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FROM ELECTORAL EXCLUSION TO CONSTITUTIONAL REMEDY: RECONSIDERING THE LEGAL CONSEQUENCES OF WRONGFUL VOTER EXCLUSION UNDER SPECIAL INTENSIVE REVISION

AUTHORED BY - PRASHANT KUMAR

INTRODUCTION

The right to vote is a fundamental feature of modern constitutional democracy. In India, this principle is reflected in Article 326 of the Constitution, which provides for elections to the House of the People and State Legislative Assemblies on the basis of adult suffrage¹. The Representation of the People Act, 1950 further regulates electoral rolls, including registration and disqualification². Although the Supreme Court has traditionally treated the right to vote as a statutory right, voting also has constitutional significance as an expression of political choice. Its importance is further recognised under Article 21 of the Universal Declaration of Human Rights (UDHR) and Article 25 of the International Covenant on Civil and Political Rights (ICCPR)³.

The Election Commission of India is constitutionally empowered under Article 324 of the Constitution of India⁴ to supervise elections, while Section 21(3) of the Representation of the People Act, 1950 provides for special revision of electoral rolls. Special Intensive Revision (SIR) is intended to maintain accurate electoral rolls by ensuring the inclusion of eligible electors and removal of persons who are legally ineligible. The exercise of this lawful power, however, may raise constitutional concerns where an eligible voter is wrongly excluded.

West Bengal provides a relevant context for examining this issue. The final electoral roll following the 2026 SIR was published on 28 February 2026. According to data disclosed in response to an RTI application, 82,782 appeals had been disposed of by the appellate tribunals, with 75,443 resulting in restoration of names and 7,339 resulting in exclusion⁵. These figures relate to appeals already decided and do not represent the total number of persons affected by the revision process.

¹ Constitution of India, arts. 326 and 324

² Representation of the People Act, 1950, ss. 15, 16, 19 and 21.

³ Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25.

⁴ Constitution of India, arts. 324.

⁵ Association for Democratic Reforms v. Election Commission of India, 2026 INSC 564 (27 May 2026).

The central difficulty arises where an eligible voter is wrongly excluded and the error is corrected only after the relevant election has concluded. Restoration may correct the electoral record and protect participation in future elections, but it cannot ordinarily recreate the opportunity to vote in an election that has already taken place.

This article therefore examines the distinction between **restoration of electoral status** and **restoration of electoral opportunity**. It considers the relevance of Articles 14, 19(1)(a), 21 and 38⁶, the statutory framework governing electoral rolls, and international human-rights principles. It also examines the legal maxims *damnum sine injuria*, *injuria sine damno* and *ubi jus ibi remedium* in understanding the nature of electoral injury and effective remedies.

The article further considers the remedial framework under Articles 32 and 226⁷ and the limited possibility of public-law compensation in exceptional cases, drawing upon the jurisprudence beginning with *Rudul Sah v. State of Bihar* and *Nilabati Behera v. State of Orissa*⁸. The argument is not that every deletion is unconstitutional or that SIR itself is unlawful, but that individual exclusions arising from its implementation must remain subject to legal scrutiny.

The central question is therefore: **where an eligible voter is wrongly excluded from the electoral roll, subsequently establishes eligibility, and is restored only after the relevant election, is restoration of electoral status sufficient to remedy the loss of the opportunity to participate in that election?** The article examines whether, in exceptional cases, the law may require a remedy that addresses not only the corrected electoral record but also the electoral consequence of the wrongful exclusion.

II. SPECIAL INTENSIVE REVISION: CONSTITUTIONAL AND STATUTORY FRAMEWORK

The preparation and revision of electoral rolls are essential to an electoral system because the rolls must include eligible voters and exclude persons who are legally disqualified. The Special Intensive Revision (SIR) conducted by the Election Commission of India must therefore be understood within the constitutional and statutory framework governing electoral rolls.

A. Constitutional and Statutory Basis

Article 324 of the Constitution gives the Election Commission of India the superintendence, direction and control of elections. Article 326 establishes the principle of adult suffrage for

⁶ Constitution of India, arts. 14, 19(1)(a), 21 and 38.

