

HUMAN RIGHTS

Prisoners' voting rights: a comparative perspective on prisoner disenfranchisement

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Introduction

As prisoners' rights have improved around the world, so has the question of who can be disenfranchised. This is particularly evident in the voting rights of prisoners. At the international level, the problem of prisoners voting rights exposes a gap between states commitments and their electoral practices.¹ Across jurisdictions, legislators and courts have adopted different approaches to the question of whether and to what extent, people in prison should retain the right to vote. Some systems maintain near-blanket statutory bans, others impose carefully delimited, offence or sentence-based restrictions.² This gives rise to a basic question, does imprisonment suspend an individual's right to participate as a citizen of a democracy or should the right to participate as a citizen, particularly the right to vote, persist even if liberty is restricted by law?³

This article asks to what extent do legal systems justify the disenfranchisement of prisoners, particularly remand and undertrial detainees, within frameworks committed to democracy, equality and the presumption of innocence? In addressing this question, it examines whether existing legal regimes adequately protect the voting rights of those in custody and whether today's voting restrictions for prisoners align with our fundamental understanding of citizenship and political inclusion.

The United Kingdom, Germany, France and India are selected not merely for comparative contrast, but because they exhibit distinct approaches to prisoner enfranchisement.⁴ Germany and France reflect models of individualised disenfranchisement, in which the loss of voting rights is exceptional, offence-linked and imposed by judicial decision.⁵ The United Kingdom represents a model of formal inclusion coupled with practical exclusion.⁶ India, by contrast, illustrates a regime of civic suspension, which disenfranchises all persons in custody, irrespective of conviction.⁷ These divergent approaches provide a structured basis for assessing how far legal systems recognise individuals in custody, especially those not yet convicted, as continuing members of the political community.

At the centre of this article is the idea of a civic presumption: individuals in custody should continue to be treated as members of the political community, unless clear and proportionate reasons for exclusion are articulated.⁸ From this perspective, pre-trial detention alone should not justify disenfranchisement and any restriction following conviction should be limited and carefully justified.⁹ Alongside this, the article develops the concept of carceral citizenship, which captures the ways in which legal systems include or exclude prisoners from democratic participation, ranging from inclusive models through conditional inclusion to outright civic suspension.

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¹ Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (2016) 6–7.

² *Ibid.*

³ Cormac Behan, 'Citizen Convicts: Prisoners, Politics and the Vote' (Manchester UP 2014) ch 1.

⁴ Tommaso Pavone, 'Comparative Views on the Right to Vote in International Law: The Case of Prisoner Disenfranchisement' in Kevin Boyle (ed), 'New Democracies and the Rule of Law' (OUP 2018) 210–214.

⁵ Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (March 2016) 6–8.

⁶ *Ibid.*

⁷ Representation of the People Act 1951 (India), s 62(5).

⁸ See Subheading – Presumption of Innocence.

⁹ Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (March 2016) 11–14.

The presumption of innocence and prisoner disenfranchisement

Presumption of innocence is understood as a core fair-trial guarantee that no person is to be treated as guilty until a competent court so determines, at minimum, this presumption bars the state from imposing penal consequences before conviction.¹⁰ Yet, as Herzog-Evans and Thomas note in their comparative study of Prisoners' voting, the presumption also has a civic dimension, because it structures who is regarded as a full rights-bearing citizen in the period before trial is concluded.¹¹ Formally, most legal systems acknowledge that remand or undertrial detainees are not convicted and therefore remain, in law, innocent.¹² Nonetheless, once an individual is physically confined within a penal institution, legal regimes often slide into treating them as if they were already subject to the full range of collateral consequences that follow conviction.¹³ The core question, for present purposes, is whether disenfranchising unconvicted detainees amounts to an illegitimate erosion of the presumption of innocence, or a permissible regulatory consequence of their custodial status.

The continued disenfranchisement of prisoners particularly those who have not been convicted represents one of the most under-theorised contradictions in modern democracies.¹⁴ Universal and equal suffrage is guaranteed in Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and elaborated in General Comment No. 25, which insists that any restriction on prisoners' voting rights must be objective, reasonable and compatible with the principles of non-discrimination and universal participation.¹⁵ The Human Rights Committee has, in concluding observations, specifically criticised blanket bans on convicted prisoners and urged states to amend such laws so that they comply with the obligation to reform and social rehabilitation in Article 10(3), when read together with Article 25.¹⁶ UN instruments on the treatment of prisoners go further, affirming that incarceration should only limit rights where this is demonstrably necessary, and that imprisonment is to be oriented towards reformation and social rehabilitation rather than civil death.¹⁷

Yet the legal regimes examined in this article show three distinct patterns of departure from the standards. In Germany and France, prisoners including those in pre-trial detention generally retain the franchise, with loss of political rights confined to narrow, individually ordered penalties; here, imprisonment rarely equates to civic degradation.¹⁸ The United Kingdom formally distinguish between convicted and unconvicted detainees, preserving the vote for remand prisoners and narrowing disenfranchisement for some categories of convicts, but in practice weak, prison-based voting arrangements produce de facto exclusions that sit uneasily

¹⁰ Martine Herzog-Evans and Jérôme Thomas (eds), *Prisoners' Vote: A Multidisciplinary and Comparative Perspective* (Routledge 2024).

¹¹ Martine Herzog-Evans and Jérôme Thomas (eds), *Prisoners' Vote: A Multidisciplinary and Comparative Perspective* (Routledge 2024).

¹² Penal Reform International 27–30 (on disenfranchisement as counter-productive to rehabilitation and democratic inclusion) (2019).

¹³ Clive Leroy Fernandes, 'Right to Vote for Undertrial and Pre-Trial Prisoners in India' (2024) *International Journal of Advanced Legal Research* (arguing that categorising undertrial prisoners in the same way as convicted offenders violates the presumption of innocence).

¹⁴ R Jago and J Marriott, 'Citizenship or civic death? Extending the franchise to convicted prisoners' (2007) 5 *Web Journal of Current Legal Issues*, accessed on March 13th 2026.

¹⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) UNTS 171, art 25; UN Human Rights Committee, 'General Comment No 25: The right to participate in public affairs, voting rights and the right of equal access to public service (art 25)' (1996) UN Doc CCPR/C/21/Rev.1/Add.7.

¹⁶ *Ibid.*

¹⁷ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), GA Res 70/175 (17 December 2015) preamble, rules 1, 2, 4–5 (stating that prisoners retain all rights except those lawfully restricted by the fact of incarceration and that the purpose of imprisonment includes social rehabilitation and reintegration, not civil death).

