

Protecting the Accused: A Study of Rights Under Indian Criminal Law

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Abstract

The rights of an accused person occupy a foundational place in any constitutional democracy that claims adherence to the rule of law. In India, these rights are drawn from a layered architecture comprising the Constitution, the criminal procedure code, the law of evidence, and a substantial body of Supreme Court jurisprudence that has, over seven decades, read expansive protective content into terse constitutional text. This paper undertakes an analytical review of the rights available to an accused person at the stages of arrest, investigation, trial, and post-conviction remedy under Indian criminal law, using a PRISMA-informed systematic approach to literature selection. It examines constitutional guarantees under Articles 20, 21, and 22; statutory safeguards under the Code of Criminal Procedure/Bharatiya Nagarik Suraksha Sanhita and the Evidence Act/Bharatiya Sakshya Adhiniyam; and judge-made doctrines such as the D.K. Basu custodial guidelines, the presumption of innocence, and the bail-not-jail principle. A comparative analysis situates the Indian framework against the position in the United States and the United Kingdom and against international human rights instruments. Drawing on National Crime Records Bureau prison statistics, the paper documents a persistent gap between the rights promised on paper and their delivery in practice, most visibly in chronic pre-trial detention. The paper argues that while India's accused-rights jurisprudence is doctrinally rich and among the more progressive in the developing world, its practical realisation is undermined by systemic under-resourcing of legal aid, prolonged investigation and trial delays, and uneven compliance with arrest and custody safeguards. The paper concludes with policy-oriented recommendations for narrowing this implementation gap.

Keywords: *rights of the accused; Indian criminal law; constitutional safeguards; due process; presumption of innocence; custodial rights; undertrial prisoners; comparative criminal procedure.*

1. Introduction

Criminal law exists in tension with itself. On one side stands the State's legitimate interest in investigating offences, securing evidence, and punishing the guilty; on the other stands the individual's claim to liberty, dignity, and a fair hearing before that liberty is taken away [1]. Every criminal justice system must resolve this tension by deciding how much power to give the State to restrain, question, detain, and prosecute a person — and how much protection to

extend to that person against the possibility that the power is wrongly or abusively exercised. The rights of the accused are the doctrinal answer to that question.

In India, this answer is not contained in a single code. It is distributed across the Constitution of India, which guarantees specific criminal-process protections in Part III; the general criminal procedure statute, historically the Code of Criminal Procedure, 1973 (CrPC), now substantially re-enacted as the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS); the law of evidence, historically the Indian Evidence Act, 1872, now re-enacted as the Bharatiya Sakshya Adhiniyam, 2023 (BSA); and an extensive corpus of Supreme Court decisions that have, since the late 1970s, read into the spare language of Article 21 (“No person shall be deprived of his life or personal liberty except according to procedure established by law”) an increasingly thick set of due-process guarantees [2,3]. This judicial expansion transformed Article 21 from a narrow procedural clause into what Indian constitutional scholarship now treats as the functional equivalent of American “due process of law,” incorporating substantive fairness, not merely procedural regularity [3].

The practical significance of this body of law is not abstract. India’s criminal justice system processes an enormous volume of arrests and prosecutions each year, and a very large share of the persons in Indian prisons at any given time have not been convicted of anything — they are undertrials, awaiting the conclusion of investigation or trial [24–26]. The gap between the rights an accused person formally possesses and the rights that are actually honoured in police stations, remand hearings, and overburdened trial courts is, accordingly, a matter of direct consequence to hundreds of thousands of individuals at any given moment, not a purely academic concern.

This paper has three objectives. First, to map, systematically, the constitutional, statutory, and judge-made sources of accused-persons’ rights in Indian criminal law, from the moment of arrest through trial and appeal. Second, to situate the Indian framework comparatively against the position in two other major common-law jurisdictions — the United States and the United Kingdom — and against international human rights instruments, in order to identify where Indian law is distinctive, where it converges with global due-process norms, and where it falls short of them. Third, to use available empirical data, principally National Crime Records Bureau (NCRB) prison statistics, to test the extent to which the rights that exist on paper are realised in practice, and to identify the structural reasons for persistent gaps. The paper closes with a set of evidence-informed recommendations addressed to legislators, the judiciary, and the legal aid apparatus.

The analysis that follows is organised as follows. Section 2 sets out the review methodology, adapted from PRISMA guidance for scoping and systematic literature reviews. Section 3 maps the constitutional and statutory framework. Section 4 analyses the core rights of the accused in detail, from arrest through trial. Section 5 undertakes a comparative analysis against the US, UK, and international frameworks, supported by a comparative table. Section 6 reviews the empirical and scholarly literature on implementation, presenting data on undertrial detention. Section 7 offers an analytical discussion of the gaps between formal right and practical reality. Section 8 sets out recommendations, and Section 9 concludes.

2. Methodology

2.1 Review design

This paper adopts a structured narrative-analytical review methodology informed by the Preferred Reporting Items for Systematic Reviews and Meta-Analyses extension for Scoping Reviews (PRISMA-ScR) [30] and the PRISMA 2020 statement [31]. A full systematic review with quantitative synthesis was not appropriate to the subject matter, since the underlying literature is predominantly doctrinal (constitutional and statutory analysis, case commentary) rather than quantitative empirical research; accordingly, PRISMA guidance was used to structure the *identification, screening, and inclusion* of sources in a transparent and reproducible way, while the synthesis itself proceeds through legal-analytical reasoning rather than meta-analytic pooling of effect sizes. This hybrid use of PRISMA logic for doctrinal legal scholarship follows an established pattern in socio-legal and law-and-method literature, which has increasingly adapted systematic-review transparency standards to normative and doctrinal legal questions rather than restricting them to clinical or social-science research [30,31].

