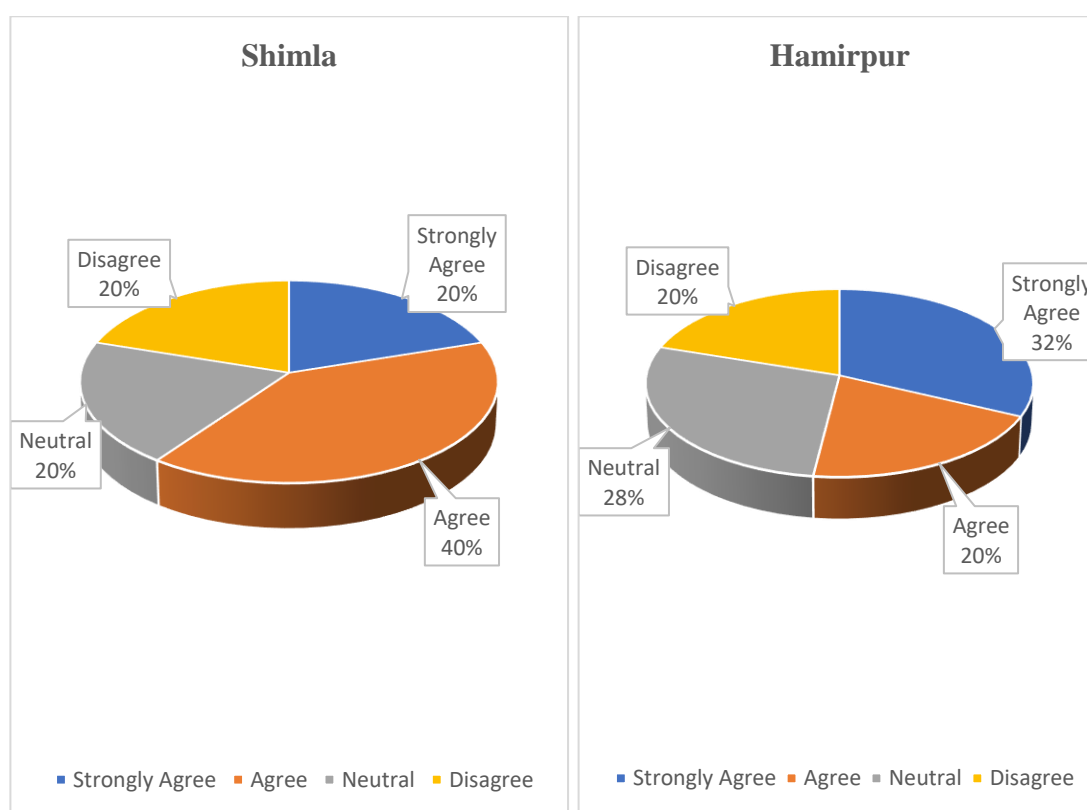
		Value	Approx. Sig.
Nominal by Nominal	Phi	.232	.442
	Cramer's V	.232	.442
N of Valid Cases		50	

To determine whether respondents' perceptions in the two districts under study are similar or different, a Chi-square test was conducted. With 3 degrees of freedom and a significance level of 5%, the calculated significance value (0.442) is greater than 0.05.

Consequently, there are no notable differences between the districts. This suggests that respondents from both districts have comparable perspectives on the issue, leading to the acceptance of the null hypothesis and the rejection of the alternative hypothesis. The significance value of 0.442 for Phi Cramer's V further supports this conclusion

FIGURE:31

The respondents were asked whether they support the proposed revisions to Section 62(5) of the Representation of the People Act, 1951, as advocated by international treaties that promote granting voting rights to prisoners. In Shimla, the legal fraternity responded with 20% "Strongly Agree," 40% "Agree," 20% "Neutral," and 20% "Disagree." In Hamirpur, the responses were 32% "Strongly Agree," 20% "Agree," 28% "Neutral," and 20% "Disagree."



6.4.3.8 International Precedents: The legal fraternity in both districts under study was asked, "Countries like Israel, South Africa, Pakistan, Canada, etc., have ensured voting rights for prisoners. Shouldn't India also be required to follow the same?" A

total of 50 respondents provided their answers, with 25 responses from Shimla and 25 from Hamirpur. The observed values for Shimla were 19 for "Yes" and 6 for "No." For Hamirpur, the observed values were 11 for "Yes" and 14 for "No."

Table 91 shows the cross-tabulation of districts. Legal professionals in both districts under study were asked the question, "Countries like Israel, South Africa, Pakistan, Canada, etc., have ensured voting rights for prisoners. Shouldn't India also be required to follow the same?"

District * Crosstabulation

District			Cross-tabulation		
			Countries like Israel, South Africa, Pakistan, Canada, etc. have ensured voting rights for prisoners. Shouldn't India also be required to follow the same		Total
			Yes	No	
District	Shimla	Count	19	6	25
		Expected Count	15.0	10.0	25.0
		% within District	76.0%	24.0%	100.0%
		% of Total	38.0%	12.0%	50.0%
	Hamirpur	Count	11	14	25
		Expected Count	15.0	10.0	25.0
		% within District	44.0%	56.0%	100.0%
		% of Total	22.0%	28.0%	50.0%
	Total	Count	30	20	50
		Expected Count	30.0	20.0	50.0
% within District		60.0%	40.0%	100.0%	
% of Total		60.0%	40.0%	100.0%	

Source: Survey

Table 92 shows that a Chi-square test was used to determine if respondents' perceptions in the two districts under study differed.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	5.333 ^a	1	.021		
Continuity Correction ^b	4.083	1	.043		
Likelihood Ratio	5.451	1	.020		
Fisher's Exact Test				.042	.021
Linear-by-Linear Association	5.227	1	.022		
N of Valid Cases	50				

0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 10.00.

Table 93: This conclusion is further supported by the significance of Phi Cramer's V.

Symmetric Measures

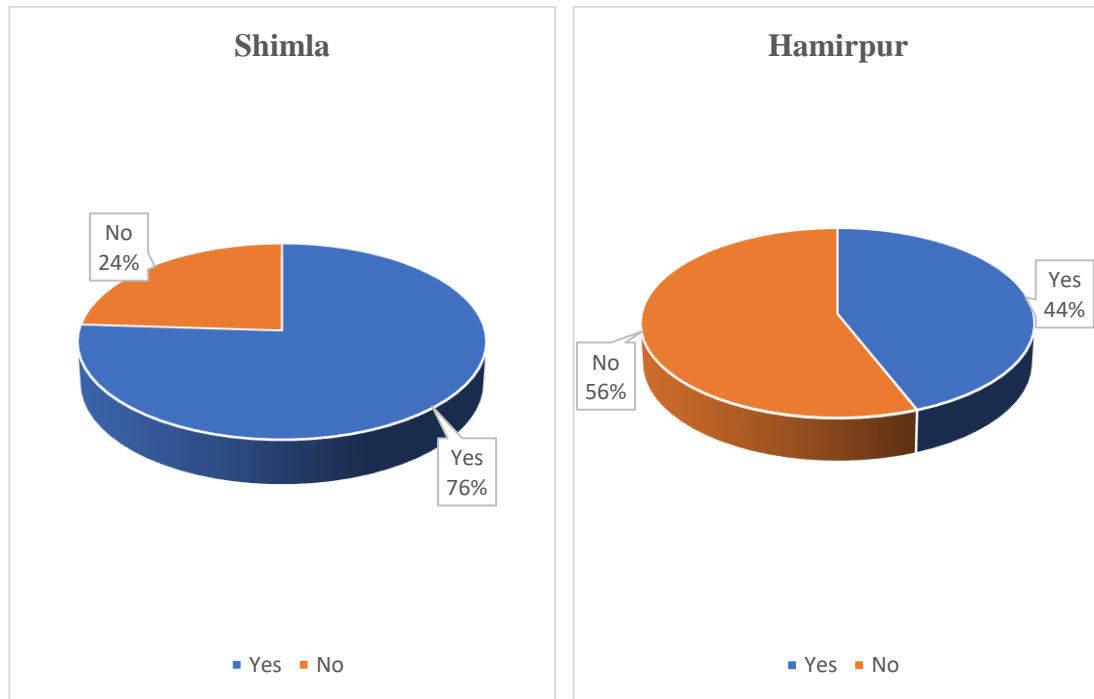
		Value	Approx. Sig.
Nominal by Nominal	Phi	.327	.021
	Cramer's V	.327	.021
N of Valid Cases		50	

The study conducted a Chi-square test to examine differences in respondents' perceptions across the two districts under investigation. With 1 degree of freedom and a 5% significance level, the test revealed a calculated significance value of 0.021, which is less than 0.05 ($0.021 < 0.05$). This indicates a statistically significant difference in perceptions between the two districts. Consequently, the alternative hypothesis is accepted, and the null hypothesis is rejected, suggesting that respondents in the two districts hold different perspectives. The significance of Phi Cramer's V (0.021) further supports this conclusion, providing additional evidence for the statistically significant variation between the districts.

FIGURE 32

The respondents were asked whether India should be required to follow the example of countries like Israel, South Africa, Pakistan, and Canada, which have ensured voting rights for prisoners. In Shimla, the legal fraternity responded with 76% saying "Yes" and 24% saying "No." In Hamirpur, the responses were 44% for "Yes" and 56% for

"No."



6.4.3.9 Law-abiding Citizenship: The legal fraternity in both districts under study was asked, "Do you think the right to vote can make prisoners law-abiding citizens?" A total of 50 respondents provided their responses, with 25 responses from Shimla and 25 from Hamirpur. The observed values for Shimla were 9 for "Strongly Agree," 15 for "Agree," 5 for "Neutral," and 7 for "Disagree." For Hamirpur, the observed values were 5 for "Strongly Agree," 10 for "Agree," 5 for "Neutral," and 5 for "Disagree."

Table 94 shows the cross-tabulation of districts. The legal professionals in both districts under study were asked, "Do you think the right to vote can make prisoners law-abiding citizens?"

District * Crosstabulation

			Do you think the right to vote can make prisoners law-abiding citizens?		
			Strongly Agree	Agree	Neutral
District	Shimla	Count	8	5	5
		Expected Count	6.5	7.5	5.0

		% within District	32.0%	20.0%	20.0%
		% of Total	16.0%	10.0%	10.0%
	Hamirpur	Count	5	10	5
		Expected Count	6.5	7.5	5.0
		% within District	20.0%	40.0%	20.0%
		% of Total	10.0%	20.0%	10.0%
Total			Count	13	15
			Expected Count	13.0	15.0
			% within District	26.0%	30.0%
			% of Total	26.0%	30.0%

District * Do you think the right to vote can make prisoners law-abiding citizens Crosstabulation

				Total
			Disagree	
District	Shimla	Count	7	25
		Expected Count	6.0	25.0
		% within District	28.0%	100.0%
		% of Total	14.0%	50.0%
	Hamirpur	Count	5	25
		Expected Count	6.0	25.0
		% within District	20.0%	100.0%
		% of Total	10.0%	50.0%
Total			Count	12
			Expected Count	12.0
			% within District	24.0%
			% of Total	24.0%

Source: Survey

Table 95 shows that a Chi-square test was conducted to determine if there were differences in the perceptions of respondents between the two districts under study.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	2.692 ^a	3	.442
Likelihood Ratio	2.732	3	.435
Linear-by-Linear Association	.016	1	.900
N of Valid Cases	50		

0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 5.00.

Table 96: This conclusion is further supported by the significance of Phi Cramer's V.

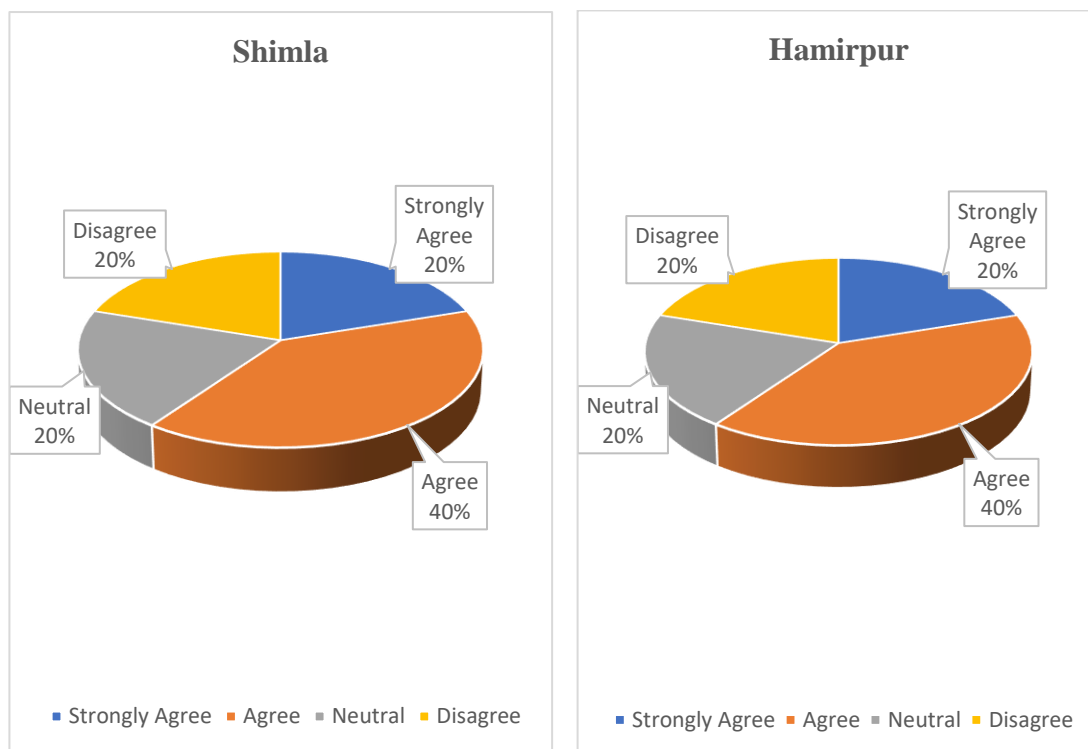
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.232	.442
	Cramer's V	.232	.442
N of Valid Cases		50	

To determine whether respondents' perceptions between the two districts differ, a Chi-square test was conducted with 3 degrees of freedom at a 5% significance level. The calculated significance value was 0.442, which is greater than 0.05 ($0.442 > 0.05$). Therefore, there are no significant differences between the districts. This indicates that respondents from both districts have comparable perspectives on the subject. The acceptance of the null hypothesis and rejection of the alternative hypothesis are further supported by the significance value of 0.442 for Phi Cramer's V.