¹⁸ Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (2016) 6–7.

with the demand for effective enjoyment of Article 25 rights.¹⁹ India represents the starkest case, it imposes a general, automatic and indiscriminate ban on all those in criminal custody.²⁰

To make this clear, this article develops a theory of “civic presumption” and “carceral citizenship” alongside the procedural presumption of innocence; there should be a presumption that those in custody remain full members of the political community unless there are specific, proportionate reasons to restrict their rights. Where National systems can then be located along a spectrum from inclusive carceral citizenship (Germany/France), through conditional carceral citizenship (UK, where formal rights are undermined in practice), to civic suspension (India, where custody itself triggers civic exclusion). It asks whether remand and undertrial prisoners are treated as presumptively innocent members of the community, consistent with civic presumption, or whether pre-trial detention is used as a *de facto* trigger for civic suspension.²¹

Remand and prisoners under trial as presumptively innocent citizens

If the presumption of innocence in its civic dimension is taken seriously, then legal rules should recognize remand and undertrial prisoners as members of the electorate, unless and until they are convicted.²² In Germany and France, remand prisoners are, in principle entitled to vote because disenfranchisement is tied to conviction and usually imposed only as an additional penalty for specific serious offences.²³ This corresponds with the civic dimension of the presumption of innocence outlined in this article in which remand and undertrial prisoners are considered members of the electorate, unless a decision to the contrary is made.²⁴ Germany and France, according to the framework outlined in this article, are examples of a model of inclusive carceral citizenship, in which imprisonment as such does not result in a loss of political membership, and the deprivation of voting rights occurs as an individual, offence-specific, and not a general consequence of imprisonment.

The United Kingdom disenfranchises persons serving a sentence of imprisonment, but it does not extend to those detained on remand, who therefore remain legally eligible to vote.²⁵ This may be an example of the presumption of innocence; however, a study on the voting rights of individuals within the United Kingdom found that the voting rate for eligible prisoners was extremely low.²⁶ Even where formal legal inclusion exists, practical barriers such as lack of registration support, delays in postal voting arrangements, inadequate information flows between prisons and electoral authorities, and tight election timetables frequently undermine the effective enjoyment of voting rights.²⁷ In practice, the combination of prison administration and limited support means that many legally eligible detainees do not vote. This is not only a matter of logistics, but also a matter of a broader attitude where the voting rights of individuals who are presumptively innocent are less important than the administration of the prison.²⁸ Therefore, the United Kingdom is an

¹⁹ Ibid.

²⁰ Representation of the People Act 1951 (India) s 62(5).

²¹ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), GA Res 70/175 (17 December 2015) preamble, rules 1, 2, 4–5 (stating that prisoners retain all rights except those lawfully restricted by the fact of incarceration and that the purpose of imprisonment includes social rehabilitation and reintegration, not civil death).

²² Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (March 2016) 6–8.

²³ *ibid* 10–15 (describing German and French regimes tying disenfranchisement to conviction and specific offences).

²⁴ Martine Herzog-Evans and Jérôme Thomas (eds), *Prisoners' Vote: A Multidisciplinary and Comparative Perspective* (Routledge 2024)(n-6).

²⁵ Representation of the People Act 1983, s 3.

²⁶ Robert Jones and Gregory Davies, ‘Prisoner Voting in the United Kingdom: An Empirical Study of a Contested Prisoner Right’ (2023) 86 MLR 900, 903–905, 921–924 (finding that participation among eligible prisoners is ‘extremely low’ and identifying logistical and interpretive barriers including poor communication between prisons and electoral administrators, incomplete or erroneous applications, and uncertainty over remand and temporary-release prisoners.).

²⁷ Jones and Gregory Davies, ‘Prisoner Voting in the United Kingdom: An Empirical Study of a Contested Prisoner Right’ (2023) 86 MLR 900.

²⁸ Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (PRI 2016) 16–20

example of a system in which legal inclusion and practical exclusion coexist. This article will refer to this as “conditional carceral citizenship”.

India excludes every person who is confined in a prison or in the lawful custody of the police, with a narrow exception only for those in preventive detention.²⁹ The provision does not distinguish between convicted prisoners, undertrials and other pre-trial detainees; confinement alone is enough to trigger disenfranchisement, collapsing the distinction between accusation and guilt, subjecting undertrials, who remain under the presumption of innocence, to the same civic penalty as convicted prisoners.³⁰ Commentators such as Clive Leroy Fernandes and Chintan Chandrachud have pointed out the problematic nature of the provision by noting the fact that individuals who the Constitution and the Code of Criminal Procedure require to be treated as innocent are instead categorized under the same category as convicts and subjected to the same penalty.³¹

Recent public interest litigation before the Supreme Court of India, such as *Sunita Sharma v Union of India*³² has been subject to increased scrutiny for the fact that the majority of the prison population are undertrials, a large number of whom will be acquitted. With over 75 per cent of India’s prison population comprising undertrials, this regime amounts to a large-scale pre-judgment of civic worth based solely on accusation and detention.³³ On any understanding of the presumption of innocence, treating everyone in custody as unfit to vote is not acceptable. Under the model that has been proposed in this article, the Indian model does, support the idea of civic suspension, as the moment the individual is placed into custody, his/her political membership is automatically revoked, even if guilt has not been established.

Collectively, these different approaches to the issue of disenfranchisement illustrate that the presumption of innocence is subject to different translations across different jurisdictions. Germany, France, and to some extent the United Kingdom, maintain some level of connection between conviction and disenfranchisement, thereby upholding the civic presumption of innocence, although in practice this may be undermined by the practical realities of the electoral process.³⁴ The Indian model, by disenfranchising both prisoners and undertrials, completely disconnects the issue of conviction and disenfranchisement, thereby indicating that the moment the individual is accused and placed into custody, their civic suspension is justified.³⁵

Clearly, the implications of these approaches are significant, as the right to vote is not simply a procedural issue but rather a key indicator of the individual’s status as a member of the political community and the denial of this right, even if temporary, indicates that the individual is no longer a member of the political community.³⁶ For unconvicted detainees, this exclusion is particularly demeaning. Disenfranchisement whether de jure or de facto, reinforces the idea that prisoners are outsiders who do not belong in a democratic community.³⁷ The evidence of the

²⁹ Representation of the People Act 1951 (India), s 62(5).

³⁰ *Anukul Chandra Pradhan v Union of India* AIR 1997 SC 2814 (upholding s 62(5) and treating the right to vote as statutory).

³¹ Clive Leroy Fernandes, ‘Right to Vote for Undertrial and Pre-Trial Prisoners in India’ (2024) Indian Journal of Law and Legal Research; Chintan Chandrachud, ‘Prisoner Voting Rights in India’ (UK Constitutional Law Blog, 8 August 2013).

³² *Sunita Sharma v Union of India* Writ Petition (Civil) No 909 of 2025 (Supreme Court of India, pending).

³³ National Crime Records Bureau, Prison Statistics India 2023.

³⁴ Martina Prpić, ‘Prisoners’ Voting Rights in European Parliament Elections’ (European Parliamentary Research Service, Briefing PE 751.459, September 2023) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751459/EPRS_BRI\(2023\)751459_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751459/EPRS_BRI(2023)751459_EN.pdf) accessed 10 March 2026.

³⁵ Clive Leroy Fernandes, ‘Right to Vote for Undertrial and Pre-Trial Prisoners in India’ (2024) Indian Journal of Law and Legal Research; Chintan Chandrachud, ‘Prisoner Voting Rights in India’ (UK Constitutional Law Blog, 8 August 2013).