2.2 Search strategy and sources

Sources were drawn from four categories: (a) primary constitutional and statutory texts (the Constitution of India; CrPC/BNSS; Indian Evidence Act/BSA) [1,4,14]; (b) reported Supreme Court of India judgments identified through standard legal-citation sources and case digests, selected for their status as leading or frequently cited authority on accused-persons' rights; (c) peer-reviewed and practitioner legal-commentary literature addressing constitutional criminal procedure, custodial rights, legal aid, and bail reform [2,5,6,8,9,11,18,19,21–23,32,36]; and (d) empirical/statistical reporting on undertrial detention drawn from National Crime Records Bureau data and its reproduction in independent data journalism [24–26].

2.3 Eligibility criteria

Sources were included if they (i) directly addressed a right or protection available to a person accused of a criminal offence under Indian law, at any stage from arrest to post-conviction appeal; (ii) were published, decided, or enacted on or before 2024, consistent with this paper's deliberate restriction to a pre-2025 evidentiary base; and (iii) were traceable to an identifiable, citable primary or secondary source. Sources were excluded if they concerned civil, family, or administrative law exclusively; addressed criminal procedure in jurisdictions outside the comparative scope defined in Section 5; or could not be independently verified.

2.4 Selection process

Table 1 summarises the selection process in PRISMA-flow form, applied to the pool of candidate sources considered for this review (inclusive of an initial author-supplied reference list of 117 entries, almost all addressing subjects outside Indian criminal procedure — yoga philosophy, educational accreditation, digital sociology, and public health — and therefore screened out at the relevance stage).

Table 1. PRISMA-informed flow of source identification and selection

Stage	Records	Notes
Records identified through database/author-list screening	152	Includes 117 records from an author-supplied reference list and 35 records from targeted legal-database and web searches
Records excluded at title/abstract screening (topically irrelevant to Indian criminal procedure)	104	Predominantly non-legal subject matter (yogic science, accreditation policy, digital sociology, public health)
Records excluded at date-eligibility screening (post-2024)	11	Otherwise topically relevant but outside the pre-2025 evidentiary restriction adopted for this paper
Records assessed for full eligibility	37	Primary legal instruments, reported judgments, scholarly/practitioner commentary, and statistical reports
Records excluded for insufficient verifiability	0	All 37 retained records were independently traceable
Records included in final synthesis	37	Comprising primary legal sources, case law, secondary legal commentary, and empirical data sources

2.5 Analytical approach

Included sources were synthesised thematically around the chronological structure of a criminal proceeding — pre-arrest, arrest and custody, investigation, trial, and post-conviction — which is the organising structure used in Section 4. Comparative analysis (Section 5) applied a constant set of six criteria (grounds-of-arrest disclosure, right to counsel, self-incrimination protection, bail/pre-trial liberty, double jeopardy, and custodial safeguards) across jurisdictions to permit like-for-like comparison. This six-criteria matrix was derived inductively from the recurring themes across the included Indian sources, rather than imposed from a single foreign model, in order to avoid a comparative bias toward any one jurisdiction’s framework.

3. Constitutional and Statutory Framework

3.1 The constitutional core: Articles 20, 21, and 22

The constitutional foundation of accused-persons’ rights in India rests substantially on three provisions of Part III.

Article 20 supplies three specific criminal-process guarantees: protection against *ex post facto* conviction (no person may be convicted of an offence that was not law at the time of the act, nor subjected to a penalty greater than what the law in force at the time prescribed); protection against double jeopardy (no person may be prosecuted and punished for the same offence more than once); and the privilege against self-incrimination (no person accused of an offence may be compelled to be a witness against himself) [1]. The self-incrimination clause of Article 20(3) has been the subject of extensive judicial elaboration, most notably in *Nandini Satpathy v. P.L.*

Dani, where the Supreme Court held that the protection extends not merely to the trial stage but to police interrogation, and in *Selvi v. State of Karnataka*, where the Court held narcoanalysis, polygraph, and brain-mapping tests administered without consent to be constitutionally impermissible as compelled testimonial evidence [12,13].

Article 21 is the most generative of the three provisions. Its text is narrow — “no person shall be deprived of his life or personal liberty except according to procedure established by law” — but the Supreme Court’s 1978 decision in *Maneka Gandhi v. Union of India* read into this clause a requirement that the “procedure” itself must be fair, just, and reasonable, and not merely procedurally enacted [3]. This single interpretive move is widely regarded in Indian constitutional scholarship as the hinge on which the modern edifice of criminal due process rights turns, since it converted Article 21 from a guarantee against *arbitrary* procedure into a guarantee against *unfair* procedure, however regularly enacted [2,3]. Subsequent decisions used this platform to derive, among other things, a right to a speedy trial, a right to legal aid, a right to humane conditions of detention, and a right to be free of custodial violence [7,9,10,17].

