Criminal Disenfranchisement in India: An International Humanitarian Approach

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Abstract
The basic cornerstone of a flourishing democracy is generally recognized by the right to vote. It is a system through which people choose representatives of their best interests. In this research paper, the author examines the present international legal status of prisoners' voting rights in the context of India. Suffrage was among the significant political issues that sparked a rebellion. Through legislation, several nations throughout the world, including the US, UK, and India, have restricted the ability of inmates and ex-felons to vote at different levels. Several of these nations constitute the largest democracies in the world. Voting rights are a strong symbol of inclusion in society, and their denial is frequently criticized. The significance of suffrage is the foundation for an individual’s dignity toward their nation. There is a persistent need to research and comprehend disenfranchisement in connection to rehabilitative approaches to punishments, formerly the "retributive theory” has failed to demonstrate its relevance. A little attempt to do this would need a thorough understanding of the concept of disenfranchisement because there is no set principle governing the restrictions of universal suffrage due to criminal charges. In light of international human rights jurisprudence, the author seeks to explore the evolving dynamics of disenfranchisement.

Keywords: Keyword1 Democracy, Keyword2 Voting Rights, Keyword3 Prisoners, Keyword4 Criminal, Keyword5 Disenfranchisement.

Introduction
Disenfranchisement is the act of denying someone or a group of people the ability to exercise their right to vote or other civil rights.¹ The foundation of any democratic country rests upon the voting rights of its citizens’ participation. According to John Locke, persons who disobey social norms shouldn't abided to vote or take part in other social meetings.² This stands as the foundation of disenfranchisement.


This practice theoretically embodies the conflict between the individuals’ participation in democracy and the exclusion of people who disobey social laws.³ Disenfranchisement is a movement that was first used to exclude people from civil society and put-up barriers to their participation. Disenfranchisement’s early stages may be found in ancient Greece, and its history can be traced to the Middle Ages.⁴ The British prohibited voting for criminals and sentenced them to "civil death," which is the complete loss of
citizenship. In America, disenfranchisement laws were first established in the 1600s as a sanction for moral offenses. Only white male property owners could participate in the early American franchise. The right to vote was granted to African American men by the United States Constitution after the 15th Amendment ratification and the first cases of criminal disenfranchisement arose during the Reconstruction era. India, unlike many other nations, has stripped voting rights from criminals. In India in 1902, the Commonwealth Franchise Act was passed, prohibiting people who had been convicted and were serving sentences from voting. The provisions of the Commonwealth Electoral Act of 1918 remained largely unchanged, and the Representation of People’s Act 1951’s Section 62(5), which prohibits prisoners in confinement from exercising their right to vote, dealt with the issue of felony disenfranchisement in India. The Representation of the People's Act 1951’s Section 62(5) states that it is unlawful for a person to exercise their right to vote while they are "confined in a jail, whether under a sentence of imprisonment or transportation or other or are in the legitimate custody of the police." However, this restriction does not apply to inmates who have completed their sentences. But this broad prohibition on confined prisoners exercising their right to vote not only goes against the letter and the spirit of the Constitution but also goes against the fundamental idea of equality established in Article 14 of the Indian Constitution.

9 The Representation of People’s Act 1951, Section 62(5).

Worldwide in recent years has seen a substantial increase in the number of people who are denied the ability to vote due to a felony conviction. Government is responsible for not making an effort to link this number to a point in crime rates, but new research shows that changes in legislation and policy are actually to blame for this mass imprisonment. 11

PHILOSOPHICAL VIEWS ON DISENFRANCHISEMENT

Denying the right to vote to inmates because of their convictions has long been a topic of philosophical discussion. Citizens who exercise their right to vote are given a crucial weapon to express and confirm their feeling of civic responsibility and proud nationalism. A crucial weapon of equality and dignity is voting. The theory of social contract was first described by Thomas Hobbes. It was initially articulated in early Platonic scriptures. John Locke and Jen-Jacques Rousseau continued to research the theory. Disenfranchisement must be evaluated in the context of the Social Contract Theory by considering the
connection between the citizen, and the state along with the importance of the "right to vote" in democracies. The notion that criminals violate social control serves as the cornerstone of the conventional argument. And so, lose their political rights. Disenfranchisement "is a voluntary surrender believed confined in the offense itself, not a response by others to the crime," according to the Social Contract view. It is necessary to distinguish this loss from "punishment" because it is voluntary.

