VOLUME 24, MAY 2021 ISSN 2456-9704

CASE COMMENT ON ANUKUL CHANDRA PRADHAN V. UNION OF INDIA & ORS

By K. Syed Yaseen Kamran
From SOEL, the Tamil Nadu Dr Ambedkar Law University

Introduction -

On the midnight of August 14th of 1941, Jawaharlal Nehru addressed the new-born Nation of India. Nehru, making a tryst with destiny, promised to uphold the noble values of our nation and uttered, "Freedom and power bring responsibility. The responsibility rests upon this Assembly, a sovereign body representing the sovereign people of India".[1] However, our Criminal Justice system has continuously disregarded this vow to represent the genuine democratic will of the people. Prisoners and Undertrials, a substantial population of the country, have been disenfranchised and are unable to participate in our democratic process. The Bell of justice echoed in the Supreme Court finally in 1997 and, a three-judge bench heard the issue in Anukul Chandra Pradhan v. Union of India & Ors[2]. The pronouncement of the judgment still reverberates in our treatment of prisoners and remain pertinent in our society.

Background -

Denying voting rights to prisoners is not a novel idea. Disenfranchising criminals who commit dreadful acts could be traced back to Ancient Greece in the form of "Atimia". Medieval Britain practised, influenced by the concept of "Aitimia", a form of disenfranchisement in the name of "civil mortuus" (Civil Death).[3] The Forfeiture Act 1870 became one of the first Acts which codified denying voting rights to prisoners in Britain. This idea to disenfranchise prisoners as a collateral consequence of getting convicted entered into Indian law book during the colonial era. Schedule VI - part I(9) of the Government of India Act 1935 denied voting to any prisoner. This practice took its form in Independent India under Section 62(5) of the Representation of the People Act, 1951 (hereafter referred to as " the Act"). The provision asserts any person severing "a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police" shall not vote. In addition to prisoners, undertrials face denial of their voting rights under the provision. An analysis of the Constitution concerning voting rights directs us to Article 326. The Article establishes observance of universal adult suffrage but also allows disqualification from voting on the ground of crime or corrupt or illegal practice. On the nature of the right to vote, the Supreme Court had clarified that the right to vote is a statutory right in various cases like N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and Others[4], and Jyothi Basu v. Debi Ghosal[5]. However, the legal convention of disenfranchising

[1] Jawaharlal Nehru, A Tryst with Destiny, The Guardian, May 1 2007, available at: https://www.theguardian.com/theguardian/2007/may/01/greatspeeches

[2] Ankul Chandra Pradhan v. Union of India, AIR 1997 SC 2814

[3] Jeff Manza & Christopher Uggen, Punishment and Democracy: Disenfranchisement of Nonincarcerated Felons in the United States, 2 PERSP. ON POL.491, 492 (2004)

[4] N.P. Ponnusamy v Returning officer Namakkal constituency, AIR 1952 SC 64 (India)

[5] Jyothi Basu v. Debi Ghosal, 1982 3 SCR 318 (India)

prisoners and undertrials had gone undisputed in the Apex Court for five decades after Indian independence. Thus, a writ petition under Article 32 of the Constitution was filed challenging the validity of Section 62(5) of the Act in Anukul Chandra Pradhan v. Union of India & Ors.

The contention of the petitioner -

The learned counsel for the petitioner, Shri. Rajinder Sacha argued that Section 62(5) of the Act is violative of the Constitution and strike down the provision as invalid on the following basis :

- Section 62(5) of the Act violates equity before law ensured in Article 14 of the Constitution. The Section has been given too wide of connotation. And, such extension of meaning disenfranchises undertrials and any person detained in prison regardless of the reasons for their detainment.

- The Section has led to arbitrary classifications where the person under police custody during an investigation is denied the right to vote, even before a charge sheet is filed in his name, but imprisoned convict released on bail can vote. Such classification violates Article 14 of the Constitution.

- Section 62(5) of the Act also violates Article 21 of the Constitution as it deprives prisoners and undertrials their right to a dignified life.

