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## Prisoners Fundamental Right to Vote: The UK Example

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### **Abstract**

*Most of the nations of the world have sophisticated judicial systems that have laid down procedures, rules and regulations concerning the law breakers. Those individuals who are fairly tried and found guilty for their crimes are referred different prison levels in order for them to be transformed into upright citizens. Over the years, there has been an ongoing debate as to whether prisoners should be allowed through the constitutional amendments to vote just like normal persons. Many political analysts from different countries have expressed both positive and negative response and opinions regarding whether prisoner should vote or not. Those who are against the idea argue that prisoners have committed a crime which unacceptable to the society and in that case, they are not part of the normal persons in the society and that they have broken the laws outlined by the constitution; and that they should not vote at all. There is a belief that prisoners should have reformed after they are set free or after the completion of their term in prison. There are different countries which registers prisoners as voters since they believe that they have a right to exercise their constitutional rights. This work therefore x-rays disenfranchisement in the UK, the present situation and its historical context from Human rights prism.*

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### **INTRODUCTION**

“Whoever, in an otherwise popular government, has no vote, and no prospect of obtaining it, will either be a permanent malcontent, or will feel as one whom the general affairs of society do not concern; for whom they are to be managed by others; who has “no business with the laws except to obey them,” nor with public interests and concerns except as a looker-on.”<sup>1</sup> In our democracy, voting is very important right of every individual, it’s something that binds the citizens and the body that governs them and only citizens can and have the right to vote. John Stuart Mill stated that “voting has an educational effects, and only the only way in which citizens rights are protected and by which citizens exercise regular checks on the government”<sup>2</sup>.

The question of whether prisoners should be allowed to vote in the UK has been in the news for some time now. Although it has been ruled by the European Court of Human Rights that ‘preventing prisoners from voting essentially denies them their human rights and is therefore against the law’ in UK there is a multiplicity of opinions on this matter, and while Prime Minister David Cameron is vehemently opposed to the idea.

Section 3 of the Representation of people Act 1983 was ruled to be incompatible with Article 3 of the European Convention on Human Right (ECHR) by the European Court of Human Right in 2005<sup>3</sup>. After years of moving between passive inertia and seemingly endless reviews,

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<sup>1</sup> John Stuart Mill, Considerations on Representative Government quoted according to <http://onlinelibrary.wiley.com/doi/10.1111/1467-9833.00177/abstract?systemMessage> pg1

<sup>2</sup> Brenner/Caste 2003: 230

<sup>3</sup> Hirst v UK (No 2) [2005] 19 BHRC 546

the UK Government is being forced into action. Frightened into submission by the risk of having to compensate the affected prisoners, senior government figures, including the then Justice Secretary Ken Clarke, argued his fellow MPs to bend to the will of the European Court. Lord Bingham in *Jackson and others v Attorney General* stated that ‘the sovereignty of the UK Parliament the “bedrock of the British constitution” risks being eroded, even eradicated, if our MPs fail to combat the ECtHR<sup>4</sup>.

UK prisoners should be able to vote in UK elections according to The European Court of Human Rights<sup>5</sup>. In the UK the current position is that, prisoners serving a custodial sentence do not have the right to vote, however those on remand are able to vote under the provisions of the Representation of the People Act 2000<sup>6</sup>. It has been eleven years since the Grand Chamber of the European Court of Human Rights confirmed that the “blanket” ban on convicted prisoners voting in national and European elections was in violation of the “right to vote” under Article 3 of the First Protocol to the European Convention on Human Rights (1950)

The question of whether those convicted should be allowed to keep their right to participate in democratic elections is down to how we see it, whether right or a privilege? Section 3 of the Representation of the People Act 1983 prohibits convicted prisoners from voting in national or local elections until after their release. However in the case of *Hirst v UK*<sup>7</sup> the Grand Chamber of the European Court of Human Rights ruled that ‘this ban violated prisoners’ right to vote, a right protected by Article 3 of Protocol 1 ECHR’.

In response to the judgment in *Hirst*, the government announced in December 2010 it would bring forward legislation to allow those sentenced to custodial sentence of not more than four years the right to vote in UK and European Parliament elections<sup>8</sup>, unless the judge considered this inappropriate. Although there is no date or time set for this proposed legislation. However in February 10<sup>th</sup> 2011, a backbench debate was subsequently held in the House of Commons, the motion, which supported the continuation of the current ban, was agreed on a division by 234 to 22<sup>9</sup>.