The Social Contract Theory, which claims that once a prisoner disregarded social standards, they forfeited their right to exercise civil rights among others, has long been used to defend the disenfranchisement of prisoners thus, the government wants to protect the right to vote for those who have upheld social control, which in their opinion forms the foundation of representative democratic ideals. There is a strong case for penalizing inmates who, after committing an offense or crime, were unable to accomplish their obligation to uphold the law.


13 Supra note 2.


Subsequently, a thorough examination of social control reveals that disenfranchisement is an ineffectual, obsolete consequence that produces more harm than benefit.

INTERNATIONAL TREATIES ON CRIMINAL DISENFRANCHISEMENT JURISPRUDENCE

Universal suffrage – The democratic cornerstone

The concept of universal suffrage was originally the foundation of democracy which list that everyone, regardless of social class, should be able to vote, not only males, landowners, and taxpayers. Certainly, international human rights have acknowledged that voting rights in elections for all individuals over a certain age should be legalized.

Prisoners, despite being deprived of their freedom, are protected by human rights legislation, and some precautions should be reserved to ensure that incarceration does not put at risk their rights that are unrelated to the punishment's objective. Indeed, authorities should ensure that a prisoner receives adequate health
treatment and other essential human rights while incarcerated: the right to be informed, the right to be educated, and the right to vote all fall under this category of rights that should be preserved. Voting is seen as the most vital way to touch governmental decision-making, and both these international conventions on voting rights have given much importance which lies at the cornerstone of Articles 21 and 25 of the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights respectively both refer to civil and political rights.

Everyone has the right, as stated in Article 21, to participate in the administration of their nation, either personally or via representatives who have been freely chosen. It further said that elections must be held with universal and equal suffrage for the will of the people to be represented.

This is recognized in Article 25 of the ICCPR, which also stipulates that the right to vote must be exercised without any form of discrimination, by Article 2(1) of the International Covenant on Civil and Political Rights. Thereby, Article 25 states that "Everyone should have the right and opportunity, without any of the distinctions outlined in Article 2 and without arbitrary restrictions, the freedom to cast a

![Image](https://example.com/image.png)

ballot and to run for office in legal, recurring elections that must be conducted using a secret ballot and a system of universal, equal suffrage. Any restrictions put on the right to vote must be "necessary in a democratic society for a public objective," according to the UN Office of the High Commissioner for Human Rights. The legal precedent is strengthened as a result. The Human Rights Committee has made a statement in connection to Article 25 of the ICCPR that emphasizes the need for proportionality between the crime, penalty, and length of time the convict's right to vote is suspended. Therefore, the fact that a prisoner is in jail as a result of his actions shouldn't be used as justification for denying him a fundamental human right like the ability to vote. Because of this, it is an "unreasonable restriction" that a general prohibition on inmates being able to vote conflicts with the duties outlined in the aforementioned treaty.

3. The Standard Minimum Rules for the Treatment of Prisoners
Articles 60 and 61, when read together, demonstrate that prison must be an institution that allows inmates to remain a part of society. The goal of the prison system must be to carry out the inevitable steps necessary to reintegrate the offender into society and minimize the differences between life in freedom and life in prison while at the same time continuing.

INTERNATIONAL COURTS CRITICIZED BLANKET BANS ON PRISONER VOTING
- **Canada**: Currently, all prisoners are eligible to vote. In 2002, the Supreme Court of Canada found that any prohibition on prisoners voting was unconstitutional as it was an unreasonable limit on the right
to vote. The Court held that such a prohibition could not be demonstrably justified in a free and democratic society. This lifted a partial prohibition allowing persons serving prison sentences of less than two years to vote federally. It also lifted all restrictions on prisoner voting at the provincial level.  