³⁶ Cormac Behan, *Citizen Convicts: Prisoners, Politics and the Vote* (Manchester UP 2014) ch 1 (arguing that enfranchisement affirms prisoners’ citizenship and that exclusion from the vote signals that they are not full members of the political community).

³⁷ *Ibid.*

preceding section already suggests that translating the presumption of innocence from courtroom procedure to electoral citizenship remains an unresolved challenge across jurisdictions; it is further explored in the context of pre-trial detention and then taken up doctrinally in the below sections.

Exclusion, pre-trial detention and the protection of rights

Pre-trial detention occupies a unique position within criminal justice systems, serving functions such as ensuring the presence of the accused at trial, protecting evidence, preventing interference with witnesses, and preventing serious harm, as opposed to serving a punitive purpose, which is reserved for post-conviction.³⁸ The UN Basic Principles for the Treatment of Prisoners asserts that all prisoners shall have fundamental freedoms, except to the extent that the exercise of such rights conflicts with the sentence or the order of a prison authority. The deprivation of liberty shall have as its sole purpose the reformation and protection of prisoners and shall not aim at their civil exclusion.³⁹

Electoral systems, as discussed within the preceding section, clearly do not support this position. When unconvicted detainees face disenfranchisement whether through India's explicit section 62(5) RPA 1951 or through the practical exclusion in formally inclusive systems such as Germany, France and the UK, custody requires conviction-like consequences.⁴⁰ Losing the franchise transforms a temporary procedural measure into a marker of civic degradation, imposing a disproportionate penalty. The presumption of innocence, which bars formal punishment before conviction, thus loses force; accusation plus confinement becomes sufficient to justify exclusion from the voting.⁴¹

This punitive spillover also destabilises the normative foundations of pre-trial detention. If pre-trial detention routinely carries electoral exclusion, the distinction between detainee and convict erodes. Taken together, these patterns pose a deeper question: can such practices be reconciled with the state's obligations under the ICCPR and contemporary rehabilitative penal theory.⁴² These practices are at odds with international rehabilitative standards. Article 10(3) ICCPR states that imprisonment must be for the reformation and social rehabilitation of prisoners, which cannot be squared with the expulsion of presumptively innocent individuals from the political community.⁴³ General Comment 25 reinforces the requirement that restrictions on voting rights under Article 25 must be reasonable and objective, which cannot be met where voting rights are automatically revoked on the basis of custodial status.⁴⁴ The global overview of international practice by Penal Reform International states that a blanket disenfranchisement of prisoners can be difficult to square with international obligations, particularly where large numbers of unconvicted individuals are affected.⁴⁵

Considering these standards, the models set out earlier in this section reveal not merely a series of technical failings, but a deeper conceptual failing, misunderstanding of political membership as contingent on physical liberty, rather than on legal status as a citizen. Upholding the civic presumption in the context of pre-trial detention therefore requires that states accept that custodial

³⁸ *Anukul Chandra Pradhan v Union of India* AIR 1997 SC 2814.

³⁹ UNGA Res 45/111 (14 December 1990) Basic Principles for the Treatment of Prisoners principle 5(b).

⁴⁰ Penal Reform International the Right of Prisoners to Vote: A Global Overview (PRI 2016) 16–20.

⁴¹ UN Human Rights Committee, 'General Comment No 32: Article 14, Right to Equality before Courts and Tribunals and to Fair Trial' (23 August 2007) UN Doc CCPR/C/GC/32, paras 30–32.

⁴² Christopher Behan Citizen Convicts: Prisoners, Politics and the Vote (Manchester UP 2014).

⁴³ ICCPR (n 2) art 10(3).

⁴⁴ UNHRC 'General Comment No 25: Article 25 (Participation in Public Affairs and the Right to Vote)' (12 July 1996) CCPR/C/21/Rev.1/Add.7 paras 4, 10.

⁴⁵ Penal Reform International (n 6) 27–29.

measures may legitimately restrict movement where strictly necessary, but not the fundamental recognition of individuals as citizens of a democratic state.⁴⁶

Establishing the doctrinal analysis

The patterns established in this article are at odds with the international framework on both pre-trial detention and political participation. The international frameworks such as ICCPR, among other treaties, provides that any form of pre-trial detention has to be exceptional and not punitive, and that any form of imprisonment has to be for reform and rehabilitation purposes.⁴⁷ At the same time, the international framework provides that any restriction on the right to vote has to be objective, reasonable, and proportionate.⁴⁸ The disenfranchisement of unconvicted detainees, whether explicit, as in the case of India, or implicit, as in the case of the UK, undermines these provisions of the international framework on the one hand, and suggests that individuals who are in pre-trial detention have a weaker claim to citizenship, notwithstanding the fact that they are citizens and presumed innocent and ought to be allowed to participate in the democratic process.

From this section, it is evident that a legitimate and realistic implementation of the presumption of innocence in modern democracies calls for a civic presumption whereby accused persons should still be regarded and treated as political members whose voices and opinions matter. Pre-trial detention should not be used to bar them from exercising their civic rights. Their movement and associational rights may be restricted while in custody to an extent necessary for their detention. However, their fundamental connection with democracy should not be severed.

The next section attempts to address this challenge. It moves from an analytical and conceptual discussion of carceral citizenship to an assessment of how domestic laws and regional human rights regimes have addressed prisoners voting rights with special attention to undertrial detainees or remand prisoners. It examines whether there is scope for using and developing existing legal doctrines to protect the civic presumption of unconvicted prisoners or whether there is a need to rethink and transform these regimes to ensure their full participation in democratic self-rule.

Legal frameworks governing prisoners' voting rights and the presumption of innocence

This section develops the civic presumption and carceral citizenship framework introduced in the previous section, by examining the legal norms that regulate Prisoners' voting rights in key jurisdictions. The question that this section seeks to answer is to what extent constitutional law, electoral law and human rights law recognize unconvicted detainees as presumptively innocent citizens for voting purposes, as opposed to regarding their detention as sufficient evidence of civic disqualification.

In this regard, the analysis will be structured into three parts: firstly, the European human rights law and its impact on the United Kingdom; secondly, the constitutional and electoral law of Germany and France; and thirdly, India, including recent constitutional case law. The question that this section seeks to answer is to what extent the current law can be amended to protect the

⁴⁶ UN Human Rights Committee, 'General Comment No 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (art 25)' (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7, para 14 ("Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote"; restrictions must be "objective and reasonable").

⁴⁷ UN Human Rights Committee, 'General Comment No 21: Humane treatment of persons deprived of their liberty (art 10)' (10 April 1992) paras 3,10.

⁴⁸ UN Human Rights Committee, 'General Comment No 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (art 25)' (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7, para 14 ("Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote"; restrictions must be "objective and reasonable").

civic presumption of innocence of remand and under-trial prisoners, and to what extent the law needs to be changed at the level of underlying norms and institutions.

