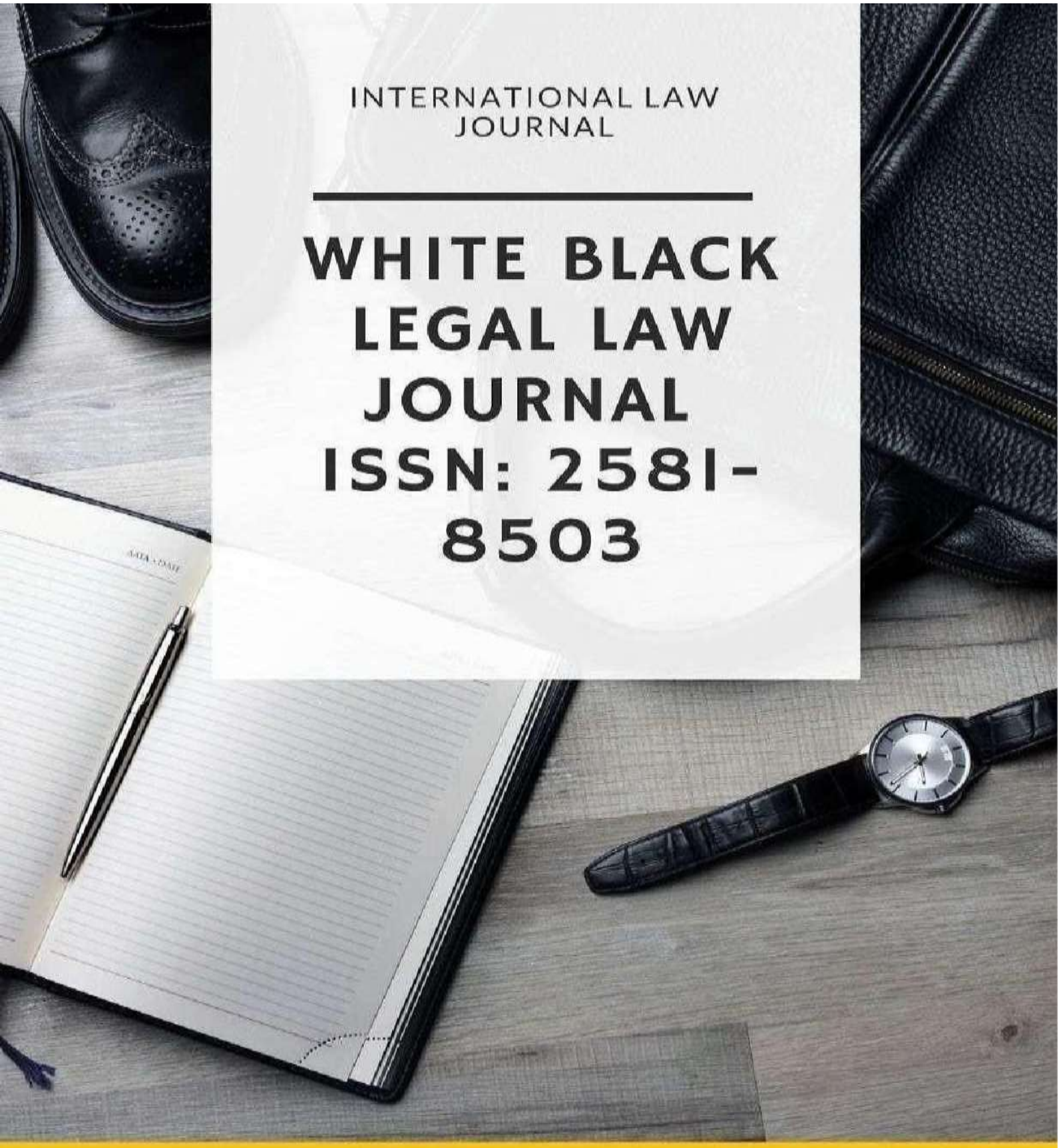

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Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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HUMAN RIGHTS VS. PUBLIC MORALITY: A LEGAL AND PHILOSOPHICAL INQUIRY INTO PRISONER ENFRANCHISEMENT IN INDIA

AUTHORED BY - MRS. ANSHIKA GUPTA
Research Scholar, College of Law & Legal Studies,
Teerthanker Mahaveer University

CO-AUTHOR - PROF. SUSHIL KUMAR SINGH
Professor, College of Law & Legal Studies,
Teerthanker Mahaveer University, Moradabad

Abstract

This paper critically examines the legal and philosophical dilemma posed by India's blanket ban on prisoner enfranchisement under Section 62(5) of the Representation of the People Act, 1951. This provision disenfranchises not only convicted criminals but also the vast population of undertrial prisoners, who are presumed innocent under law. The paper argues that this statutory disenfranchisement, historically justified by anachronistic notions of "public morality" and administrative convenience, stands in stark contradiction to international human rights law, progressive global jurisprudence, and, most critically, the Indian Supreme Court's own transformative doctrine of "constitutional morality." The analysis critically deconstructs the seminal judgment of Anukul Chandra Pradhan v. Union of India, which judicially sanctions the ban. It examines the right to vote under the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Indian Constitution, highlighting the law's inherent disproportionality and its violation of the principles of equality under Article 14. The paper exposes a significant doctrinal inconsistency: the Supreme Court's failure to apply the same principles of constitutional morality—used to expand fundamental rights in landmark cases concerning privacy and sexual orientation—to the core political right of prisoners. Furthermore, a comparative study of jurisprudence from Canada, South Africa, the European Court of Human Rights, and Germany reveals India's anomalous position, as these jurisdictions have overwhelmingly rejected indiscriminate bans in favor of narrowly tailored, proportionate restrictions. The paper contrasts the punitive

philosophy of "civic death" underpinning the ban with modern penological goals of rehabilitation and restorative justice. It concludes that the conflict is not between human rights and public morality, but between a regressive, majoritarian morality and the Constitution's own inclusive ethos. Ultimately, it calls for legislative and judicial reform to abolish the blanket ban, arguing that enfranchising prisoners is a constitutional imperative to uphold the foundational values of dignity, equality, and democratic legitimacy for all citizens.