⁷ Constitution of India, arts. 32 and 226.

⁸ *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

elections to the House of the People and State Legislative Assemblies. The electoral-roll system gives practical effect to this constitutional principle by determining who is eligible to participate in elections.

The Representation of the People Act, 1950 (RPA 1950) provides the detailed statutory framework. Section 15 provides for electoral rolls for constituencies, Section 16 specifies grounds of disqualification, and Section 19 lays down conditions for registration, including age and ordinary residence. Section 21 deals with the preparation and revision of electoral rolls, while Section 21(3) empowers the Election Commission to order a special revision⁹.

The Supreme Court's decision in *Association for Democratic Reforms v. Election Commission of India*, 2026, concerning the Bihar SIR, is particularly important. In its judgment dated 27 May 2026, the Court upheld the validity of the Bihar SIR and recognised Section 21(3) as an autonomous statutory source of power for directing a special revision¹⁰. The Court also explained that Article 324 and Section 21(3) operate together, with Article 324 providing the constitutional authority and Section 21(3) providing the specific statutory basis for special revision¹¹.

B. Legitimate Purpose of SIR

Electoral-roll revision serves a legitimate purpose. Electoral rolls may contain names of deceased persons, duplicate entries, persons who have permanently shifted residence, or persons who otherwise do not satisfy the statutory requirements. Revision is therefore necessary to maintain accurate and reliable electoral rolls¹².

In the Bihar SIR judgment, the Supreme Court noted concerns relating to migration, urbanisation, non-reporting of deaths and duplicate entries, and held that the exercise was based on a legitimate purpose and satisfied the applicable requirements of proportionality.

The issue examined in this article is therefore not whether the Election Commission has the power to conduct an SIR. That power has been judicially recognised. The relevant question is what happens when that lawful process results in the wrongful exclusion of an otherwise eligible voter. The legality of SIR as a general exercise and the legality of an individual exclusion are distinct questions.

⁹ Representation of the People Act, 1950, ss. 15, 16, 19, 20 and 21.

¹⁰ Representation of the People Act, 1950, s. 21(3).

¹¹ *Association for Democratic Reforms v. Election Commission of India*, 2026 INSC 564 (27 May 2026).

¹² *Association for Democratic Reforms v. Election Commission of India*, 2026 INSC 564 (27 May 2026)

C. Role of Electoral Authorities and Procedural Safeguards

The electoral-roll process involves authorities such as the Electoral Registration Officer (ERO) and Booth Level Officers (BLOs). The ERO deals with matters relating to registration, claims, objections and deletion, while BLOs assist in field-level verification of electoral information. The Registration of Electors Rules, 1960 also provide procedural safeguards during revision. These include identification of doubtful entries, notice to the concerned elector, an opportunity to respond and a reasoned determination¹³. The Supreme Court, while considering the Bihar SIR, noted that these safeguards continued to apply and that non-inclusion at the draft stage was provisional until the prescribed scrutiny and hearing process was completed¹⁴.

These safeguards are important because an error in electoral-roll revision can directly affect an eligible person's ability to vote. The availability of claims, objections and appeals provides a means of challenging wrongful omission or deletion.

D. The Problem of Timing and Post-Election Restoration

The existence of procedural safeguards and appellate remedies does not necessarily mean that the remedy will be effective in every case. Timing is particularly important in electoral matters. If an eligible voter is wrongly excluded but the error is corrected before polling, the person's opportunity to vote can still be protected. However, if the name is restored only after the election, restoration corrects the electoral record but cannot recreate the opportunity to participate in the election that has already taken place.

This creates a distinction between restoring a person's electoral status and remedying the loss of an election-specific opportunity. The issue, therefore, is not whether electoral rolls should be revised, but whether the legal system provides an adequate remedy when a lawful revision process results in the wrongful exclusion of an eligible voter and the error is recognised only after the election.