FIGURE 33

The respondents were asked whether they think the right to vote can make prisoners law-abiding citizens. In Shimla, the legal fraternity responded with 32% "Strongly Agree," 20% "Agree," 20% "Neutral," and 28% "Disagree." Similarly, in Hamirpur, the responses were 20% for "Strongly Agree," 40% for "Agree," 20% for "Neutral," and 20% for "Disagree".



6.4.4 RESPONSES FROM THE GENERAL PUBLIC

The responses of the respondents to the various questions are as follows-

6.4.4.1 Prisoners' Voting Rights: The general public from both districts under study was asked, "Do you think prisoners are concerned about their voting rights?" A total of 100 respondents answered the question, with 50 responses recorded from Shimla and 50 from Hamirpur. The observed values for Shimla were 9 for "Yes," 15 for "No," and 26 for "Maybe." For Hamirpur, the observed values were 14 for "Yes," 25 for "No," and 11 for "Maybe." The detailed responses are presented below.

Table 97 shows the cross-tabulation of districts regarding the general public's views on prisoners' voting rights.

District * Crosstabulation

			Do you think prisoners are concerned about their voting rights			Total
			Yes	No	May be	
District	Shimla	Count	9	15	26	50
		Expected Count	11.5	20.0	18.5	50.0

		% within District	18.0%	30.0%	52.0%	100.0%
		% of Total	9.0%	15.0%	26.0%	50.0%
	Hamirpur	Count	14	25	11	50
		Expected Count	11.5	20.0	18.5	50.0
		% within District	28.0%	50.0%	22.0%	100.0%
		% of Total	14.0%	25.0%	11.0%	50.0%
		Total	Count	23	40	37
Expected Count	23.0		40.0	37.0	100.0	
% within District	23.0%		40.0%	37.0%	100.0%	
% of Total	23.0%		40.0%	37.0%	100.0%	

Source: Survey

Table 98 displays the Chi-square test used to determine whether respondents in the two districts under study had similar or different perceptions.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	9.668 ^a	2	.008
Likelihood Ratio	9.882	2	.007
Linear-by-Linear Association	6.823	1	.009
N of Valid Cases	100		

0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 11.50.

Table 99 illustrates the application of the Phi Cramer's V significance test to support the conclusion.

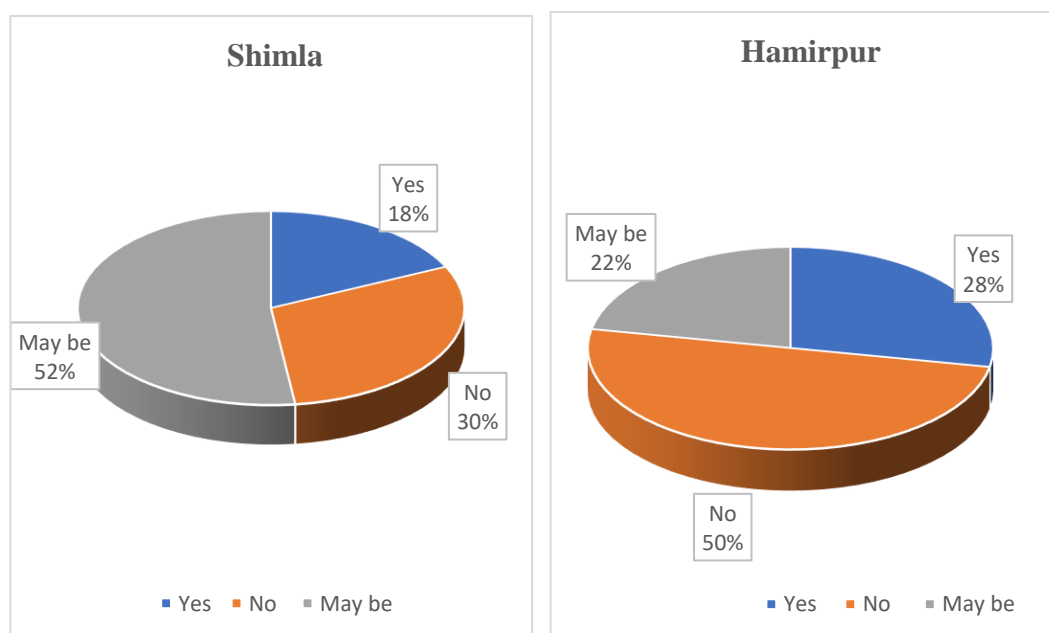
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.311	.008
	Cramer's V	.311	.008
N of Valid Cases		100	

A Chi-square test was used to determine if respondents in the two districts under study perceived the causes similarly or differently. With degrees of freedom = 2, the calculated significance value (0.008) is less than 0.05. Therefore, it can be concluded that the districts differ statistically significantly. The alternative hypothesis is accepted and the null hypothesis is rejected, indicating that respondents in the two districts have different opinions. This conclusion is further supported by the significance of Phi Cramer's V (0.008).

FIGURE 34

In a survey conducted among the general public in Shimla and Hamirpur districts, respondents were asked whether they believe prisoners are concerned about their voting rights. In Shimla, 18% of respondents answered "Yes," 30% said "No," and the majority, 52%, were uncertain, responding with "Maybe." In Hamirpur, the responses were 28% for "Yes," 50% for "No," and 22% for "Maybe." These findings indicate varying levels of awareness and opinion among the general public regarding prisoners' concerns about their voting rights.



6.4.4.2. Extending Voting Rights to Prisoners: The general public in both districts under study was asked, "Should prisoners in India have the right to vote?" A total of

100 respondents participated, with 50 responses from Shimla and 50 from Hamirpur. In Shimla, the observed values were 29 for "Yes" and 21 for "No," while in Hamirpur, the observed values were 43 for "Yes" and 7 for "No." The responses are presented below.

Table 100 presents the cross-tabulation of districts regarding the extension of voting rights to prisoners by the general public.

District * Cross tabulation

			Should Prisoners in India have the Right to Vote		Total
			Yes	No	
District	Shimla	Count	29	21	50
		Expected Count	36.0	14.0	50.0
		% within District	58.0%	42.0%	100.0%
		% of Total	29.0%	21.0%	50.0%
	Hamirpur	Count	43	7	50
		Expected Count	36.0	14.0	50.0
		% within District	86.0%	14.0%	100.0%
		% of Total	43.0%	7.0%	50.0%
Total	Count	72	28	100	
	Expected Count	72.0	28.0	100.0	
	% within District	72.0%	28.0%	100.0%	
	% of Total	72.0%	28.0%	100.0%	

Source: Survey

Table 101 shows the Chi-Square test used to examine whether the general public in both districts has differing or similar views on whether prisoners in India should have the right to vote.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	9.722 ^a	1	.002		
Continuity Correction ^b	8.383	1	.004		
Likelihood Ratio	10.065	1	.002		
Fisher's Exact Test				.003	.002
Linear-by-Linear Association	9.625	1	.002		
N of Valid Cases	100				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 14.00.

Table 102 shows the results of the Phi Cramer's V significance test, which supports the conclusion.

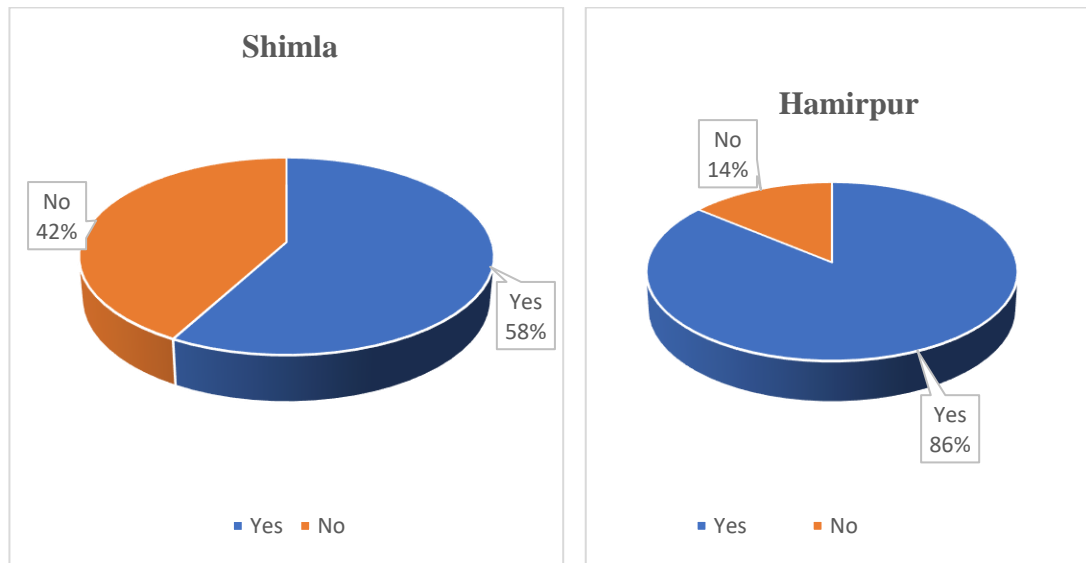
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	-.312	.002
	Cramer's V	.312	.002
N of Valid Cases		100	

A Chi-square test was used to determine if respondents from the two districts differed significantly. The calculated significance value (0.002) is less than 0.05, with a significance level of 5% and degrees of freedom = 1. Thus, it can be concluded that the respondents' perceptions in the two districts differ statistically significantly. This indicates that respondents in each district have different perspectives, supporting the acceptance of the alternative hypothesis and the rejection of the null hypothesis. Further evidence for this conclusion is provided by the significance of Phi Cramer's V (0.002).

FIGURE 35

The general public in both districts under study was surveyed with the question, "Should prisoners in India have the right to vote?" In Shimla, 58% of respondents answered "Yes," while 42% answered "No." In Hamirpur, 86% responded "Yes," and 14% responded "No."



6.4.4.3 Eligibility to Vote Among Prisoners: The general population in both districts under study was asked, "If you support prisoners' voting rights in India, who should be granted the right to vote?" A total of 100 responses were collected, with 50 from Shimla and 50 from Hamirpur. In Shimla, the observed values are 13 for under-trials, 9 for convicts, and 28 for both. In Hamirpur, the observed values are 26 for under-trials, 5 for convicts, and 19 for both. The responses are shown below.

Table 103 shows the cross-tabulation of districts regarding prisoners' voting rights (General Public) and examines preferences for extending voting rights to under-trials, convicts, or both.

District * Crosstabulation

			If you are in favor of prisoners' voting rights in India, whom out of the following it should be provided to			Total
			Under-trials	Convicted	Both	
District	Shimla	Count	13	9	28	50
		Expected Count	19.5	7.0	23.5	50.0
		% within District	26.0%	18.0%	56.0%	100.0%
		% of Total	13.0%	9.0%	28.0%	50.0%
	Hamirpur	Count	26	5	19	50

		Expected Count	19.5	7.0	23.5	50.0
		% within District	52.0%	10.0%	38.0%	100.0%
		% of Total	26.0%	5.0%	19.0%	50.0%
Total		Count	39	14	47	100
		Expected Count	39.0	14.0	47.0	100.0
		% within District	39.0%	14.0%	47.0%	100.0%
		% of Total	39.0%	14.0%	47.0%	100.0%

Source: Survey

Table 104 displays the results of a Chi-square test conducted to determine whether the general public in both districts perceived differently or similarly regarding who should be eligible for voting rights among prisoners.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	7.200 ^a	2	.027
Likelihood Ratio	7.310	2	.026
Linear-by-Linear Association	5.613	1	.018
N of Valid Cases	100		

0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 7.00.

Table 105 shows the results of the Phi Cramer's V significance test, providing additional support for the conclusion of the Chi-square test.

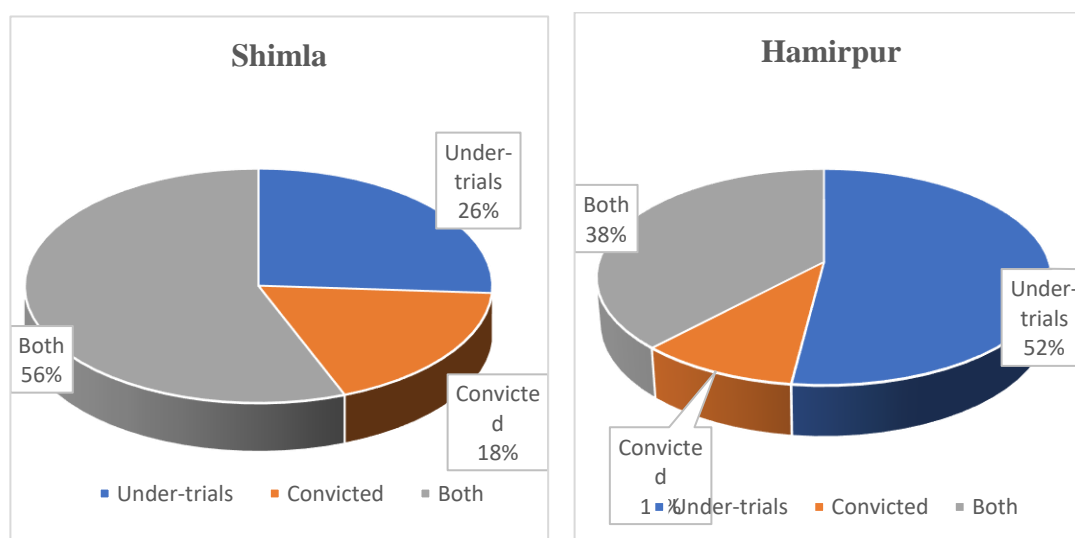
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.268	.027
	Cramer's V	.268	.027
N of Valid Cases		100	

The study conducted a Chi-square test to examine any differences in respondents' perceptions between the two districts under investigation. The calculated significance value (0.027) was less than 0.05, with a significance level of 5% and 2 degrees of freedom. This indicates that respondents in each district have significantly different perceptions, leading to the acceptance of the alternative hypothesis and rejection of the null hypothesis. The significance of Phi Cramer's V (0.027) further supports this conclusion, providing additional evidence for the statistically significant variation between the districts.