- **Europe:** Across Europe, there are no prohibitions on prisoner voting in many countries; limited and targeted prohibitions in some countries, several prohibitions on prisoners from voting have been lifted as a result of recent European Court of Human Rights rulings  

- **United Kingdom:** All prisoners are currently disqualified from voting. The prohibition on prisoner voting has been subject to several rulings by the European Court of Human Rights (ECtHR). The ECtHR found a blanket prohibition was disproportionate and thus violated the European Convention on Human Rights.  

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21 The International Covenant on Civil and Political Rights, Article 25.  
22 The Standard Minimum Rules for the Treatment of Prisoners, Articles 60 and 61.  

- **Australia:** In 2006, Australia introduced a complete prohibition on prisoner voting, reversing a partial prohibition that had been in place. This prohibition was overturned by the High Court which found that the Constitution enshrined a limited right to vote.  

### Table 1: International Court Judgements on Criminal Disenfranchisement  

<table>
<thead>
<tr>
<th>Court</th>
<th>Case</th>
<th>Decision</th>
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<tbody>
<tr>
<td>Canada</td>
<td>Sauvé v. Canada [2002] 3 S.C.R. 519</td>
<td>Denying prisoners, their right to vote, removes a route to social development and rehabilitation. It undermines the correctional law and policy directed toward rehabilitation and integration</td>
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<tr>
<td>South Africa</td>
<td>August and another v. Electoral Commission and Others, 1999(4) BCLR368(CC).</td>
<td>The vote of every citizen is a badge of dignity and personhood. Quite literally, it says everybody counts.”</td>
</tr>
<tr>
<td>Israel</td>
<td>Hilla Alrai v. Minister of the Interior HC2757/06 P.D.50(2) 18 (1996)</td>
<td>It is accomplished strongly but with mutual respect and tolerance, as is common in a democratic state, especially when unpleasant viewpoints are spoken by a minority.</td>
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</tbody>
</table>
The European Court of Human Rights

Since 2005, the UK has been violating inmates' voting rights. European Court of Human Rights ruled that the UK's blanket prohibition violated the right to a free and fair election. allowed prisoners on remand to register to vote.

INTERNATIONAL DIFFERENCES ON CRIMINAL VOTING RIGHTS 23

23 Supra note 18.

Here are three different approaches across the world for giving way Inmates the ability to vote.
1. In the beginning, Countries that have awarded Inmates complete voting rights without any constraints.
2. In addition, in Countries where voting is restricted for individuals who have been convicted but not those who are still awaiting trials, they are allowed to vote.
3. At the last, Countries that have provided the right to vote but with some limits on the seriousness of the offense, imprisonment, and so on.

Table 2

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>No limits</th>
<th>The complete prohibition on Prisoner voting</th>
<th>Restrictions after release</th>
<th>Selective constraints</th>
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<tr>
<td>1.</td>
<td>Spain</td>
<td>Argentina</td>
<td>Armenia</td>
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<td>2.</td>
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<td>3.</td>
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<td>6.</td>
<td>Finland</td>
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<td>7.</td>
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<td>South Africa</td>
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<td>11.</td>
<td>Spain Bosnia</td>
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<td>Sweden</td>
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<td>Switzerland</td>
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**A COMPARATIVE APPROACH ON FELONY DISENFRANCHISEMENT: USA, UK, AND INDIA**

Disenfranchisement of prisoners is a real worldwide issue. The execution of the same is subject to a variety of standards and regulations depending on the country. By examining the United States of America and the United Kingdom, two nations that are now at the forefront of the enfranchisement of prisoners, it is possible to get a basic sense of the present trend. The Constitution’s fundamental principles include democracy. Democracy is one of its core values. Only a process of fair and free elections can ensure the continuation of democracy. Democracy can only be sustained through a process of free and fair elections. Some Constitutional theorists have highlighted the "right to vote" in a democracy.

**UNITED STATES OF AMERICA**

As a result of the enactment of the Fifteenth Amendment to the United States of America Constitution, prisoner disenfranchisement in the country began. Denial of the right to vote based on race was forbidden by the amendment. The most deceptive way to exclude African Americans from the franchise was through criminal disenfranchisement. Several Southern States changed their disenfranchisement laws in years from 1890 and 1910 to have a greater impact on black people, even though voting limitations had already been in place before the Fifth Amendment. Although the black community makes up just around 12% of the general population, they account for about 36% of those who have lost their ability to vote as a result of criminal convictions.