This timing-based issue provides the basis for the subsequent analysis of Articles 14, 19(1)(a) and 21, the principles of effective remedy, *damnum sine injuria*, *injuria sine damno* and *ubi jus ibi remedium*, and the possibility of exceptional public-law compensation in appropriate cases.

¹³ Registration of Electors Rules, 1960, rr. 16–20.

¹⁴ Association for Democratic Reforms v. Election Commission of India, 2026 INSC 564 (27 May 2026).

III. RIGHT TO VOTE, POLITICAL JUSTICE AND ARTICLE 19(1)(a)

The legal nature of the right to vote requires a distinction between the **right to vote** and the **freedom involved in voting**. In *Jyoti Basu v. Debi Ghosal*, the Supreme Court described the right to elect as a statutory right regulated by election law¹⁵. Therefore, the right to vote, by itself, cannot be treated as an unrestricted Fundamental Right under Part III of the Constitution. However, the constitutional significance of voting cannot be determined solely by asking whether the right is statutory or fundamental. The subsequent jurisprudence of the Supreme Court has recognised that the exercise of the electoral choice involves a distinct freedom of expression protected by Article 19(1)(a).

In *Union of India v. Association for Democratic Reforms*, (2002), the Supreme Court recognised the voter's fundamental right to obtain relevant information about candidates as an aspect of freedom of speech and expression under Article 19(1)(a)¹⁶. This principle was substantially developed in *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003). The Court held that information concerning candidates was necessary for the voter to make an informed electoral choice and that the voter's right to know was an integral part of Article 19(1)(a). Justice P. Venkatarama Reddi further drew an important distinction between the statutory right to vote and the freedom of voting, observing that when an eligible voter actually casts a vote, the act constitutes an expression of the voter's opinion and preference and therefore attracts Article 19(1)(a)¹⁷.

This distinction became particularly important in *Kuldip Nayar v. Union of India*, (2006). The Constitution Bench reaffirmed the statutory character of the right to vote and rejected the proposition that the right to vote itself was a Fundamental Right. At the same time, subsequent Supreme Court discussion of *Kuldip Nayar* has clarified that it did not displace the distinction recognised in *PUCL* between the statutory right to vote and the freedom of voting as an aspect of freedom of expression¹⁸. Thus, the jurisprudence is better understood as protecting the **expressive exercise of electoral choice** under Article 19(1)(a), rather than converting the statutory entitlement to vote into an unrestricted Fundamental Right.

The principle was reaffirmed and applied in *People's Union for Civil Liberties v. Union of India*, (2013), concerning the voter's right to maintain secrecy when choosing not to vote. The Supreme Court expressly stated that the right to vote is distinct from the freedom of voting and

¹⁵ *Jyoti Basu v. Debi Ghosal*, (1982) 1 SCC 691.

¹⁶ *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

¹⁷ *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399.

¹⁸ *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1.

held that the freedom of voting, including the choice not to vote, is a facet of the fundamental right guaranteed by Article 19(1)(a). The Court consequently directed the introduction of the None of the Above (NOTA) option so that a voter's electoral choice could be expressed while maintaining secrecy¹⁹.

The same constitutional understanding has subsequently informed cases concerning the voter's **right to know** and the conditions necessary for meaningful electoral choice. In *Lok Prahari v. Union of India* (2018), the Supreme Court considered the disclosure of information concerning the assets and liabilities of candidates and reaffirmed the importance of informed electoral choice within the constitutional framework governing elections²⁰. The Court's election jurisprudence has consequently treated access to information necessary for evaluating candidates as closely connected with the voter's freedom of expression under Article 19(1)(a). The position was further reaffirmed by the Supreme Court in *Association for Democratic Reforms v. Union of India*, 2024. While examining the Electoral Bond Scheme, the Constitution Bench reiterated that the **right to vote is a constitutional and statutory right grounded in Article 19(1)(a), insofar as casting a vote amounts to the expression of an opinion by the voter**. The Court explained that meaningful electoral choice requires access to information that can materially influence the voter's decision²¹. The judgment therefore represents a significant contemporary reaffirmation of the relationship between voting, informed electoral choice and Article 19(1)(a).