1. Introduction: The Paradox of the Voteless Citizen in a Democracy

The bedrock of any modern democratic state is the principle of universal and equal suffrage. This principle posits that the legitimacy of a government is derived directly from the consent of the governed, a consent expressed through periodic, free, and fair elections. The right to vote is, therefore, more than a mere procedural entitlement; it is a fundamental human right, indispensable for meaningful participation in governance and the sustenance of the rule of law. It serves as the primary instrument through which citizens exercise their political agency, hold their elected representatives accountable, and affirm their status as equal members of the political community. The Universal Declaration of Human Rights (UDHR) unequivocally states that the "will of the people shall be the basis of the authority of government," a will that must be expressed through elections based on "universal and equal suffrage". Within this global consensus on democratic ideals, the Indian legal landscape presents a profound and unsettling paradox. Section 62(5) of the Representation of the People Act (RPA), 1951, imposes a stark and sweeping prohibition on the franchise of a significant segment of its citizenry. The provision states that "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". This blanket ban is remarkably broad, affecting not only those convicted of criminal offenses but also the vast population of undertrial prisoners—individuals who are merely accused of a crime and are, under the cardinal principles of criminal jurisprudence, presumed innocent until proven guilty. According to recent data, undertrials constitute over two-thirds of India's entire prison population, meaning hundreds of thousands of legally innocent citizens are disenfranchised by this single statutory clause.

The legal architecture of Section 62(5) reveals a deeper, more troubling inconsistency. While it disenfranchises those accused or convicted of a specific crime, its proviso explicitly exempts individuals held under preventive detention laws. This creates a bizarre legal fiction where the

state grants the right to vote to a person detained by executive order on the mere suspicion of future misconduct, often without a formal charge or trial, while denying that same right to a person who is facing trial but is still cloaked in the presumption of innocence. This inversion of legal and moral logic suggests that the statute's objective may be less about safeguarding electoral purity from proven criminality and more about other, less articulated, considerations of social control and administrative convenience. This paper argues that India's policy of blanket prisoner disenfranchisement, a relic justified by anachronistic notions of public morality and administrative expediency, stands in stark contradiction to established international human rights norms, the progressive evolution of global comparative jurisprudence, and, most critically, the Indian Supreme Court's own transformative application of "constitutional morality" in other domains of fundamental rights. This dissonance creates a significant doctrinal and ethical schism within Indian constitutional law, isolating it from the global democratic consensus and undermining its own commitment to universal human dignity.

To substantiate this thesis, this paper will undertake a multi-faceted analysis. It will first examine the foundational principles of the right to vote under international and Indian constitutional law. It will then critically deconstruct the seminal Supreme Court judgment in *Anukul Chandra Pradhan v. Union of India*, the judicial bedrock upon which India's disenfranchisement regime rests. The analysis will then pivot to the crucial distinction between "public morality" and "constitutional morality," arguing that the latter provides a compelling lens through which to re-evaluate the disenfranchisement law. This will be followed by an exploration of the core philosophical arguments for and against prisoner enfranchisement. Finally, a comparative study of jurisprudence from Canada, South Africa, the United Kingdom, and Germany will be presented to highlight the anomalous nature of the Indian position, concluding with a call for legislative and judicial reform to align Indian law with the principles of a modern, inclusive, and rights-respecting democracy.

2. The Right to Vote in International and Indian Constitutional Law

The legitimacy of any restriction on the right to vote must be measured against the robust legal frameworks that protect it at both the international and domestic levels. While no right is absolute, the right to political participation is considered so fundamental to democracy that any limitation must withstand the highest degree of scrutiny.

2.1 The Universal Right to Political Participation: UDHR and ICCPR

2.1.1 Article 21 (UDHR) and Article 25 (ICCPR): The Foundation of Democratic Legitimacy

The international legal architecture for the right to vote is anchored in two seminal documents. Article 21 of the UDHR lays down the foundational principle that government authority must be based on the will of the people, expressed through "periodic and genuine elections which shall be by universal and equal suffrage". While the UDHR is a declaration, its principles, including the right to vote, are widely considered to have attained the status of customary international law, binding on all states. This principle is given legally binding force by Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which India has ratified. Article 25 guarantees every citizen the right and opportunity, "without any of the distinctions mentioned in article 2 and without unreasonable restrictions," to take part in the conduct of public affairs, to vote, and to be elected. The non-discrimination clause in Article 2 explicitly prohibits distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or "other status". The status of being a prisoner falls squarely within this protective ambit, implying that any disenfranchisement based on this status must be rigorously justified.