European human rights law and the United Kingdom

Article 3 of Protocol No 1 ECHR and the essence of the right to vote

The European Court of Human Rights (ECtHR) has interpreted Article 3 of Protocol No 1 (A3P1) as protecting the right of individuals to vote and stand in elections under conditions that ensure the free expression of the opinion of the people in the choice of the legislature.⁴⁹ Though the ECtHR has acknowledged that states have a broad margin of appreciation in regulating the right to vote, it has also emphasized that any restriction must have a legitimate aim, be proportionate, and that the restriction should not touch upon the essence of the right.⁵⁰ In its general approach, the ECtHR has also refused to recognize both the absolute right to vote for all prisoners and the absolute discretion for states to deprive individuals of their voting rights, emphasizing that any restriction should have a rational connection with the conduct or status that is relied upon for justifying the restriction.⁵¹

Hirst and the critique of blanket disenfranchisement

In the case of *Hirst v United Kingdom*,⁵² the Grand Chamber held that the UK's blanket ban on voting for convicted prisoners pursuant to section 3 of the Representation of the People Act 1983 was in violation of A3P1. In reaching this decision, the Court highlighted the fact that the blanket ban on voting for convicted prisoners was general, automatic, and indiscriminate in nature, applying to all convicted prisoners in detention without regard to the length of sentence, nature of offence, or assessment of individual circumstances.⁵³ Although recognizing the protection of the rule of law and the functioning of democracy as legitimate reasons for a deprivation of voting rights, the Court held that the deprivation of voting rights for all detainees in the UK was not proportionate to these legitimate reasons because it did not maintain a discernible link between the restriction and the particular wrongdoing of the individuals concerned.⁵⁴

Although the case of *Hirst v United Kingdom* does not directly address remand prisoners, it is significant for the civic presumption in two ways. First, in its approach to the case, the Court's decision on the violation of A3P1 can be taken as a sign that the mere fact of custody does not justify the exclusion from voting.⁵⁵ Second, in its approach to proportionality, the Court's decision can be taken as a sign that the mere fact of physical confinement does not, in itself justify exclusion from voting.⁵⁶

Post-Hirst jurisprudence – Greens, Scoppola and Hora

Subsequent cases, such as *Greens & M.T. v. United Kingdom*⁵⁷ and *Scoppola v Italy*,⁵⁸ clarified but did not reverse *Hirst*. In *Greens*, the ECtHR again found a violation of A3P1 regarding voting rights for prisoners in the UK, but set a timetable for reform.⁵⁹ In *Scoppola*, it acknowledged that disenfranchising provisions, especially those related to the gravity of offense and individually ordered by courts, could be compatible with A3P1, provided they were not general or

⁴⁹ *Mathieu-Mohin and Clerfayt v Belgium* (1987) 10 EHRR 1.

⁵⁰ *Gitonas v Greece* (1997) 26 EHRR 691.

⁵¹ *Ibid.*

⁵² *Hirst v United Kingdom* (2006) 42 EHRR 41.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Hirst v United Kingdom* (2006) 42 EHRR 41.

⁵⁶ *Ibid.*

⁵⁷ *Greens and M.T. v United Kingdom* App no 60041/08 and 60054/08 (ECtHR, 23 November 2010).

⁵⁸ *Scoppola v Italy* (2013) 56 EHRR 19.

⁵⁹ *Greens and M.T. v United Kingdom* App no 60041/08 and 60054/08 (ECtHR, 23 November 2010).

indiscriminate.⁶⁰ It also continued to criticize general disenfranchising provisions, which lacked specific justification, thus continuing to pressure states with broad disenfranchising provisions.

A more recent judgment, *Hora v United Kingdom*,⁶¹ signals a shift in how the Court applies these principles. The applicant was an inmate serving an indeterminate sentence for multiple counts of rape and serious sexual offense. He claimed that section 3 of the RPA 1983 Act had deprived him of a vote in the 2019 general election.⁶² The Court held unanimously that there was no breach of A3P1. It was not considered justifiable to examine the Convention compatibility of the legislation in abstract and was instead restricted to examining this particular applicant in these particular circumstances. Given the severity of his crimes and his risk to public safety, and with a wide margin of appreciation, it held his disenfranchisement to be proportionate.⁶³

Hora does not overturn *Hirst*'s condemnation of "general, automatic and indiscriminate" bans, *Hora* appears to mark a change of approach by the Court by restricting their potential for remedy to an assessment of proportionality.⁶⁴ For present purposes, *Hora* and similar cases would appear to suggest that whilst section 3 of the RPA 1983 Act remains formally problematic in its blanket nature, prisoners entering the system in the future would be more likely to succeed by demonstrating that their disenfranchisement was disproportionate to their circumstances where their offense was of a lesser severity than in *Hora*.⁶⁵

The Lidington compromise and minimalist compliance

Like *Hirst* and *Greens*, the UK did not revise section 3 RPA 1983 in *Hora*, but eventually introduced some limited administrative reforms, also termed the Lidington compromise.⁶⁶ This allowed a very limited number of prisoners on temporary release and those on home detention curfew to vote outside prison, as well as clearer disenfranchisement notification either at or very close to the point of sentencing.⁶⁷ Commentators such as Andreas von Staden have termed this as an example of "minimalist compliance" since the very essence of section 3 RPA 1983 has remained unaffected, and the majority of convicted individuals continue to be disenfranchised.⁶⁸ From a point of view centered on civic presumption, this demonstrates the potential and limitations of supranational human rights adjudication, which, despite being able to override any ban, has shown itself to be ineffective in promoting adequate forms of carceral citizenship.⁶⁹

Remand prisoners and the limits of doctrinal protection

Formal distinctions between conviction and accusation are clearly drawn in the UK's electoral law and whilst section 3 of the RPA 1983 disenfranchises individuals who serve a sentence of imprisonment, no such disenfranchising provisions apply to remand prisoners, who are formally entitled to register and vote either by post or proxy.⁷⁰ In purely formal terms, the UK's electoral law thus appears to be in line with the presumption of innocence, since only individuals whose

⁶⁰ *Scoppola v Italy* (2013) 56 EHRR 19.

⁶¹ *Hora v United Kingdom* App no 1048/20 (ECtHR, 23 September 2025) HUDOC 001-228802. For a commentary on the case and its impact, see S. Foster, (2026) 2 *European Human Rights Law Review*, 234.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ European Rights Court Backs UK Ban as Man Convicted of Rape Loses Voting Case' The Guardian (London, 7 December 2017) <https://www.theguardian.com/politics/2017/dec/07/council-of-europe-accepts-uk-compromise-on-prisoner-voting-rights> accessed 17 March 2026.