FIGURE 36

The respondents were asked about their views on the eligibility for voting rights among prisoners. In Shimla, the general public responded with 26% supporting "Under-trials," 18% supporting "Convicted," and 56% supporting "Both." In Hamirpur, the responses were 52% for "Under-trials," 10% for "Convicted," and 38% for "Both."



6.4.4.4 Prisoners on Bail/Parole: These responses provide insights into the perceptions of the general public in both districts regarding the eligibility of prisoners on bail/parole to vote and the exclusion of prisoners with petty offenses who cannot seek bail. In Shimla, out of the 50 respondents, 36 considered it unfair that prisoners on bail/parole are eligible to cast their votes while prisoners with petty offenses who cannot seek bail are not. In contrast, 14 respondents in Shimla believed that this practice is fair. In Hamirpur, 20 respondents considered it unfair, while 30 respondents believed it was

fair. The responses are presented below.

Table 106 presents the cross-tabulation of districts concerning the eligibility of prisoners on bail/parole to vote, while prisoners with petty offenses who cannot seek bail are excluded, it also examines whether this situation is considered unfair.

District * Crosstabulation

			Prisoners on bail /parole are eligible to cast their votes, while prisoners with petty offenses who cannot seek bail are not considered eligible to cast their votes. Isn't that unfair		Total
			Unfair	Fair	
District	Shimla	Count	36	14	50
		Expected Count	28.0	22.0	50.0
		% within District	72.0%	28.0%	100.0%
		% of Total	36.0%	14.0%	50.0%
	Hamirpur	Count	20	30	50
		Expected Count	28.0	22.0	50.0
		% within District	40.0%	60.0%	100.0%
		% of Total	20.0%	30.0%	50.0%
Total		Count	56	44	100
		Expected Count	56.0	44.0	100.0
		% within District	56.0%	44.0%	100.0%
		% of Total	56.0%	44.0%	100.0%

Source: Survey

Table 107 displays the results of a Chi-square test conducted to analyze the perceptions of the general public in both districts regarding the eligibility of prisoners on bail/parole to vote, and the exclusion of prisoners with petty offenses who cannot seek bail.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	10.390 ^a	1	.001		
Continuity Correction ^b	9.131	1	.003		
Likelihood Ratio	10.589	1	.001		
Fisher's Exact Test				.002	.001
Linear-by-Linear Association	10.286	1	.001		
N of Valid Cases	100				

0 cells (0.0%) have expected count less than 5. The minimum expected count is 22.00.

Table 108 shows the results of the Phi Cramer's V significance test, which supports the findings of the Chi-square test.

Symmetric Measures

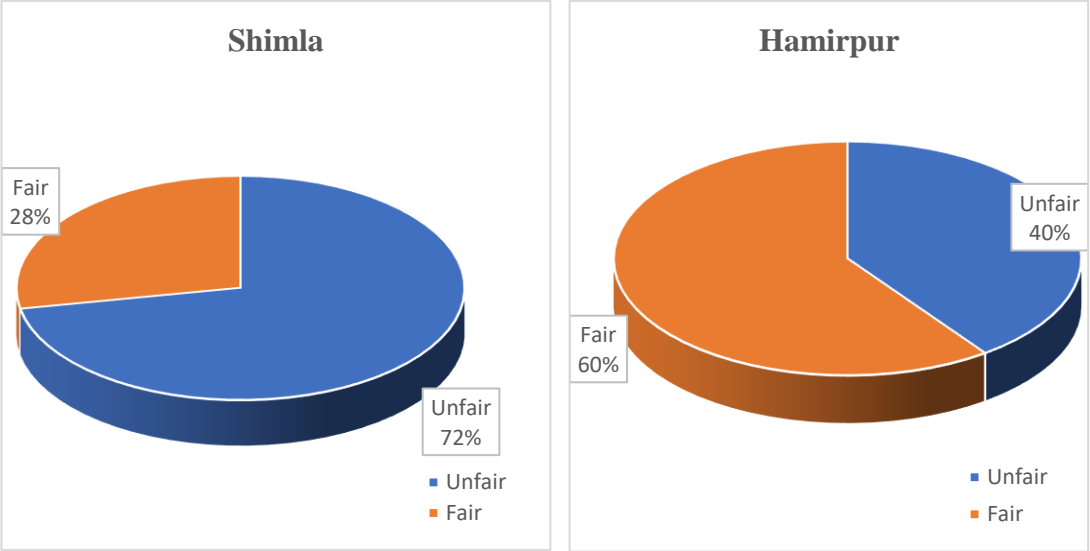
		Value	Approx. Sig.
Nominal by Nominal	Phi	.322	.001
	Cramer's V	.322	.001
N of Valid Cases		100	

To determine if there were significant differences between the respondents in the two districts, a Chi-square test was conducted. With a significance level of 5% and degrees of freedom = 1, the calculated significance value was 0.001, which is less than 0.05. This indicates that respondents' perceptions in the two districts differ significantly from one another. As a result, the alternative hypothesis is supported, and the null hypothesis is rejected. The conclusion is further corroborated by the significance of Phi Cramer's V (0.001), which reveals a strong association between the district and respondents' perceptions.

FIGURE 37

Illustrates the public's views on the voting eligibility of prisoners on bail/parole and the exclusion of prisoners with minor offenses who cannot seek bail. In Shimla, 72%

of respondents considered this practice "Unfair," while 28% viewed it as "Fair." In Hamirpur, 40% of respondents deemed it "Unfair," and 60% considered it "Fair."



6.4.4.5 Voting Rights Based on Crimes: This provides insights into the general public's opinions in both districts regarding the differentiation of voting rights based on the crimes committed by prisoners. In Shimla, out of 50 respondents, 17 believed that prisoners convicted of murder and rape should not be allowed to vote, 7 felt the same about those convicted of theft and robbery, 19 held this view for prisoners convicted of election fraud, and 7 believed there should be no discrimination based on crime. In Hamirpur, among the 50 respondents, 11 believed that prisoners convicted of murder and rape should not be allowed to vote, 7 thought the same for those convicted of theft and robbery, 8 held this view for election fraud, and 24 felt there should be no discrimination based on crime.

Table 109 presents the cross-tabulation of districts based on voting rights related to different crimes.

District * Crosstabulation

	Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes or there should be no discrimination based on crime for voting
--	--

			Murder and Rape	Theft and Robbery	Election Fraud
District	Shimla	Count	17	7	19
		Expected Count	14.0	7.0	13.5
		% within District	34.0%	14.0%	38.0%
		% of Total	17.0%	7.0%	19.0%
	Hamirpur	Count	11	7	8
		Expected Count	14.0	7.0	13.5
		% within District	22.0%	14.0%	16.0%
		% of Total	11.0%	7.0%	8.0%
	Total		Count	28	14
			Expected Count	28.0	14.0
			% within District	28.0%	14.0%
			% of Total	28.0%	14.0%

District * Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes or there should be no discrimination based on crime for voting Crosstabulation

				Total
			No discrimination based on crime	
District	Shimla	Count	7	50
		Expected Count	15.5	50.0
		% within District	14.0%	100.0%
		% of Total	7.0%	50.0%
	Hamirpur	Count	24	50
		Expected Count	15.5	50.0
		% within District	48.0%	100.0%
		% of Total	24.0%	50.0%

Total	Count	31	100
	Expected Count	31.0	100.0
	% within District	31.0%	100.0%
	% of Total	31.0%	100.0%

Source: Survey

Table 110 displays the results of a Chi-square test conducted to analyze the opinions of the general public in both districts regarding the differentiation of voting rights based on crimes committed by prisoners.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	15.090 ^a	3	.002
Likelihood Ratio	15.767	3	.001
Linear-by-Linear Association	5.872	1	.015
N of Valid Cases	100		

0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 7.00.

Table 111 further supports the conclusion by showing the significance of Phi Cramer's V.

Symmetric Measures

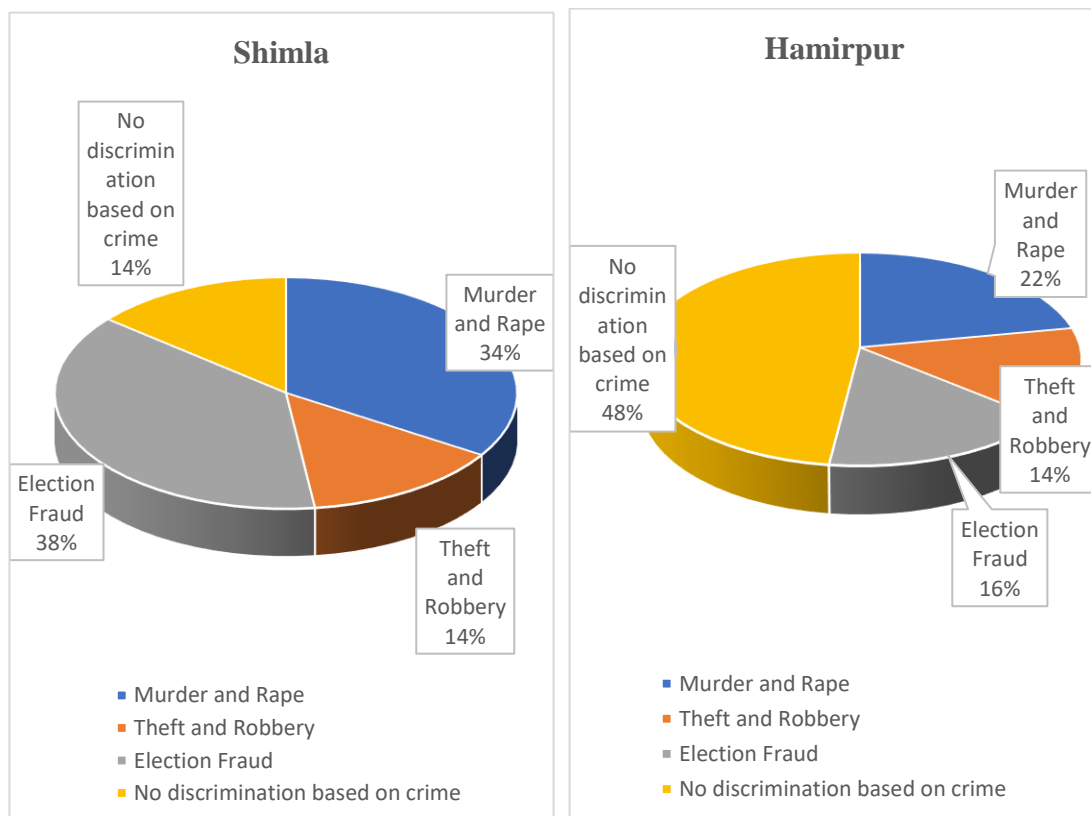
		Value	Approx. Sig.
Nominal by Nominal	Phi	.388	.002
	Cramer's V	.388	.002
N of Valid Cases		100	

A Chi-square test was conducted to determine if there is a significant difference in respondents' perceptions between the two districts under investigation. The calculated significance value (0.002) is less than 0.05, indicating a significant difference, with a significance level of 5% and degrees of freedom = 3. Thus, it can be concluded that the perceptions of respondents in the two districts differ significantly. This supports the

acceptance of the alternative hypothesis and the rejection of the null hypothesis. Further evidence is provided by Phi Cramer's V value of 0.002, which confirms a notable disparity in perceptions between the two districts.

FIGURE 38

The responses provide insights into the opinions of the general public in both districts regarding differentiating voting rights based on crimes committed by prisoners. In Shimla, the general public responded as follows: 34% for murder and rape, 14% for theft and robbery, 52% for election fraud, and 14% for no discrimination based on crime. In Hamirpur, the responses were: 22% for murder and rape, 14% for theft and robbery, 16% for election fraud, and 48% for no discrimination based on crime. These percentages reflect the distribution of responses from the general public in each district regarding the differentiation of voting rights based on crimes committed by prisoners.



6.4.4.6. Impact on Elections: These responses provide insights into the opinions of the general public in both districts regarding the potential impact of granting voting rights to prisoners on the electoral process. In Shimla, out of 50 respondents, 23 strongly

agreed that allowing prisoners to vote would impact the elections, 10 agreed, 8 were neutral, and 9 disagreed. In Hamirpur, 7 strongly agreed, 22 agreed, 10 were neutral, and 11 disagreed regarding the impact of granting voting rights to prisoners on the electoral process. The detailed responses are presented below.

In **Table 112**, a cross-tabulation of districts was conducted with the question, "Do you think that if prisoners are allowed to vote, it will have an impact on the elections?"

District * Crosstabulation

			Do you think if prisoners are allowed to vote, it will have an impact on the Elections		
			Strongly agree	Agree	Neutral
District	Shimla	Count	23	10	8
		Expected Count	15.0	16.0	9.0
		% within District	46.0%	20.0%	16.0%
		% of Total	23.0%	10.0%	8.0%
	Hamirpur	Count	7	22	10
		Expected Count	15.0	16.0	9.0
		% within District	14.0%	44.0%	20.0%
		% of Total	7.0%	22.0%	10.0%
Total			Count	30	32
			Expected Count	30.0	32.0
			% within District	30.0%	32.0%
			% of Total	30.0%	32.0%

District * Do you think if prisoners are allowed to vote, it will have an impact on the Elections Crosstabulation

				Total
			Disagree	
District	Shimla	Count	9	50
		Expected Count	10.0	50.0

		% within District	18.0%	100.0%
		% of Total	9.0%	50.0%
	Hamirpur	Count	11	50
		Expected Count	10.0	50.0
		% within District	22.0%	100.0%
		% of Total	11.0%	50.0%
Total			Count	20
			Expected Count	20.0
			% within District	20.0%
			% of Total	20.0%

Source: Survey

Table 113 displays the results of a Chi-square test, showing how the general population in both districts perceives the potential impact of granting inmates voting rights on the electoral process.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	13.456 ^a	3	.004
Likelihood Ratio	14.027	3	.003
Linear-by-Linear Association	3.988	1	.046
N of Valid Cases	100		

0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 9.00.