2.1.2 The Permissibility of "Reasonable" and "Proportionate" Restrictions

The crucial phrase in Article 25 of the ICCPR is "without unreasonable restrictions." This acknowledges that the right to vote is not absolute, but it sets a high bar for any limitation. The UN Human Rights Committee, the treaty body that interprets the ICCPR, has clarified in its General Comment No. 25 that any conditions imposed on the right to vote must be based on "objective and reasonable" criteria established by law. Furthermore, the Committee has emphasized the principle of proportionality, stating that if conviction for an offense is used as a basis to suspend the right to vote, "the period of such suspension should be proportionate to the offence and the sentence". The Committee has also explicitly stated that persons deprived of their liberty but who have not been convicted (i.e., undertrials) should not be excluded from exercising their right to vote. This international standard directly challenges blanket bans like India's, which are neither objective (as they treat all prisoners alike) nor proportionate (as they are not linked to the nature of the offense).

2.2 The Constitutional Mandate in India

The Indian Constitution, drafted in the wake of a long struggle for freedom, places immense

value on democratic participation. This commitment is reflected in its provisions on suffrage and the judicial interpretation of associated rights.

2.2.1 Article 326: The Unqualified Promise of Adult Suffrage

The cornerstone of Indian democracy is Article 326 of the Constitution, which mandates that elections to the Lok Sabha and State Legislative Assemblies shall be on the basis of "adult suffrage". This means every citizen who is not less than eighteen years of age is entitled to be registered as a voter. The article permits disqualification only on constitutionally specified grounds: "non-residence, unsoundness of mind, crime or corrupt or illegal practice". The power to prescribe the specifics of these disqualifications is granted to the legislature. The debates within the Constituent Assembly reveal a clear and powerful consensus in favor of the broadest possible franchise, rejecting historical restrictions based on property or education and embracing universal suffrage as a non-negotiable pillar of the new republic.

2.2.2 The Right to Vote: From a Mere Statutory Right to a Constitutional Right

The judicial understanding of the right to vote in India has undergone a significant evolution. Early Supreme Court judgments, including the landmark case of *Anukul Chandra Pradhan*, firmly categorized the right to vote as "pure and simple, a statutory right" created by the RPA, and not a fundamental or common law right. This classification had a profound impact, as it suggested that the right was subject to any limitations the legislature chose to impose via statute. However, subsequent jurisprudence has elevated the status of this right. While still not recognized as a fundamental right under Part III, the Supreme Court has increasingly referred to it as a "constitutional right," flowing from Article 326. This shift is not merely semantic. Recognizing the right as constitutional, rather than purely statutory, implies that legislative restrictions on it must be scrutinized more rigorously. It signals that the right to vote is a core component of the constitutional scheme of democracy and cannot be abridged by the legislature with the same latitude as an ordinary statutory entitlement. This jurisprudential evolution reveals a deep-seated tension in Indian law. The Court's continued reliance on the "statutory right" doctrine in the specific context of prisoner disenfranchisement appears to function as a doctrine of avoidance. By classifying the right in this manner, the judiciary can sidestep a direct and potentially contentious confrontation with a legislative policy that, on its face, conflicts with the Constitution's broader commitments to equality and dignity. This judicial self-restraint, rooted in an older, more deferential era of jurisprudence, stands in awkward contrast to the Court's modern, activist role in expanding the frontiers of fundamental rights, particularly

under Article 21, in cases concerning privacy, autonomy, and sexual orientation. This creates a doctrinal inconsistency: the Court is willing to read new rights into the Constitution to protect personal autonomy but is hesitant to apply the full force of existing constitutional principles to a core political right when it is restricted by statute.

2.2.3 Interplay with Fundamental Rights: Articles 14, 19, and 21

Even if the right to vote is not itself a fundamental right, any law that curtails it must still pass the muster of Part III of the Constitution. A statute, like the RPA, cannot violate the fundamental rights to equality, freedom, and life. The blanket ban imposed by Section 62(5) is therefore vulnerable to challenge on several grounds.

First, it is assailable under **Article 14 (Right to Equality)**. The provision creates a classification between persons in prison and persons outside. More problematically, it creates a sub-classification between undertrials in custody and undertrials who have secured bail; both are presumed innocent, yet their ability to vote is determined not by their legal status but by their financial ability to furnish bail. The distinction between those in prison and those under preventive detention is also prima facie arbitrary, as it favors those detained without charge over those merely accused of a crime.

Second, while the right to vote is not explicitly mentioned in **Article 19**, the ability to participate in the political process is a dimension of the freedom of speech and expression. Any restriction on this must be "reasonable" under Article 19(2). A blanket, indiscriminate ban that is not proportionate to any legitimate state interest struggles to meet the standard of reasonableness.

Third, and perhaps most powerfully, the ban implicates **Article 21 (Right to Life and Personal Liberty)**. The Supreme Court has expansively interpreted this article to include the right to live with human dignity. Disenfranchisement is an assault on the civic dignity of a person. It renders them a non-person in the political sphere, stripping them of the most basic attribute of citizenship. Denying this right, especially to undertrials, arguably violates their right to a dignified existence as recognized under Article 21.

3. The Judicial Edifice of Disenfranchisement: *Anukul Chandra Pradhan v. Union of India*

The legal sanction for India's blanket ban on prisoner voting rests almost entirely on the 1997 Supreme Court decision in *Anukul Chandra Pradhan v. Union of India*. This three-judge bench ruling has stood for over two decades as the definitive judicial pronouncement on the matter, creating a formidable precedent that has thwarted subsequent challenges. A thorough understanding of its reasoning and its inherent flaws is essential to grasping the legal dilemma.