⁶⁷ *Ibid.*

⁶⁸ Andreas von Staden, 'Minimalist Compliance in the UK Prisoner Voting Rights Cases' (ECHR Blog, 16 November 2018)

⁶⁹ *Ibid.*

⁷⁰ Representation of the People Act 1983, s 3, as amended by the Representation of the People Act 2000.

guilt has been determined by the courts are disenfranchised, whilst individuals who have not been convicted of a crime are not.⁷¹

However, empirical research suggests that this formal distinction is often not reflected in reality. Jones and Davies argue that the extent of prisoner disenfranchisement is perhaps even greater than was previously supposed, and that without strong administrative systems, the reality is that prisoners' voting rights will be purely theoretical.⁷² From a doctrinal perspective, the failure of the ECtHR or domestic courts to address these practical barriers shows the limits of A3P1. In *Hirst*, *Greens* and *Hora*, the Court accepts the distinction between remand and convicted prisoners in section 3 but does not ask whether remand prisoners are in practice able to exercise the right that is formally available to them.⁷³

The position of remand prisoners therefore illustrates the limits of existing doctrine. A3P1 has helped condemn blanket bans in principle, but it has done little to secure the civic presumption in practice for those who are formally included in the electorate yet effectively excluded by institutional arrangements.⁷⁴

Germany and France: individualised disenfranchisement and inclusive carceral citizenship

Both Germany and France locate the right to vote at the core of democratic citizenship and are generally reluctant to equate imprisonment with civic degradation.⁷⁵ In both regimes, the starting point is that a custodial sentence should not terminate the political membership of the prisoner; any restriction on the electoral rights of prisoners should be specifically provided for in statute law and imposed by a criminal court as a distinct penalty.⁷⁶

In Germany, under the Basic Law's constitutional guarantee of democracy and universal suffrage, the Federal Elections Act provides that prisoners retain their electoral rights unless convicted of a criminal offence targeting the democratic order or the state; in that event, a criminal court may impose loss of voting rights as a penalty for a specified period.⁷⁷ Under the French regime, loss of civic rights, including the electoral franchise, is a *peine complémentaire* that may be imposed by a criminal court for a specified period for a serious offence; however, there is no loss of electoral rights merely because of a custodial sentence.⁷⁸

These regimes are consistent with a baseline commitment to inclusive carceral citizenship; that is, imprisonment does not entail loss of electoral rights, and a distinction is drawn between the merely accused and the convicted of particular offences.⁷⁹ From the perspective of civic

⁷¹ UK Ministry of Justice, 'Restrictions on Prisoner Voting: Policy Framework' (2020); Committee of Ministers, Resolution CM/ResDH (2018) 467, 'Execution of the judgments of the European Court of Human Rights in 101 cases against the United Kingdom (Prisoners' Right to Vote)' (6 December 2018).

⁷² Robert Jones and Gregory Davies, 'Prisoner Voting in the United Kingdom: An Empirical Study of a Contested Prisoner Right' (2023) 86 MLR 900, 903–905, 920–928.

⁷³ *Hora v United Kingdom* App no 1048/20 (ECtHR, 23 September 2025) HUDOC 001-228802; *Greens and M.T. v United Kingdom* App nos 60041/08 and 60054/08 (ECtHR, 23 November 2010); *Hirst v United Kingdom* (2006) 42 EHRR 41.

⁷⁴ Susan Easton, *Prisoners' Rights: Principles and Practice* (Routledge 2011) 7–10.

⁷⁵ Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (March 2016) 6–8.

⁷⁶ Tommaso Pavone, 'Comparative Views on the Right to Vote in International Law: The Case of Prisoner Disenfranchisement' in Kevin Boyle (ed), *New Democracies and the Rule of Law* (OUP 2018) 210–212 (noting that in Germany only offenders convicted of crimes against the democratic order or state institutions may be disenfranchised, and then only by judicial decision).

⁷⁷ Federal Elections Act, s 12.

⁷⁸ *peine complémentaire*: describing French rules under which courts may impose loss of civic rights, including voting, as an additional penalty for specified serious offences and for a limited time.

⁷⁹ European Parliamentary Research Service, 'Prisoners' Voting Rights in European Parliament Elections' (Briefing, September 2023) 3–5 (classifying Germany and France as systems where disenfranchisement is an ancillary, offence-linked penalty, not an automatic effect of imprisonment).

presumption, both Germany and France provide a comparatively high level of doctrinal protection for the electoral rights of unconvicted detainees.

Statutory rules on prisoners' voting rights

Under the German legal system, loss of electoral rights is a collateral consequence that may flow from conviction for certain serious offenses, but not automatically, nor is there a direct link with imprisonment.⁸⁰ A person who has been sentenced under section 45(5) of German Criminal Code, the court may, in addition, for a period of two to five years, deprive the convicted person of the right to participate in any election or vote on public matters, but only if the provisions regarding the offense in question specifically provide for this as a possible sanction.⁸¹ The Federal Elections Act (Bundeswahlgesetz) then connects the eligibility to vote in Bundestag elections with these criminal law consequences by stating that a person loses eligibility to vote in Bundestag elections if a court has deprived them of the right to vote by a final court judgment.⁸²

Commentaries on German law report that the use of section 45(5) orders is extremely rare, affecting only a handful of individuals annually, so that the vast majority of convicted prisoners in Germany still possess voting rights and can vote from prison.⁸³ Prison inmates, including remand prisoners, are specifically entitled to vote in Bundestag and European Parliament elections as long as they are eligible in general and have not been deprived of the vote by a court judgment as described above, and can vote either in special voting districts or by postal vote.⁸⁴ Remand prisoners, who have not yet been convicted, are completely included in the voting franchise and are not affected by the deprivation of rights.

French law has undergone a similar evolution from automatic civic degradation to individualised, court-ordered disenfranchisement. However, with recent changes to the Criminal Code and Code of Criminal Procedure of France, there is an additional penalty of disenfranchisement.⁸⁵ The point of departure is demonstrated by *Delvigne v Commune de Lesparre-Medoc*.⁸⁶ A French citizen was found guilty of a serious offense in 1988 and was given a 12-year prison sentence with permanent and automatic loss of civic rights as an ancillary penalty. However, when Delvigne sought to be included on the electoral roll for European Parliament elections, he invoked the jurisdiction of the Bordeaux court, who in turn referred a number of questions to the Court of Justice to determine whether this permanent and automatic disenfranchisement was compatible with Article 39 of the EU Charter of Fundamental Rights.⁸⁷

In its Grand Chamber judgment, it was acknowledged that the French provisions did restrict the applicant's Charter right to vote in European Parliament elections but, having regard to the reforms of 1992 and 1994.⁸⁸ It was also acknowledged that the French system, which deprives certain offenders of civic rights for a period, subject to review, could satisfy the requirements of legality, proportionality, and respect for the essence of the right.⁸⁹ Significantly, it was noted that under the previous system of civic degradation, this was permanent and automatic, but under the new system, taking into account the nature and gravity of the criminal offence committed, as well

⁸⁰ German Criminal Code (Strafgesetzbuch), ss 45, 45(5), 45a (loss of public electoral rights and judicial power to deprive the right to vote on public matters).

⁸¹ Ibid.

⁸² Federal Elections Act (Bundeswahlgesetz) s 13(1) no 2.

⁸³ European Parliamentary Research Service, 'Prisoners' Voting Rights in European Parliament Elections' (Briefing, September 2023) 5–6.

⁸⁴ Federal Returning Officer, 'Prison Inmates' (explaining that prisoners, including those in pre-trial detention, may vote by post or in special polling districts if otherwise eligible).

