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DISENFRANCHISING THE INNOCENT? A CONSTITUTIONAL ANALYSIS OF UNDERTRIAL PRISONERS' VOTING RIGHTS IN INDIA

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Abstract

The right to vote sits at the heart of democratic participation and political equality in any constitutional democracy. In India, undertrial prisoners still can't cast their votes, thanks to Section 62(5) of the Representation of the People Act, 1951. This law bars anyone held in prison or lawful police custody from voting, even though undertrials are presumed innocent until proven guilty. That raises a real constitutional problem: Does stripping undertrial prisoners of their voting rights fit with the guarantees of equality, dignity, and democratic participation promised by Articles 14, 21, and 326 of the Indian Constitution?

This article gets into the details, questioning whether this blanket ban is really justified. It digs into judicial interpretations, especially the logic behind *Anukul Chandra Pradhan v. Union of India*, and lays out how the current rules restrict democratic rights far too much, without properly weighing state interests against constitutional principles. Looking beyond India, the piece explores how countries like Canada, South Africa, the UK, and the US are thinking about prisoner voting, showing that global standards are shifting.

The paper also highlights deeper problems in India's criminal justice system—poverty-driven incarceration, endless undertrial detention—and argues that excluding undertrials from elections only worsens democratic marginalisation. It wraps up by suggesting reforms: amend Section 62(5), add postal ballot options, and urge courts to rethink total disenfranchisement. These steps would help Indian electoral law catch up with constitutional ideals of inclusion and political equality.

Keywords – Undertrial Prisoners; Voting Rights; Electoral Disenfranchisement; Political Equality; Constitutional Morality.

"Democracy is not merely a form of government; it is primarily a mode of associated living."

—Dr. B.R. Ambedkar

"The vote is the most powerful instrument ever devised by man for breaking down injustice."

— Lyndon B. Johnson

I. Introduction

Democracy draws its strength from people taking part in the political process.³¹ In India, voting isn't just a legal right; it's a powerful expression of equal citizenship and a key marker of inclusion in the democratic order. When the framers of our Constitution chose universal adult franchise, they weren't just ticking a box—they saw it as a radical step, a way to break down the old colonial power structures and push back against social exclusion. Casting a vote, then, does more than just fill a ballot—it's a public acknowledgment that everyone has the same stake in our political community.

Yet, for all this talk about equality and participation, Indian law stops many citizens from voting. Section 62(5) of the Representation of the People Act, 1951,³² says anyone in prison or legal police custody can't vote. This isn't just about those found guilty—it sweeps in people still awaiting trial, who, legally, are presumed innocent. That's a serious issue. Stripping undertrial

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³¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 17 (Oxford University Press, 1966).

³² Representation of the People Act, 1951, § 62(5).

prisoners of the vote, even before any court has pronounced them guilty, shakes the foundation of the constitutional right to equality.

The way India's prison system works makes the problem even worse. Most inmates aren't convicted—they're undertrials, stuck behind bars often because they can't afford bail or must wait for a sluggish legal process. The result? Disenfranchisement hits the poorest and most vulnerable the hardest, further eroding the promise of a truly representative democracy. This article dives into whether the blanket ban on undertrial prisoners voting actually holds up under constitutional scrutiny. I'll break down the laws around prisoner voting, how the judiciary has dealt with this issue, and bigger constitutional questions about equality, dignity, and democratic voice. I'll also compare how other democracies treat prisoner voting and see what lessons we might learn.

In simple terms, I want to answer this: Does Section 62(5), which blocks undertrials from voting, violate the Constitution's commitments to equality and participation? And can we really lump undertrials in with convicted prisoners? Finally, looking at what other countries do, do their legal traditions support the idea that incarcerated people deserve a vote?

My argument is clear: shutting undertrial prisoners out of elections is constitutionally out of proportion. It ignores their still-intact presumption of innocence and undercuts the spirit of democratic inclusion.

To tackle these questions, I've used doctrinal and comparative research methods—scanning constitutional texts, statutes, court cases, prison data, and legal approaches from around the world.