3.1 A Detailed Examination of the Supreme Court's Reasoning

The petition in *Anukul Chandra Pradhan* challenged the constitutional validity of Section 62(5) of the RPA, 1951, primarily on the grounds that it violated Articles 14 and 21 of the Constitution. The Supreme Court, however, rejected these contentions and upheld the provision, building its judgment on three main pillars.

3.1.1 The "Reasonable Classification" Test under Article 14

The Court's primary line of defense for the provision was the doctrine of reasonable classification under Article 14. It held that the law permissibly classifies citizens into two groups: those in prison and those not. The Court found this classification to be non-arbitrary because the differentia (the fact of confinement) had a rational nexus to the legislative object. The Court reasoned that a person is confined in prison as a result of their own conduct, and this confinement logically results in the deprivation of certain freedoms, including the freedom to vote.

3.1.2 The Justification of "Preventing Criminalisation of Politics"

The Court identified the overarching objective of the provision as the need to "prevent criminalisation of politics and maintain probity in elections". It framed this as a paramount constitutional goal, stating with considerable force that "Criminalisation of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution". By linking prisoner disenfranchisement to this noble objective, the Court gave the restriction a powerful moral and constitutional justification, suggesting that it was a necessary measure to purify the democratic process.

3.1.3 Administrative and Logistical Concerns

The third pillar of the Court's reasoning was purely pragmatic. It gave significant judicial weight to the administrative and logistical challenges that would arise from allowing prisoners to vote. The judgment explicitly noted that enfranchising the prison population "would require the deployment of a much larger police force and much greater security arrangement in the conduct of elections". The Court cited the "resource crunch" and other infrastructural constraints as additional factors justifying the restriction imposed by Section 62(5).

3.2 A Critical Deconstruction of the *Pradhan* Judgment

While *Anukul Chandra Pradhan* remains the binding precedent, its reasoning has been the subject of extensive scholarly critique and appears increasingly fragile when viewed through the lens of modern constitutional principles.

3.2.1 The Flawed Classification and the Plight of Undertrials

The most glaring flaw in the judgment is its failure to engage with the composition of the group it disenfranchises. The classification between those "in prison" and "out of prison" is overly simplistic and collapses under scrutiny. It makes no distinction between convicted criminals and undertrial prisoners, who, as noted, constitute the vast majority of inmates in India and are legally presumed innocent. This blanket application of the ban punishes the unconvicted alongside the convicted, making a mockery of the presumption of innocence. Furthermore, the law creates a deeply discriminatory situation based on economic status: an affluent person accused of a serious crime who can afford to secure bail is free to vote, while an impoverished person accused of a minor offense who cannot furnish bail is disenfranchised. This differential treatment based on financial capacity, rather than legal guilt, is the very definition of an arbitrary classification and a clear violation of the equal protection guarantee of Article 14.

3.2.2 Conflating Physical Confinement with the Annihilation of Civic Rights

The Court's logic that the loss of physical liberty due to confinement automatically and logically entails the loss of other rights is a constitutionally perilous assertion. It harks back to the archaic notion of "civic death," where a prisoner was stripped of all rights and personhood. Modern jurisprudence, in India and globally, has firmly established that prisoners retain all fundamental rights save those that are necessarily curtailed by the fact of incarceration. The right to vote is not a right whose exercise is inherently incompatible with imprisonment. The punishment for a crime is the deprivation of liberty, as determined by a court of law;

disenfranchisement constitutes an additional, collateral punishment that is not part of the judicial sentence and has no necessary connection to the original offense.

3.2.3 The "Statutory Right" Argument as a Shield

As previously discussed, the Court's heavy reliance on the "statutory right" doctrine served as a convenient shield, allowing it to avoid a substantive fundamental rights review. By framing the right to vote as a mere creature of statute, the Court could argue that it is inherently subject to the limitations within that statute, thereby sidestepping the difficult question of whether those limitations themselves violate the constitutional guarantees of equality and dignity. This approach is a form of judicial deference that is inconsistent with the Court's role as the ultimate guardian of the constitutional ethos.

3.2.4 Administrative Convenience over Constitutional Principle

The justification based on administrative and logistical difficulties is the weakest of all. It is a well-settled principle of constitutional law that the denial of fundamental or constitutional rights cannot be justified on grounds of administrative inconvenience or financial cost. The state has a positive obligation to create the necessary infrastructure to facilitate the exercise of rights by its citizens. The argument is further weakened by the fact that the state already possesses mechanisms for remote voting, such as postal ballots, which are made available to government employees on election duty, armed forces personnel, and, tellingly, those held in preventive detention. The refusal to extend a similar facility to prisoners reveals that the issue is not one of impossibility, but of a lack of political and administrative will.

4. Public Morality vs. Constitutional Morality: The Shifting Sands of Indian Jurisprudence

The debate over prisoner enfranchisement in India is fundamentally a contest between two competing notions of morality: the shifting, majoritarian sentiment of "public morality" and the enduring, principled values of "constitutional morality." The justification for Section 62(5) is deeply rooted in the former, while the arguments for its repeal are grounded in the latter. The Indian Supreme Court's own jurisprudence in recent years has championed constitutional morality as a transformative tool, creating a stark doctrinal inconsistency when it comes to the rights of prisoners.