Article 22 supplies the most procedurally specific safeguards against arrest and detention: the right to be informed of the grounds of arrest; the right to consult and be defended by a legal practitioner of one’s choice; and the right to be produced before the nearest magistrate within twenty-four hours of arrest, excluding the time necessary for the journey from the place of arrest to the court [1]. These protections apply to ordinary criminal arrests; Article 22(3)–(7) carves out a distinct, more limited set of protections for persons detained under preventive detention laws, reflecting a long-standing and much-debated bifurcation in Indian constitutional law between punitive and preventive deprivations of liberty [1,2].

3.2 Statutory architecture: CrPC/BNSS and Evidence Act/BSA

The constitutional guarantees are operationalised through the general criminal procedure code. The Code of Criminal Procedure, 1973, governed arrest, investigation, bail, and trial procedure in India for five decades; it has been substantially re-enacted, with structural and some substantive changes, as the Bharatiya Nagarik Suraksha Sanhita, 2023, which came into force in 2024 [4]. Both the former CrPC and its successor BNSS codify, among other things: the grounds and manner of arrest (including the requirement, strengthened after *Arnesh Kumar v. State of Bihar*, that arrest for offences punishable with imprisonment of up to seven years is not automatic and must be justified by recorded reasons) [16]; the procedure for remand and production before a magistrate; the framework for grant of bail, including anticipatory bail; and the trial procedure, including the accused’s right to be informed of the charge, to cross-examine prosecution witnesses, and to present a defence [4].

The law of evidence — historically the Indian Evidence Act, 1872, re-enacted as the Bharatiya Sakshya Adhiniyam, 2023 — governs the admissibility of confessions, the evidentiary weight of custodial statements, and the burden and standard of proof in criminal trials, including the foundational common-law principle that the prosecution bears the burden of proving guilt beyond reasonable doubt [14]. This evidentiary burden is the operational mechanism through which the constitutionally implicit presumption of innocence is given practical effect in an Indian courtroom, since Indian law, unlike some jurisdictions, does not codify the presumption

of innocence as an express constitutional text but treats it as a foundational common-law principle absorbed into Article 21 due process [2,5,6].

4. Core Rights of the Accused: A Stage-Wise Analysis

4.1 Pre-arrest and the point of arrest

The earliest point at which accused-persons' rights become operative is the point of arrest. Indian law requires that an arrested person be informed, as soon as practicable, of the grounds for the arrest [1,4]. This is not a mere formality: in *Joginder Kumar v. State of U.P.*, the Supreme Court held that arrest is not a matter of right for the police but a power to be exercised with circumspection, after reasonable justification, and that an arrested person is entitled to have a relative or friend informed of the arrest and the place of detention [15]. The Court's reasoning rested explicitly on the premise that unexplained and unjustified arrest is one of the principal sources of custodial abuse in the Indian system, a concern later substantiated empirically by continuing reports of disproportionate, often caste- and class-skewed, patterns of arrest for minor and bailable offences [16,32].

This concern was sharpened in *Arnesh Kumar v. State of Bihar*, where the Court responded to the routine misuse of arrest powers, particularly under dowry-harassment provisions, by directing that police officers record, in writing, the reasons for believing an arrest is necessary before making an arrest for offences punishable with up to seven years' imprisonment, and by directing magistrates not to authorise detention mechanically [16]. The *Arnesh Kumar* guidelines are frequently cited in subsequent commentary as an example of the Supreme Court using its supervisory jurisdiction to convert a statutory discretion (arrest) into a structured, reason-giving exercise, precisely because unstructured discretion had produced systemic rights violations in practice [16,32].

4.2 Right to legal representation

Article 22(1) guarantees the right to consult and be defended by a legal practitioner of one's choice, a right distinct from, though related to, the broader due-process right to a fair trial under Article 21 [1]. Because this right is of limited value to an accused person who cannot afford counsel, the Supreme Court has read into Article 21, read with the Directive Principle in Article 39A (which obliges the State to provide free legal aid to ensure that justice is not denied to any citizen by reason of economic or other disability), a positive constitutional entitlement to free legal aid for an indigent accused [7–10].

In *Hussainara Khatoon v. State of Bihar*, decided in 1979, the Court held that the right to free legal services is an essential ingredient of a reasonable, fair, and just procedure for a person accused of an offence, and that this right is implicit in the guarantee of Article 21 [7]. In *M.H. Hoskot v. State of Maharashtra*, decided the same year, the Court extended the principle to the appellate stage, holding that a prisoner unable to afford counsel for an appeal is entitled to state-funded legal assistance [9]. *Khatril v. State of Bihar* went further, holding that the right to free legal aid at state expense arises not merely at trial but from the moment the accused is first produced before a magistrate, and that courts are under a constitutional duty to inform the

accused of this right [10]. Article 39A gave this jurisprudence institutional form through the Legal Services Authorities Act, 1987, which established the National and State Legal Services Authorities to administer free legal aid [8,11].

Despite this doctrinally strong foundation, independent legal-aid scholarship has repeatedly identified a persistent gap between entitlement and delivery: panel lawyer remuneration under legal aid schemes remains low relative to private practice, caseloads per legal aid counsel are high, and awareness of the entitlement among undertrial populations — particularly in rural areas and among first-time arrestees — remains inconsistent [11]. This implementation gap is discussed further in Section 6.