Accordingly, the Supreme Court's jurisprudence from *PUCL* (2003) through *Kuldip Nayar* (2006), *PUCL* (2013)²² and the later cases concerning electoral information, culminating in *Association for Democratic Reforms* (2024), supports a careful distinction between the **legal entitlement to vote** and the **freedom expressed through the act of voting**. The former remains subject to the statutory framework governing electoral registration and elections, while the latter engages the fundamental freedom of speech and expression under Article 19(1)(a). This distinction is particularly important in the context of Special Intensive Revision, because the wrongful exclusion of an eligible voter may affect not merely an entry in an electoral register but the person's ability to exercise an expressive electoral choice.

This reasoning can be further understood through the constitutional approach adopted in *M.H. Hoskot v. State of Maharashtra* and *Hussainara Khatoon v. State of Bihar*. In those cases, the Supreme Court read Article 39A, concerning equal justice and free legal aid, together with

¹⁹ People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1.

²⁰ Lok Prahari v. Union of India, (2018) 4 SCC 699.

²¹ Association for Democratic Reforms v. Union of India, (2024) 5 SCC 234.

²² People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1.

Articles 14 and 21. The Court recognised that legal aid was necessary to make the guarantee of fair and reasonable procedure under Article 21 meaningful²³. The significance of these cases lies in their method of **harmonious constitutional interpretation**: a Directive Principle can inform the content and effective enjoyment of a Fundamental Right without itself becoming a Fundamental Right.

A similar approach may inform the interpretation of electoral participation. Article 38 directs the State to secure a social order informed by **social, economic and political justice**²⁴. While Article 38 does not itself create a Fundamental Right to vote, its reference to political justice is relevant when Article 326 is read alongside Articles 14, 19(1)(a) and 21. Article 326 establishes adult suffrage, Article 19(1)(a) protects the expressive dimension of political choice, and Articles 14 and 21 provide safeguards against arbitrary and unfair procedures²⁵.

This becomes particularly relevant in the context of Special Intensive Revision. Electoral-roll revision serves a legitimate purpose in maintaining accurate and reliable electoral rolls. However, where an otherwise eligible citizen is wrongly excluded, the consequence is not merely administrative. The citizen may be prevented from participating in an election and from expressing a political preference through voting. Where such a person is subsequently found eligible and the name is restored, this does not by itself establish that the earlier deletion was unlawful. It does, however, demonstrate the practical importance of procedural safeguards against wrongful exclusion.

The constitutional question, therefore, is not whether every deletion violates Article 19(1)(a), nor whether the State lacks authority to revise electoral rolls. The question is **whether the procedure provides adequate notice, opportunity for verification and effective remedies so that eligible citizens are not arbitrarily or unjustifiably prevented from exercising their electoral choice**.

Accordingly, the more defensible constitutional position is that **the statutory entitlement to vote under the electoral law operates within the constitutional framework of Article 326, while the freedom to express political choice through the act of voting engages Article 19(1)(a). Articles 14 and 21 provide additional protection against arbitrary and unfair exclusion, while Article 38 supplies the broader constitutional commitment to political justice**. Read together, these provisions do not transform the statutory right to vote into an unrestricted Fundamental Right, but they support the principle that electoral procedures must

²³ M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544; Hussainara Khatoon v. State of Bihar, (1979) 3 SCC 532.

²⁴ Constitution of India, art. 38.

²⁵ Constitution of India, arts. 14, 19(1)(a), 21 and 326.

protect both the integrity of the electoral roll and the meaningful participation of eligible citizens.

IV. ARTICLE 14, ARTICLE 19, ARTICLE 21 AND PROCEDURAL FAIRNESS

The constitutional examination of SIR should not be confined to Article 19(1)(a). **Articles 14 and 21** provide an additional framework for examining the manner in which electoral-roll revision is carried out.