During the same year, the government referred the latest ECtHR ruling on the issue which was the Greens and MT judgement to the Grand Chamber of the European Court of Human Rights<sup>10</sup>. Here the court gave the UK six months to introduce legislation that will remove the blanket ban. Again on April 11<sup>th</sup> 2011, the court dismissed an appeal made by the UK and once again gave the UK government a deadline of six months from this date to introduce legislative proposals<sup>11</sup>. An extension was requested by the government on the 6<sup>th</sup> September 2011 referring to *Scoppola v Italy (No3)* this case was similar to that of *Greens and MT* to the Grand Chamber. An extension was granted to the UK by the court which was six months from the date of the judgment in the case<sup>12</sup>. This submission to the Grand Chamber was made by the UK government as third party intervener in the case.

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<sup>4</sup> *Jackson and others v Attorney General* [2005] UKHL 56, per Lord Bingham

<sup>5</sup> *Hirst v the United Kingdom (No 2)* [2005] [ECHR 681](http://www.echr.coe.int/tk/press/pr/pr2005050801.htm)

<sup>6</sup> The Representation of the People Act 2000

<sup>7</sup> [2005] ECHR 681

<sup>8</sup> <http://www.parliament.uk/briefing-papers/sn01764.pdf> pg 1

<sup>9</sup> <http://www.bbc.co.uk/news/uk-31356895> pg 1

<sup>10</sup> Alexander Horne and Isobel White, ‘Prisoner voting rights’ (11<sup>th</sup> February 2015)

<[www.parliament.uk/briefing-papers/sn01764.pdf](http://www.parliament.uk/briefing-papers/sn01764.pdf)>

<sup>11</sup> <http://www.parliament.uk/briefing-papers/sn01764.pdf> pg 1

<sup>12</sup> <http://www.prisonreformtrust.org.uk/projectsresearch/citizenship/barredfromvoting>

The Grand Chamber's judgment in the case of *Scoppola v Italy (No 3)* was announced on 22 May 2012. The Grand Chamber confirmed the judgment in the case of *Hirst (no 2)* (which held that a general and automatic disenfranchisement of all serving prisoners was incompatible with Article 3 of Protocol No 1); but it accepted the UK Government's argument that member states should have a wide discretion (or 'margin of appreciation') in how they regulate a ban on prisoners voting<sup>13</sup>, *Scoppola* judgment meant that the UK government had six months from 22 May 2012 to bring forward legislative proposals to amend the law. When George McGeoch and Peter Chester who were both serving life sentence for murder brought domestic law proceeding in 2010 challenging the ban, the UK Supreme Court dismissed the appeal. The Supreme Court rejected a separate head of claim that the blanket ban was incompatible with European Union law. However, the Supreme Court also maintained the position determined in Strasbourg that the UK's blanket ban was contrary to the European Convention on Human Rights; although it refused to make a further 'declaration of incompatibility' with the Human Rights Act 1998, considering that it was unnecessary in the circumstances<sup>14</sup>.

The current debate on the issue of prisoners voting arose because of legal challenges to the disenfranchisement of the UK convicted prisoners. 'There is little to commend in the judgement. Finding against the Government, the Grand Chamber judges swing unashamedly between indefensible ambiguity, deliberate confusion, and brazen arrogance.'<sup>15</sup> Firstly a destructive desire to curtail the margin of appreciation to the point of non-existence was demonstrated by the court. However, the Grand Chamber states that "*it is for each contracting state to mould the electoral system into their own democratic vision*", the remainder of the Court's reasoning serves only to undermine and qualify this otherwise laudable claim'<sup>16</sup> so here why is the court forcing the UK government to allow prisoners to vote?. The British government should have said; they have to decide whether or not they want to give prisoners the vote.

The right to vote is recognised as an essential right by the majority of democratic societies. In spite of this, countries such as the United Kingdom and the United State of America have laws in place that deprive citizens who have been convicted of a felony of their right to vote in elections<sup>17</sup>. This is known as felony disenfranchisement and has been at the heart of the debate in the UK after a ruling by the European Court of Human Rights in the case of *Hirst* in 2005. If a person is locked up for crime he or she committed in this country, they already have a lot taken from them example the right to see friends and family whenever they want, the choice about what to eat or when to eat, when to sleep and wake up and many more. All these rights have been taken away from them, but why should they have the right to vote automatically taken from them too?