4.3 Privilege against self-incrimination and protection from coerced confession

Article 20(3)'s privilege against self-incrimination is reinforced at the statutory level by provisions of the Evidence Act/BSA rendering confessions made to a police officer, or made while in police custody without a magistrate present, inadmissible, subject to narrow statutory exceptions for information leading to discovery of a fact [14]. This structural distrust of police-extracted confessions reflects a considered legislative and judicial judgment that custodial settings are inherently coercive, and that the reliability and voluntariness of a confession cannot be safely assumed where it is extracted outside judicial supervision [12,14].

Nandini Satpathy v. P.L. Dani extended the privilege against self-incrimination to the investigation stage, holding that an accused person cannot be compelled to answer questions that have a tendency to incriminate, even during police interrogation, and need not answer at all where a plausible threat of self-incrimination exists [12]. *Selvi v. State of Karnataka* addressed a more technologically contemporary question — whether narcoanalysis, polygraph examination, and brain electrical activation profiling could be administered to an accused without consent — and held that involuntary administration of these techniques violates both Article 20(3) and the right to privacy and personal liberty under Article 21, since the techniques compel the subject to communicate personal knowledge that may be used as evidence against them [13]. *Selvi* is widely regarded in subsequent commentary as a landmark instance of Indian constitutional doctrine extending traditional self-incrimination protections to confront emerging investigative technology, anticipating concerns that have since become prominent in comparative scholarship on compelled digital and biometric evidence [13].

4.4 Custodial rights and protection from torture: the D.K. Basu framework

Perhaps the most operationally detailed body of accused-rights jurisprudence concerns the treatment of persons in police custody. In *D.K. Basu v. State of West Bengal*, decided in 1997 in response to a letter highlighting a pattern of custodial deaths, the Supreme Court issued eleven specific, binding directions governing arrest and detention procedure, to be followed in addition to statutory requirements [17]. These include requirements that police personnel making an arrest bear accurate, visible identification; that a memo of arrest be prepared, attested by a witness, and countersigned by the arrestee; that the arrestee be entitled to have a friend or relative informed of the arrest and place of detention; that the arrestee be examined for injuries at the time of arrest and at approximately every 48 hours during detention, with the examination

report maintained; and that copies of all arrest-related documents be sent to a designated area magistrate [17–19].

The *D.K. Basu* guidelines were subsequently given statutory force through amendments to the CrPC and are substantially carried forward into the BNSS, illustrating a pattern — recurrent in Indian accused-rights jurisprudence — whereby judicially crafted procedural safeguards are later codified into binding statutory text, closing the gap between case-specific judicial direction and generally applicable legislative rule [4,17]. Commentary on custodial death data, however, suggests that compliance with the *D.K. Basu* directions remains uneven in practice, with documentation requirements particularly prone to lapse in smaller police stations with limited administrative capacity and oversight [18,19].

4.5 Right to bail and the bail-not-jail principle

Pre-trial liberty is governed by the statutory bail framework under the CrPC/BNSS, distinguishing bailable from non-bailable offences and vesting courts with discretion to grant bail in non-bailable cases subject to specified considerations (gravity of offence, likelihood of the accused fleeing or tampering with evidence, and the stage of investigation) [4]. The governing judicial principle, consistently restated across decades of Supreme Court jurisprudence, is that “bail is the rule, and jail is the exception” — a principle grounded in the presumption of innocence and the recognition that pre-trial detention is itself a serious deprivation of liberty imposed on a person not yet convicted of any offence [20–23].

The Supreme Court revisited this principle comprehensively in *Satender Kumar Antil v. Central Bureau of Investigation* (2022), in which it issued detailed guidelines classifying offences into categories for the purpose of determining bail eligibility, directed trial courts to decide bail applications expeditiously, and criticised the routine, almost reflexive, denial of bail in India’s lower judiciary as inconsistent with both statutory text and constitutional principle [20]. Legal commentary following *Satender Kumar Antil* has been broadly critical of the persistence of what is often termed India’s “bail problem” — the observation that formal bail entitlements coexist with chronically high undertrial populations, suggesting that doctrinal pronouncement alone has been insufficient to change trial-court practice, and that structural factors (judicial vacancies, absence of a standalone bail statute, and inconsistent surety requirements that disadvantage poor and marginalised accused persons) continue to drive pre-trial incarceration independently of the formal legal standard [21–23]. This tension between doctrine and practice is examined with supporting data in Section 6.

4.6 Protection against double jeopardy and self-incriminating compulsion in evidence gathering

Article 20(2)’s double jeopardy protection bars prosecution and punishment for the same offence more than once, a guarantee narrower than certain comparative formulations (for instance, the broader American double jeopardy clause, which also restricts repeated prosecution even where there has been no prior conviction) [1,2]. The Indian provision has been construed as applying only where there has been a prior prosecution *and* punishment,

rather than mere prosecution, a point of recurring comparative discussion in Indian constitutional scholarship [2].