Since there is no national standard for voting rights for criminal offenders, state laws governing voting rights for criminal offenders and ex-offenders vary greatly. Disenfranchisement laws in the United States are also different from those in other nations in that certain states even disenfranchise non-incarcerated convicts or those who have served their whole time in jail. The Supreme Court affirmed the legitimacy of prisoner disenfranchisement Richardson v. Richardson v. Ramirez, a case that ruled that disenfranchisement statutes do not violate the Fourteenth Amendment to the United States Constitution.

However, the Court ruled in *Hunter v. Underwood* that an Alabama law that denied voting rights to some criminal offenders violated the Fourteenth Amendment’s Equal Protection.

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24 Keshavanadha Bharti v. State of Kerala, AIR 1976 SC
26 M.P. Jain, Indian Constitutional Law 941 (Lexi Nexis, India, 2006).


Supra note 18.


Clause because "the law had a disproportionate impact on Blacks and was adopted with racially discriminatory intention" in 1985. Disenfranchisement rules in the United States will gradually but significantly alter. The evolving human rights jurisprudence worldwide has been increasingly linked to a change in state legislation.

UNITED KINGDOM

Compared to the United States of America, the United Kingdom uses criminal disenfranchisement less frequently, excluding only a small subset of criminals from voting and only while they are behind bars. The UK's position on prisoner disenfranchisement, however, has been significantly influenced by Hirst v. United Kingdom. was decided by the European Court of Human Rights. The regulations of the United Kingdom's laws on the disenfranchisement system make it illegal for prisoners serving a term to exercise their voting rights in any parliamentary or local government election. The judiciary ruled out that disenfranchisement rules contradict England's ratification of the European Convention on Human Rights and, consequently, the "right to free elections" by violating Article 3 of the First Protocol. Disenfranchisement was characterized by the court as "a blunt tool that discriminatorily harmed a major category of persons."

INDIAN POSITION

The Indian Constitution states in Article 326 that "adult suffrage shall be the foundation of elections to the House of the People and the Legislative Assemblies of States." But according to the section's explanation, the legislature has the authority to specify the conditions for such exclusion. The provision states that "Any individual who is in jail, whether according to a term of incarceration, transportation or otherwise or is in the authorized custody of the police, must not vote at any election."


Supra note at 18.

Hirst v United Kingdom (No 2) (2005) ECHR 681.

The Representations of Peoples Act, 1983, Sec. 3(1).

The constitutionality of Section 62(5) of the Representation of Peoples Act, 1951, was challenged in the case of Anukul Chandra Pradhan v. Union of India. The disenfranchisement clause in Section 62(5) of the Representation of Peoples Act, 1951, was asserted to violate Article 14 of the Constitution before the Hon'ble Court. It was suggested that denying someone the opportunity to exercise their democratic right to vote offends their sense of worth. Article 21 of the Indian Constitution is broken by this.

The restriction on anybody who is lawfully detained by the police, which includes anyone whois being held during an investigation but has not yet been charged, highlights the absurdity of the provision. A person who has been convicted and sentenced to time in jail but has been released on bail, on the other hand, is still eligible to vote. It is justified by the idea that "a person who is detained because of his or her behavior and is consequently denied liberty for the period of that custody cannot claim equal freedom of expression, speech, or movement".

Similar to this, it was ruled Sunil Batra v. Delhi Administration is a case where a prisoner's limitation imposed under Section 30 (2) of the Prisons Act, 1894, was not excessive because it was put in place to preserve the jail's security and the protection of the inmates. Because the limitation was placed in place to protect the security of the prisoners and their inmates, it cannotbe said that it violates Article 19 (1) (d) of the Constitution.

Therefore, under Section 62(5) and Section 11A of the Representation of the People Act, respectively, there are two different ways in which prisoners are prohibited from exercising their right to vote.