II. Democracy Behind Bars: Universal Adult Franchise and The Constitutional Vision of Political Equality

The decision to introduce universal adult franchise was one of the boldest choices the Constituent Assembly ever made. While many leading democracies kept their franchise restricted—limiting the vote to the wealthy, the educated, or men—India broke away from that pattern. Here, every adult, no matter their caste, religion, gender, education, or economic status, got the right to vote. The Assembly understood something simple but radical: democracy makes no sense if people can't participate in shaping it.

Article 326³³ of the Constitution captures this promise: elections run on the basis of adult suffrage. Political equality sits at the heart of it. No matter how society tries to divide or rank its citizens, democracy insists that each vote counts the same. It's a clear, almost stubborn assertion that every citizen has equal value.

But the right to vote isn't just a formality—it binds people to the democratic project. When people vote, they invest in the system and build a sense of belonging and trust. Block people from voting, and you don't just quiet their voices—you chip away at the legitimacy of the whole system.

Participatory democracy theory makes this point even stronger. A democracy only has moral authority if it brings everyone into the fold. John Rawls saw equal political liberty as a building block of justice. Republican thinkers argue that full participation in politics is the surest guard against exclusion and domination.

India's Supreme Court has made it clear, time and again, that electoral participation matters. The Court points out that while the right to vote comes from statute, free and fair elections carry deep constitutional weight. So voting isn't just a statutory right; it's much more than that, almost brushing against the core values of the Constitution.

That's why excluding undertrial prisoners from voting strikes such an odd note. Unlike convicted prisoners, undertrials haven't even been found guilty. Denying them the right to vote clashes sharply with the idea of political equality that runs through our constitutional vision. It's a contradiction that the system struggles to justify.

³³ INDIA CONST. Art. 326.

III. India's Undertrial Crisis: Criminalisation before Conviction

India's prisons are overflowing, but the majority of inmates haven't even been convicted. Undertrials—people waiting for their cases to move through the courts—make up most of India's prison population. Many of them spend years behind bars, not because they've been found guilty, but because the system moves slowly, court procedures drag on, and bail is either unaffordable or out of reach for the poor. Despite constitutional safeguards, the human rights of under-trial prisoners are frequently violated, with basic facilities often denied and discrimination occurring based on sex, caste, or language.³⁴

Presumption of innocence isn't just a legal technicality, it's a basic constitutional promise.³⁵ The law says every accused person is innocent until proven guilty, and undertrial detention is supposed to be only preventive—meant to ensure someone's presence at trial, prevent interference with evidence, or keep the peace when absolutely necessary.

But walk into any Indian jail, and you'll find this promise often broken. For many, especially the poor and marginalized, "innocent until proven guilty" is just words on paper. People end up sitting in jail for months or even years because they can't afford bail or effective legal help. In reality, pre-trial detention punishes them before any court has delivered a verdict, and it hits the weakest sections of society the hardest.

India's Supreme Court has noticed this. In the *Hussainara Khatoon* case³⁶, the Court drew attention to the shocking number of people trapped in jail for years without trial and said the right to a speedy trial is part of Article 21- protection of life and personal liberty. Yet the delays continue.

This isn't just about slow courts or overburdened judges. The crisis reflects deep inequalities built into the system. Data shows that prisons are filled with the poor, minorities, and socially marginalised groups. When these undertrials lose the right to vote, it strips not just individuals but entire communities of political voice. Democratic exclusion piles onto social and economic disadvantage.

When undertrial prisoners are barred from voting, it isn't just a technical rule. It means whole segments of society lose a say in the country's future. Democracy loses its inclusiveness, and the constitutional promise of equality rings hollow.

Just because someone is detained before trial, that shouldn't cancel their civic rights. Undertrials still hold constitutional protections—dignity, protection from arbitrary treatment. Yet, denying them the vote seems a direct contradiction of the presumption of innocence.

IV. The Constitutional Dilemma of Electoral Exclusion

India's blanket ban on voting by prisoners sparks a real constitutional debate. Democratic participation, state security, electoral integrity, and prison administration—all these interests collide here.

Those in favour of the ban argue that allowing inmates to vote isn't practical. Security risks, administrative hassles, and a sense that people accused of crimes don't deserve full civic privileges—these are the typical reasons given.