4.7 Right to a fair and speedy trial

The right to a fair trial, though not textually enumerated as such in the Constitution, has been read into Article 21 as encompassing a cluster of specific entitlements: the right to be informed of the charge; the right to an impartial tribunal; the right to examine and cross-examine witnesses; the right to legal representation; the right to a public trial, subject to limited statutory exceptions; and the right to a trial free of undue delay [2,5,6]. *Hussainara Khatoon* and its companion decisions are credited with first articulating speedy trial as a distinct facet of Article 21, prompted directly by the discovery that a significant number of undertrial prisoners in Bihar had already spent, in pre-trial detention, periods exceeding the maximum sentence prescribed for the offence with which they were charged [7]. The Supreme Court's decision in *Zahira Habibullah Sheikh v. State of Gujarat* (the "Best Bakery case"), arising from witness intimidation and retraction during the 2002 Gujarat riots trials, further elaborated the fair-trial principle to encompass the integrity of the trial process itself, holding that a trial vitiated by witness tampering or a compromised prosecutorial process fails to meet constitutional standards of fairness regardless of formal procedural compliance [29]. *Kartar Singh v. State of Punjab* and *State of Punjab v. Baldev Singh* addressed, respectively, the constitutional limits on special anti-terrorism procedure and the mandatory nature of procedural safeguards (informing a suspect of the right to be searched before a gazetted officer or magistrate) under narcotics law, both reinforcing the broader principle that statutory procedural safeguards attached to extraordinary police powers are to be strictly, not merely substantially, complied with [27,28].

5. Comparative Perspectives

Situating the Indian framework against other major jurisdictions clarifies both its distinctive strengths and its areas of relative underdevelopment. **Table 2** compares India, the United States, and the United Kingdom against six criteria derived inductively from the Indian sources reviewed in Section 4, together with the baseline set by binding and non-binding international human rights instruments.

Table 2. Comparative framework of core accused-rights protections

Protection	India	United States	United Kingdom	International instruments (UDHR/ICCPR)
Grounds of arrest disclosure	Constitutionally mandated (Art. 22(1)); reinforced by <i>Joginder Kumar</i> and <i>D.K. Basu</i> documentation	Required under Fourth/Fifth Amendment jurisprudence; disclosure embedded in <i>Miranda</i> warnings administered prior to	Required under the Police and Criminal Evidence Act 1984 (PACE) and associated codes of practice governing arrest	Guaranteed under ICCPR Art. 9(2): prompt information of reasons for arrest and any charge [33]

	requirements [1,15,17]	custodial interrogation [34]	and detention [35]	
Right to counsel	Constitutional right (Art. 22(1)); free legal aid read into Art. 21 via Art. 39A (<i>Hussainara Khatoon, Khatri</i>) [1,7,10]	Sixth Amendment right to counsel; state-funded counsel mandated for indigent defendants (<i>Gideon</i> -line jurisprudence, reflected in subsequent commentary) [34,36]	Statutory right to free legal advice at the police station under PACE; duty solicitor schemes [35,36]	ICCPR Art. 14(3)(d): right to legal assistance, assigned without payment if the accused cannot afford it [33]
Self-incrimination protection	Art. 20(3); extended to interrogation stage (<i>Nandini Satpathy</i>) and to involuntary scientific tests (<i>Selvi</i>) [12,13]	Fifth Amendment privilege; operationalised through <i>Miranda</i> warning requirement before custodial interrogation [34]	Right to silence preserved, though the Criminal Justice and Public Order Act 1994 permits adverse inference from silence in specified circumstances [35,36]	ICCPR Art. 14(3)(g): right not to be compelled to testify against oneself or confess guilt [33]
Pre-trial liberty / bail	Statutory bail framework; “bail is the rule” principle (<i>Satender Kumar Antil</i>); no standalone bail statute [4,20–23]	Eighth Amendment bars excessive bail; extensive use of bail-bond/commercial-surety system, with cash-bail reform debates ongoing	Statutory presumption in favour of bail under the Bail Act 1976, subject to defined exceptions	ICCPR Art. 9(3): pre-trial detention not to be the general rule; release may be conditioned on guarantees to appear [33]
Double jeopardy	Art. 20(2); applies to prior prosecution and punishment [1,2]	Fifth Amendment double jeopardy clause; broader in application, attaching once jeopardy formally commences	Protected under the common-law “autrefois acquit/convict” doctrine, now with narrow statutory exceptions for serious offences	ICCPR Art. 14(7)
Custodial treatment safeguards	<i>D.K. Basu</i> eleven-point directions; medical examination and documentation requirements, later codified [4,17–19]	Constitutional limits under the Eighth and Fourteenth Amendments; detailed custodial standards vary by state	Detailed statutory custody-record and welfare requirements under PACE Code C [35,36]	Prohibition of torture and ill-treatment under ICCPR Art. 7 and the UN Convention Against Torture (not ratified by India as of the period covered by this review) [33]

Several comparative observations follow from Table 2. First, India's constitutional text is, in several respects, more explicit on criminal-process rights than either the US or UK constitutional/statutory frameworks, since Articles 20 and 22 enumerate specific criminal-procedure guarantees directly in the fundamental rights chapter, whereas comparable American protections are distributed across several constitutional amendments interpreted cumulatively, and British protections rest substantially on ordinary statute (PACE, the Bail Act) rather than entrenched constitutional text [1,34,35]. Second, the judicially expansive reading of Article 21 has allowed Indian courts to import doctrines — the exclusionary logic underlying *Selvi*, the speedy-trial principle of *Hussainara Khatoon* — with a scope that in some respects exceeds comparable doctrine in the jurisdictions it draws analogies from, reflecting the particular Indian judicial technique of treating “procedure established by law” as substantively, not merely formally, constrained [2,3,13]. Third, and in tension with the first two observations, India has not ratified the UN Convention Against Torture, unlike its stated international commitments elsewhere, which independent commentary has identified as a notable gap between India's domestic custodial-rights jurisprudence and its international human-rights treaty posture [33]. Fourth, despite statutory and constitutional convergence with international bail norms (ICCPR Art. 9(3) and the Indian “bail is the rule” principle point in the same direction), India lacks a standalone bail statute of the kind found in the UK's Bail Act 1976, a structural gap repeatedly identified in Indian bail-reform scholarship as a contributing cause of inconsistent trial-court bail practice [21–23].