Table 114 presents the results of a Cramer's V significance test, conducted to support the conclusion of the Chi-square test.

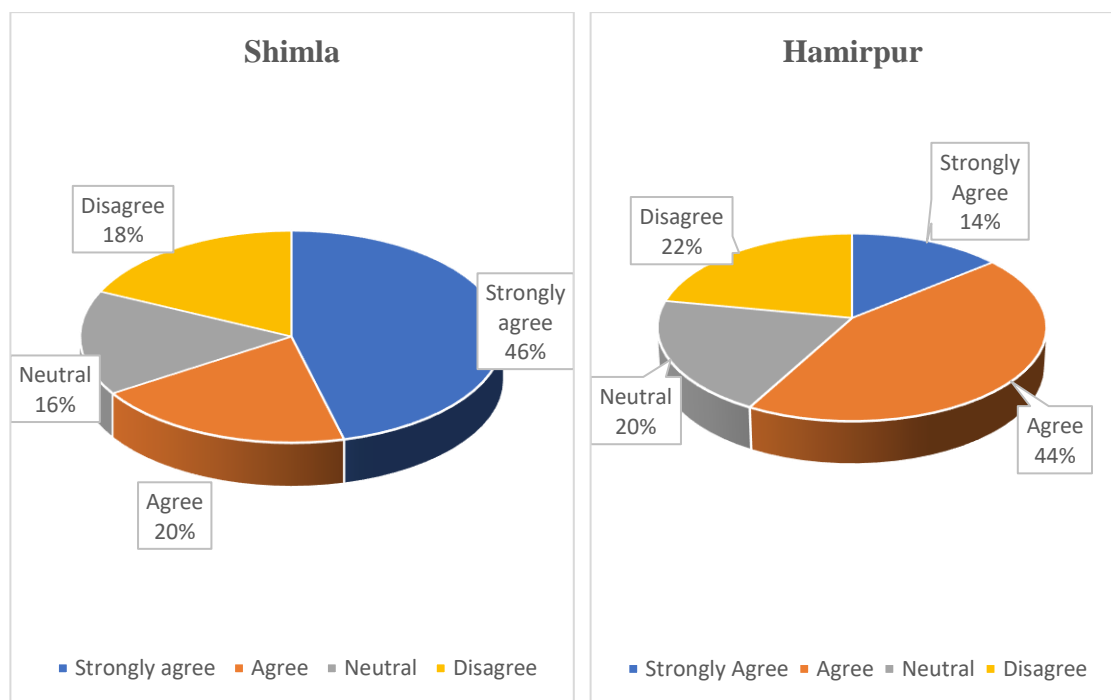
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.367	.004
	Cramer's V	.367	.004
N of Valid Cases		100	

The Chi-square test was conducted to determine whether respondents in the two districts under study perceived the impact of granting voting rights to prisoners differently. With a significance level of 5% and 3 degrees of freedom, the computed significance value (0.004) is less than 0.05. This indicates a statistically significant difference in perceptions between the two districts. Therefore, the null hypothesis is rejected, and the alternative hypothesis is accepted, suggesting that respondents in the two districts perceive the reasons differently. This conclusion is further supported by the significance of Phi Cramer's V (0.004).

FIGURE 39

The responses provide insights into the opinions of the general public in both districts regarding the potential impact of granting voting rights to prisoners on the electoral process. In Shimla, the general public responded as follows: 46% "Strongly Agree," 20% "Agree," 16% "Neutral," and 18% "Disagree." Similarly, in Hamirpur, the responses were 14% "Strongly Agree," 44% "Agree," 20% "Neutral," and 22% "Disagree."



6.4.4.7. Political Ignorance: The general public of both districts under study was asked

the question, "Do you think politicians ignore prisoners because they don't have the right to vote?" A total of 100 respondents participated, with 50 responses from Shimla and 50 from Hamirpur. The observed values for Shimla were 19 for "Yes," 13 for "No," and 18 for "Maybe." In Hamirpur, the observed values were 20 for "Yes," 16 for "No," and 14 for "Maybe."

Table 115 shows a crosstabulation of districts with the question, "Do you think politicians ignore prisoners because they don't have the right to vote?"

District * Crosstabulation

			Do you think politicians ignore prisoners because they don't have the right to vote			Total
			Yes	No	May be	
District	Shimla	Count	19	13	18	50
		Expected Count	19.5	14.5	16.0	50.0
		% within District	38.0%	26.0%	36.0%	100.0%
		% of Total	19.0%	13.0%	18.0%	50.0%
	Hamirpur	Count	20	16	14	50
		Expected Count	19.5	14.5	16.0	50.0
		% within District	40.0%	32.0%	28.0%	100.0%
		% of Total	20.0%	16.0%	14.0%	50.0%
Total		Count	39	29	32	100
		Expected Count	39.0	29.0	32.0	100.0
		% within District	39.0%	29.0%	32.0%	100.0%
		% of Total	39.0%	29.0%	32.0%	100.0%

Source: Survey

Table 116 presents the results of a Chi-square test conducted to assess whether there were notable variations in the perceptions of respondents across the two districts under study.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.836 ^a	2	.658
Likelihood Ratio	.838	2	.658
Linear-by-Linear Association	.351	1	.554
N of Valid Cases	100		

0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 14.50.

Table 117 shows the results of the Phi Cramer's V test, which supports the findings of the Chi-square test.

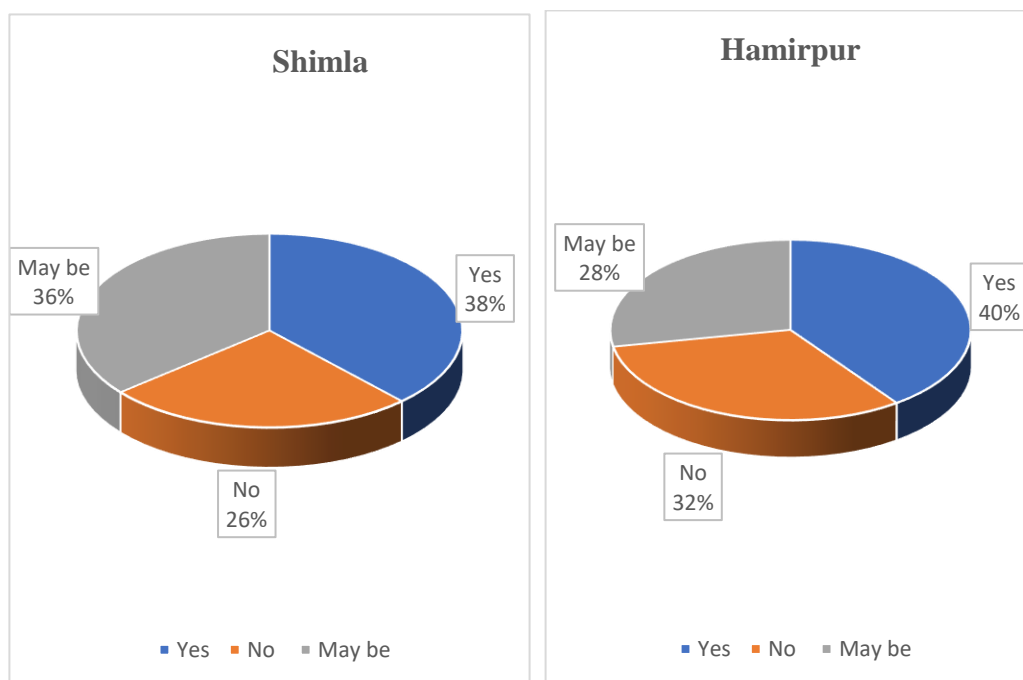
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.091	.658
	Cramer's V	.091	.658
N of Valid Cases		100	

To determine if the perceptions of respondents in the two districts under study were similar or different, a Chi-square test was performed. With 2 degrees of freedom and a significance level of 5%, the calculated significance value is 0.658, which is greater than 0.05 ($0.658 > 0.05$). Thus, there are no notable differences between the districts. Consequently, the null hypothesis is accepted, and the alternative hypothesis is rejected, indicating that the respondents from both districts have comparable perspectives on the issue. This conclusion is further supported by the Phi Cramer's V value of 0.658.

FIGURE 40

The general public in both districts under study was asked whether they believe politicians ignore prisoners because they lack the right to vote. In Shimla, the responses were 38% for "Yes," 26% for "No," and 36% for "Maybe." In Hamirpur, the responses were 40% for "Yes," 32% for "No," and 28% for "Maybe." These percentages reflect the distribution of opinions on whether the absence of voting rights for prisoners leads to their neglect by politicians.



6.4.4.8. Democratic Voting rights: The general public in both districts was asked, "If prisoners are given their democratic voting rights, their demands can be heard by whom?" A total of 100 respondents participated, with 50 responses from Shimla and 50 from Hamirpur. In Shimla, the observed values were 9 for "Political Leaders," 10 for "Non-Government Organizations," 15 for "Center-State Division on Prison Reforms," and 16 for "All of the Above." In Hamirpur, the observed values were 12 for "Political Leaders," 16 for "Non-Government Organizations," 10 for "Center-State Division on Prison Reforms," and 12 for "All of the Above."

Table 118 presents the crosstabulation of districts concerning democratic voting rights.
District * Crosstabulation

			If Prisoners are given their democratic voting rights, their demands can be heard by the following		
			Political Leaders	Non-Government Organizations	Center-State Division on Prison Reforms
District	Shimla	Count	9	10	15
		Expected Count	10.5	13.0	12.5

		% within District	18.0%	20.0%	30.0%
		% of Total	9.0%	10.0%	15.0%
	Hamirpur	Count	12	16	10
		Expected Count	10.5	13.0	12.5
		% within District	24.0%	32.0%	20.0%
		% of Total	12.0%	16.0%	10.0%
Total			Count	21	26
			Expected Count	21.0	26.0
			% within District	21.0%	26.0%
			% of Total	21.0%	26.0%

District * If Prisoners are given their democratic voting rights, their demands can be heard by the following Crosstabulation

				Total
			All of the above	
District	Shimla	Count	16	50
		Expected Count	14.0	50.0
		% within District	32.0%	100.0%
		% of Total	16.0%	50.0%
	Hamirpur	Count	12	50
		Expected Count	14.0	50.0
		% within District	24.0%	100.0%
		% of Total	12.0%	50.0%
Total			Count	28
			Expected Count	28.0
			% within District	100.0%
			% of Total	100.0%

Source: Survey

Table 119 shows the results of a Chi-square test conducted to determine if there are significant differences in respondents' perceptions between the two districts under study.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.385 ^a	3	.336
Likelihood Ratio	3.407	3	.333
Linear-by-Linear Association	2.077	1	.149
N of Valid Cases	100		

0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 10.50.

Table 120 shows the results of a Phi Cramer's V significance test conducted to support the findings of the Chi-square test.

Symmetric Measures

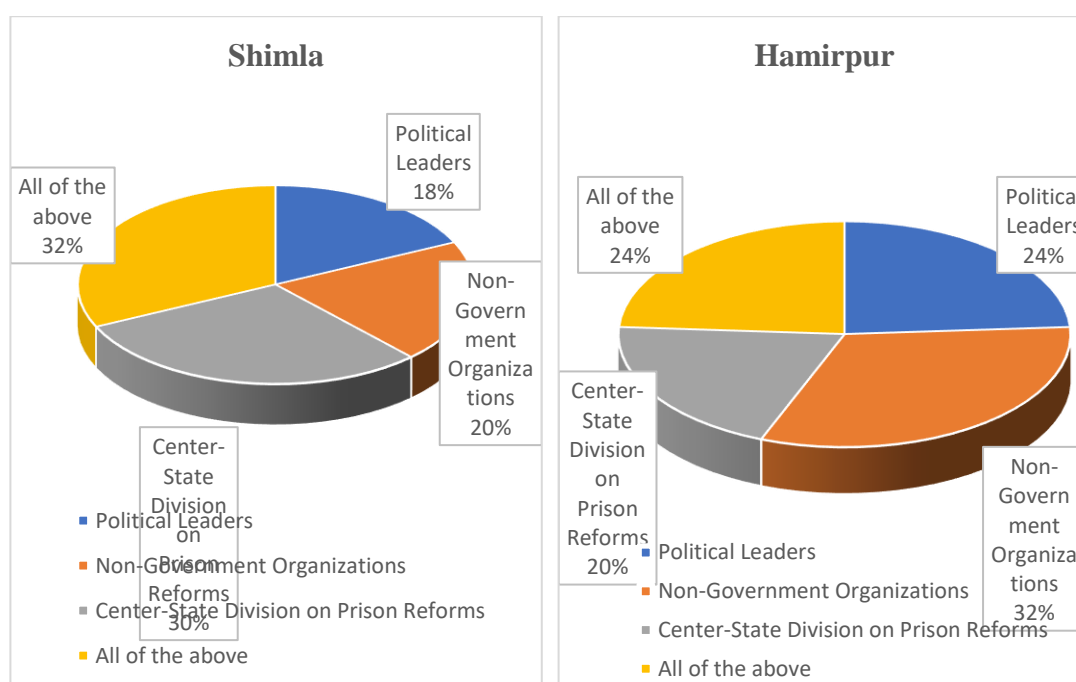
		Value	Approx. Sig.
Nominal by Nominal	Phi	.184	.336
	Cramer's V	.184	.336
N of Valid Cases		100	

To determine whether respondents' perceptions in the two districts under study were similar or different, a Chi-square test was conducted. With 3 degrees of freedom and a significance level of 5%, the calculated significance value was 0.336, which is greater than 0.05 ($0.336 > 0.05$). This indicates that there are no notable differences between the districts. Consequently, the null hypothesis is accepted, and the alternative hypothesis is rejected, suggesting that respondents from both districts have comparable views on the subject. The significance value of 0.336 for Phi Cramer's V further supports this conclusion.