Today, the question to whether prisoners should be permitted to vote or not, have been one of the major concerns not only in the UK, but also in other countries of the world. Presently, the prisoners in the UK are not allowed to vote. As of August 2014, the court ruled that the prisoners' rights of human were broken as whenever they were literally not permitted to vote. The European Court of Human Right has already ruled that preventing prisoners from voting is against the law, as it essentially denies them their human right. There are diversities of

<sup>13</sup> Prisoners voting right by Horne and White 2015, pg 1

<sup>14</sup> <http://www.parliament.uk/briefing-papers/sn01764.pdf> pg 1

<sup>15</sup> <http://www.civitas.org.uk/crime/prisonervoting.pdf>

<sup>16</sup> *Hirst v United Kingdom (No. 2)* (2005) 19 BHRC 546, 562

<sup>17</sup> Bbc News 'Prisoner votes by European country' (22<sup>nd</sup> November 2014)

<<http://www.bbc.co.uk/news/uk-20447504>> pg 1

opinions on this matter and while the former Prime Minister David Cameron is vehemently opposed to the idea, Parliament is set to debate this question and make a ruling. First of all, let us look at the law as it currently stands and the historical context of prisoner's disenfranchisement in the UK and the pressures placed on the British government by the European Court of Human Rights.

Recently, the two judgment in August and February 2014, which are the cases of *Frith and Other v UK* and *McHugh and others v UK* relating to large number of outstanding claims by prisoners, here it was noted by the European Court of Human Right that 'continuing violation of Article 3 to Protocol No 1 of the convention, however no compensation or legal expenses was awarded to the applicants'.<sup>18</sup> The UK government for more than ten years have wasted public funds for resisting the European Courts judgment on the issue of prisoners voting. Even the former Prime Minister David Cameroon has admitted to feeling "*physically ill to even contemplate having to give the vote to anyone who is in prison*"<sup>19</sup>. The proposals by cross-party committee set the government to consider the draft bill on prisoners voting have fallen on deaf ears.

### **DISENFRANCHISEMENT IN THE UK: THE PRESENT SITUATION AND ITS HISTORICAL CONTEXT FROM HUMAN RIGHTS PRISM**

The right to vote holds great importance in democratic societies and supremacy of constitutional laws. However, the prisoners in United Kingdom are excluded and disqualified for voting under the section 3 of the Representation of the People Act 1983 law, which states that, '*A convicted person during the time that he is detained in a penal institution in pursuance of his sentence or unlawfully at large when he would otherwise be so detained is legally incapable of voting at any parliamentary or local government election.*'<sup>20</sup>. On the other hand, the European Court of Human Rights claims it as against their charter and also a breach of the terms of human rights. In December 2013, the PM of United Kingdom said that prisoners should not be allowed to vote and the powers of The European Court of Human Rights should be limited I this regard who claim the act to be unlawful. However, The European Court of Human Rights is of the view that if the United Kingdom, being the founder of ECHR does not follow its judgment, then the court would lose its worth and meaning on the whole.

The government of the United Kingdom has ordered the disenfranchisement of the prisoners on the following grounds. The most important point in this regard is the punishment of the offender. The government is of the view that the right of vote is given to the citizens who are responsible and are playing their constructive roles for the betterment of the country. If a person is not following the law of the country and has committed some act which is against the law, then he should also face the music and should not be allowed to participate in the voting campaigns in the country because he is not a responsible citizen.

Secondly, the purpose of disenfranchisement of the prisoners is to prevent the crime. It is considered that due to such implications, the general public would be more concerned in following the laws so that they can practice their voting rights. Another thing is that the act would create a sense of civic responsibility and the respect for the supremacy of the law among

<sup>18</sup> <http://www.parliament.uk/briefing-papers/sn01764.pdf> pg 1

<sup>19</sup> <https://www.opendemocracy.net/ourkingdom/juliet-lyon/uk-should-encourage-prisoners-to-be-good-citizens-and-let-them-vote> pg 1

<sup>20</sup> Plaxton M and Lardy H, 'Prisoner Disenfranchisement: Four Judicial Approaches' (2010)

the general public and they would be well aware of the fact that breaching the terms of the conditions, they would have to face the implications.