But these justifications fall apart when it comes to undertrials. These people haven't been convicted of anything. Their jail time is supposed to be temporary, only to prevent flight or tampering with evidence. Denying them the vote basically punishes them without a verdict.

³⁴ Rubi Srivastava & Dr. Prashant Srivastava, *The Human Rights of the Under Trial Prisoners in India*, 11 *Int'l J. For Rsch. In Applied Sci. & Eng'g Tech.* VI, 884 (2023).

³⁵ *Woolmington v. Director of Public Prosecutions*, [1935] UKHL 1.

³⁶ *Hussainara Khatoon v. State of Bihar*, 1979 INSC 35 .

Section 62(5) of the Representation of the People Act draws no distinctions. It sweeps everyone in—undertrials and convicted criminals alike, regardless of how serious the offence, how short the detention, or the progress of their case. Someone in jail for a minor charge and unable to pay bail is treated exactly the same as someone convicted of the most serious crimes.

This fails the test of Article 14. Equal protection of the law requires reasonable classification. Lumping undertrials and convicts together simply isn't reasonable.

There's a bigger issue, too. Elections get their legitimacy from the widest participation possible. Excluding people who haven't even been found guilty undermines both representative democracy and the deeper values of the constitution.

Disenfranchising undertrials also runs against the rehabilitative ideas that modern criminal justice claims to support. Participation in democracy builds civic responsibility and ties people to society in positive ways. Shutting undertrials out only deepens their sense of alienation and exclusion.

V. Electoral Disenfranchisement in India: Statutory Framework and Constitutional Foundations

The law on prisoner voting rights in India sits mainly in Section 62 of the Representation of the People Act, 1951. Section 62(5) lays it out plainly: "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." Preventive detainees are the exception—they can vote.

Lawmakers have claimed this rule is about keeping elections clean and simple, limiting criminal influence, and making the process easier to manage. But Section 62(5) bans voting for all in custody, without asking if someone has actually been convicted.

Voting rights in India come from Article 326, which promises universal adult suffrage, but allows Parliament to set limits through law. But those limits must still be reasonable and fit with the values of a democracy.

Article 14 matters a lot here. The constitution bans arbitrary classifications and unfair discrimination. Treating undertrials and convicted criminals the same, when their legal status is so different, raises serious doubts about whether this law belongs in a democracy.

Article 21 piles on more weight, with the Supreme Court expanding its meaning over the years to include dignity and fairness—basic requirements for any restriction on personal liberty. Even though voting isn't formally a fundamental right, being part of democracy remains a core part of citizenship. Constitutional morality—the idea that the state must foster inclusive democracy and equal citizenship—should matter. A blanket ban on voting simply doesn't fit with this principle, because it shuts out people who haven't even been convicted, with no individualized judgment at all.

And then there's the inconsistency in how the law treats different types of detainees. Preventive detainees, locked up for national security reasons, are allowed to vote. Undertrials, often accused of far less serious offences, are not. This contradiction only weakens any justification for Section 62(5).

VI. From Citizens to Silent Spectators: Judicial Approach towards Prisoner Voting Rights

The Supreme Court's decision in *Anukul Chandra Pradhan v. Union of India* stands as the key judicial precedent on prisoner voting rights in India.³⁷ This case directly tackled the constitutionality of Section 62(5) of the Representation of the People Act, 1951, which denies voting rights to prisoners.

The petitioners in the case argued that depriving prisoners of their right to vote was arbitrary and undermined both equality and meaningful participation in democracy. In upholding the law, the Supreme Court took the view that restricting prisoner voting was necessary for maintaining the

³⁷ *Anukul Chandra Pradhan v. Union of India*, 1997 INSC 545.

integrity of elections and preventing the criminalisation of politics. The Court concluded that prisoners, due to their circumstances, form a distinct class and that logistical hurdles justified denying them a say at the ballot box. Crucially, the Court reinforced the statutory rather than fundamental character of the right to vote in India.

Still, the judgment has drawn serious criticism, both for its approach and underlying assumptions. The first major shortcoming is the Court's failure to meaningfully distinguish between convicts and undertrials. By placing all prisoners into a single undifferentiated category, the Court brushed aside the fundamental constitutional value of the presumption of innocence—a principle that holds undertrials must be seen as innocent until proven guilty. This erasure of legal distinction is not a minor oversight; it directly contravenes a foundational guarantee of criminal justice.