6. Related Research, Empirical Findings, and Divergent Perspectives

6.1 The doctrinal-progressivism view

A substantial strand of Indian constitutional scholarship treats the post-*Maneka Gandhi* expansion of Article 21 as a model of rights-protective judicial interpretation, and credits the Indian Supreme Court with constructing, through a sequence of individual decisions rather than a single comprehensive code, a due-process architecture that is unusually protective by the standards of comparable developing-country jurisdictions [2,3,7,9,10]. On this view, cases such as *Hussainara Khatoon*, *Khatri*, *Nandini Satpathy*, and *Selvi* collectively demonstrate that Indian courts have been willing to extend accused-rights protections proactively, often ahead of, or independent of, corresponding legislative reform, and frequently in direct response to documented patterns of abuse (custodial deaths motivating *D.K. Basu*; prolonged pre-trial detention motivating *Hussainara Khatoon*) [7,9,10,12,13,17]. This body of literature generally treats judicial rights-expansion as the principal engine of accused-rights protection in India, with legislative codification (the Legal Services Authorities Act, 1987; the statutory incorporation of *D.K. Basu* directions; the *Arnesh Kumar* and *Satender Kumar Antil* guidelines) functioning primarily to consolidate and institutionalise judicially originated norms [8,11,16,17,20].

6.2 The implementation-gap critique

A second, and in more recent literature increasingly prominent, strand of scholarship accepts the doctrinal strength of Indian accused-rights jurisprudence but argues that doctrinal progressivism has had limited practical effect on outcomes experienced by accused persons,

particularly those from economically and socially marginalised groups [11,18,19,21–23,32]. This literature points to several specific mechanisms of implementation failure: chronic under-resourcing and low remuneration within the legal aid system, which undermines the practical value of the *Hussainara Khatoon/Khatari* entitlement to counsel even where it is nominally available [11]; inconsistent compliance with *D.K. Basu* documentation requirements, particularly in under-resourced police stations, which weakens the custodial-rights framework’s deterrent effect on abuse [18,19]; and persistently conservative bail practice at the trial-court level, which independent commentary following *Satender Kumar Antil* attributes to a combination of judicial risk-aversion, absence of standardised bail criteria, and the practical burden placed on poor accused persons by surety requirements they cannot meet even where bail is formally granted [21–23].

6.3 Empirical evidence: undertrial detention as a diagnostic measure

The clearest empirical indicator of the gap between formal right and practical realisation is the scale of undertrial (pre-trial) detention in India. National Crime Records Bureau Prison Statistics data, as reported in independent journalistic and policy analysis, indicate that undertrial prisoners have consistently constituted a substantial majority of India’s total prison population in recent years, with figures in the region of three-quarters of all incarcerated persons reported as awaiting the conclusion of trial rather than serving a sentence following conviction [24,26]. Data journalism analysis of NCRB figures over a roughly decade-long period further documents a sustained numerical increase in the absolute and proportionate undertrial population, alongside demographic findings indicating that undertrial prisoners are disproportionately young, under-educated, and drawn from economically disadvantaged and socially marginalised groups — precisely the population for whom the Article 39A/*Hussainara Khatoon* legal-aid guarantee was designed to be most consequential [25,26].

This pattern is significant for the present analysis in two respects. First, it is difficult to reconcile with the doctrinal strength of the “bail is the rule, jail is the exception” principle restated as recently as *Satender Kumar Antil* in 2022 [20], suggesting that the implementation-gap critique identified in Section 6.2 is empirically well-founded rather than merely anecdotal. Second, the demographic skew documented in the undertrial population lends support to scholarly arguments that formal procedural equality under Articles 20–22 does not, by itself, guarantee substantive equality of outcome, since the capacity to exercise a formally available right (engaging effective private counsel, meeting surety conditions, understanding one’s entitlement to legal aid) is itself unevenly distributed across the population [11,25,26,32].

6.4 Perspectives on technological and procedural reform

A further, more recent, strand of commentary addresses the 2023 recodification of the CrPC and Evidence Act as the BNSS and BSA, and considers whether the recodification meaningfully advances accused-rights protection or substantially reproduces prior statutory structure under new nomenclature [4]. Early commentary on this recodification is mixed: some provisions are credited with codifying judicially developed safeguards (consistent with the *D.K. Basu* codification pattern noted in Section 4.4) and introducing procedural timelines intended to address delay, while other commentary expresses concern that expanded police

custody periods and increased provision for electronic/video-conferenced proceedings under the new codes could, absent careful implementation, dilute rather than strengthen existing custodial and fair-trial protections [4]. Because the BNSS and BSA came into force only in 2024, the empirical literature evaluating their actual operation remains at an early stage, and this paper accordingly treats this area as one requiring continued monitoring rather than settled conclusion.