Thirdly, the government views disenfranchisement as deterrence. The government is of the view that the citizens have some rights as well as responsibilities. They get privileges but they have to follow the laws and other conditions of the governments in order to get their rights and benefits. On the other hand, ECHR is of the view that right to vote is one of the basic rights of human beings which no one can restrict. The government also considers it as the rehabilitation of the supremacy of the law. They fear of the view that such implications would discourage the prohibition of laws in the society.

The prisoners should be limited only to some extent in this regard. They should be not banned lifelong. There should be some laws regarding this also. The matter should be dealt in the way that the persons who have committed serious crimes and also on multiple basis should be banned for life. However, the people who accidentally commit some crime or are guilty of their act, their ban should be left after some years of the fulfilment of their punishment. The main purpose of punishment is to give the time to culprit to think about his attitude, its severity and its implications and then try to bring a positive change in his personality. Increasing the time span of punishment is not a good thing and everyone deserves a second chance until he proves himself as deserving. So prisoners should be given the right to vote but with a certain limitation. The current position now is that one can be termed with a stalemate between the Court in the Strasbourg and the British government<sup>21</sup>. Various reform and charities are continuously urging that change is needed and would benefit the rehabilitation opportunities of thousands of prisoners. ‘Members of the legislation on each occasion that a debate is forced, make it well know that they are fundamentally opposed to any change in legislation’<sup>22</sup> although Eleven years has passed since the Grand Chamber of the European Court of Human Rights confirmed that the “blanket” ban on convicted prisoners voting in national and European elections was in violation of the “right to vote” under art.3 of the First Protocol to the European Convention on Human Rights 1950<sup>23</sup>.

Currently there are over 86,019 prisoners in the UK<sup>24</sup> however the population continues to grow at an alarming rate. According to Ministry of Justice, 2009, the prison population in England and Wales grew by 32,500 between 1995 and 2009. ‘The UK government submitted to the ECHR that the current ban affects 48,000 prisoners as those on remand are able to vote, which was deemed to be significant figure by the ECHR’<sup>25</sup>. Considering that these people would be voting in different constituencies throughout the UK, the possibility that they would sway an election is admittedly rather theoretical.

Only around one-in-five men could vote from between 1430 and 1832. The Great Reform Act of 1832 gave more people the right to vote but only for men who owned property, this made majority of men and women working unable to vote.<sup>26</sup>

Historically, the origin of disenfranchisement in the UK dates back to the Forfeiture Act of 1870 “... *If any person hereafter convicted of treason or felony, for which he shall be sentenced to death, or penal servitude, or any term of imprisonment with hard labour, or exceeding twelve*

<sup>21</sup> Nicola Talbot, ‘Should prisoners have the right to vote?’ 2011 <

<http://www.onepaper.co.uk/Should%20prisoners%20have%20the%20right%20to%20vote.pdf>

<sup>22</sup> <http://www.news@one.com>

<sup>23</sup> <http://www.criminallawandjustice.co.uk/features/Prisoner-Voting>

<sup>24</sup> <https://www.gov.uk/government/statistics/prison-population-figures-2015>

<sup>25</sup> White, I ‘Prisoners’ voting rights’ House of Commons Research Review, (27<sup>th</sup> April 2011) <[www.parliament.uk/commons/lib/research/briefings/snpc-01764.pdf](http://www.parliament.uk/commons/lib/research/briefings/snpc-01764.pdf)>

<sup>26</sup> <http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>

months, shall at the time of such conviction [...] continue thenceforth incapable [...] of being elected, or sitting, or voting as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within England, Wales, or Ireland,"<sup>27</sup> and has been linked to the notion of civic death. This Act denied offenders their rights of citizenship. The Forfeiture Act of 1890 was the first law against prisoner voting in England, Wales and Ireland and the act barred any felon sentenced to more than 12 months imprisonment from voting. Also home addresses of the prisoners were not permitted on the electoral register while in jail<sup>28</sup>.

Prior to this, the right to vote was mediated by the Reform Act of 1832 which allowed on those with a property worth more than a certain value to vote<sup>29</sup>. An assertion that the right to vote has always been based on privilege and that current disenfranchisement laws manifest this same injustice. This ruling seems likely to force changes due to the recent ruling by the E.U. the European Court of Human Right in March 2004 ruled that '*an absolute ban on convicted prisoners voting was in breach of Article 3 of the First Protocol to the European Convention on Human Rights (the right to free and fair elections)*'. *Hirst v United Kingdom* was brought by John Hirst who was serving a life sentence for manslaughter in 1980. The British government appealed, but their appeal was unsuccessful.