FIGURE 41

The general public in both districts under study was asked the question, "If prisoners are given their democratic voting rights, their demands can be heard by the following?" In Shimla, the responses were: 18% chose "Political Leaders," 20% chose "Non-

Government Organizations," 30% chose "Center-State Division on Prison Reforms," and 32% chose "All of the above." Similarly, in Hamirpur, the responses were: 24% for "Political Leaders," 32% for "Non-Government Organizations," 20% for "Center-State Division on Prison Reforms," and 24% for "All of the above."



6.4.4.9. Contesting Elections: The general public in both districts under study was asked the question, "Is it not ironic that prisoners can contest elections but cannot vote?" A total of 100 respondents provided their responses, with 50 responses collected from Shimla and 50 from Hamirpur. In Shimla, 34 respondents found it "Unfair," while 16 considered it "Fair." In Hamirpur, 23 respondents thought it "Unfair," while 27 believed it to be "Fair." The detailed responses are presented below.

Table 121 presents the cross-tabulation of responses from the general public in both districts regarding the question, "Is it not ironic that prisoners can contest elections but cannot vote?"

District * Crosstabulation

	Is it not ironic that prisoners can contest elections but cannot vote? Is it fair or unfair		Total
	Unfair	Fair	

District	Shimla	Count	34	16	50
		Expected Count	28.5	21.5	50.0
		% within District	68.0%	32.0%	100.0%
		% of Total	34.0%	16.0%	50.0%
	Hamirpur	Count	23	27	50
		Expected Count	28.5	21.5	50.0
		% within District	46.0%	54.0%	100.0%
		% of Total	23.0%	27.0%	50.0%
Total	Count	57	43	100	
	Expected Count	57.0	43.0	100.0	
	% within District	57.0%	43.0%	100.0%	
	% of Total	57.0%	43.0%	100.0%	

Source: Survey

Table 122 shows a Chi-square test to determine if there are any variations in responses between the two districts under examination.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	4.937 ^a	1	.026		
Continuity Correction ^b	4.080	1	.043		
Likelihood Ratio	4.982	1	.026		
Fisher's Exact Test				.043	.021
Linear-by-Linear Association	4.887	1	.027		
N of Valid Cases	100				

0 cells (0.0%) have an expected count less than 5. The minimum expected count is 21.50.

Table 123 shows the results of the Phi Cramer's V significance test, which is carried out to support the findings of the Chi-square test.

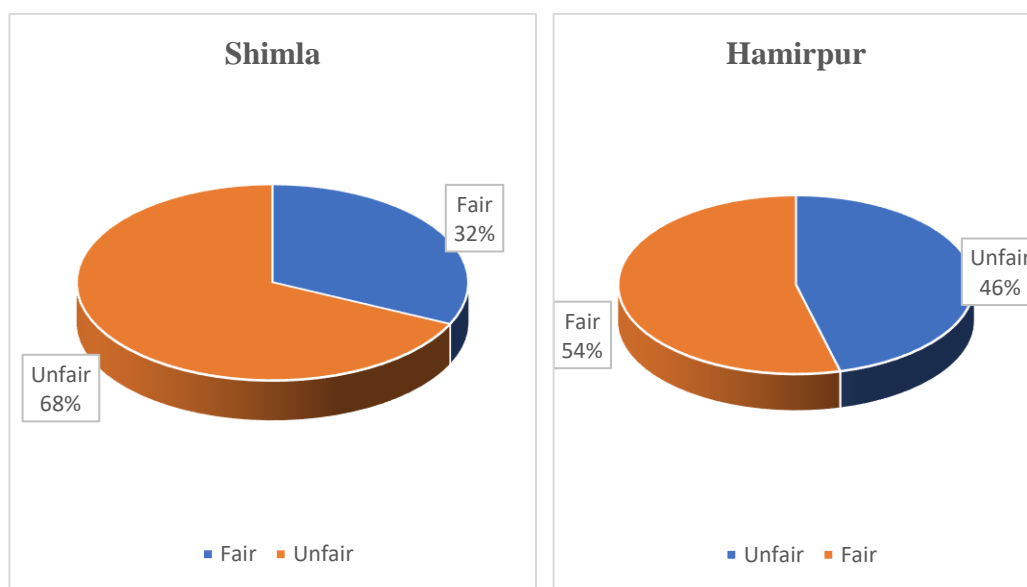
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.222	.026
	Cramer's V	.222	.026
N of Valid Cases		100	

To determine if there were variations in responses between the two districts under study, a Chi-square test was performed. With 1 degree of freedom and a significance level of 5%, the calculated significance value of 0.026 is less than 0.05 ($0.026 < 0.05$). This indicates a statistically significant difference in perceptions between the districts. Consequently, the null hypothesis is rejected, and the alternative hypothesis is accepted, suggesting that respondents in the two districts have different perspectives on the issue. The significance of Phi Cramer's V (0.026) further supports this conclusion.

FIGURE 42

The general public in both districts was asked, "Is it not ironic that prisoners can contest elections but cannot vote?" In Shimla, the responses were: 68% said "Unfair" and 32% said "Fair." In Hamirpur, the responses were: 28% said "Unfair," 50% said "Fair," and 22% said "Maybe."



6.4.4.10. Argument in Favor: The general public in both districts under study was asked, "Do you support the following arguments in favor of allowing prisoners to vote?" A total of 100 respondents participated, with 50 responses from Shimla and 50 from Hamirpur. In Shimla, the observed values were 11 for "Voting strengthens Democracy," 20 for "Voting promotes civic responsibility," and 19 for "Denial of voting is an additional, unfair, and arbitrary punishment." In Hamirpur, the observed values were 8 for "Voting strengthens Democracy," 29 for "Voting promotes civic responsibility," and 13 for "Denial of voting is an additional, unfair, and arbitrary punishment." The detailed responses are presented below.

Table 124 shows a cross-tabulation of the general public in both districts under consideration regarding their support for reasons to allow prisoners to vote.

District * Crosstabulation

District			Cross tabulation			
			The following arguments are in favor of allowing prisoners to vote, do you support it			Total
			Voting strengthens Democracy	Voting promotes civic responsibility	Denial of voting is an additional, unfair and arbitrary punishment	
District	Shimla	Count	11	20	19	50
		Expected Count	8.0	29.0	13.0	50.0
		% within District	22.0%	40.0%	38.0%	100.0%
		% of Total	11.0%	20.0%	19.0%	50.0%
	Hamirpur	Count	5	38	7	50
		Expected Count	8.0	29.0	13.0	50.0
		% within District	10.0%	76.0%	14.0%	100.0%
		% of Total	5.0%	38.0%	7.0%	50.0%
Total		Count	16	58	26	100
		Expected Count	16.0	58.0	26.0	100.0

	% within District	16.0%	58.0%	26.0%	100.0%
	% of Total	16.0%	58.0%	26.0%	100.0%

Source: Survey

Table 125 presents the results of a Chi-square test used to investigate whether there are variations in the responses among the general public from the two districts under consideration.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	13.375 ^a	2	.001
Likelihood Ratio	13.740	2	.001
Linear-by-Linear Association	.869	1	.351
N of Valid Cases	100		

0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 8.00.

Table 126 shows the significance of Phi Cramer's V, confirming the findings of the Chi-square test

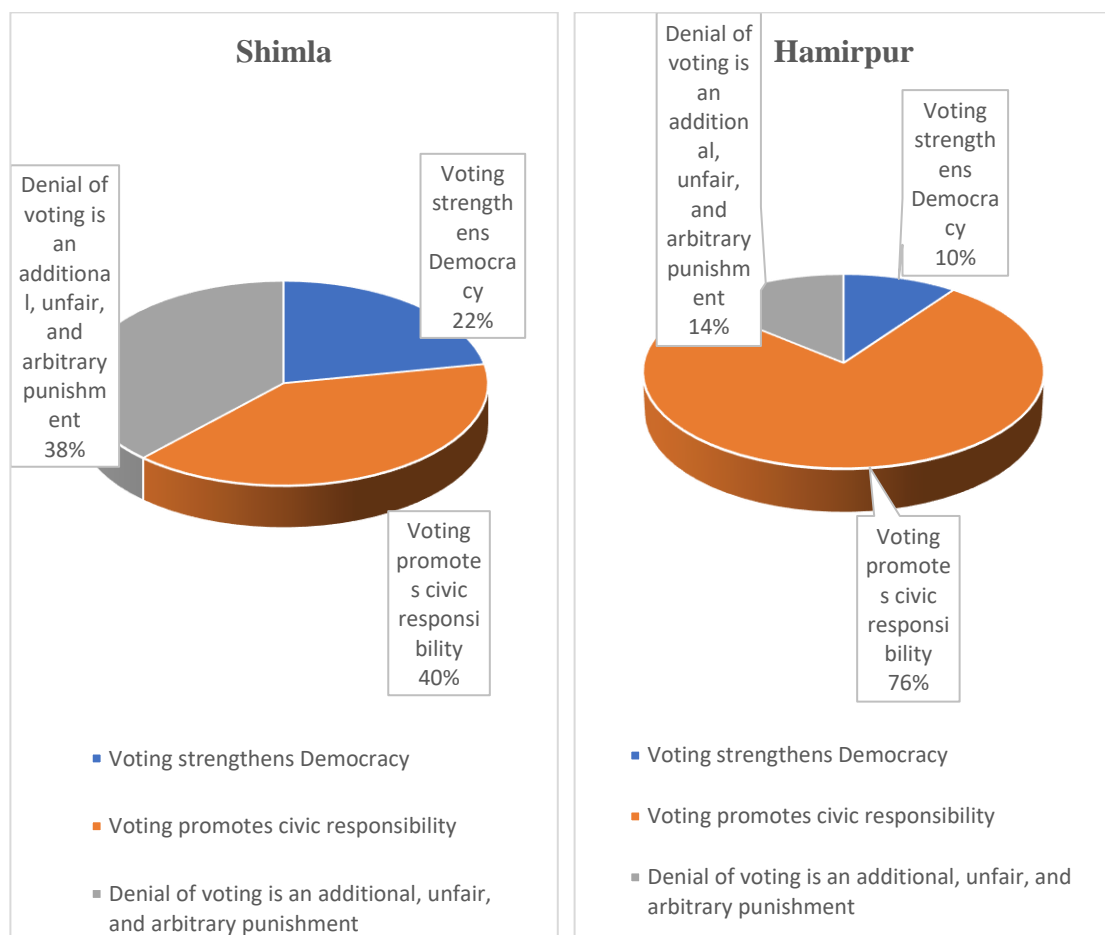
Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.366	.001
	Cramer's V	.366	.001
N of Valid Cases		100	

A Chi-square test was conducted to determine if there were significant differences between respondents in the two districts. The calculated significance value (0.001) is less than 0.05, or $(0.001) < 0.05$, with degrees of freedom = 2. This indicates that respondents' perceptions differ statistically significantly between the districts, supporting the acceptance of the alternative hypothesis and the rejection of the null hypothesis. The significance of Phi Cramer's V (0.001) further confirms this conclusion.

FIGURE 43

Shows the general public's support in both districts for various arguments in favor of allowing prisoners to vote. In Shimla, the responses were: 22% for "Voting strengthens Democracy," 40% for "Voting promotes civic responsibility," and 38% for "Denial of voting is an additional, unfair, and arbitrary punishment." In Hamirpur, the responses were: 10% for "Voting strengthens Democracy," 76% for "Voting promotes civic responsibility," and 14% for "Denial of voting is an additional, unfair, and arbitrary punishment."



6.4.4.11. Law-abiding citizen: The general public in both districts was asked whether they believe the right to vote can make prisoners law-abiding citizens. A total of 100 respondents participated, with 50 responses from Shimla and 50 from Hamirpur. In Shimla, the observed values were: 8 for "Strongly Agree," 19 for "Agree," 8 for "Neutral," and 15 for "Disagree." In Hamirpur, the observed values were: 29 for

"Strongly Agree," 8 for "Agree," 9 for "Neutral," and 4 for "Disagree."

Table 127 presents the crosstabulation of districts regarding the question, "Do you think the right to vote can make prisoners law-abiding citizens?"

District * Crosstabulation

			Do you think the right to vote can make prisoners law-abiding citizens		
			Strongly agree	Agree	Neutral
District	Shimla	Count	8	19	8
		Expected Count	18.5	13.5	8.5
		% within District	16.0%	38.0%	16.0%
		% of Total	8.0%	19.0%	8.0%
	Hamirpur	Count	29	8	9
		Expected Count	18.5	13.5	8.5
		% within District	58.0%	16.0%	18.0%
		% of Total	29.0%	8.0%	9.0%
Total	Count	37	27	17	
	Expected Count	37.0	27.0	17.0	
	% within District	37.0%	27.0%	17.0%	
	% of Total	37.0%	27.0%	17.0%	

District * Do you think the right to vote can make prisoners law-abiding citizens Crosstabulation

				Total
			Disagree	
District	Shimla	Count	15	50
		Expected Count	9.5	50.0
		% within District	30.0%	100.0%
		% of Total	15.0%	50.0%
	Hamirpur	Count	4	50

		Expected Count	9.5	50.0
		% within District	8.0%	100.0%
		% of Total	4.0%	50.0%
Total		Count	19	100
		Expected Count	19.0	100.0
		% within District	19.0%	100.0%
		% of Total	19.0%	100.0%

Source: Survey

Table 128 shows a Chi-square test used to compare the responses from the two districts under analysis to determine if there are any significant differences.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	22.828 ^a	3	.000
Likelihood Ratio	24.115	3	.000
Linear-by-Linear Association	13.777	1	.000
N of Valid Cases	100		

0 cells (0.0%) have expected count less than 5. The minimum expected count is 8.50.

Table 129 presents the results of a Phi Cramer's V test, used to assess the significance and support the findings of the Chi-square test.