⁸⁵ Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (March 2016) 6–8.

⁸⁶ Case C-650/13 *Delvigne v Commune de Lesparre-Médoc*.

⁸⁷ Ibid.

⁸⁸ Hanneke van Eijken and Jan Willem van Rossem, 'Prisoner Disenfranchisement and the Right to Vote in Elections to the European Parliament: Universal Suffrage Key to Unlocking Political Citizenship?' (2016) 12118–119 (describing Mr Delvigne's 1988 conviction and automatic loss of voting rights under the old Code).

⁸⁹ Case C-650/13 *Delvigne v Commune de Lesparre-Médoc* paras 39–45, 52–54.

as the duration of the penalty, it is subject to review, thus again highlighting the shift towards individualized disenfranchisement.⁹⁰

In the case of *Delvigne*, the Court of Justice of the European Union acknowledged that such a system, in which loss of the vote results from a criminal conviction, with temporal limitations and possibilities of review, could be compatible with EU law on universal suffrage, as long as the restriction on voting rights was proportionate.⁹¹ Therefore, disenfranchisement is now understood as a *peine complémentaire* under Article 131-26 Code pénal, which must be specifically pronounced and in principle, it is also characterized by its temporary nature and reversibility, rather than a civil consequence of imprisonment.⁹²

At the level of the electoral process, in Germany as well as in France, prisoners who have a vote, including those in pre-trial detention, are permitted to vote either by postal or proxy vote or by temporary release.⁹³ Recent EU and national documentation confirms that neither Germany nor France currently has a statutory bar on voting by prisoners as such, and that remand prisoners are, in principle, included in the electorate.⁹⁴ From a doctrinal perspective, these practices reinforce the picture presented in the previous section, in which loss of the vote was characterized as an exceptional, offence-based sanction requiring judicial intervention, rather than as a civil consequence of imprisonment, and in which pre-trial detention does not trigger disenfranchisement.

India: civic suspension and the constitutional challenge to section 62(5) of the Representation of People Act 1951

The Representation of People Act 1951 of India section 62(5) disenfranchises every person who is confined in a prison or in lawful custody of the police with a limited exception for those in preventive detention.⁹⁵ No differentiation is made between those who have been convicted, those who have not been convicted, and those who are in custody; it is not conviction but rather confinement or custody by itself that triggers disenfranchisement under section 62(5).⁹⁶ When Parliament enacted s62(5) during India's first general elections in 1951, the explicit aim was to exclude persons in custody from voting to maintain the purity of the electoral process.⁹⁷ The provision responded to issues about criminal elements influencing elections, particularly given widespread custodial detention during the partition-era violence and political arrests.⁹⁸ This model thus prioritised electoral administration and symbolic purity over assessment of individual guilt or rehabilitation potential.

This has very significant consequences. In India, over three-quarters of those in prison are undertrials; moreover, many of these undertrials will be acquitted. This provision, therefore, results in a large-scale pre-judgmental disenfranchisement of citizens on the sole ground of their detention.⁹⁹ The broad scope of disenfranchisement under section 62(5) is also evident from the

⁹⁰ Ibid.

⁹¹ Case C-650/13 *Delvigne v Commune de Lesparre-Médoc* paras 51-54.

⁹² Code pénal, art 131-26, *peine complémentaire*: describing French rules under which courts may impose loss of civic rights, including voting, as an additional penalty for specified serious offences and for a limited time.

⁹³ European Parliamentary Research Service, 'Prisoners' Voting Rights in European Parliament Elections' (Briefing, September 2023) 3–5 (reporting that in EU states where prisoners retain the vote, participation is often facilitated by postal votes, proxy votes or special polling stations, including in Germany and France).

⁹⁴ Ibid (classifying Germany and France as Member States where disenfranchisement is an ancillary, offence-linked penalty and remand prisoners remain entitled to vote).

⁹⁵ Representation of the People Act 1951 (India), s 62(5).

⁹⁶ Ibid; see also Bar & Bench, 'Plea in Supreme Court Seeks Right to Vote for Undertrial Prisoners' (9 October 2025) <https://www.barandbench.com> accessed 17 March 2026 (summarising that the provision applies to all persons in prison or police custody, save those in preventive detention).

⁹⁷ Representation of the People Act 1951 (India), s 62(5).

⁹⁸ Ibid.

⁹⁹ India Spend, 'Half a Million Indians Behind Bars, 74% Still Awaiting Trial' (13 October 2025); <https://www.indiaspend.com> accessed 22 March 2026.

fact that this provision operates without regard to the nature of the offense for which an undertrial is held, without regard to the potential length of sentence for an offense for which an undertrial is held, and without regard to whether a court has assessed the need for disenfranchisement.¹⁰⁰

As discussed in earlier in this article, this model ignores the line between accusation and guilt and imposes on undertrial prisoners who remain under the presumption of innocence the civic penalty of disenfranchisement.¹⁰¹ Unlike Germany and France, where disenfranchisement is restricted to those who have committed particular serious offenses and where there is a court order to do so, and unlike the UK, where there is at least a residual qualification of voting rights for remand prisoners, in India all prisoners of detention are disenfranchised by virtue of their status.¹⁰² Under the civic presumption model, section 62(5) of RPA 1951 therefore represents a model of civic suspension, where once an individual enters criminal custody, their political membership is immediately revoked despite their guilt not being established.

Constitutional framework: Democracy, Equality and the presumption of innocence; Litigation & criticism of section 62(5)

The Indian Constitution provides for a democratic government based on universal adult franchise and equality before the law and equal protection of the laws under Articles 14 and 326.¹⁰³ In the case of *Kuldip Nayar v Union of India*,¹⁰⁴ the right to vote has been held by the Supreme Court of India to be a statutory right rather than a fundamental right, but the Court has also held that this right is an integral part of the democratic process and an essential ingredient for the enforcement of the provisions of the Constitution. However, the jurisprudence on criminal procedure pulls in the opposite direction from s. 62(5). In the landmark case of *State of Rajasthan v Balchand*,¹⁰⁵ the Supreme Court famously stated the principle that “bail is the rule, jail an exception,” and justified this on the presumption of innocence and the need to be careful not to allow pre-trial detention to become a form of anticipatory punishment. These decisions present pre-trial detention as an exceptional, tightly controlled measure, and insist that the state may not treat detainees as if they were already convicts for punitive purposes.

In this context, section 62(5) of the RPA 1951, appears to be problematic from a constitutional point of view, since it effectively disenfranchises all persons in prison or in police custody, without any differentiation between the guilty and the innocent, without any assessment of the duration of the sentence, and without any regard for the constitutional presumption of innocence of all persons, including undertrials, or the principle of criminal procedure that pre-trial detention is not punitive.¹⁰⁶ The Supreme Court, in the case of *Anukul Chandra Pradhan v Union of India*,¹⁰⁷ upheld the validity of section 62(5) of the RPA, 1951, on the ground that the disenfranchisement of all prisoners was a logical consequence of their detention, which was necessary for maintaining the purity of the electoral process. However, the judgment did not address the implications of its own prior decisions on bail, nor did it address the issue of the differential treatment of undertrials and accused persons on bail.