4.1 Defining the Dichotomy: Majoritarian Norms vs. Constitutional Values

The concept of "public morality" is often invoked as a ground for restricting fundamental rights, particularly under Articles 19(2) and 25 of the Constitution. It typically refers to the prevailing moral or social norms of a society at a given time. However, this concept is inherently problematic as it is often synonymous with majoritarian sentiment, which can be transient, subjective, and deeply prejudicial to minorities. When the state uses public morality to restrict rights, it risks enforcing the prejudices of the majority upon those who do not conform. In contrast, "constitutional morality" is a doctrine that demands adherence to the core principles and values enshrined in the Constitution itself. First articulated in the Constituent Assembly by Dr. B.R. Ambedkar, it posits that the Constitution is not merely a legal text but a moral one, embodying a commitment to a set of normative values: liberty, equality, fraternity, and the dignity of the individual. Constitutional morality acts as a check on both state power and popular will, requiring that all laws and actions be judged against these foundational values. It is a counter-majoritarian principle designed to protect the rights of individuals and minorities from the potential tyranny of the majority.

4.2 The Rise of Constitutional Morality as a Transformative Tool

In a series of landmark judgments, the Supreme Court of India has powerfully wielded the doctrine of constitutional morality to expand the frontiers of fundamental rights and strike down laws based on outdated public morality.

4.2.1 Landmark Precedents

In *Navtej Singh Johar v. Union of India* (2018), the Court decriminalized consensual homosexual acts between adults, striking down Section 377 of the Indian Penal Code. It explicitly held that "popular morality or public disapproval of certain acts is not a valid justification for restriction of the fundamental rights" and that constitutional morality, which is rooted in individual dignity and equality, must prevail. Similarly, in *Joseph Shine v. Union of India* (2018), the Court struck down the law on adultery, finding it to be an archaic provision that treated women as chattel and violated their dignity, thereby offending constitutional morality. In the *Indian Young Lawyers Association v. State of Kerala* (2018) case, concerning the entry of women into the Sabarimala temple, the Court again invoked constitutional morality to hold that religious practices cannot be used to perpetuate gender discrimination and subvert the constitutional values of equality and dignity.

4.2.2 Upholding Individual Dignity and Equality Against Popular Sentiment

These judgments collectively establish a clear jurisprudential principle: the Court has a duty to act as a counter-majoritarian institution, safeguarding the fundamental rights of even the most marginalized individuals and groups against the tide of popular sentiment. Constitutional morality serves as the "laser beam" that guides this judicial function, ensuring that the Constitution remains a living document capable of transforming a society marked by historical hierarchies into one that respects the autonomy and worth of every individual.

4.3 Applying the Lens of Constitutional Morality to Prisoner Enfranchisement

When the powerful lens of constitutional morality is turned upon Section 62(5) of the RPA, the provision's constitutional infirmities become glaringly apparent.

4.3.1 Is the "Purity of the Ballot Box" a Tenable Argument?

One of the implicit justifications for prisoner disenfranchisement is the notion that it preserves the "purity of the ballot box" by excluding individuals deemed morally unworthy to participate in law-making. This argument is a classic invocation of public morality. It seeks to create a class of civic outcasts based on a societal judgment of their character. Constitutional morality, however, rejects this premise. It is founded on the principle of inclusive citizenship and the inherent dignity of all persons, irrespective of their actions or status. It does not permit the creation of a hierarchy of citizens where some are deemed "worthy" to vote and others are not. From a constitutional morality perspective, the right to vote is an attribute of citizenship, not a privilege to be earned by civic virtue.

4.3.2 Re-evaluating the "Criminalisation of Politics" Argument

The primary justification offered in *Anukul Chandra Pradhan*—preventing the criminalization of politics—also fails the test of constitutional morality. While the objective is laudable, constitutional morality demands that the means used to achieve it must be rational, non-arbitrary, and proportionate. Section 62(5) is none of these. It does little to prevent candidates with criminal records from contesting elections, which is governed by a different provision (Section 8 of the RPA). Its disenfranchisement of hundreds of thousands of undertrials, who are not criminals in the eyes of the law, is a grossly disproportionate and irrational measure. A law that disenfranchises a poor undertrial accused of petty theft but allows a wealthy murder accused on bail to vote cannot be said to be rationally connected to the objective of purifying politics. Constitutional morality would demand a law that is narrowly tailored and effective,

not a blunt instrument that causes widespread collateral damage to the principle of universal suffrage.

The judiciary's failure to apply this doctrine to the case of prisoners reveals a troubling inconsistency. While the Court has courageously protected the rights of other marginalized groups, such as the LGBTQ+ community and women challenging patriarchal religious norms, it has remained deferential to the state in the case of prisoners. This selective application suggests a potential hierarchy of rights and of "acceptable" versus "unacceptable" minorities in the eyes of the law. Prisoners are a uniquely disempowered and socially reviled group, lacking the political capital and public sympathy that other movements have been able to garner. The Court's persistent refusal to reconsider the *Pradhan* judgment indicates that even a powerful transformative doctrine like constitutional morality may falter when confronted with deeply entrenched punitive sentiments and the political invisibility of the group seeking its protection. This exposes a critical gap between the Court's progressive rhetoric on human dignity and its application to the most ostracized members of society.

5. Philosophical Underpinnings of Enfranchisement and Disenfranchisement

The legal debate surrounding prisoner voting is animated by deeper, competing philosophical traditions regarding the nature of citizenship, punishment, and the state. Understanding these philosophical arguments is crucial for moving beyond a purely textual analysis of the law and appreciating the fundamental values at stake.