Symmetric Measures

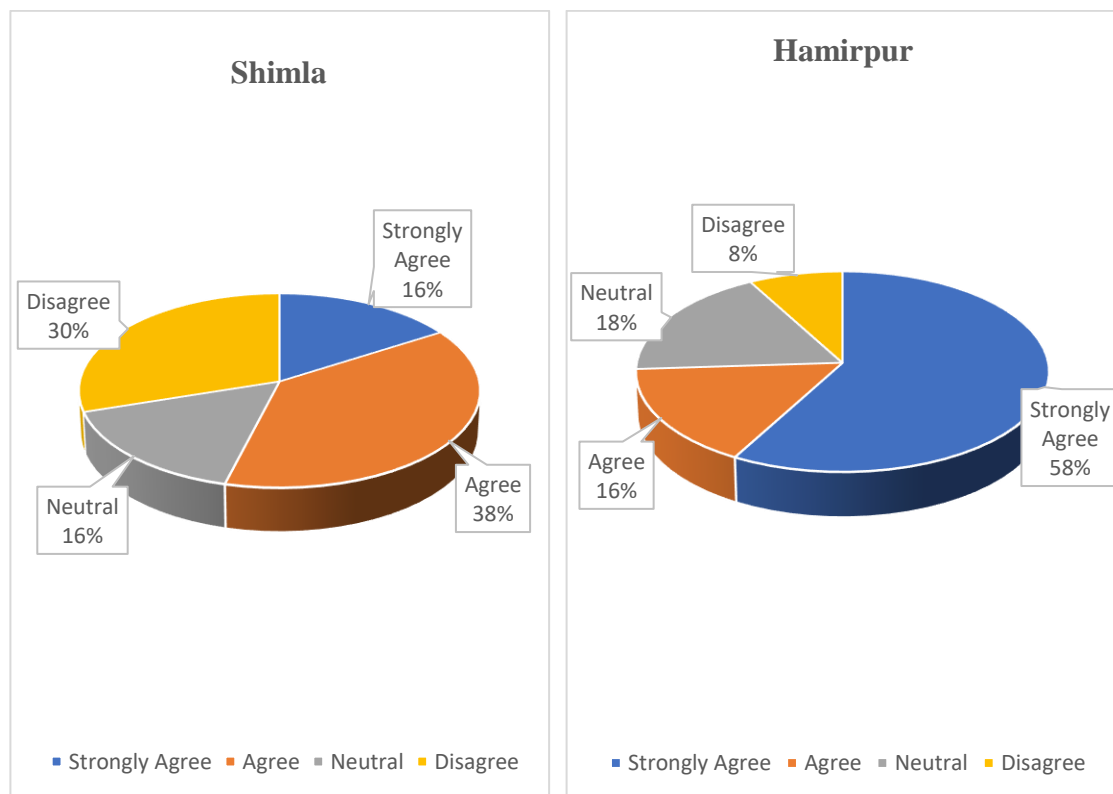
		Value	Approx. Sig.
Nominal by Nominal	Phi	.478	.000
	Cramer's V	.478	.000
N of Valid Cases		100	

A Chi-square test was used to determine if there were significant differences in respondents' perceptions between the two districts. The calculated significance value (0.000) is less than 0.05 ($0.000 < 0.05$), with a significance level of 5% and degrees of freedom = 3. This indicates that the perceptions of respondents in the two districts differ

statistically significantly. Consequently, the null hypothesis is rejected, and the alternative hypothesis is accepted, showing that the respondents in each district have different views. This conclusion is further supported by the significance of Phi Cramer's V (0.000).

FIGURE:44

The general public of both districts under study was asked the question, "Do you think the right to vote can make prisoners law-abiding citizens?" In Shimla, the responses were as follows: 16% "Strongly Agree," 38% "Agree," 16% "Neutral," and 30% "Disagree." In Hamirpur, the responses were: 58% "Strongly Agree," 16% "Agree," 18% "Neutral," and 8% "Disagree."



CHAPTER - 7

CONCLUSION AND SUGGESTIONS

This study concludes the importance of recognizing and safeguarding the fundamental human rights of prisoners' voting rights in Himachal Pradesh, India. The current policy on disenfranchising felons is inconsistent and conflicts with the principles of democracy, social justice, and human rights. Granting voting rights to prisoners emerges as a social approach to address these challenges. By extending voting rights to all prisoners, India can enhance their rehabilitation, promote social reintegration, and foster a more inclusive and democratic society. Denying prisoners their voting rights represents an unjustifiable infringement on their fundamental human rights. International agreements such as the UDHR, ICCPR, UN, and Standard Minimum Rules provide a wide-ranging framework that emphasizes the fair and just human treatment of offenders, by giving recognition to voting. In the present democratic Indian society, adhering to international fundamental human rights laws, it remains deemed inappropriate to deny prisoners their right to vote. The issue is important to acknowledge, as prisoners are entitled to all their legal human rights. These conventions have shown that extending voting rights to all prisoners can be a logical progression. Subsequently, India should reconsider its policy of disenfranchising felons and progress their laws towards granting voting rights to prisoners. By taking this step, India can align itself with international standards for human rights, promoting equality and inclusivity in safeguarding the basic rights of prisoners under Indian law. The principle of judicial supremacy plays a crucial role in promoting and preserving fundamental human rights. Courts have unequivocally ruled that prisoners possess the status of human beings, natural persons, and legal persons. The fact that someone is incarcerated does not diminish their humanity or their entitlement to legal rights. Any punishment imposed within the prison system must adhere to procedural safeguards and not infringe upon constitutional or statutory laws. Since prisoners are recognized as legal persons with legal rights, they must not be unjustly restricted or deprived of exercising their voting rights. The subject of prisoners' voting rights in India is complex and multifaceted. Through the review of various perspectives and judicial rulings of similar cases internationally, it becomes clearer that the unreasonable denial of

prisoners' voting rights violates their basic human fundamental right to engage in the democratic procedure. The tendency toward recognizing more rights and protections for prisoners by the constitution and judiciary is expected, and there is a need for sociopolitical approaches and radical changes in the perception of prisoner punishment and their voting rights.

This empirical research on felony disenfranchisement policy gathers information on the various perspectives apprehended by different respondents. These findings are valuable in enlightening policy reforms and procedures surrounding the restoration of voting rights for prisoners. Different Respondents, specifically the General Public, Prisoners, and Legal Fraternity, under the study support the idea of the restoration of voting rights of prisoners, emphasizing the importance of rehabilitation and reintegration into society. Their opinions highlight the need for policymakers to consider perspectives when formulating policies. Legislators can gain a deeper understanding of the underlying principles at stake. This includes balancing the goals of punishment and rehabilitation in the criminal justice system. The research findings would act as a valuable resource for policymakers, offering insights into public opinion on disenfranchisement. By considering the respondent's views, policymakers can work towards developing fair and effective policies that align with societal values. Ultimately, the aim should be to achieve a harmonious equilibrium that considers both the principles of punishment and rehabilitation. This requires careful consideration of the potential impact of felony disenfranchisement on individuals' rights and the potential benefits of promoting civic engagement and reintegration into society. The research on felony disenfranchisement is limited, and it is crucial to continue studying its impact. Despite the lack of statistically significant findings on prisoners' voting rights, the practice of disenfranchisement has negative consequences, including the alienation of portions of the population from civic engagement. Considering these findings, it is recommended that India should reconsider its policy on felony disenfranchisement and take steps towards protecting prisoners' voting rights. This includes comprehensive political reforms, education, and awareness campaigns, ensuring fair and just treatment of prisoners in association with international principles. By embracing the protection of prisoners' voting rights, India can demonstrate its commitment to human rights, equality, and democracy, fostering a more inclusive and

participatory society for all its citizens. Thus, the study sought to gather insights and opinions from these different respondents to gain an inclusive understanding of their perspectives on prisoners' voting rights. These aspects include:

- i. To gain insights into the respondents' knowledge, experiences, and views related to voting.
- ii. To analyze perspectives on the acceptability and fairness of disenfranchising prisoners.
- iii. To evaluate the prisoners' intentions to practice democratic voting rights in elections.

7.1 RESPONDENTS' PERSPECTIVES ON PRISONERS' VOTING RIGHTS

7.1.1 Voting: Knowledge, Perspectives, and Experiences

The study revealed that there are different responses gathered from two districts in Himachal Pradesh, each respondent was of the views and experiences on “Should prisoners have the right to vote “between different respondents, viz., prisoners, the public, the legal fraternity, and police administrative staff. The public and the legal fraternity favored providing voting rights to the prisoners irrespective of any crime committed, whereas the police administration disagreed with the voting rights to the prisoners. These respondents highlight the importance of implementing enhanced voter education programs to foster a deeper understanding of the voting process and its significance among the police administrative staff. The findings suggest that each group holds different perspectives and viewpoints that may stem from diverse factors such as personal beliefs, societal attitudes, legal considerations, and professional experiences.

7.1.2 Removing Voting Rights: Perceptions of Fairness and Acceptability

This study highlights varying perceptions and opinions of the fairness and acceptability of withdrawing voting rights from Indian prisoners among the different groups surveyed. Firstly, the study underlines the importance of fairness in democratic processes. Removing voting rights can be seen as a violation of the principle of equal representation, as it denies certain individuals or groups the opportunity to participate in the policies and decisions in the electoral process. This raises concerns about the

fairness of the political system and the possibility of certain segments of society being marginalized. By removing voting rights, there is a risk of excluding certain individuals or communities from participating in the democratic process. This exclusion can perpetuate existing inequalities and hinder progress towards a more inclusive society. It is critical to distinguish and address the barriers that prevent definite groups from exercising voting rights, rather than promoting disenfranchisement. Furthermore, this study highlights the need for public discourse and awareness-raising efforts. By engaging in informed discussions, one can gain a better understanding of the potential consequences of removing voting rights. This can help dispel misconceptions, challenge biases, and promote a more nuanced understanding of the issues. One can work towards finding alternative solutions that uphold the principles of fairness and inclusivity. The study underscores the importance of fairness and inclusivity in democratic processes. Removing voting rights raises concerns about equal representation and exclusion, necessitating public discourse and awareness-raising efforts to ensure a more informed and inclusive approach to shaping the democratic systems.

7.1.3 Voting Rights: Prisoners' Intentions

The survey led by prisoners provides valuable insight into their intentions to vote and their level of civic engagement. The findings indicate that the prisoners have intended to participate in the democratic process, which suggests a potential desire for political engagement. One notable concern raised by the prisoners is the uncertainty surrounding the voting rights of those out on bail. This lack of clarity and consistency regarding voting rights for prisoners has led to questions about the fairness and equality of the democratic system in India. The study emphasizes the importance of facilitating the exercise of voting rights for prisoners. It highlights the need to ensure prisoners' voices are heard, promote inmates' reintegration, and take a step toward progress in society. By enabling prisoners to participate in the democratic election, it is believed that their engagement and sense of belonging in society can be enhanced, and a more inclusive and democratic society can be fostered, where all eligible individuals have the chance to take part in political justice.

7.2 HYPOTHESES TESTING

7.2.1 H1: There is a significant difference in public opinion on the extension of voting rights to prisoners between the general public of Shimla and Hamirpur districts in Himachal Pradesh.

Survey Findings: The findings from the study on prisoners' voting rights reveal significant discrepancies in perspectives across various respondents in the state of Himachal Pradesh. A substantial 72% of the general public supported granting voting rights to prisoners, demonstrating a relatively progressive approach. Particularly, 47% of respondents favor extending these rights to convicts and under-trial prisoners, indicating a subtle perspective within the general public. In contrast, public authority shows a conservative standpoint, with 62% opposing voting rights for prisoners. Police authority aligns with this notion as 53% admit that neither convicts nor those under trial should be granted voting rights. Additionally, 54% of public authorities suspect that prisoners' voting rights would not contribute to improved prison administration. However, the legal fraternity had more inclusive views of the general public, with 58% advocating for prisoners' voting rights, and 32% supporting voting rights for both under-trial and convicted prisoners. These disparities underscore the complexity of the arguments surrounding prisoners' voting rights, necessitating continued interaction to proceed with the diverse opinions and potentially shape future policies in India.

7.2.2 H0: There is no significant difference in the awareness of voting rights among prisoners in Shimla and Hamirpur districts of Himachal Pradesh.

Survey findings: The findings reveal a strong awareness among prisoners in Himachal Pradesh regarding their voting rights. A substantial 84% of the prisoners are aware of the restriction of their voting rights, emphasizing a level of civic knowledge within the incarcerated population. Moreover, 59% of inmates argue that denying prisoners the right to vote constitutes a violation of their human rights. Additionally, 73.6% of prisoners advocate for equal voting rights, believing that prisoners in India should have the same voting privileges as other citizens. In comparison, 56% of the general population believes it is wrong to deprive convicts of their voting rights who have committed minor offenses and are unable to gain bail. This discrepancy in perception between prisoners and the general public prompts reflection on the different

perspectives surrounding prisoners' voting rights. The awareness expressed by prisoners, accepting the null hypothesis, is acceptable, concluding that there is no lack of awareness among prisoners in Himachal Pradesh regarding their voting rights.

7.2.3 H2: There is a significant difference in the perception of the rehabilitative impact of voting rights among prisoners in Shimla and Hamirpur districts of Himachal Pradesh.

Survey Findings: The findings regarding the third hypothesis explore the distinct perspectives on the impact of voting rights on rehabilitation, specifically comparing the viewpoints of prisoners and Police Administrative Staff. The survey sheds light on the perceptions of prisoners in Himachal Pradesh regarding their voting rights, revealing a substantial belief among prisoners that their voting rights can significantly contribute to their rehabilitation. A notable 51.2% of prisoners express confidence in the rehabilitative potential of their voting rights. In contrast, the Police Administrative Staff hold a different stance, with 54% expressing doubt about the potential improvements in prison administration if prisoners were granted voting rights. Additionally, 43% of the Police Administrative Staff disagree that voting rights have the transformative influence to make prisoners law-abiding citizens. These diverse opinions underscore the complexity surrounding the rehabilitative impact of voting rights, highlighting the intricate nature of these perspectives. The findings highlight the benefits of recognizing and facilitating prisoners' voting rights as a potential rehabilitative measure. Allowing prisoners to engage in the democratic process through voting could have civic engagement obligations and social integration. The integration of voting rights will emerge as a potential pathway with positive effects on prisoners in society.