The most recent public interest litigation, *Sunita Sharma v Union of India*,¹⁰⁸ has once again brought section 62(5) into the public eye and directly challenged its validity within the

¹⁰⁰ Bar & Bench, ‘Plea in Supreme Court Seeks Right to Vote for Undertrial Prisoners’ (9 October 2025) <https://www.barandbench.com> accessed 17 March 2026.

¹⁰¹ See Chapter 2 above.

¹⁰² Tommaso Pavone, ‘Comparative Views on the Right to Vote in International Law: The Case of Prisoner Disenfranchisement’ in Kevin Boyle (ed), *New Democracies and the Rule of Law* (OUP 2018) 210–212.

¹⁰³ The Constitution of India 1950, art 14 and 326.

¹⁰⁴ *Kuldip Nayar v Union of India* (2006) 7 SCC 1 (Constitution Bench) (reaffirming that the right to vote is statutory but central to the operation of representative democracy under the Constitution).

¹⁰⁵ *State of Rajasthan v Balchand* (1977) 4 SCC 308.

¹⁰⁶ Representation of the People Act 1951 (India), s 62(5).

¹⁰⁷ *Anukul Chandra Pradhan v Union of India* (1997) 6 SCC 1 – (upholding s 62(5) as a reasonable restriction intended to maintain the purity of elections and holding that prisoners as a class may be excluded from voting).

¹⁰⁸ *Sunita Sharma v Union of India* Writ Petition (Civil) No 909 of 2025 (Supreme Court of India, pending).

constitutional framework of India. The petitioner contends that the whole disenfranchisement of prisoners, particularly those who are under trial, violates the equality principle of Article 14 by making a distinction between those who are incarcerated and those who are not.¹⁰⁹ The petitioner also contends that it violates the presumption of innocence by penalising those who have yet to be convicted of a crime and putting them on the same footing as those who have been convicted. Furthermore, the petitioner contends that it disproportionately affects minorities and the poor, as they are overrepresented as pre-trial detainees in India.¹¹⁰

Therefore, this issue raises the question whether the Court should consider section 62(5) as a constitutional issue and address it as such. Indeed, academic commentators have written on this issue and have termed section 62(5) as “an exemplary case of civic suspension, whereby one’s legal status as a prisoner negates one’s legal status as a citizen”.¹¹¹ The commentators have also pointed out the “irony of being required by the Constitution to be treated as innocent until such time as one is convicted by a court of law, yet being treated as a convict and denied a vote by virtue of allegations of a crime of which one has yet to be convicted”.¹¹²

When viewed through the lens of the civic presumption, a system that is in compliance with constitutional and international law would require a minimum repeal or substantial amendment of section 62(5) to restore the right to vote for undertrial detainees and a more nuanced, rather than a wholesale, ban on the right to vote for convicts, depending on the offences for which they have been convicted and the length of sentence imposed.¹¹³

Evaluating India against the civic presumption

When assessed against the grounded minimum standard articulated in earlier, India’s framework falls at the most restrictive end of the spectrum.¹¹⁴ The model of carceral citizenship is one of comprehensive civic suspension, in which the presumption of innocence is of little practical value in the electoral sphere.

In practice, this would entail distinguishing between categories of offences, limiting disenfranchisement to the most serious crimes, ensuring that any loss of voting rights is time-limited and imposed only by a court through a reasoned order, and recognising a pathway to restoration.¹¹⁵ This would require, for instance, differentiating between offences, restricting disenfranchisement to more serious offences, making it time-limited and subject to a court order, and providing for the restoration of voting rights.¹¹⁶ It would also require establishing administrative systems capable of delivering voting rights for detainees, so that conditionality does not lead to a re-emergence of de facto disenfranchisement.¹¹⁷ This would place India more in line with offence-based models of disenfranchisement, like Germany and France, but would also allow for a more nuanced approach in respect of domestic electoral integrity concern

A comparative assessment across the jurisdictions

As can be seen from the various jurisdictions discussed above, several tools have been developed by the courts and statutory bodies, such as the proportionality test under A3P1, which can be utilized for the protection of the civic presumption for unconvicted detainees. The critical

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Clive Leroy Fernandes, ‘Prisoner Disenfranchisement and the Indian Constitution’ (2020) 5 NUJS L Rev 1, see also Chintan Chandrachud, ‘Voting Rights of Prisoners and the Indian Constitution’ (2019) 31 National Law School of India Review 45.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ See subheading – Presumption of innocence.

¹¹⁵ Penal Reform International (n 23) 42–45.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

perspective of *Hirst* regarding broad, automatic, and indiscriminate bans,¹¹⁸ combined with *Scoppola*'s positive focus on specific restrictions tied to particular offences,¹¹⁹ and *Hora*'s emphasis on individual proportionality,¹²⁰ creates a framework for contesting both sweeping statutory bans and the enforcement of general measures that render rights effectively illusory. The approach by constitutional courts in Germany and France to linking the right to participate in the democratic process to serious offenses and to individual judicial decisions provide a basis for the presumption of continued civic membership even for convicted prisoners.¹²¹ In the UK, the legislative response to the issue has been minimalist and the weak administrative response, resulting in a system of conditional carceral citizenship.¹²² In the case of India, the wide-reaching statutory ban has been upheld by the constitutional courts, providing a model of civic suspension incompatible with the presumption of innocence and the right to participate in the democratic process.¹²³

This discussion has highlighted the need for a change of approach by courts and legislatures to imprisonment, and for a shift from merely using existing tools to protect the civic presumption for unconvicted detainees towards actively designing and implementing reform proposals that secure their voting rights in practice. This is the subject matter of the next section.

Possible reforms and practical possibilities

The preceding sections of this article show that custody, particularly pre-trial detention, is often treated as a de facto trigger for civic exclusion even where the presumption of innocence is formally preserved. This section turns from doctrine to reform and asks what a legally grounded model of carceral citizenship, consistent with civic presumption, would look like in practice. It does so by outlining a universal model that states could adapt to their own constitutional and political settings.

The model rests on the understanding that disenfranchisement should be exceptional, not routine. Voting rights should not be forfeited because of pre-trial detention or because a person is awaiting sentence, since such a restriction is difficult to justify as reasonable and serves no rehabilitative purpose.¹²⁴ Reports from human rights organisations show that in most countries voting rights are never or rarely withdrawn following criminal conviction, and that the prevailing trend is toward time-limited, offence-specific disenfranchisement.¹²⁵ The CJEU's endorsement of a narrowly defined civic disability in *Delvigne* is therefore consistent with universal suffrage only when the restriction is individually ordered for a specific period; it sits uneasily with automatic, indiscriminate disenfranchisement.¹²⁶

Research on prisoner enfranchisement has shown that, through participation in the electoral process, a prisoner can retain a sense of ongoing citizenship rather than remain a permanent outsider and can imagine a law-abiding future in which they have a voice and a responsibility.¹²⁷ Behan's interviews with serving prisoners, for example, show that being able to vote can

¹¹⁸ *Hirst v United Kingdom* (No 2) (2006) 42 EHRR 41.