The government takes very seriously the issue of prisoners voting and it has remained under careful consideration. Dominic Grieve who was the Shadow attorney general said "*it would be ludicrous if prisoners are giving the vote... the law will bring into disrepute if people like convicted rapists and murderers are given the vote. Many people will see it as making a mockery of justice*"<sup>30</sup>. It has been openly considered by a very few MPs about the possibility of removing the practice of disenfranchisement completely.

However, The Representation of the People Act 1969 introduced specific provision that convicted persons were legally incapable of voting during the time that they were detained in a penal institution after the Criminal Law Act 1967 amended the 1870 Act<sup>31</sup>. "These provisions were later consolidated in the Representation of the People Act 1983. The RPA 1969 enacted the recommendations of the Speaker's Conference of 1967-68, one of which was that a convicted prisoner who is in custody should not be entitled to vote"<sup>32</sup>. Voting was not yet considered a universal right in those days, with the democratic principle of one person, one vote of equal worth. Until 1918 only men who owned property were granted voting right. It was in 1918 when this law was changed giving the same right to women with property but only with those aged 30 years and over, while from 1918 all men aged 21 and over could vote either with or without property<sup>33</sup>. Women didn't achieve equal voting rights with men until 1928. The Representation of the People Act of 1948 introduced postal voting on a limited basis, for those "no longer resident at their qualifying address".<sup>34</sup> Consequently, those imprisoned for 12

<sup>27</sup> <https://cognitivelibertyuk.files.wordpress.com/2011/11/against-prisoner-disenfranchisement-in-the-uk.pdf>

<sup>28</sup> The Forfeiture Act 1890

<sup>29</sup> Cheney, Deborah (2008) Prisoners as Citizens in a Democracy. *The Howard Journal*, 47 (2). pp. 134-145. ISSN 02655527 : <http://kar.kent.ac.uk/6328/>

<sup>30</sup> Philip Johnson, 2010. 'Should prisoners have the right to vote?' *The Telegraph*, 20th September: <http://blogs.telegraph.co.uk/news/philipjohnston/100054356/should-prisoners-have-the-rightto-vote/>

<sup>31</sup> The Representation of the People Act 1969

<sup>32</sup> Final Report of the Conference on Electoral Law, Cmnd 3550, February 1968 7/7/2015

<sup>33</sup> <http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>

<sup>34</sup> [Jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html](http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html)

months or less as stipulated in the 1870 Act could now use a postal vote, so long as they remained registered at their home addresses. However Scotland took different course, their Criminal Justice (Scotland) Act 1949, combined with the introduction of postal voting, resulted in the removal of any limitations on prisoners in Scotland from voting<sup>35</sup>. In the 1950 general election in England and Wales some prisoners did make use of the new postal vote. The Times then reported, "among the postal votes to be returned in Manchester were a number from prisons in Cardiff, Lincoln, Preston and Manchester"<sup>36</sup>

The UK in 1951 ratified the European Convention on Human Right; this includes Protocol 1, an undertaking to, and "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"<sup>37</sup>. The distinctions between felonies and misdemeanours were removed by The Criminal Law of 1967. The outcome was that, the barred from voting will only affects prisoners convicted of treason. This brought the law in England, Wales and Northern Ireland in line with Scotland, by removing the limitations on prisoner voting.

Lord Stonham the then Labour Minister during the House of Lords debate on the 1967 Act stated that "*By Section 2 of the Forfeiture Act 1870, conviction of a felony resulting in imprisonment for over twelve months disqualifies the offender from holding office under the Crown, or various other offices; from membership of either House of Parliament; from voting at elections ... and the Government agree with the Criminal Law Revision committee that these automatic disqualifications should not be continued.*"<sup>38</sup> According to the new law, there were no statutory restrictions on prisoner voting in all of the United Kingdom from 1967. However the restrictions were still on criminals voting who are in prison for more than a year. This is because the 1948 Act allows postal voting for those, "no longer resident at their qualifying address" example their home address shown on the Electoral Register.