1. Section 11A outlines various offenses that prevent the accused criminal from casting a ballot in elections. These offenses include bribery, undue influence, election fraud, etc. Section 11B, on the other hand, empowers the Election Commission to revoke any disqualification imposed by Section 11A at any time.

2. Section 62(5) lays down that any person in custody of the police is debarred from casting a vote, whether they are sentenced, in transportation, or even those undertrial who have not been proven guilty, except for those under preventive detention, as is given in the proviso clause.

43 Anukul Chandra Pradhan v. Union of India, AIR 1997 SC 2814.
45 Supra note 43.
48 Amal Sethi and Prakruti Joshi, “Knocking on the legislature’s door-a proposal to Reform the criminal disenfranchisement laws in India”, 1 SACJ (2014).

These rights to vote have been challenged in court several times; nonetheless, they have been determined to be legitimate and constitutional. It is critical to recognize that the right to vote is not fundamental or
constitutional, but rather a statutory right. As a result, the courtship viewed it as a “privilege” that can be revoked at any time. 

In the case, *Anukul Chandra Pradhan v. Union of India, and Radhakrishnan v. Union of India*49, the courts have also said, that prisoners are deprived of certain liberties during imprisonment and cannot be held to be on the same footing as other citizens. The Court relied on the purity of ballot idea in the case of to defend prisoner disenfranchisement. The main argument put forward in such a view is that a “ballot box” should be free from any kind of corruption, which is exactly what prisoner disenfranchisement might lead to. In India, the major argument against prisoner enfranchisement seems to be that allowing prisoners to vote would result in the criminalization of politics. This, however, seems to be a highly contentious line of argumentation.

The criminalization of politics takes place when criminals enter positions of political power. Providing criminals with voting rights does not equal the same, and it is only an assumption incourt that criminals may attempt to vote for similarly criminal candidates. Following points to support the argument:

1. Firstly, to understand why it is that taking away the right to vote is valid or invalid, one must understand the nature of such a right, and why it is a statutory right rather than a constitutional right. The right to vote is enshrined not in the Constitution of India, but in the Representation of the People Act, 1951, which is a statute, that makes the right to vote a statutory right. However, such a right cannot just be viewed strictly and simplistically. As asserted by the researcher above, the right to vote is one of the very pillars on which a healthy democracy rest. Most modern democracies and liberal nations want a more widespread style of enfranchisement since more political engagement is required to hold the government responsible. Democracy is, for the most part, the heart and spirit of the Constitution, and the ideas that govern it are intrinsic parts of the Constitution. As a result, the Court’s failure to extend the scope of Article 21 not to cover the right to vote is a major blunder. Voting is a highly important aspect of public life and every government that takes democratic societies the right to vote seriously. Therefore, the very basis on which the courts have decided that prisoner disenfranchisement, in the opinion of this researcher, is erroneous,

2. Secondly, Section 62 (5) of the Representation of the People Act fails to make a distinction between those who are convicted, and those undertrial. This is glaringly a mis-grouping of different classes into one without taking into consideration the inherent differences. There is no conceivable reason why a person who is not accused of a crimeshould be barred from voting. By such a provision, the Act creates a false contradiction between those in custody but not charged and those out on bond. Any individual must be assumed to be innocent before they are found guilty, by our principles of criminal justice. By the clause, individuals accused who are out on bond can vote, but those who are not out on bail cannot. Again, this differentiates how the same class of people is treated. The aforementioned consequences are all in violation of Article 14 of the Indian Constitution. However, neither the courts nor the legislature has made any more attempts to alter it.

Through case law and interpretations of the fundamental rights, conferring to the Indian Constitution's Part III, India has access to the provisions of the ICCPR. The Indian Constitution's Directive Principles of Specify Policy states in Article 51(c) provides "The State must endeavor to develop respect for international law and treaty responsibilities in the interactions of organized persons with another." 51 Even though not all international agreements are always enforceable on national legislation, 52 India's commitment to human rights is seen in its 1940s-era statutes, the U.N. Charter, and the Indian Constitution. 53