¹¹⁹ *Scoppola v Italy* (No 3) (2013) 56 EHRR 19.

¹²⁰ *Hora v United Kingdom* App no 1048/20 (ECtHR, 23 September 2025) HUDOC 001-228802.

¹²¹ Bundesverfassungsgericht Federal Constitutional Court, BVerfGE 33, 1 (1972) (upholding narrow, offence-linked disenfranchisement compatible with Art 38 GG); Code pénal, art 131-26 (peine complémentaire of deprivation of civic rights, including the vote); Case C-650/13 *Delvigne v Commune de Lesparre-Médoc* EU:C:2015:648.

¹²² Andreas von Staden, 'Minimalist Compliance in the UK Prisoner Voting Rights Cases' (ECHR Blog, 16 November 2018)

¹²³ Chintan Chandrachud, 'Voting Rights of Prisoners and the Indian Constitution' (2019) 31 National Law School of India Review 45.

¹²⁴ International Covenant on Civil and Political Rights 1966, art 25.

¹²⁵ Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (2016) 3–5 (reporting that most countries permit pre-trial detainees to vote and noting that automatic disenfranchisement following conviction remains contested).

¹²⁶ Case C-650/13 *Delvigne v Commune de Lesparre-Médoc* EU:C:2015:648.

¹²⁷ Cormac Behan and Ian O'Donnell, 'Prisoners, Politics and the Polls: Enfranchisement and the Burden of Responsibility' (2007) 47 British Journal of Criminology 371.

encourage reflection on political issues, reinforce pro-social identities and modestly strengthen ties to the outside world.¹²⁸ The denial of the right to vote, on the other hand, sends a very different message, that of civic death, that the relationship between the prisoner and the state is a purely coercive one, and that rehabilitation is not possible.¹²⁹ In that sense, prisoner voting is not a reward for good behaviour but a normal incident of rehabilitation.

Evidence from the UK shows that even where individuals are formally included, they may be effectively excluded through administrative disenfranchisement: lack of information, poor coordination between prison and electoral services, limited time, and inadequate voting infrastructure.¹³⁰ This undermines the rehabilitative value of enfranchisement, because rights that cannot practically be exercised lose much of their meaning.¹³¹ A credible reform agenda must therefore impose positive obligations on both prison and electoral authorities.¹³² International standards support this shift toward positive obligations. General Comment No. 25 makes clear that states must take steps to ensure equal opportunities to exercise the right to vote, which requires more than avoiding unjustified restrictions; it also requires the removal of practical obstacles that disproportionately affect detainees.¹³³

The Nelson Mandela Rules, although they do not specifically address voting rights, state that imprisonment should promote rehabilitation and social reintegration, with prison life approximating life outside prison walls.¹³⁴ Read together with General Comment No. 25, these standards suggest that continued electoral participation, especially for unconvicted detainees, should be treated as a normal feature of carceral citizenship rather than a privilege that may be withdrawn whenever a person is in custody.

The universal model proposed here therefore offers both a normative framework and a practical basis for reform. It would ensure that pre-trial detention is never used, explicitly or implicitly, to trigger civic exclusion. If implemented in this way, prisoner voting would help avoid civic exclusion and support the broader rehabilitative aim of preparing prisoners for responsible participation in democratic life.¹³⁵

Conclusion

This article has argued that prisoners' voting rights cannot be fully understood without taking both the presumption of innocence and the concept of carceral citizenship seriously.¹³⁶ Beginning with remand and undertrial detainees, it has shown that legal systems often collapse the distinction between accusation and guilt, allowing custody, especially pre-trial detention, to operate as a *de facto* trigger for civic exclusion even where the accused are formally presumed innocent.¹³⁷ Across the four jurisdictions examined, this pattern recurs in different doctrinal forms but with similar practical effects.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Robert Jones and Gregory Davies, 'The Administrative Disenfranchisement of Prisoners in England and Wales' (2023) 270 *Prison Service Journal* 3, 8–11.

¹³¹ Robert Jones and Gregory Davies, 'The Administrative Disenfranchisement of Prisoners in England and Wales' (2023) 270 *Prison Service Journal* 3, 8–11.

¹³² Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (PRI 2016).

¹³³ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), GA Res 70/175 (17 December 2015) preamble, rules 1, 2, 4–5 (stating that prisoners retain all rights except those lawfully restricted by the fact of incarceration and that the purpose of imprisonment includes social rehabilitation and reintegration, not civil death).

¹³⁵ Cormac Behan and Ian O'Donnell, 'Prisoners, Politics and the Polls: Enfranchisement and the Burden of Responsibility' (2007) 47 *British Journal of Criminology* 371.

¹³⁶ 'Presumption of Innocence.'

¹³⁷ Ibid.

At the international level, there is not universally recognised right of incarcerated prisoners to vote.¹³⁸ Treaties such as the ICCPR and the European Convention on Human Rights (ECHR) recognise the rights to participate in public affairs, hold free elections, and exercise freedom of expression. Prisoners are included under these provisions.¹³⁹ However, there has been an absence of an explicit recognition of prisoner enfranchisement and so it has fallen to regional and domestic courts to assess the validity of each state's regulation of prisoner enfranchisement. This has led to a frequently inconsistent recognition and implementation of prisoner enfranchisement rights, even within the UK and Europe.

Germany and France show that disenfranchisement can be linked to serious offences and imposed by individual judicial decision, thereby preserving a strong presumption of continued political membership even for convicted prisoners.¹⁴⁰ The United Kingdom is an example of administrative disenfranchisement, despite reforms following *Hirst* and related judgments, many formally eligible detainees remain unable to vote because of poor administration.¹⁴¹ India lies at the other end of the spectrum. Section 62(5) of the Representation of the People Act 1951 disenfranchises all persons in custody except preventive detainees, creating a regime of civic suspension that sits uneasily with equality, the presumption of innocence, and Article 25 ICCPR and General Comment No. 25.¹⁴² Research on prisoner voting also suggests that participation can support rehabilitation by preserving citizenship, public engagement, and ties to the wider community.¹⁴³

The comparative and theoretical analysis in this article supports a clear normative conclusion: prisoner enfranchisement should begin from a presumption of innocence and voting should be treated as a core incident of citizenship, not a privilege lost through incarceration, and may be restricted only in narrow circumstances that are proportionate, justified, and consistent with the presumption of innocence.

¹³⁸ Penal Reform International, *The Right of Prisoners to Vote: A Global Overview* (PRI 2016).

¹³⁹ *Ibid.*

¹⁴⁰ 'Germany and France: Individualised Disenfranchisement and Inclusive Carceral Citizenship.'

¹⁴¹ 'European Human Rights Law and the United Kingdom.'

¹⁴² 'India: Civic Suspension and the Constitutional Challenge to Section 62(5).'

¹⁴³ 'Presumption of Innocence.'