Second, the judgment did not grapple with the modern principle of proportionality, which demands that restrictions on rights be balanced, tailored, and justified as truly necessary. Increasingly, constitutional courts across the world require any limitation of rights to be the least restrictive means available. The Supreme Court's decision in *Anukul Chandra Pradhan*, however, gave almost complete deference to the legislature without interrogating whether a less sweeping exclusion than total disenfranchisement was possible—or even preferable from the perspective of a constitutional democracy.

Third, the Court overlooked the deep social and economic inequities that shape incarceration in India. Undertrial detention frequently results from the inability to afford bail or the inefficiencies of an overloaded criminal justice system. Blanket disenfranchisement, therefore, doesn't just exclude "criminals"—it almost automatically hits the poor and marginalized the hardest. In effect, the law amplifies structural disadvantage under the banner of electoral integrity.

Taken together, this judicial approach exposes unresolved tensions within Indian constitutional law. While the right to vote is formally a statutory right, its connection to democratic legitimacy and representative government is fundamental. Recent constitutional jurisprudence has placed renewed emphasis on values like dignity, substantive equality, and transformative constitutionalism. Expansive readings of Article 21 and debates over constitutional morality have only sharpened the argument that broad, undifferentiated exclusions from voting are out of step with contemporary legal values.

Ironically, the Court has in other contexts affirmed prisoners' rights—to protection from torture, access to legal aid, and respect for basic dignity. Yet, when it comes to the vote, these same individuals are stripped of political voice and rendered invisible in democratic life. This inconsistency signals a deeper doctrinal confusion: should prisoners be recognized as full constitutional persons or not?

The extensive discussion on delayed trials and prolonged incarceration Highlights that many under-trial prisoners spend years in jail without conviction. Denying voting rights to these individuals means a significant portion of the population, who may eventually be acquitted or serve minimal sentences, are excluded from democratic participation.³⁸ The problems of overcrowding, lack of classification, abuse, and specific challenges faced by women prisoners Demonstrate how the system already marginalizes and disempowers under-trial prisoners. Denying voting rights exacerbates this systemic disenfranchisement, particularly for vulnerable groups.

By shelving undertrial prisoners' voting rights, India turns them from citizens into "silent spectators." They remain within the bounds of the constitutional order—physically present in society, yet cut off from the very process that shapes its collective future.

³⁸ Supra note 4

VII. Disenfranchising the Unconvicted: Constitutionality of Undertrial Voting Restrictions

Examining the constitutional legitimacy of disenfranchising undertrial prisoners means confronting principles of equality, proportionality, dignity, and participation squarely. Article 14 requires any state action, including electoral regulations, to pass the test of reasonable classification and avoid arbitrariness. Section 62(5), as it stands, groups undertrial and convicted prisoners together, although their legal situations are categorically different: convicts are found guilty after trial, while undertrials are presumed innocent up to the point of conviction.

This overbroad classification fails to respect constitutional guarantees of substantive equality. Excluding undertrial prisoners without any individualized assessment treats them as guilty before the law has even determined their responsibility—a violation of due process and basic fairness. Denying prisoners the right to vote can hinder their rehabilitation and social reintegration. Conversely, allowing them to vote can foster a sense of civic responsibility and connection to society, aiding in their return to the community. The stigmatization and humiliation from disenfranchisement can be detrimental to self-concept and may even lead to further criminal activity.

Moreover, the denial of voting rights to undertrial prisoners loses sight of the presumption of innocence, which criminal jurisprudence fiercely guards. In essence, India's current approach imposes a civic penalty on those not only unconvicted, but possibly never to be convicted.

Disenfranchisement also reflects and entrenches existing social hierarchies. Poorer individuals are far more likely to await trial behind bars, their poverty making bail impossible. In contrast, the well-off secure bail and retain their right to vote, even though their criminal charges may be identical or more grave. In this way, electoral exclusion compounds socio-economic discrimination, reinforcing a two-tiered citizenship.

