

**Bill No. XXXIX of 2022**

**THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 2022**

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**BILL**

*further to amend the Representation of the People Act, 1951.*

BE it enacted by the Parliament in the Seventy-third Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Representation of the People (Amendment) Act, 2022. Short title and commencement.

5           (2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

43 of 1951.           **2.** In section 62 of the Representation of the People Act, 1951, for sub-section (5), the following shall be substituted, namely:— Amendment of section 62.

10                   "(5). No person shall be allowed to vote at any election if such person is convicted for any offence and is sentenced to imprisonment for more than seven years:

Provided that a person who is alleged to have committed any offence and is under lawful custody of the police and is under imprisonment for the period of such trial, shall have the right to vote:

Provided further that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force." 5

## STATEMENT OF OBJECTS AND REASONS

The preamble of the Indian Constitution declares India to be a democratic State. With a population of 1.4 billion, India is the largest democracy in the world. Voting right is essential to the functioning of the democracy, envisioned by the Constituent Assembly. The Supreme Court on various occasions specially in the landmark judgement of 'Kesavananda Bharati case vs UOI' declared voting right as a part of the basic structure of the Constitution of India. The right to vote is unconditionally essential to a well-functioning democracy. Without the proper enforcement of this right, democracy would be farce.

2. The conviction rate of under trial or accused persons is also very low in India. The National Crime Record Bureau in its 2018 report titled 'Prisoner Statistics India' had mentioned that out of a total of 4,66,084 prisoners, there were 3,23,537 under trials and 1,39,488 convicts lodged across 1,339 prisons across India. Thus, it shall be fair to state that a blanket ban on the exercise of the right to vote for all prisoners is a dilution of the strength of democracy and unnecessary curtailment of the fundamental rights of the prisoners.

3. With the language of Section 62(5) of the Representation of the People Act, 1951 banning any person who is 'confined' in a prison from voting is not just ambiguous but also unrequitedly expansive. This is for the very reason that under trial prisoners are also "confined" on the basis of pre-supposition. While some under trials may afford to procure bail, others with critical financial conditions may not be able to afford the same. This brings out the issue of violation of Article 14 by Section 62(5) of RP Act. A more shocking violation of equality happens, by the fact, that our legal system, while not allowing a person to vote from prison allows a person to contest elections from the same prison. Article 14 of the Indian Constitution is a guarantee of equality before law and equal protection of laws. The Supreme Court of India in the case of *Amita vs UOI*, (2005) 13 SCC 721 has expounded on the meaning of the two terms, while the former lays down that no citizen shall be discriminated in the application of law, the latter puts an obligation on the State to ensure that every individual is given equal respect and concern which he is entitled to as a human being. The privileged, under privileged, politicians, or common men, all are equal before the law.

4. It is pertinent to point out that a basic facet of natural justice and the Indian criminal justice system is the presumption of innocence unless proven guilty. While the law provides for curtailment of certain rights of criminals, curtailment of a critical right of voting is against natural justice and also defeats the purpose and object of the legislation. This deprivation of rights of innocent people cannot be justified.

Hence this Bill.

IRANNA KADADI

*ANNEXURE*

EXTRACTS FROM THE CONSTITUTION OF INDIA

(ACT NO. 43 OF 1951)

Right to vote.

**62.** \* \* \* \* \*

(5) 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 sub-section shall apply to a person subjected to preventive detention under any law for the time being in force:

Provided further that by reason of the prohibition to vote under this sub-section, a person whose name has been entered in the electoral roll shall not cease to be an elector.

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RAJYA SABHA

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further to amend the Representation of the People Act, 1951.

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*(Shri Iranna Kadadi, M.P.)*