7.3 SUGGESTIONS

This empirical research in Himachal Pradesh highlights the need to advance India's legislative framework governing inmates' voting rights. Given the socioeconomic ramifications, the importance of this right in the Indian context, and the illegality of disenfranchisement, it is suggested that all prisoners in India be granted the right to vote. The current disenfranchisement policy should be amended since it breaches Indian human rights laws that protect minorities and inmates. Given these findings, enabling prisoners to vote is recommended to aid their rehabilitation by encouraging

civic involvement and accountability, potentially helping their successful reintegration into society.

7.3.1 LEGAL SUGGESTIONS

7.3.1.1. Amendment to Section 62(5) of the Representation of the People Act, 1951

Current Provision: Section 62(5) states: “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. Provided further that because of the prohibition to vote under this subsection, a person whose name has been entered in the electoral roll shall not cease to be an elector”.

Proposed Amendment: The proposed amendment to Section 62(5) recommends that “any person confined in a prison, whether under a sentence of imprisonment, transportation, or otherwise, or in the lawful custody of the police,” should retain the right to vote in any election, with the following exceptions: i. Those charged with election fraud. ii. Those convicted of waging war against the state.

Under this amendment, no person should be deprived of voting rights except those specifically charged with election fraud or convicted of waging war against the state. The principle is that voting rights should be preserved as a fundamental civic obligation, and both undertrials (those awaiting trial) and convicts (those serving sentences) should generally maintain their right to vote.

7.3.1.2 Amendment to the H.P. Good Conduct Prisoners (Temporary Release) Act, 1968

Current Purpose of the Act: “Section 19.01 outlines the objectives of granting parole as follows: i. To allow inmates to maintain family connections and address familial and social matters. ii. To mitigate the adverse effects of prolonged incarceration. iii. To support the maintenance and development of self-confidence. iv. To foster constructive hope and active engagement in life. v. To keep the inmate informed about developments in the outside world. vi. To ensure physiological and psychological well-being. vii. To aid in overcoming the stress and negative impacts of imprisonment. viii.

To motivate adherence to good conduct and discipline within the prison”.

Proposed Amendment: To further these objectives, the parole provisions should be expanded to allow prisoners to exercise their voting rights, thereby aiding their reintegration into society and promoting democratic participation.

Proposed Section: Voting Parole - A new section should be added to the Act as follows:

Voting Parole: Prisoners eligible for regular parole should be permitted to request parole for the purpose of exercising their voting rights during elections. This special parole should: i. Be granted upon request, provided eligibility criteria and good conduct are met. ii. Include an adequate police escort to and from the polling station. iii. Be limited to the time necessary for voting, with an immediate return to the prison facility. iv. Ensure that the period spent outside for voting is counted as part of the prisoner’s sentence.

Implementation:

- i. Eligibility: Prisoners eligible for regular parole and those showing good conduct within the prison should be considered for voting parole.
- ii. Duration: Voting for parole should be granted for the minimum period required to cast a vote, with an allowance for travel time to and from the polling station.
- iii. Conditions:
 - The prisoner should be escorted to the polling station under police protection.
 - The release should be documented, and the period spent on voting parole should be counted as part of the prisoner’s sentence.
 - Adequate measures should be taken to prevent any misuse of this provision.

Advantages

- i. Democratic Participation: Allowing prisoners to vote reinforces their fundamental rights and ensures their participation in the democratic process.
- ii. Rehabilitation and Reintegration: Engaging in civic duties such as voting can help prisoners feel a part of society, aiding their rehabilitation and reintegration.

- iii. Encouraging Good Behavior: Linking the privilege of voting to good conduct can act as an incentive for maintaining discipline within the prison.

7.3.1.3 Bail as a Rule, Not an Exception

Implementing the principle that bail should be the rule and jail the exception can significantly reduce the number of disenfranchised undertrial prisoners. Ensuring that those who are not a threat to society or are not likely to abscond should be granted bail, which will maintain their voting rights, thereby promoting a more inclusive democratic process. The Indian judiciary has significantly incorporated this principle in numerous rulings, emphasizing the need for bail over prolonged detention. Despite this, the voting rights of prisoners remain restricted. By extending this principle to include the voting rights of prisoners, India can further enhance its democratic inclusivity and uphold the rights of individuals who are still awaiting trial or are convicted of minor offenses.

7.3.1.4 Adopting International Judicial Practices

India can draw valuable lessons from international judicial practices regarding prisoners' voting rights, particularly through judicial challenges in countries like Canada and South Africa. These nations have expanded voting rights for prisoners through judicial interpretations that emphasize democratic principles and rehabilitation. For instance, the Constitutional Court of South Africa underscored the importance of voting in prisoner rehabilitation. Similarly, Canadian courts have upheld prisoners' voting rights as crucial for democracy, while also emphasizing the need for any restrictions to be narrowly defined and justified. Aligning with these international standards involves learning from global judicial precedents and ensuring India's approach to prisoners' voting rights reflects these progressive benchmarks.

7.3.1.5 Adopting International Legislative Reforms

Several countries have proactively legislated to grant voting rights to prisoners, reflecting evolving democratic norms and human rights principles. For instance, Norway, Denmark, and Finland stand out as examples where prisoners retain their voting rights even while incarcerated. In Norway, prisoners vote in all elections with no restrictions based on their criminal status. Similarly, Denmark and Finland have adopted inclusive voting policies that ensure prisoners can participate in democratic

processes without disenfranchisement. These legislative reforms underscore a commitment to uphold the democratic rights of all citizens, including those in prison, and recognize the importance of civic participation in rehabilitation and social integration. India can draw valuable lessons from these countries' experiences to formulate inclusive policies that align with international human rights standards. By embracing such reforms, India can support a more equitable and participatory democratic framework that respects the rights and dignity of every individual, irrespective of their legal status.

7.3.1.6 E-Voting Implementation

The distribution of electronic voting for inmates could benefit prisoners by integrating them into political processes, which could speed up the procedure and reduce the need for extensive police deployment. This can be achieved with adequate monitoring and security measures. Estonia has pioneered e-voting and allows its citizens, including prisoners, to vote electronically. Other countries, such as Switzerland, Canada, and Brazil, have also implemented electronic voting systems to various extents. India should consider implementing a secure e-voting system to enable prisoners to exercise their voting rights without the logistical challenges associated with traditional voting methods.

7.3.1.7 Postal Ballots for Prisoners

In countries like Australia, New Zealand, the United Kingdom, and Canada, prisoners vote via postal ballots. This system should be adopted in India to facilitate prisoner voting. The concept of postal ballots for elderly and disabled voters should also serve as a model for implementing postal voting for prisoners. Introducing postal ballots for prisoners would ensure challenges do not hinder their right to vote. This process can allow prisoners to participate in the electoral process without compromising security and significant resources for physical voting facilities. Postal voting can be a secure and manageable solution, with proper verification processes to maintain the integrity of the election. By learning from the experiences of these countries, India can design a postal ballot system for its unique needs, ensuring that prisoners are not disenfranchised. Implementing such a system will reinforce India's commitment to democratic values and human rights, ensuring that all citizens of their circumstances,

can exercise their fundamental right to vote.

7.3.1.8. Proxy Voting Rights

India should consider adopting proxy voting systems for prisoners to promote a more inclusive and democratic society. The United Kingdom and New Zealand allow proxy voting, enabling prisoners to designate someone to vote on their behalf, ensuring their participation in elections. Other nations, including Canada and South Africa, have also implemented similar proxy voting systems for prisoners. By implementing these measures, India could ensure prisoners exercise their voting rights without facing logistical challenges. Legislative amendments, stringent security measures, and pilot programs could facilitate this transition, reducing administrative burdens and reinforcing prisoners' civic engagement. This approach would uphold the fundamental human rights of prisoners and contribute to a more equitable and just society. The concept of proxy voting is where a designated individual votes on behalf of a prisoner. India should explore this option to ensure prisoners' voices are heard in the electoral process. The bill currently pending to grant Non-Resident Indians (NRIs) the right to vote remotely should be extended to include prisoners within its scope. Just as the legislative framework accommodates NRIs who are physically absent from the country, similar provisions should be adapted to enable prisoners to exercise their voting rights despite their physical confinement due to incarceration. This legislative adjustment would align with principles of equity and inclusivity in democratic participation. It acknowledges that both NRIs and prisoners face logistical barriers to voting in traditional polling stations and proposes leveraging modern technologies or alternative voting methods to ensure their electoral participation. By extending the existing framework to include prisoners, India would demonstrate its commitment to upholding the democratic rights of all citizens, regardless of their current circumstances or location. This approach not only improves the integrity of the voting process, but it also adheres to the fundamental idea of universal suffrage in a varied and inclusive society.

7.3.1.9 Electoral Reforms

The Election Commission of India should propose comprehensive electoral reforms to include prisoners in the voter list. This can involve creating a separate category for prisoner voters and ensuring necessary facilities are provided to enable them to vote. It

is essential to establish procedures that facilitate the registration of eligible prisoners to vote, ensuring they have access to necessary voting facilities within correctional facilities. Furthermore, these reforms should prioritize the implementation of secure and efficient voting mechanisms for the unique circumstances of prisons. This includes provisions for postal voting, electronic voting where feasible, and the establishment of polling stations within prisons during elections. The reforms should also include measures for voter education and awareness campaigns targeted at prisoners, correctional staff, and electoral officials. These efforts are crucial for ensuring that prisoners understand their voting rights, the procedures involved, and the significance of their participation in elections. Moreover, continuous monitoring and evaluation of these electoral reforms through pilot projects and feedback mechanisms will be essential to identify challenges and refine implementation strategies. By encouraging these comprehensive electoral reforms, the Election Commission can uphold the democratic rights of all citizens, including those in correctional facilities, thereby more inclusive and participatory democratic system in India.

The denial of political participation to confined prisoners directly contradicts established international human rights principles, as enshrined in the ICCPR and upheld by the ECHR. Inequities in voting rules, particularly between prisoners on bail and those unable to afford bail, undermine principles of equality under international law and demand a thorough review to ensure fairness for all. Recognizing prisoners as legal individuals entitled to their rights aligns with global standards such as the Nelson Mandela Rules, emphasizing the need for their protection even during incarceration. It is incumbent upon the government to actively safeguard these rights, including through educational campaigns within prisons to promote awareness and understanding. Incorporating global court precedents into Indian legal frameworks can further set the recognition and strengthening of prisoners' rights, as demonstrated by cases like Francis Coralie Mullin's case, which underline the judiciary's pivotal role in balancing punitive measures with the preservation of human rights in correctional settings.

7.3.2 SOCIAL SUGGESTIONS

The disenfranchisement of prisoners extends beyond legal and political dimensions, raising critical social concerns related to democratic inclusion, rehabilitation, and

reintegration. Addressing these issues requires a multi-faceted approach that involves public engagement, institutional reforms, and policy interventions. The following recommendations outline strategies for developing societal acceptance of prisoners' voting rights and enhancing their participation in the democratic process.

7.3.2.1 Strengthening Public Awareness and Civic Engagement

Public misconceptions regarding prisoners' voting rights often stem from a lack of awareness about the broader democratic and human rights implications. Targeted civic education initiatives should be undertaken to inform the public about the significance of electoral participation as a fundamental right, irrespective of incarceration. Educational institutions, civil society organizations, and governmental bodies should collaborate to incorporate discourses on disenfranchisement within civic studies curricula, public seminars, and community outreach programs. The use of digital platforms, media advocacy, and scholarly engagements can further contribute to reshaping public attitudes and fostering an inclusive democratic ethos.

7.3.2.2 Using Voting Rights as a Mechanism for Rehabilitation

The extension of voting rights to prisoners can serve as a rehabilitative measure by fostering civic responsibility and reinforcing their connection to society. Empirical studies indicate that engagement in democratic processes enhances a sense of agency and social belonging, which are crucial for reducing recidivism. Structured educational programs on governance, legal rights, and electoral processes should be introduced within correctional facilities to cultivate an informed electorate among incarcerated individuals. Such initiatives can be integrated into existing prison education systems and supplemented by collaborations with legal experts, social workers, and policymakers.

7.3.2.3 Enhancing Political Representation and Electoral Participation

The political marginalization of prisoners has broader implications for policy development, as issues concerning prison administration, legal aid, and post-incarceration reintegration remain underrepresented in political discourse. Establishing formal mechanisms for political engagement, such as prison-based electoral literacy workshops and candidate interactions, can facilitate informed voting among incarcerated individuals. Furthermore, political parties should be encouraged to incorporate prison reform and disenfranchisement policies into their electoral

manifestos, ensuring that the concerns of incarcerated populations are acknowledged in legislative discussions.

7.3.2.4 Addressing Societal Stigma and Facilitating Reintegration

The disenfranchisement of prisoners perpetuates societal perceptions of criminality as an enduring status rather than a temporary condition warranting rehabilitation. Post-incarceration reintegration efforts should include structured programs that emphasize civic reintegration alongside economic and social rehabilitation. Community-based initiatives that promote the social acceptance of former prisoners, coupled with policy measures that prevent discrimination in employment and civic participation, are essential in mitigating the long-term consequences of disenfranchisement.

7.3.2.5 Strengthening the Role of Civil Society and Non-Governmental Organizations

Civil society organizations and non-governmental entities play a crucial role in advocating for electoral rights and ensuring the implementation of legal reforms. Their involvement in research, policy advocacy, and litigation has been instrumental in challenging restrictive electoral laws in various jurisdictions. Collaborations between human rights organizations, legal aid groups, and electoral commissions can facilitate empirical research on the social impact of disenfranchisement, thereby informing evidence-based policymaking. Additionally, civil society initiatives can provide legal assistance and awareness programs within correctional institutions, ensuring that prisoners are equipped with the necessary knowledge to exercise their electoral rights.