The Representation of the People Act 1983 came to replace the 1969 Act which reiterated the ban on prisoner voting, and remains in force to this day. The Act states that "*A convicted person during the time that he is detained in a penal institution in pursuance of his sentence ... is legally incapable of voting at any parliamentary or local election*"<sup>39</sup>. Meanwhile, there were no debates in Parliament about prisoners voting during the passage of the 1969 and 1983 Acts. "It's thought by some political commentators that this was because the issue simply wasn't considered important, as opposed to the lowering of the voting age to 18, which Parliament agreed to in the 1969 Act"<sup>40</sup>. However in 1982, an appeal heard by the House of Lords, Lord Wilberforce stated that "the fact that you are in prison does not mean you lose your civil rights simple because they have been imprisoned. *Under English law, a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication*"<sup>41</sup> and this right should include the right to vote if they wish to.

Parliament only considered the issue of prisoners voting again for the Act 2000. As stated early in my introduction, the Act only gave prisoners on remand the right to vote but for those prisoners serving a custodial sentence do not have that right. Only convicted prisoners are

<sup>35</sup> <http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>  
7/7/2015

<sup>36</sup> Jon Danzig, 'Should prisoners be allow to vote?', 10<sup>th</sup> October 2014, <  
<http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>>

<sup>37</sup> <http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>

<sup>38</sup> <http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>

<sup>39</sup> The Representation of the People Act 1983

<sup>40</sup> <http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>

<sup>41</sup> Jon Danzig, 'Should prisoners be allow to vote?', 10<sup>th</sup> October 2014, <

<http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>

prevented from voting by the 1983 Act, this includes prisoners on remand example those charged and detained, but not as yet convicted of any crime.

The Representation of the People Act 2000 therefore was not presented to Parliament as restoring a right, but simply making it practically possible to exercise an already existing right. This was achieved by enabling prisoners on remand to register their prison address on the Electoral Register.<sup>42</sup> The government have always maintained that ‘absence of rights, including the right to vote, is part of the punishment of a convicted prisoner’ and their view still remains the same. In 2005, it was held that UK’s ban on all serving prisoners was a breach of the European Convention on Human Rights. The European Court on Human Rights based in Strasbourg ruled that “*a general and automatic disenfranchisement of all serving prisoners was incompatible with Article 3 of Protocol One of the European Convention on Human Rights.*” So the UK was told to end its ban on convicted prisoners voting, however a partial ban would be acceptable. The then Labour government of that time managed to adroitly duck and dive the issue, and rather conveniently (for them) handed the controversy on to the next government, a coalition of Conservatives and Liberal Democrats, voted into power in May 2010. A further six months’ notice was given to the UK in November 2010 to change its blanket ban on prisoners voting or face significant consequences. The two prisoners who appealed to the Court had their human rights breached as a result of the voting ban; however the court did not award them any compensation.

‘In December 2010, the [new government announced](#) that it would bring forward legislation to allow offenders sentenced to less than four years in prison the right to vote in UK Parliamentary and European elections (unless the sentencing judge considered this to be inappropriate’.<sup>43</sup> Following a backbench debate on the issue on prisoner voting in February 2011, the House of Commons overwhelmingly voted to retain the current ban on all convicted prisoners from voting. Here 234 MPs voted in favour and only just 22 MPs voted against continuing the ban<sup>44</sup>. When the European Court of Human Rights gave the UK government six months to change the law preventing prisoners from voting, the UK appealed to the Grand Chamber of the European Court of Human Rights in March that year. However the appeal was rejected by the Grand Chamber but they gave them another deadline of six months in order for them to come up with new legislative proposals to be introduced in the UK on prisoners voting rights<sup>45</sup>.

A Bill was published by the UK government in November 2012. (The Voting Eligibility Prisoners Draft Bill) for pre-legislative scrutiny by a joint committee of both Houses of Parliament. It was recommended by the Committee in its report in December 2013 that all prisoners serving sentences of 12 months or less be allowed to vote in all UK Parliamentary, local and European elections. The problem is that the UK government has not yet responded to the Committee’s recommendations and did not even schedule the Bill for consideration in the current Parliament. Meaning the issue of prisoners voting will not be considered again until next election. “In September 2014, the Council of Europe committee that oversees the decisions of the European Court of Human Rights, [decided to postpone](#) any decision on the issue until at least September 2015, giving the UK and the current government and the next government a

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<sup>42</sup> <http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>

<sup>43</sup> Nicholas Watt and Alan Travis, ‘MPs decide to keep blanket ban on prisoners’ vote’ *theguardian* (London 10<sup>th</sup> February 2011)

1<<http://www.theguardian.com/politics/2011/feb/10/mps-blanket-ban-prisoners-vote>>

<sup>44</sup> Clive Coleman, ‘MPs reject prisoner votes plan’ 10<sup>th</sup> February 2011

<<http://www.bbc.co.uk/news/uk-politics-12409426>>

<sup>45</sup> <http://jondanzig.blogspot.co.uk/2014/10/should-prisoners-be-allowed-to-vote.html>



further breathing space on this issue”<sup>46</sup>. If this ruling is not adhered to by the UK government, then this will be the first time one of the 47 signatories to the European Convention on Human Rights will have declined to comply with an order of the European Court of Human Rights.