Article 14 guarantees equality before the law and equal protection of the laws. Its protection has developed beyond a narrow prohibition of discriminatory classification and now includes the principle that State action must not be **arbitrary, unreasonable or unfair**²⁶. Therefore, even where the Election Commission possesses statutory authority to revise electoral rolls, the exercise of that authority may still be questioned if individual voters are excluded through arbitrary or irrational procedures.

The relevant question is therefore whether the procedure adopted for deletion provides adequate safeguards against wrongful exclusion. Factors such as proper verification, notice to the affected person, an opportunity to present relevant material, consideration of objections and timely appellate review become important in determining whether the process satisfies constitutional standards.

Article 21 is also relevant because the Supreme Court, particularly after *Maneka Gandhi v. Union of India*, has held that a procedure affecting life or personal liberty must be fair, just and reasonable and not arbitrary²⁷. Although the right to vote cannot simply be treated as a right directly guaranteed by Article 21, the broader constitutional principle of procedural fairness developed under Article 21 may inform the assessment of State action affecting important constitutional interests. The Principle of the Golden Triangle of the Indian Constitution can also be applied here. It refers to the close relationship between Article 14, Article 19 and Article 21 of the Constitution of India²⁸. These three Fundamental Rights play a crucial role in ensuring equality, freedom, and personal liberty for all individuals. Article 14 ensures equality before the law, Article 19 provides important freedoms such as freedom of speech, expression, assembly, and movement, and Article 21 guarantees the right to life and personal liberty.

²⁶ Constitution of India, art. 14.

²⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁸ Constitution of India, arts. 14, 19 and 21.

The significance of these principles becomes greater when the electoral authority acts against an eligible voter on the electoral roll. A procedure that technically provides an opportunity to challenge deletion may still raise constitutional concerns if the opportunity is practically ineffective, particularly where the decision is not corrected until before polling.

Thus, the constitutional inquiry should consider not merely **whether a remedy existed**, but whether the remedy was **timely and effective enough to protect the voter's participation in the relevant election**.

V. RIGHT TO VOTE AS A HUMAN RIGHT

The importance of voting is not confined to domestic constitutional law. Political participation is also recognised as an important human right under international law.

Article 21 of the Universal Declaration of Human Rights (UDHR) recognises the right to participate in government, directly or through freely chosen representatives, and provides that the will of the people shall be expressed through genuine periodic elections based on universal and equal suffrage²⁹. Similarly, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) recognises the right and opportunity to participate in public affairs and protects the right to vote and be elected through genuine periodic elections based on universal and equal suffrage and secret ballot³⁰.

These provisions show that electoral participation is more than a matter of administrative record-keeping. Electoral rolls are the means through which eligible citizens are enabled to participate in elections. Their accuracy therefore has a direct bearing on the practical exercise of political participation.

The principles of universality and equality do not mean that every person must be included in an electoral roll irrespective of legal qualifications. States may prescribe lawful conditions for electoral registration. However, once a person satisfies the applicable legal requirements, the electoral process should not arbitrarily prevent that person from participating.

This distinction is important in the context of Special Intensive Revision (SIR). SIR may legitimately be used to identify and remove persons who are not legally entitled to remain on the electoral roll. The concern arises when an eligible voter is wrongly excluded through error or defective procedure.

Timing is also significant. If an erroneous exclusion is corrected before polling, restoration of the voter's name may protect the opportunity to participate. If the error is recognised only after

²⁹ Universal Declaration of Human Rights, art. 21.

³⁰ International Covenant on Civil and Political Rights, art. 25.

the election, however, restoration cannot recreate the opportunity to vote in that particular election. The voter may participate in future elections, but the earlier opportunity has already passed.

International human-rights principles therefore provide an important context for examining wrongful electoral exclusion. They support the need to maintain accurate electoral rolls while also protecting genuine and equal political participation. In the context of SIR, the issue is consequently not the existence of electoral-roll revision itself, but whether the process adequately protects eligible citizens from wrongful exclusion and provides an effective remedy when such exclusion occurs.