5.1 Justifications for Disenfranchisement: A Critical Review

The arguments for denying prisoners the right to vote are historically potent and draw from foundational theories of political philosophy.

5.1.1 The Social Contract Theory

The most frequently cited justification for disenfranchisement is rooted in social contract theory. This theory, in its various forms, posits that individuals in a society implicitly agree to abide by a set of common rules (the law) in exchange for the protection and benefits of the state. Proponents of this view argue that when a person commits a serious crime, they have fundamentally violated the terms of this contract. By choosing to act outside the law, they have

voluntarily forfeited their right to participate in making the law for others. Disenfranchisement, from this perspective, is not merely a punishment but a logical consequence of breaking the civic bond that underpins political society.

This argument, however, is open to significant criticism. It treats the social contract as a monolithic agreement that can be wholly forfeited by a single act, which is a simplistic view of citizenship. It fails to differentiate between the vast spectrum of criminal offenses; it is difficult to argue that an individual convicted of a non-violent property crime has breached the social contract in the same way as someone who has committed treason. Most critically, the theory offers no justification whatsoever for disenfranchising undertrial prisoners, who have not been judicially proven to have breached any contract at all.

5.1.2 Civic Death and Retributive Justice

A related, though more archaic, justification is the concept of "civic death" or *civiliter mortuus*. Originating in ancient Roman and medieval European law, this doctrine held that a person convicted of a felony was considered "dead in the eyes of the law" and was stripped of all civil and political rights, including the right to own property, enter contracts, and, of course, vote. This practice was explicitly retributive, designed to mark the offender as an outcast and permanently sever their ties to the community. While modern legal systems have largely abandoned the full scope of civic death, the disenfranchisement of prisoners is arguably its most enduring remnant. It functions as a form of retributive justice, expressing society's moral condemnation of the offender's actions. However, this purely punitive approach is fundamentally at odds with the modern penological consensus, which emphasizes rehabilitation and reintegration as primary goals of the criminal justice system. A policy that aims to permanently exclude and stigmatize an individual cannot coexist with a system that purports to prepare them for a return to society as a law-abiding citizen.

5.2 The Imperative for Enfranchisement: A Modern Perspective

The philosophical case for prisoner enfranchisement is grounded in contemporary understandings of human rights, restorative justice, and democratic theory.

5.2.1 Rehabilitation and Restorative Justice

The most compelling argument for enfranchisement is its role as a tool for rehabilitation and civic education. Denying prisoners the vote reinforces their alienation from society, deepening

the divide between them and the community they are expected to rejoin upon release. Conversely, allowing them to vote fosters a sense of civic responsibility and encourages them to see themselves as stakeholders in the political process. It connects them to the lawful mechanisms of social change and teaches them that their voice matters within the established order, not just outside of it. Enfranchisement is thus a profoundly restorative act, signaling to the prisoner that despite their past transgression, they are still a part of the body politic and have a vested interest in its well-being.

5.2.2 Upholding Human Dignity and Democratic Legitimacy

As the South African Constitutional Court eloquently stated, the vote is a "badge of dignity and personhood. Quite literally, it says that everybody counts". To deny this right is to strip an individual of their civic identity, effectively rendering them invisible to the state. This act of dehumanization is an affront to the principle of inherent human dignity that underpins modern human rights law. Furthermore, a democratic government's legitimacy is weakened when it governs a population that includes disenfranchised citizens. The laws passed by such a government are imposed upon individuals who have had no say in their creation, undermining the core principle of governance by consent.

5.2.3 The Expressive Function of the Vote

The act of voting is not just instrumental; it is also expressive. It is a symbolic affirmation of one's membership in the political community. Denying the vote sends a powerful message of exclusion and condemnation, telling the prisoner that they are no longer considered a full member of society. Enfranchisement, on the other hand, sends the opposite message: it expresses a societal commitment to reintegration and affirms that the individual's civic worth is not permanently extinguished by their criminal conviction. It is a symbolic handshake welcoming them back into the fold of responsible citizenship.

6. A Comparative Legal Perspective: Global Trends and Judicial Dialogues

India's adherence to a blanket ban on prisoner voting places it in a shrinking minority among the world's major constitutional democracies. An examination of comparative jurisprudence reveals a strong and growing international consensus that rejects such indiscriminate measures in favor of more nuanced, proportionate, and rights-affirming approaches. This global judicial dialogue offers crucial lessons for the potential reform of Indian law.

6.1 The Canadian Approach: *Sauvé v. Canada*

The Supreme Court of Canada has been unequivocal in its defense of prisoner voting rights. In its landmark decision in *Sauvé v. Canada (Chief Electoral Officer)* (2002), the Court struck down a federal law that disenfranchised prisoners serving sentences of two years or more. The government offered several justifications for the ban, including enhancing civic responsibility and respect for the law, and serving as an additional form of punishment. The Court, in a 5-4 majority decision, rejected these justifications as vague, symbolic, and insufficient to override a fundamental democratic right guaranteed by Section 3 of the Canadian Charter of Rights and Freedoms. Chief Justice Beverley McLachlin, writing for the majority, argued that denying prisoners the vote was more likely to undermine respect for the law than to enhance it. She stated that the government's objectives were not rationally connected to the means of disenfranchisement and that the denial of the right to vote "runs counter to the Canadian commitment to the inherent worth and dignity of every individual". The ruling emphasized that disenfranchisement hinders, rather than helps, the process of rehabilitation and reintegration into society. As a result of this decision, all incarcerated adult citizens in Canada now have the right to vote.