Article 21, transformed by decades of judicial interpretation into the repository of personal dignity, liberty, and substantive fairness, also stands in direct tension with blanket disenfranchisement. Participation in public life isn't merely a privilege here—it forms an essential ingredient of a dignified existence and meaningful citizenship.

Constitutional morality, as a framework, demands that institutions be inclusive and participatory. Stripping undertrials—often the most marginal—of their vote exposes a rift between constitutional promise and real-world practice.

From the perspective of proportionality, Section 62(5) is indefensible. If safeguarding electoral integrity is the objective, less drastic measures are at hand. Postal ballots, supervised voting within prisons, remote electronic mechanisms—all offer practical alternatives balancing security with participation.

Globally, constitutional courts have increasingly turned away from indiscriminate prisoner disenfranchisement. Democracies are embracing the idea that voting is inherent to citizenship, not a dispensable statutory perk.

India's framework, in continuing to side-line the legally innocent from democratic processes, finds itself more and more at odds with evolving constitutional standards that prioritize inclusion over exclusion.

VIII. Comparative Constitutionalism: Global Perspectives on Prisoner Voting Rights

A look across constitutional jurisdictions shows an undeniable momentum: democratic societies are increasingly recognizing prisoner voting as a core attribute of citizenship.

Canada's Supreme Court, in *Sauvé v. Canada*, famously struck down legislative bans on prisoner voting,³⁹ declaring such laws as antithetical to the democratic guarantees of the Charter. The Court rejected the notion that punishment justifies civic exclusion and insisted that a functioning democracy thrives by embracing—rather than rejecting—its most marginalized. Denying the vote, the Court warned, diminishes both dignity and democratic legitimacy.

South Africa offers a compelling parallel. In *Minister of Home Affairs v. NICRO*, the Constitutional Court ruled that even those viewed unfavourably by society remain integral parts of the constitutional community. Voting rights, the Court argued, go hand-in-hand with dignity and citizenship, underscoring their place in a transformative constitutional order that seeks not simply to reproduce past injustices but to transcend them.

The European Court of Human Rights, in the landmark *Hirst v. United Kingdom*, concluded that wide-sweeping bans on prisoner voting are incompatible with the proportionality required by the European Convention on Human Rights.⁴⁰ While individual states have leeway in electoral regulation, blanket prohibitions that ignore the realities and degrees of offending fail both legal and moral scrutiny. Democratic exclusion, stripped of context, is simply indefensible.

The United States follows no single path. Some states permanently disenfranchise those with felony convictions; others champion restoration of voting rights. Yet, debates over disenfranchisement are inseparable from America's legacy of racial discrimination and mass incarceration. Studies have repeatedly shown that felony bans suppress minority voices and distort political representation. As awareness grows and reform movements strengthen, some states are rethinking rigid bans.

What, then, do these cases signal for India? The global trend is clear: contemporary constitutional thought treats participation not as a reward for good behavior but as the essence of membership in the political community. Broad exclusions belong to another era. Even serious concerns about prison security or administrative burden have inspired the development of practical, less intrusive alternatives.

India's stubborn adherence to blanket bans—even for those who have never been convicted—now stands out as outmoded and out of step with global democratic ideals.

IX. Practical Concerns and the Politics of Security

Advocates for maintaining prisoner disenfranchisement often stress the administrative, logistical, and security complications that come with allowing prisoners to vote. Running elections inside prisons, they claim, creates new demands on personnel, infrastructure, and oversight. There's also the argument—usually advanced in grave tones—that voting rights for prisoners would fuel political manipulation, foster coercion, or allow criminal gangs to unduly influence results within a captive electorate.

But these arguments wilt under scrutiny. Administrative convenience is not—and should not be—the basis on which fundamental rights rise or fall. Democracies take pride in extending the franchise even under difficult circumstances: service voters, people with disabilities, the elderly—each group benefits from mechanisms like postal ballots and curated voting procedures. If the state can resource these solutions for others, surely it can do the same for undertrial prisoners.

Technological gains make this even more feasible. Supervised electronic polling, mobile ballot boxes, or remote voting arrangements have already been deployed in challenging situations elsewhere. The question is no longer whether these alternatives are possible, but whether there's the political will to implement them.