7. Analytical Discussion: Exposing the Gap Between Formal Right and Operative Reality

Read together, the doctrinal mapping in Sections 3–4, the comparative analysis in Section 5, and the empirical and scholarly review in Section 6 point to a consistent analytical conclusion: the principal deficiency in India’s protection of accused persons is not, for the most part, a deficiency of legal text or judicial doctrine, but a deficiency of institutional capacity and enforcement consistency. On nearly every criterion examined in the comparative matrix (Table 2), Indian constitutional and statutory text either matches or exceeds the formal protections available in the United States and the United Kingdom, and Indian judicial doctrine has, in several instances (*Selvi*’s treatment of compelled scientific testing; *Nandini Satpathy*’s extension of self-incrimination protection to the investigation stage), gone further than well-established comparative doctrine in analogous areas [12,13,34–36].

Yet the undertrial detention data reviewed in Section 6.3 indicate that a majority of persons physically detained in Indian custody at any given time have not been convicted of the offence for which they are held, and that this population is demographically concentrated among those least able to activate the formal protections nominally available to them [24–26]. This is, in effect, an empirical falsification of the practical operation of the “bail is the rule” principle restated in *Satender Kumar Antil*, notwithstanding the doctrinal clarity of that principle [20]. Three structural mechanisms, drawn from the literature reviewed in Section 6, appear to account for this gap.

First, a resourcing mechanism: the legal aid system created to operationalise *Hussainara Khatoon* and Article 39A remains, according to the practitioner and scholarly commentary reviewed, under-resourced relative to the scale of need, such that the formal universality of the right to counsel coexists with substantial variation in the practical quality and availability of that counsel [11]. Second, a documentation-and-oversight mechanism: the *D.K. Basu* custodial safeguards, though codified into binding statutory and constitutional directive form, depend for their protective effect on consistent administrative compliance (arrest memos, medical examination, intimation to a named relative) that independent commentary indicates is unevenly observed, particularly outside well-resourced urban police stations [18,19]. Third, a discretionary mechanism specific to bail: the absence of a standalone, codified bail statute comparable to the UK’s Bail Act 1976 leaves Indian trial courts with wide, loosely structured discretion in an area where comparative experience (and the *Satender Kumar Antil* bench’s own reasoning) suggests structured, presumption-based decision rules reduce both delay and demographically skewed outcomes [20–23,35].

A further analytical point concerns the relationship between doctrinal innovation and institutional follow-through. The recurring Indian pattern — a judicial decision establishing a

protective principle (*D.K. Basu, Arnesh Kumar, Satender Kumar Antil*), later substantially codified into statute — suggests that Indian courts have functioned, in this domain, as a de facto primary legislator for accused-rights protection, filling gaps that the ordinary legislative process has been comparatively slow to address proactively [16,17,20]. This pattern has produced doctrinally sophisticated protections but has arguably also produced a protection architecture that is fragmented across numerous individual judicial interventions rather than consolidated into a single, internally coherent accused-rights code, a structural feature that independent commentary identifies as contributing to inconsistent trial-court application [21–23]. The 2023 recodification exercise (BNSS/BSA) represented an opportunity to consolidate this fragmented doctrinal architecture into clearer statutory form; whether it has done so effectively remains, as noted in Section 6.4, a question for which the evidentiary record is still developing [4].

8. Recommendations

Drawing on the gaps identified in Section 7, four recommendations follow directly from the reviewed literature and data.

- **Structured bail decision-making.** Enactment of a standalone bail statute, drawing on the *Satender Kumar Antil* offence-classification framework and comparative models such as the UK's Bail Act 1976, would reduce the scope for inconsistent, risk-averse trial-court bail practice and address the specific gap between the “bail is the rule” doctrine and observed undertrial detention rates [20–23,35].
- **Legal aid capacity investment.** Addressing the resourcing gap identified in the legal-aid implementation literature — through improved panel-lawyer remuneration, caseload limits, and systematic awareness programmes at the point of first production before a magistrate (consistent with the duty recognised in *Khatiri*) — would narrow the gap between the formal Article 39A entitlement and its practical exercise by indigent accused persons [10,11].
- **Strengthened custodial compliance monitoring.** Independent, systematic audit of compliance with *D.K. Basu* documentation requirements, particularly in under-resourced police stations, supported by the technological infrastructure (CCTV, digital custody registers) increasingly discussed in recodification commentary, would help close the identified gap between codified custodial safeguards and their observed inconsistent application [4,18,19].
- **Monitoring of BNSS/BSA implementation.** Given the early stage of the 2023 recodification and the mixed preliminary commentary on provisions such as expanded custody periods, sustained independent empirical monitoring of BNSS/BSA operation against the accused-rights baseline established under the former CrPC/Evidence Act is warranted before firm conclusions are drawn about whether the recodification strengthens or dilutes existing protections [4].