The Indian Constitution's "Fundamental Rights" which are outlined in Part III serve as an obvious illustration of how Indian law implements the principles of the ICCPR. Article 14 of the Indian Constitution guarantees equality before the law and equal protection under the law. Article 14 of the Indian Constitution stipulates that it is wrong to treat individuals alike regardless of whether they are equal or not. 54 Unfortunately, no one who is incarcerated is it possible to classify section 62(5) of the Representation of People Act in a "fair manner. Additionally, no one who is lawfully under the care of the police or the courts during an inquiry is allowed to "vote" as per their "right. “The Legislature adopted this extensive regulation by unnoticed the distinction between people who have already been convicted of a crime and those who are still awaiting trial. 55 According to the International Covenant on Civil and Political Rights, the accused and the convicted "must be dealt with separately." 56 Another argument against criminal disenfranchisement is that there is no obvious distinction between the criminals themselves. No difference is made based on how terrible the offense the sentenced person committed. 57 Under the Representation of People Act, 1951 section 62(5) makes no distinction between those who can afford bail from those who cannot, even if it does not do so explicitly. 58 It is crucial to focus on the results rather than the law's intended aim since Section 62(5) creates an equal number of unequals. 59

Criminal disenfranchisement violates Article 21 of the Constitution and is a violation of one's dignity. 60 People who have lost their civic rights are not only distant from being properly reintegrated into their communities but they are also prohibited from voting and from participating in politics. 61 Disenfranchised individuals are not just a long way from being properly reintegrated into their communities, but they are also prohibited from voting and from participating in politics. 62 There is no reason for such a demand, and it is beneath the dignity of man to have a felon wait for so long. 63

It follows that criminal disenfranchisement offends the fundamental liberties protected by Articles 14 and 21 of Part III of the Constitution.

CRITIQUE ON CRIMINAL DISENFRANCHISEMENT

The problem of the "Right to Vote" has not been settled in modern democracies 64 because denying prisoners the ability to vote presents a challengeable threat to democracy. 65 Supporters of the idea of criminal disenfranchisement laws may reduce crime, even though there is no proof to support this. 66 Contemporary

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51 The Indian constitution Article 51 (c).
54 All India Sainik Schools Employees' Assn. v. Sainik Schools Society, 1989 Supp (1) SCC 205.

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research, highlights the existence on the negative link between

56 International Covenant on Civil and Political Rights 1966, Art. 10,
58 Supra note 29 at 335.
63 Id at 355.
65 Id at 245.
66 Supra note 6 at 236.

voting and later criminal behavior among persons with and without a past criminal history. 67 Disenfranchisement’s status as an oddity is confirmed by other nations' growing aversion to adopting it. 68 In today's society, which works to defend international human rights, depriving prisoners of their rights is unacceptable. 69 Criminal disenfranchisement conflicts with pneumology’s aim of rehabilitation of criminals. 70 A democratic system of government requires the right to vote to function, yet the current definition excludes a substantial portion of society from prisoners voting rights i.e. felony disenfranchisement. 71 Without the right to vote, a democratic form of government cannot work, yet the current definition regrettably excludes a sizable segment of society—criminals. 72 According to a recent study, voting has a negative correlation with future criminal conduct in both those with and without a criminal history, indicating that a good resolution to this problem could be to expand the "Right to Vote." Maybe the first step toward a practical solution for more inclusive society issues like jail reforms. 73 These arguments against criminal disenfranchisement ought to at least persuade people to reconsider one of the greatest current risks to democracy.

Conclusion

The 'Right to Vote' is not a settled issue in modern democracies and the disenfranchisement of inmates is a danger to democracy that should be questioned. Supporters of criminal disenfranchisement believe that such laws may reduce crime, but there is no strong evidence that it achieve this purpose. Indeed, new research suggests that "there exists a negative link between voting and eventual criminal behavior among persons with and without a past criminal history." The position of disenfranchisement has become an anomaly, which is reinforced by other countries' rising unwillingness to embrace felony disenfranchisement. Disenfranchisement of prisoners cannot be justified in a contemporary society that strives to uphold International Human Rights. If the goal of penology is to rehabilitate offenders, then criminal disenfranchisement contradicts this goal.


70 Supra note 29 at 339.


73 Supra note 3 at 14.