Behind the invocation of “security” often lies a discomfort with the notion of prisoner agency and voice. Security rhetoric, historically, has provided cover for rights restrictions affecting the most

³⁹ *Sauvé v. Canada* (Chief Electoral Officer), [2002] 3 SCR 519.

⁴⁰ *Hirst v. United Kingdom* (No. 2), (2005) ECHR 681.

marginalized. Democratic societies must guard against letting such anxieties solidify into permanent exclusions. A genuine commitment to proportionality requires hard evidence, not vague fears. Critically, blanket disenfranchisement does more than create a legal barrier: it amplifies the marginalization that brought many undertrials into conflict with the law in the first place. Exclusion is not just an administrative measure; it is a social signal, reinforcing the sense that some people are always outside the democratic circle.

Reimagining Democracy: Reforms for an Inclusive Electoral Framework

Making prisoner voting laws truly consonant with constitutional values demands more than marginal tweaks. The most urgent step is to amend Section 62(5) of the Representation of the People Act so that it differentiates clearly between those who are convicted and those still presumed innocent—the undertrials. The failure to do so flies in the face of India's own constitutional commitments.

Implementing postal ballot facilities for undertrial prisoners should be an immediate reform. India's own electoral laws already provide special provisions for segments of the population who face mobility barriers. There's little reason not to extend these to the jailhouse.

Prisons could establish supervised polling stations during elections to enable secure, transparent voting—a model already functional in other democracies. If concerns about manipulation or logistical complexity persist, such mechanisms introduce checks without wholesale disenfranchisement.

Judicial attitudes also need recalibration. It is time for courts to reassess established precedent in light of the constitution's evolving emphasis on dignity, substantive equality, and meaningful participation. Blanket restrictions can no longer claim automatic deference in the face of such normative shifts.

There's also an opportunity to fold democratic participation into prison reform efforts more broadly. Rehabilitation isn't served by political exclusion. If anything, giving marginalized individuals the chance to engage with civic life fosters deeper social reintegration and strengthens the foundations of both democracy and justice. Legal aid systems must help incarcerated individuals become aware of—and able to exercise—their electoral rights. Democratic participation can't be held hostage to socio-economic circumstance or educational disadvantage.

Ultimately, the conversation about prisoner voting should shift from punishment to participation, from exclusion to inclusion. Citizenship isn't conditional on a clean bill of criminal record—certainly not for those the law has yet to convict. The legitimacy of a democratic regime rests on the recognition that constitutional membership, and the rights that flow from it, cannot be inconveniently suspended.

X. Conclusion: Can A Democracy Exclude the Legally Innocent?

The disenfranchisement of undertrial prisoners is an enduring contradiction at the heart of Indian constitutional democracy. On the one hand, the framework proclaims a universal franchise and equal political voice. On the other, Section 62(5) of the Representation of the People Act silences a vast group of people who, in law and in fact, remain innocent until proven otherwise.

Treating undertrials the same as convicts for electoral purposes flouts the presumption of innocence, undermines substantive equality, and denies them the dignity inherent in democratic participation. It isn't just about law; it's about the kind of democracy India aspires to be.

Moreover, this practice hits the poorest hardest—those unable to afford bail are overrepresented among disenfranchised undertrials. Exclusion from voting thus parallels and perpetuates structural inequalities baked into the criminal justice system.

Lessons from comparative constitutional law are unmistakable. Around the world, courts and legislatures increasingly view voting rights as a core element of citizenship. There's a growing insistence that even the incarcerated—especially those not yet found guilty—deserve to participate in the collective project of self-government.

Perpetuating blanket bans is simply out of step with the constitution's own trajectory—toward greater equality, meaningful participation, and the moral demands of dignity. At its core, the question isn't whether undertrial prisoners "deserve" the right to vote. The question is whether a constitutional democracy can tolerate the silencing of its legally innocent, even temporarily. The future of Indian democracy depends, in no small part, on its willingness to answer this challenge—not with silence and exclusion, but with inclusion and trust. Extension of prisoner voting rights isn't a trivial technical reform; it is a reaffirmation of the core promise that citizenship, dignity, and voice cannot be revoked before guilt is proven.