VI. FROM EXCLUSION TO LEGAL INJURY

The central concern arises when the revision process results in the exclusion of a person who was legally entitled to remain on the electoral roll. The mere deletion of a name, however, cannot by itself be treated as unlawful. Electoral authorities are required to remove persons who are deceased, have permanently shifted residence, are legally disqualified, or otherwise do not satisfy the statutory requirements.

The difficulty arises where an eligible voter is wrongly excluded and is restored only after the relevant election has concluded. Consider a situation in which an eligible voter challenges the deletion of his or her name during SIR, establishes eligibility, but the challenge is decided only after polling. Although restoration corrects the electoral record and protects the person's participation in future elections, it cannot restore the opportunity to vote in the election that has already taken place.

This creates an important distinction between **restoration of electoral status** and **restoration of electoral opportunity**. Restoration of status means recognising the person again as an eligible elector. Restoration of opportunity would require restoring the position the person would have occupied had the wrongful exclusion not occurred. Once an election has concluded, that opportunity may no longer be capable of being recreated. Future voting opportunities cannot retrospectively substitute for the lost opportunity in a particular election.

The existence of legal injury therefore depends upon more than the fact of deletion. Three questions become relevant: whether the person was legally eligible to vote, whether the exclusion was erroneous or resulted from defective or unlawful action, and whether the exclusion actually prevented participation in the relevant election.

This also distinguishes the legality of an individual exclusion from the general validity of SIR. The Election Commission may possess lawful authority to revise electoral rolls, yet an

individual decision taken under that process may still be erroneous or procedurally defective and remain subject to legal scrutiny.

The timing of correction is therefore significant. If restoration occurs before polling, the exclusion may be corrected without loss of the election-specific opportunity. If restoration occurs only after polling, the electoral record may be corrected while the loss of participation in that election remains.

The issue can therefore be stated as follows: **when an eligible voter is wrongly excluded from an electoral roll, subsequently establishes eligibility, and is restored only after the relevant election, does restoration of electoral status adequately remedy the lost opportunity to participate in that election?**

This distinction between correction of status and correction of consequence provides the basis for examining the appropriate constitutional and legal remedies in the subsequent parts.

VII. APPLICATION OF THE LATIN MAXIMS

The traditional maxims *damnum sine injuria*, *injuria sine damno* and *ubi jus ibi remedium* provide useful conceptual tools for analysing wrongful electoral exclusion. They should, however, remain subordinate to the constitutional and statutory framework and should not be treated as independent sources of a right to vote or compensation.

A. *Damnum sine injuria*

Damnum sine injuria means damage without legal injury³¹. The maxim establishes that actual loss does not by itself create a legal claim where no legally protected right has been violated. Its relevance to SIR is limited but important. A person may experience the practical and democratic loss of not voting, but compensation or other legal relief cannot follow merely from the fact of that loss. The claimant must first establish that the exclusion was unlawful or that a legally protected interest was violated.

Thus, the maxim provides a threshold inquiry: **was the exclusion merely an adverse consequence of a lawful electoral decision, or did it result from an unlawful or procedurally defective exercise of authority?**

B. *Injuria sine damno*

Injuria sine damno means legal injury without proof of actual financial or material loss³². The

³¹ Black's Law Dictionary 480 (Bryan A. Garner ed., 11th edn., Thomson Reuters, 2019)

³² Black's Law Dictionary 480 (Bryan A. Garner ed., 11th edn., Thomson Reuters, 2019)

classic illustration is *Ashby v. White*, where an eligible voter was wrongfully prevented from voting³³.

The relevance of the maxim to SIR is that electoral injury need not necessarily be measured in financial terms. If an eligible voter is unlawfully prevented from participating in an election, the absence of monetary loss does not necessarily eliminate the legal significance of the exclusion. The relevant injury may consist in the denial of the legally protected electoral opportunity itself.

C. *Ubi jus ibi remedium*

Ubi jus ibi remedium means that where there is a right, there should be a remedy³⁴. The maxim does not itself create a constitutional right to vote or a right to compensation. Its relevance lies in the effectiveness of the remedy after a legal violation has been established.