Judgement of the Court in brief -

The Court reasoned that Article 14 does allow reasonable classification for a rational object desired by the Statue. Thus, in the present case, Section 62(5) of the Act aims to prevent the criminalisation of politics by disenfranchising prisoners and undertrials. Further, the Court substantiated the Section based on two rationales. First, prisoners lose their voting rights due to their own criminal actions. Second, the State need to spend a substantive number of resources for security management and deploy a large police force to allow the participation of prisoners in elections. On these grounds, the Court held the provision of law in question as valid and dismissed the petition.

Analysis of the judgment -

In its judgment, the Honourable Court had correctly established that Article 14 of the Constitution allows reasonable classification of individuals for the rational object pursued by the law. The Court, in the past, have upheld the Principle of Reasonable Classification, in various cases, on the ground that different groups need to be treated differently for achieving social development. However, there still lies the question of whether classification established under Section 62(5) of the Act is reasonable and just or not. And, the rationales unearthed by the Court, in support of the Section and the practice of disenfranchising prisoners, are subject to heavy criticism. The Court had argued, firstly, disenfranchising prisoners and undertrials would reduce the criminalisation of politics. However, there hasn't been any empirical evidence to support the claim of the Court. Likewise, the Section in question does not deny voting rights to criminals who habitually engage in electoral offences or collude with politicians but disenfranchises every prisoner regardless of the reasons for their confinement. Secondly, the Court stated allowing prisoners and undertrials to participate in elections would require additional resources to be spent by the

State. This argument of the Court has been widely disproved as administrative inconveniences could not the basis for denying the vital rights of a citizen of India. Thirdly, it was asserted, by the Court, that criminals end up losing their rights due to their own actions. This justification of the Section relies on the philosophy doctrine " Rights forfeiture theory". The theory, generally, is summarised as follows: It is morally justifiable to punish a person if he/ she has forfeited their rights by infringing the rights of others. A closer look into the theory reveals that it mere justify punishments to criminals when imposed and does not argue criminals must be punished. Then, Disenfranchising criminals as punishment for infringing the rights of others is based on retributive ideals. The object of the Indian criminal justice system, however, as stated in Narotam Singh v. the State of Punjab[6], is to reform and rehabilitate criminals back to be good members of society.

Implementation of Section 62(5) of the Act also leads to failure to uphold the constitutional mandate of providing political and social justice. Disenfranchising undertrials and prisoners harm the Dalits, Adivasis, Muslims and other minorities disproportionately and thus silences the already unheard voices of minorities in the political sphere of our society.[7] Further, the need to reform our disenfranchisement laws becomes pertinent in the light of the International Conventions ratified by India. The Universal Declaration of Human Rights (UDHR) under Article 21 and the International Covenant on Civil and Political Rights (ICCPR) under Article 25 restate every person right to take part in their government and its decisions. Thus, we see the reasons furthered by the Court fails to validate Section 62(5) of the Act.

Conclusion -

We see, in conclusion, Section 62(5) of the Act have acted as a hurdle in reforming and rehabilitating prisoners by denying them from participating in their democratic duties. And, we see that, disenfranchising prisoners and undertrials have been harmful to the minority communities. The Section lies in conflict with the ideals upon which our great nation was found, and the Court has failed to uphold them in Anukul Chandra Pradhan v. Union of India & Ors. We direct our attention back to the momentous speech given by Jawaharlal Nehru. Taking to every citizen of the newly independent nation, he uttered these ambitious words, " Whither do we go and what shall be our endeavour? To bring freedom and opportunity to the common man...to create social, economic and political institutions which will ensure justice and fullness of life to every man and woman."

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[6]Narotam Singh v. State of Punjab, AIR 1978 SC 1542 (India)

[7]Shreehari Paliath ,Indian prisons in dire straits: 7 in 10 undertrials, 1 in 3 Dalit or tribal, September 7 2020 , available at: https://www.business-standard.com/article/current-affairs/indian-prisons-in-a-dire-state-7-in-10-undertrials-1-in-3-dalit-or-tribal-120090700193_1.html