

3. Voting Rights of Prisoners

Prelims Level: Rights Issues

Mains Level: GS-II Welfare schemes for vulnerable sections of the population by the Centre and States and the performance of these schemes; mechanisms, laws, institutions and Bodies constituted for the protection and betterment of these Vulnerable Sections.

Why in News?

- The Delhi High Court has recently rejected a petition seeking voting rights for the prisoners.

Who can vote and Who Cannot?

- Under **Section 62(5) of the Representation of the People Act, 1951**, individuals in lawful custody of the police and those serving a sentence of imprisonment **after conviction cannot vote**.
- **Under trial prisoners** are also **excluded** from participating in elections even if their names are on electoral rolls.

What are the observations made by the Court?

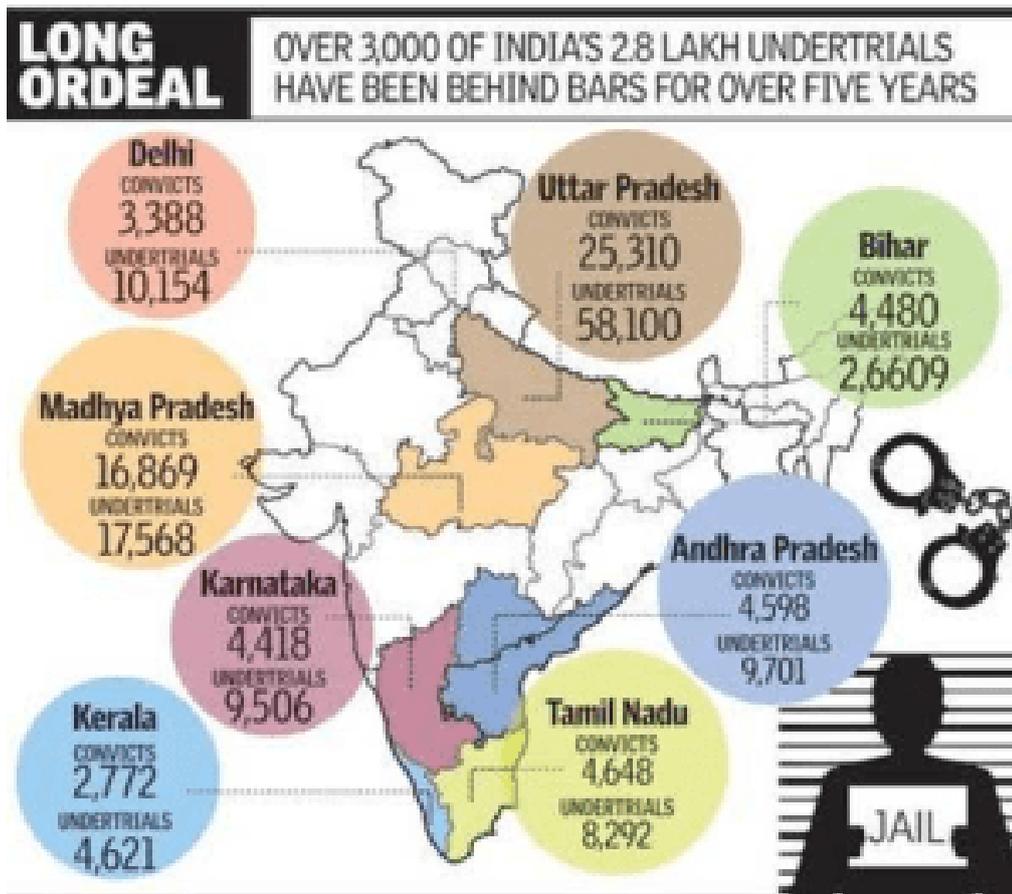
- The **right to cast vote is neither a fundamental right nor a common law right** and is only provided by a statute.
- The right to vote provided under the statute – Representation of the People Act – **was subject to restrictions imposed by the law, which does not allow prisoners to cast vote from jails.**

Why Undertrials should be given Voting Rights?

- The present voting ban is criticized on the ground that **it makes no offence-based or sentence-based classification** – that is, prisoners are debarred from voting irrespective of the gravity of the offence they have committed, or the length of their sentence.
- It also makes **no distinction between convicted prisoners, undertrials, and those in lawful Police Custody.**
- Besides, a person is **Innocent Until Proven Guilty by law**. Despite this, it denies an under trial the right to vote but allows a detainee the same.
- The provision also **violate the rights to equality, vote (Article 326)** and is arbitrary. It is not a reasonable restriction.

What does the stats says?

- The ‘**Prison Statistics India, 2014**’ published by the **National Crime Records Bureau**, says there were 2, 82,879 undertrials and 1, 31,517 convicts lodged across 1,387 prisons in the country as on December 31, 2014.
- In Europe, Switzerland, Finland, Norway, Denmark, Ireland, the Baltic States, and Spain already allow **prisoner voting**.
- Countries like Romania, Iceland, the Netherlands, Slovakia, Luxembourg, Cyprus and Germany have opted for a middle path: Voting is allowed subject to certain permits and conditions such as the quantum of sentence served.
- They are only disenfranchised as an added penalty based on the gravity of the crime. Bulgaria allows for anyone sentenced to less than a decade to vote. In Australia, the limit is Five Years.



Need of an Hour:

- Undertrials should be allowed to vote. This is because there are many people, awaiting trial, who have spent more time in prison than the actual term their alleged crime merits. Their numbers are much bigger than convicts.