This principle becomes particularly important where an eligible voter is restored to the electoral roll only after the election. Restoration may correct the record, but if the legal violation has already deprived the person of participation in a completed election, the adequacy of restoration as a remedy becomes questionable.

Accordingly, the three maxims should be used briefly and collectively. They establish three propositions: **damage alone is insufficient; legal injury need not produce financial loss; and an established legal wrong should ordinarily have an effective remedy.** The ultimate determination, however, must come from the Constitution, electoral legislation and applicable judicial principles.

VIII. CONSTITUTIONAL COMPENSATION FOR WRONGFUL ELECTORAL EXCLUSION

The question of compensation is the most difficult and novel part of the argument. The issue is not whether a vote can be assigned a monetary value, but whether monetary compensation may, in exceptional circumstances, operate as a public-law remedy where an established constitutional violation has caused an injury that can no longer be practically reversed.

Indian constitutional jurisprudence recognises that constitutional courts may, in appropriate cases, award monetary compensation for established violations of fundamental rights. In *Rudul Sah v. State of Bihar*³⁵, the Supreme Court recognised compensation as an appropriate public-

³³ *Ashby v. White*, (1703) 2 Ld Raym 938, 92 ER 126.

³⁴ *Black's Law Dictionary 1850* (Bryan A. Garner ed., 11th edn., Thomson Reuters, 2019)

³⁵ *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.

law remedy where ordinary legal remedies were insufficient to provide meaningful redress. This principle was further developed in *Nilabati Behera v. State of Orissa*³⁶. These cases, however, do not automatically extend to electoral-roll disputes.

There are important limitations. The right to vote has traditionally been treated as a statutory right, and not every wrongful deletion from an electoral roll will amount to a violation of a Fundamental Right. Administrative error alone cannot therefore justify public-law compensation. The remedy must remain exceptional and require a sufficiently serious constitutional or public-law wrong.

A possible claim for such compensation may arise where the following circumstances are cumulatively established:

1. the person was legally eligible to vote;
2. the person was wrongly excluded from the electoral roll;
3. the exclusion resulted from arbitrary, unlawful or seriously defective State action;
4. the exclusion actually prevented participation in a particular election;
5. the person's eligibility was subsequently established and the electoral status restored;
and
6. restoration occurred only after the relevant election, making the lost opportunity incapable of effective reversal.

Causation is particularly important. It must be shown that the wrongful exclusion actually prevented the person from voting. The conduct of the authorities would also be relevant. A bona fide error promptly corrected before polling would present a different remedial situation from an exclusion involving disregard of mandatory safeguards, failure to consider material evidence, or arbitrary administrative action.

The availability and adequacy of ordinary statutory remedies must also be considered. Constitutional compensation should not replace the existing mechanisms for claims, objections, appeals and correction of electoral rolls. It should arise only where those mechanisms have failed to prevent or adequately redress a constitutionally significant injury.

The justification for compensation, therefore, would not be that the State can place a monetary value on a vote. Rather, it would recognise that an important constitutional opportunity to participate was unlawfully denied and that, once the election has concluded, restoration of the electoral record cannot restore that particular opportunity.

Accordingly, the argument should remain narrow: where wrongful electoral exclusion is

³⁶ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

established as a serious constitutional or public-law violation, actually prevents participation in a completed election, and cannot be effectively remedied through ordinary legal mechanisms, constitutional compensation may be considered as an exceptional remedial possibility.

IX. ARTICLES 32 AND 226: THE REMEDIAL FRAMEWORK

The Constitution provides judicial remedies against unlawful State action through Articles 32 and 226. Article 32 enables a person to approach the Supreme Court for enforcement of Fundamental Rights, while Article 226 gives High Courts wider writ jurisdiction for the enforcement of Fundamental Rights as well as other legal rights³⁷.

These provisions are relevant where an eligible voter is wrongly excluded from the electoral roll. The existence of statutory mechanisms for claims, objections and appeals does not place electoral authorities beyond judicial review. Where the procedure adopted is arbitrary, unlawful or procedurally defective, an affected person may seek appropriate relief, subject to the applicable electoral law and the circumstances of the case.