6.2 The South African Post-Apartheid Vision: *August and Another v. Electoral Commission*

In post-apartheid South Africa, the right to vote holds a particularly profound significance. The Constitutional Court, in *August and Another v. Electoral Commission* (1999), addressed the issue of whether prisoners could be denied the right to register and vote. The Court's reasoning was grounded in the text of the new 1996 Constitution, which guarantees universal adult suffrage without qualification for prisoners.

Justice Albie Sachs, writing for a unanimous court, held that only the Parliament had the power to disenfranchise citizens, and in the absence of any specific law doing so, prisoners retained their constitutional right to vote. The Court ruled that neither the Electoral Commission nor the judiciary had the authority to strip citizens of this right; it was a legislative prerogative that had not been exercised. The judgment powerfully articulated the symbolic importance of the vote as a "badge of dignity and personhood," especially in a nation seeking to heal from a history of systematic disenfranchisement. The Court ordered the Electoral Commission to make all reasonable arrangements to enable eligible prisoners to register and vote.

6.3 The European Consensus: *Hirst v. United Kingdom (No. 2)*

The jurisprudence of the European Court of Human Rights (ECHR) has been highly influential in shaping a European consensus against blanket bans. In the seminal Grand Chamber judgment of *Hirst v. United Kingdom (No. 2)* (2005), the Court found that the UK's blanket statutory ban on voting for all convicted prisoners was a violation of Article 3 of Protocol No. 1 to the European Convention, which guarantees the right to free elections.

The Court did not rule that all prisoners must be allowed to vote. It acknowledged that states have a "margin of appreciation" in this area and that restrictions can be imposed for legitimate aims, such as preventing crime and enhancing civic responsibility. However, it held that any restriction must be proportionate. The UK's law failed this test because it was a "blunt instrument" that was "general, automatic and indiscriminate". It applied to all prisoners regardless of the length of their sentence, the nature or gravity of their offense, or their individual circumstances. The ECHR's ruling established a clear principle: while targeted disenfranchisement for specific, serious offenses might be permissible, a blanket ban that does not engage in any assessment of proportionality is incompatible with the Convention.

6.4 The German Nuance: Judicial Discretion and Offence-Specific Disqualification

German law offers a model of a highly nuanced and restrictive approach to disenfranchisement, standing in stark contrast to India's blanket ban. Under the German Federal Elections Act and the Penal Code, disenfranchisement is not an automatic consequence of imprisonment. Instead, it is a specific, additional penalty that can only be imposed by a judge as part of a sentence. This penalty is reserved for a very narrow category of serious offenses that directly threaten the democratic order, such as high treason or electoral fraud. Even in such cases, the deprivation of the right to vote is for a limited period, typically between two and five years, and is at the discretion of the court.

The German Federal Constitutional Court has further reinforced this principle of narrow tailoring. In a 2019 judgment, it struck down provisions that excluded persons under full guardianship or those confined in psychiatric hospitals from voting, finding these exclusions to be unconstitutional. The Court reasoned that any exclusion from the franchise can only be justified if the person is demonstrably incapable of participating in the democratic communication process, a high bar that automatic, status-based exclusions fail to meet.

Table 1: Comparative Framework of Prisoner Voting Rights

The following table provides a concise summary of the divergent legal approaches to prisoner enfranchisement, starkly illustrating the isolation of the Indian position.

Jurisdiction	Legal Basis for Restriction	Scope of Restriction	Key Judicial Ruling	Stated Justification / Rationale
India	Sec. 62(5), RPA, 1951	**Blanket ban** on all persons in prison or police custody (convicts and undertrials). Exception for preventive detention.	*Anukul Chandra Pradhan v. UoI (1997)*: Upholds ban as a reasonable classification.	Preventing criminalization of politics; administrative convenience.
Canada	Canada Elections Act (Struck Down)	Initially, prisoners serving 2+ years. Now, **no restriction**.	*Sauvé v. Canada (2002)*: Struck down all restrictions as a disproportionate violation of the right to vote.	Promoting rehabilitation and democratic values; rejection of purely symbolic punishment.
South Africa	Constitution, Electoral Act	**No restriction**. Parliament has the power to legislate restrictions but has not done so.	*August v. Electoral Commission (1999)*: In absence of a law, prisoners retain their constitutional right to vote.	Upholding universal suffrage and human dignity in a post-apartheid democracy.
United Kingdom (ECHR)	Representation of the People Act 1983	Blanket ban on all convicted prisoners.	*Hirst v. UK (No. 2) (2005)*: Blanket ban is a disproportionate	Restrictions must be proportionate, not automatic or

			and indiscriminate violation of the ECHR.	general.
Germany	Federal Elections Act, Penal Code	**No blanket ban**. Disenfranchisement is a specific, additional penalty imposed by a judge for a limited time (2-5 years) for serious crimes against the state.	*German Constitutional Court (2019)*: Struck down automatic exclusions for those under guardianship/in psychiatric hospitals.	Restrictions must be narrowly tailored to an individual's incapacity to participate in democratic communication.