A claim brought by two prisoners who were both serving life sentences for murder in England in October 2013 was dismissed by the UK’s Supreme Court. The court ruled that the blanket ban on prisoners voting was not incompatible with European Union law. The European Court of Human Rights in August last year upheld its earlier ruling that the blanket ban on prisoners voting was breach of prisoner’s human rights. It was decided by the Court that ten prisoners in Scottish jails who had appealed to the court for damages were not entitled to any as the ruling in their favour was sufficient.

The European Court of Human Right ruling means that the UK government can no longer maintain blanket ban restrictions on prisoners voting; however the ruling does not require Britain to give all prisoners the vote<sup>47</sup>. It would seem that at no point did the government openly propose the prospect of universal enfranchisement of all convicts to serious consideration. The then Lord Chancellor Lord Falconer said. *“I can make it absolutely clear that in relation to convicted prisoners, the result of this is not that every convicted prisoner is in the future going to vote”*<sup>48</sup>The whole point of human rights is that they are rights by virtue of our humanity and not by virtue of our conduct.

## CONCLUSION AND RECOMMENDATIONS

The effects of felony disenfranchisement have been described as “civil death”<sup>49</sup>. Today, the question to whether prisoners should be permitted to vote or not, have been one of the major concerns not only in the UK, but also in other countries of the world. Presently, the prisoners in the U.K, are not allowed to vote. As of August 2014, the court ruled that the prisoners’ rights of human were broken as whenever they were literally not permitted to vote<sup>50</sup>. Suppose the court had ruled that the government must make compensation to the prisoners who were not permitted to vote in their prison environs-the government would have made payouts in hundreds in regards to similar cases. This means therefore that prisoners; however their circumstances may be, they have rights to vote, and there are many who have been denied their chances to do so.

In many states, it is noted that felony disenfranchisement laws are still noted in the books<sup>51</sup>. To make the matter worse, the current scope of the said policies are not only too unjust to tolerate but also too significant to ignore. So far, over a century has passed since when the post-reconstruction states made use of these measures, for one reason of stripping the African

<sup>46</sup> <http://www.bbc.co.uk/news>

<sup>47</sup> <http://www.bbc.co.uk/news/uk-politics-12409426>

<sup>48</sup> Norman Smith, ‘UK 'obliged' to allow some prisoners to vote’ (2<sup>nd</sup> November 2010)

<<http://www.bbc.co.uk/news/uk-11671164>>

<sup>49</sup> Karlan 2004: 1169

<sup>50</sup> Florida Attorney General “Clemency Shift Upholds Rule of Law,”<[www.tampabay.com](http://www.tampabay.com)>

(16<sup>th</sup> March, 2011)

<sup>51</sup> US Attorney General "Attorney General Eric Holder Delivers Remarks on Criminal Justice Reform at Georgetown University Law Center," [www.justice.gov](http://www.justice.gov), accessed 19 Oct. 2015.

Americans of their most fundamental rights<sup>52</sup>. Up to that point, the question to whether the prisoners should be given chance to vote or be limited to a point, can now chip in. It is true that by going to jail, prisoners have forfeited the right to vote by breaking the law, but it should be remembered that they are members of the subjected country and therefore, they have the rights to choose whomever they want in the parliament<sup>53</sup>. In other words, voting is a basic right, and since they live in that country, and they share resources of the country like other people, they also share the rights such as voting, so they are expected to be allowed to vote. Voting is a constitutional right that applies to every citizen in a country, prisoners or no prisoners. Therefore this work strongly recommend among other things that prisoners should be allowed to vote because they are citizens and have their constitutional rights to vote. Voting exercise should however be in a systematic manner which will allow prisoners to vote electronically. Denial of such right to vote will amount to a fundamental breach of their Human Rights.

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