Article 32, however, is relevant only where the facts disclose a violation of a Fundamental Right. Since the right to vote has traditionally been treated by the Supreme Court as a statutory right, every wrongful deletion from an electoral roll cannot automatically give rise to a claim under Article 32. An independent constitutional violation would be necessary³⁸.

Article 226 provides a wider basis for judicial intervention. A High Court may examine whether the electoral authorities acted according to law, followed the prescribed procedure, provided a proper opportunity to establish eligibility, and relied upon relevant material. Relief may include restoration or correction of the electoral record, reconsideration of the claim, or other appropriate directions.

The timing of judicial intervention is particularly important. If an erroneous exclusion is corrected before polling, restoration may effectively protect the voter's opportunity to participate. If restoration occurs only after the election, however, the electoral record may be corrected while the opportunity to vote in that particular election remains lost. Thus, restoration of electoral status does not necessarily restore the electoral opportunity itself.

This distinction is important to the question of remedy. A wrongful exclusion may produce two related but distinct consequences: the incorrect removal of the person's name from the electoral roll and the resulting loss of participation in a particular election. Judicial relief can ordinarily

³⁷ Constitution of India, arts. 32 and 226.

³⁸ Constitution of India, arts. 32 and 226.

correct the first, but may not be capable of reversing the second once the election has concluded.

The existence of constitutional remedies should not, therefore, be understood as creating a separate electoral process outside the statutory framework. Articles 32 and 226 provide constitutional avenues for reviewing unlawful State action and ensuring that available remedies are effective in the circumstances of the case.

The question of compensation discussed above would arise only in exceptional circumstances. It would require, at minimum, proof of eligibility, wrongful exclusion, actual loss of participation in the relevant election, and inadequacy of ordinary remedies. The central consideration remains the timing of correction: **where restoration occurs before polling, the lost opportunity may be effectively preserved; where restoration occurs only after polling, further remedial questions arise because the particular electoral opportunity can no longer ordinarily be restored.**

X. CONCLUSION

The Special Intensive Revision of electoral rolls is a legitimate exercise aimed at maintaining accurate electoral rolls³⁹. The legal concern arises not from the existence of this power, but from the wrongful exclusion of an otherwise eligible voter. The central distinction is between **restoration of electoral status** and **restoration of electoral opportunity**. While restoration of the name may correct the electoral record and enable participation in future elections, it cannot ordinarily restore the opportunity to vote in an election that has already concluded.

This does not mean that every wrongful exclusion constitutes a violation of a Fundamental Right or automatically gives rise to compensation. The right to vote has traditionally been recognised as statutory⁴⁰, although voting has constitutional significance through political expression and the requirements of fair and non-arbitrary State action. Articles 32 and 226 provide judicial avenues where the relevant constitutional or legal requirements are satisfied, alongside the statutory mechanisms governing electoral rolls.

The possibility of constitutional compensation must remain exceptional⁴¹. Where an eligible voter is wrongly excluded through serious unlawful or procedurally defective State action, is actually prevented from participating in an election, and ordinary remedies cannot adequately address the resulting injury, an appropriate constitutional court may consider whether further

³⁹ Association for Democratic Reforms v. Election Commission of India, 2026 INSC 564 (27 May 2026).

⁴⁰ Jyoti Basu v. Debi Ghosal, (1982) 1 SCC 691.

⁴¹ Rudul Sah v. State of Bihar, (1983) 4 SCC 141; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

public-law relief is necessary. Such compensation would not place a monetary value on the vote, but would address an injury whose electoral consequence can no longer be reversed.

The central proposition of this paper is therefore that **correction of the electoral record should not necessarily be treated as complete redress where an eligible voter is wrongly excluded and restored only after the relevant election**. The adequacy of the remedy must also account for the lost opportunity to participate, the conduct of the authorities, the safeguards followed, the availability of timely remedies, and the seriousness of the resulting legal injury.