6.6 Lessons for India: The Anomaly of a Blanket Ban in a Democratic World

The comparative analysis yields a clear and compelling lesson: India is a significant outlier in the democratic world. The common thread running through the jurisprudence of Canada, South Africa, the ECHR, and Germany is the emphatic rejection of *blanket, automatic, and indiscriminate* bans on prisoner voting. The guiding principle in these jurisdictions is that of proportionality—a principle that demands a discernible and rational link between the restriction, the individual, and the offense. This principle is conspicuously absent from both the text of Section 62(5) of the RPA and the judicial reasoning in *Anukul Chandra Pradhan* that upholds it.

7. The Path Forward: Reforming Section 62(5) and Reimagining Citizenship

Despite the compelling arguments against India's disenfranchisement law, both legal and philosophical, the path to reform has been blocked by judicial deference and legislative inaction. The current legal framework remains stagnant, perpetuating a system that is out of step with both global standards and India's own constitutional ethos.

7.1 The Stagnation of Indian Law: The Dismissal of Recent PILs

In recent years, there have been renewed attempts to challenge the constitutionality of Section 62(5) through Public Interest Litigations (PILs). A notable petition was filed in 2019 by Aditya

Prasanna Bhattacharya, a law student, which argued that the provision was a violation of Article 14 for its arbitrary and discriminatory nature. The petition highlighted the absurdity of disenfranchising undertrials while allowing convicts on bail to vote.

However, these efforts have met a judicial dead end. In May 2023, the Supreme Court dismissed the petition, explicitly stating that it was not inclined to entertain the challenge in view of the prior judgments upholding the provision's validity, particularly the three-judge bench decision in *Anukul Chandra Pradhan*. This dismissal powerfully illustrates the doctrine of *stare decisis* (the principle of adhering to precedent) acting as a barrier to judicial re-evaluation. The Court's refusal to reconsider the issue, even in light of the significant evolution of its own jurisprudence on constitutional morality and fundamental rights in the intervening decades, signals a deep-seated reluctance to disturb the established legal position on this politically sensitive issue.

7.2 Legislative and Judicial Pathways for Reform

Given the judicial impasse, the primary impetus for reform must come from the legislature, though the judiciary still has a role to play.

7.2.1 Adopting a Proportionality-Based Approach

The most critical reform needed is the amendment of Section 62(5) to replace the blanket ban with a system grounded in proportionality. Drawing lessons from the comparative analysis, particularly the approaches in Europe and Germany, Parliament should amend the law to ensure that disenfranchisement is not an automatic consequence of incarceration. Any restriction should be narrowly tailored and reserved for those convicted of the most serious offenses, particularly those that strike at the heart of the democratic process itself, such as electoral fraud, treason, or terrorism. Furthermore, any such disqualification should be for a limited and proportionate period, not for the entire duration of the sentence, and should ideally be imposed by a judge as a specific part of the sentence.

7.2.2 Enfranchising Undertrials and those in Civil Detention

At a minimum, Parliament must immediately amend Section 62(5) to enfranchise all undertrial prisoners and those detained in civil prisons. The disenfranchisement of individuals who are presumed innocent under the law is the most constitutionally indefensible aspect of the current regime. It is a manifest violation of the principles of equality, liberty, and human dignity.

Removing this aspect of the ban would be a crucial first step toward aligning the law with basic constitutional norms.

7.2.3 The Role of the Law Commission and Parliament

The Law Commission of India has a history of producing comprehensive reports on electoral reforms, focusing on issues like the criminalization of politics and the disqualification of candidates. However, the specific issue of prisoner enfranchisement has not received the focused attention it deserves. A specific reference should be made to the Law Commission to conduct a thorough review of Section 62(5), taking into account international human rights law, comparative jurisprudence, and the principles of constitutional morality. Based on such a report, Parliament, exercising its powers under Article 327 of the Constitution to legislate on electoral matters, should enact the necessary amendments.

8. Conclusion: Reconciling Human Rights and Public Morality through the Prism of the Constitution

The legal dilemma surrounding prisoner enfranchisement in India is often framed as a conflict between the universal ideal of human rights and the pragmatic necessity of upholding public morality. This paper has argued that this is a false dichotomy. The true conflict is between a regressive, punitive, and majoritarian "public morality" that views prisoners as civic outcasts, and the progressive, inclusive, and transformative "constitutional morality" that lies at the heart of the Indian Constitution.

The blanket ban enshrined in Section 62(5) of the Representation of the People Act, 1951, is a product of the former. It is an indiscriminate and disproportionate measure that punishes the innocent alongside the guilty, discriminates on the basis of economic status, and isolates India from the global democratic community. The judicial reasoning in *Anukul Chandra Pradhan* that sustains this ban is built on flawed classifications, questionable logic, and an outdated deference to administrative convenience over constitutional principle. In stark contrast, the doctrine of constitutional morality, which the Supreme Court has so powerfully deployed in other contexts to protect the dignity and autonomy of marginalized citizens, provides a clear path forward. It demands that we reject the notion of civic death and instead embrace a vision of citizenship that is inclusive and restorative. It requires that any restriction on a right as fundamental as the vote be justified not by popular prejudice or logistical hurdles, but by

rational, objective, and proportionate criteria that are in harmony with the Constitution's core commitments. Reforming Section 62(5) is therefore not merely a matter of legal tidiness or of aligning with international trends. It is a constitutional imperative. Upholding the principles of constitutional morality in this context is essential for the realization of the Indian Constitution's own profound promise of justice, liberty, equality, and fraternity for all its citizens—including, and perhaps especially, for those who live behind prison walls.

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