7.3.2.6 Facilitating Community Discussions and Policy Discourse

Encouraging discussions between policymakers, legal experts, prison authorities, and the public can contribute to a more nuanced understanding of the implications of felony disenfranchisement. Structured forums such as academic conferences, legislative hearings, and public consultations should be organized to deliberate on the social and democratic ramifications of prisoner disenfranchisement. Engaging community leaders and former prisoners in these discussions can provide valuable perspectives on the challenges associated with reintegration and electoral participation.

7.3.2.7 Institutionalizing Electoral Literacy Initiatives within Correctional Facilities

Many incarcerated individuals, particularly those from marginalized socio-economic

backgrounds, have limited awareness of their electoral rights and the democratic process. Institutionalizing structured electoral literacy programs within prisons can bridge this gap by providing inmates with knowledge of electoral laws, voting procedures, and the significance of political participation. Such programs can be integrated into broader prison education curricula and should be developed in collaboration with electoral commissions, legal scholars, and civic educators.

7.3.2.8 Promoting Responsible Media Representation and Public Discourse

Media narratives significantly influence public perceptions regarding the rights and rehabilitation of prisoners. Sensationalized portrayals often reinforce stereotypes that equate incarceration with the forfeiture of fundamental rights. Media organizations should adopt responsible journalistic practices by incorporating research-based perspectives on disenfranchisement, highlighting the rehabilitative potential of electoral participation, and presenting empirical evidence on its impact. Academic research, expert interviews, and case studies of jurisdictions that have successfully implemented prisoners' voting rights should be leveraged to foster an informed public debate.

The recognition of prisoners' voting rights is not solely a legal reform but a broader societal imperative that necessitates shifts in public perception, institutional engagement, and policy frameworks. The aforementioned recommendations emphasize the need for a holistic approach that integrates public awareness, rehabilitative policies, political representation, and international best practices. Ensuring electoral participation for incarcerated individuals can contribute to a more inclusive democracy, reinforcing principles of justice, rehabilitation, and civic responsibility.

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APPENDICES

Part-I

Questionnaire for the General Public in Districts Shimla and Hamirpur, Himachal Pradesh

1. Do you think prisoners are concerned about their voting rights
 - Yes
 - No
2. Should Prisoners in India have the Right to Vote
 - Yes
 - No
3. If you are in favor of prisoners' voting rights in India, whom out of the following should be provided to
 - Under-Trials
 - Convicted
 - Both
4. Prisoners on bail /parole are eligible to cast their votes, while prisoners with petty offenses who cannot seek bail are not considered eligible to cast their votes. Isn't that unfair
 - Unfair
 - Fair
5. Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes or there should be no discrimination based on crime for voting
 - Murder and Rape

- Theft and Robbery
 - Election Fraud
 - No discrimination based on crime
6. Do you think if prisoners are allowed to vote, it will have an impact on the Elections
- Strongly Agree
 - Agree
 - Neutral
 - Disagree
 - Strongly Disagree
7. Do you think politicians ignore prisoners because they don't have the right to vote
- Yes
 - No
8. If Prisoners are given their democratic voting rights, their demands can be heard by the following
- Political Leaders
 - Non-Government Organizations
 - Center-State Division on Prison Reforms
 - All of the Above
9. Is it not ironic that prisoners can contest elections but cannot vote? It is fair or unfair
- Unfair
 - Fair

10. The following arguments are in favor of allowing prisoners to vote, do you support it

- Voting strengthens Democracy
- Voting promotes civic responsibility
- Denial of voting is an additional, unfair, and arbitrary punishment
- Maybe

11. Do you think the right to vote can make prisoners law-abiding citizens

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

Part-II

Questionnaire for the Legal Fraternity in Districts Shimla and Hamirpur, Himachal Pradesh

1. Do you consider the Right to vote a Human Right

- Yes
- No

2. Should Prisoners in India have the Right to Vote

- Yes
- No

3. If you are in favor of prisoners' voting rights in India, whom out of the following should be provided to

- Under-Trials

- Convicted
 - Both
4. Prisoners on bail /parole are eligible to cast their votes, while prisoners with petty offenses who cannot seek bail are not considered eligible to cast their votes. Isn't that unfair
- Unfair
 - Fair
5. Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes or there should be no discrimination based on crime for voting
- Murder and Rape
 - Theft and Robbery
 - Election Fraud
 - No discrimination based on crime
6. Do you support allowing prisoners to vote by Electronically Transmitted Postal Ballots (ETPB)
- Strongly Agree
 - Agree
 - Neutral
 - Disagree
 - Strongly Disagree
7. Do you believe if prisoners are given their voting rights, it will help to make a better administration of prisons
- Yes
 - No
8. Do you think prisoners' voting rights are impractical
- Strongly Agree
 - Agree
 - Neutral
 - Disagree

- Strongly Disagree
9. Do you think the right to vote can make prisoners law-abiding citizens
- Strongly Agree
 - Agree
 - Neutral
 - Disagree
 - Strongly Disagree

Part-III

Questionnaire for Prisoners in District Model Central Jail Shimla and District Jail Hamirpur, Himachal Pradesh

1. Do you believe voting strengthens the Nation
 - Yes
 - . No
2. Is it important in your opinion, to vote in an election
 - Yes
 - . No
3. Are you aware of your voting rights?
 - Yes
 - No
4. Is the restriction on prisoners' right to vote a violation of their Human Rights
 - Yes
 - No
5. Do you believe that the right to vote for prisoners in India should be made equal to other citizens
 - Yes
 - No

6. Do you believe your voting Rights can help in your rehabilitation
 - Yes
 - No
7. If you are on bail/parole, will you vote?
 - Yes
 - No
8. Do you believe that those who are under-trials should at least be allowed to vote
 - Yes
 - No
9. Prisoners can't be voters but contestants. Fair or unfair
 - Yes
 - No
10. Do you support a new law on the right of prisoners to vote
 - Yes
 - No

Part-III

Questionnaire for Legal Fraternity in Districts Shimla and Hamirpur, Himachal Pradesh

1. Do you agree that voting strengthens Democracy
 - Yes
 - No
2. Is the Right to vote a Constitutional Right in India
 - Yes

- No
3. Should prisoners in India have the Right to Vote
- Yes
 - No
4. If you are in favor of prisoners' voting rights in India, whom out of the following should be provided to
- Under-Trials
 - Convicted
 - Both
5. Prisoners on bail /parole are eligible to cast their votes, while prisoners with petty offenses who cannot seek bail are not considered eligible to cast their votes. Isn't that unfair
- Unfair
 - Fair
6. Each prisoner has committed a different crime, yet they are treated equally. Do you believe that some prisoners should not be allowed to vote if they have committed certain crimes or there should be no discrimination based on crime for voting
- Murder and Rape
 - Theft and Robbery
 - Election Fraud
 - No discrimination based on crime
7. The International treaties support enfranchising (voting rights) of prisoners, do you agree to support the changes to Section 62(5) of the Representation of the People Act,1951?

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

8. Countries like Israel, South Africa, Pakistan, Canada, etc. have ensured the voting rights for prisoners. Shouldn't India also be required to follow the same

- Yes
- No

9. Do you think the right to vote can make prisoners law-abiding citizens

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

LIST OF PUBLICATIONS

SCOPUS-INDEXED JOURNAL

1. CRIMINAL DISENFRANCHISEMENT IN INDIA: AN INTERNATIONAL HUMANITARIAN APPROACH, Journal of Human Rights and Social Work, 2024, <https://doi.org/10.1007/s41134-024-00364-6>.

2. A COMPARATIVE ANALYSIS OF PRISONERS DISENFRANCHISEMENT IN INDIA AND INTERNATIONAL JURISDICTIONS: A CRITICAL STUDY, Migration Letters, Vol 21, No.3, 2024, Page no.664-671.

UGC-CARE LISTED JOURNALS

1. PROTECTION OF PRISONERS RIGHTS IN PRISONS THROUGH LEGAL GUIDELINES: A COMPARATIVE STUDY, Shodh Sanchar Bulletin, Vol 11, No. 41, 2021, Page no.293-298.

2. AN INTERNATIONAL APPROACH TOWARDS THE UNVEILING CHANGING ASPECTS FOR THE INCARCERATED AND BALLOTS IN INDIA, Madhya Pradesh Journal of Social Sciences, Vol 29, No.4, 2024, Page no.9-18.

LIST OF CONFERENCES

INTERNATIONAL CONFERENCES

1. RESTORING DEMOCRACY BEHIND BARS: A CASE STUDY ON PRISONERS: VOTING RIGHTS, International Conference on Right to Equality, 15-03-2024 to 16-03-2024.

2. PRISONERS EMPOWERMENT: GLOBAL PERSPECTIVES ON VOTING RIGHTS, GENDER JUSTICE AND HUMAN RIGHTS, 12th International Conference on Human Rights and gender justice 2023, 08-12-2023, Paper Presented.

3. AN ANALYSIS OF THE OVERSIGHT OF THE IMPORTANCE OF PRISONER'S VOTING RIGHTS IN INDIAN DEMOCRACY, 2nd International Conference on women's rights in Emerging Societies, 17-02-2024, Paper Presented.

NATIONAL CONFERENCES

1. LEGAL ANALYSIS ON THE CONCEPT OF DISENFRANCHISEMENT OF PRISONERS: A COMPARATIVE STUDY, National Seminar on criminal law, administration of justice system in India: Recent Trends, 09-03-2022, Paper Presented.

2. COMPARATIVE STUDY OF PROTECTION OF HUMAN RIGHTS OF PRISONERS, National Conference on emerging trends in law: international and national perspectives, 22-10-2021, Paper Presented.

3. SHOULD PRISONERS BE GIVEN THE RIGHT TO VOTE, AN EXAMINATION OF WHETHER THE JURISPRUDENCE OF THE INDIAN COURT OF HUMAN RIGHTS PROVIDES A WIDER RIGHT TO DEMOCRACY, National Seminar on Constitutionalism: Augmenting the spirit of socio-legal-economic and political development, 14-03-2020, Paper Presented.

ANNEXURE-1

Through Email Only

No. 4-7/99-Jails-IV-17-2449-50
Government of Himachal Pradesh,
"Directorate of Prisons & Correctional Services"

From The Addl. Director General,
Prisons & Correctional Services,
Himachal Pradesh.

To The Superintendent Jail
Model Central Jail, Kanda (Shimla)
District Jail, Kaithu and Hamirpur
Himachal Pradesh.

Dated Shimla-171009, the 13 APR 2023

Subject: - Regarding Jail visit.

Memo,

Find enclosed herewith an email dated 10/04/2023, received from Miss Deepika Thakur, Research Scholar, Lovely Professional University, Phagwara Punjab for information.

The permission is hereby granted to Miss Deepika Thakur, Research Scholar, Lovely Professional University, Phagwara Punjab to visit Model Central Jail, Kanda (Shimla) District Jail, Kaithu (Shimla) and Hamirpur for doing research and collect the required data of the prisons from 12th April to 25th April 2023 as requested, after observing all codal formalities as per the provisions contained in the Prison Manual, 2021 and the guidelines of Ministry of Home Affairs dated 24/07/2015.

Encls: A/A

- By Order -
Additional Director General
Prisons & Correctional Services
Himachal Pradesh.

Endst. No. 4-7/99-Jails-IV-17-

Dated Shimla-171009, the

Copy forwarded to Miss Deepika Thakur, Research Scholar, Lovely Professional University, Phagwara Punjab w.r.t. her email as referred above for information please.

(Bhanu Prakash Sharma)
Chief Welfare Officer
Prisons & Correctional Services,
Himachal Pradesh.

ANNEXURE-2**TOTAL NUMBER OF POSTS IN THE DEPARTMENT OF PRISONS****HIMACHAL PRADESH**

S. No	Name of Category	Number of sanctioned posts	Filled posts	Vacant posts
1	Director General of Prisons	01	01	--
2	DIG Prisons	01	00	01
2	Sr. A.I.G. (Prisons)/SP (Prisons)	01	01	--
3	Chief Welfare Officer (Prisons)	01	00	01
4	Deputy/Assistant District Attorney	01	01	--
5	Superintendent Jail Model Central Jail	02	02	--
6	Superintendent Jail (Part Time)	07	07	--
7	Superintendent District. Jail	01	01	--
8	Superintendent Open-Air Jail (in the rank of Deputy Supdt. Jail)	01	01	--
9	Superintendent Borstal Jail (in the rank of Deputy Supdt. Jail)	01	01	--
10	Deputy Superintendent Jail	06	03	03
11	Medical Officer	04	01	03
12	Medical Officer (Part Time)	01	01	--
13	Personal Assistant	01	--	01
14	Superintendent Grade-II	02	02	--
15	Assistant Superintendent Jails	16	11	05

16	Welfare Officer cum-Assistant Superintendent Jail	03	03	--
17	Welfare Officer (Prisons)	01	--	01
18	Senior Assistant	04	02	02
19	Senior Assistant (Accounts)	04	02	02
20	Dispenser/Pharmacist	13	13	--
21	Steno Typist	01	01	--
22	Clerk	22	15	07
23	Head Warder (Male)	60	31	29
24	Female Head Warder	04	01	03
25	Warder (Male)	324	269	55
26	Female Warder	20	20	--
27	Driver	06	02	04
28	Factory Supervisor	01	01	--
29	Store-keeper	01	--	01
30	Male Social Worker	01	--	01
31	Female Social Worker	01	--	01
32	Multipurpose Health Worker	01	01	--
33	Junior Technician (Tailor Master)	01	--	01
34	Junior Technician (Carpenter Master)	02	02	--
35	Junior Technician (Weaving Master)	03	01	02
36	T.G.T.	01	--	01
37	J.B.T.	01	--	01
38	Peon	07	06	01
39	Chowkidar	01	01	--

40	Mali	01	01	--
41	Turnkey	15	06	09
42	Cook	01	01	--
43	Sweeper	13	07	06
	Total	559	419	140