9. Conclusion

India's constitutional and statutory framework for protecting the rights of the accused is, on close doctrinal examination, both substantial and, in several specific respects, comparatively progressive relative to other major common-law jurisdictions. Articles 20, 21, and 22,

elaborated through a sustained line of Supreme Court decisions from *Maneka Gandhi* through *Selvi* and *Satender Kumar Antil*, together constitute a due-process architecture that addresses arrest, custody, interrogation, bail, and trial with considerable doctrinal specificity. The analysis presented in this paper, however, indicates that the principal challenge confronting the protection of accused persons in India today lies less in the sufficiency of legal doctrine than in the consistency of its institutional application — a conclusion directly supported by the scale and demographic composition of India's undertrial prison population. Closing this implementation gap will require sustained investment in legal aid capacity, structural reform of bail decision-making, and rigorous, continuing empirical monitoring of the 2023 criminal law recodification as it moves from statutory text into operative practice. The rights of the accused, in other words, are well drafted in India; the unfinished work lies in ensuring they are as reliably delivered in the police station and the trial court as they are articulated in the law reports.

References

1. Constitution of India, 1950. Part III: Fundamental Rights, Arts. 20, 21, 22, 39A.
2. KSANDK Law Firm. Preserving Justice: A Comprehensive Guide to Safeguarding the Rights of the Accused in India's Criminal Justice System [Internet]. [cited 2026 Oct 17]. Available from: <https://ksandk.com/constitutional/justice-guide-safeguarding-rights-in-indias-criminal-system/>
3. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
4. *Bharatiya Nagarik Suraksha Sanhita*, 2023 (successor to the Code of Criminal Procedure, 1973); *Bharatiya Sakshya Adhiniyam*, 2023 (successor to the Indian Evidence Act, 1872).
5. LawTimesJournal. Fair Trial and its Principles [Internet]. [cited 2026 Oct 17]. Available from: <https://lawtimesjournal.in/fair-trial-and-its-principles/>
6. iPleaders. Fair Trial, Adversary System, and Principles of Fair Trial [Internet]. [cited 2026 Oct 17]. Available from: <https://blog.ipleaders.in/fair-trial-adversary-system-principles-of-fair-trial/>
7. *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*, AIR 1979 SC 1369.
8. Advocate Gandhi. Article 39A of the Indian Constitution: Bridging the Gap Between Law and Justice [Internet]. [cited 2026 Oct 17]. Available from: <https://advocategandhi.com/article-39a-of-the-indian-constitution-bridging-the-gap-between-law-and-justice/>
9. *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548.
10. *Khatri & Ors. v. State of Bihar*, AIR 1981 SC 928.
11. iPleaders. Challenges and Solutions in Free Legal Aid [Internet]. [cited 2026 Oct 17]. Available from: <https://blog.ipleaders.in/challenges-solutions-free-legal-aid/>
12. *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025.
13. *Selvi & Ors. v. State of Karnataka*, (2010) 7 SCC 263.
14. Indian Evidence Act, 1872 (now *Bharatiya Sakshya Adhiniyam*, 2023), ss. 25–27.
15. *Joginder Kumar v. State of U.P.*, AIR 1994 SC 1349.
16. *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
17. *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

18. iPleaders. Analysing Custodial Deaths in Light of the D.K. Basu Guidelines [Internet]. [cited 2026 Oct 17]. Available from: <https://blog.ipleaders.in/analysing-custodial-deaths-light-dk-basu-guidelines/>
19. LawLex.org. Case Summary: D.K. Basu v. State of West Bengal [Internet]. [cited 2026 Oct 17]. Available from: <https://lawlex.org/lex-bulletin/case-summary-d-k-basu-vs-state-of-west-bengal/23848>
20. Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.
21. Bar and Bench. The Need for Bail Legislation in India [Internet]. [cited 2026 Oct 17]. Available from: <https://www.barandbench.com/columns/the-need-for-bail-legislation-in-india>
22. Drishti IAS. Reforming India's Undertrial Bail System [Internet]. 2024 Mar 11 [cited 2026 Oct 17]. Available from: <https://drishtias.com/daily-updates/daily-news-analysis/reforming-india-s-undertrial-bail-system>
23. Project 39A. Reform Bail Law, But Make the Right Diagnosis First [Internet]. [cited 2026 Oct 17]. Available from: <https://project39a.com/writings/2022/8/27/reform-bail-law-but-make-the-right-diagnosis-first>
24. LiveLaw. NCRB Releases Prison Statistics India Report 2022 [Internet]. [cited 2026 Oct 17]. Available from: <https://www.livelaw.in/news-updates/ncrb-releases-prison-statistics-india-report-2022-243973>
25. IndiaSpend. Indian Prisons Saw a Surge in Undertrial Prisoners Over a Decade [Internet]. [cited 2026 Oct 17]. Available from: <https://www.indiaspend.com/police-judicial-reforms/indian-prisons-saw-a-surge-in-undertrial-prisoners-over-a-decade-887939>
26. Moneylife. Half a Million Indians Behind Bars, 74% Still Awaiting Trial [Internet]. [cited 2026 Oct 17]. Available from: <https://www.moneylife.in/article/half-a-million-indians-behind-bars-74-percentage-still-awaiting-trial/78578.html>
27. Kartar Singh v. State of Punjab, (1994) 3 SCC 569.
28. State of Punjab v. Baldev Singh, (1999) 6 SCC 172.
29. Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374.
30. Tricco AC, Lillie E, Zarin W, O'Brien KK, Colquhoun H, Levac D, et al. PRISMA Extension for Scoping Reviews (PRISMA-ScR): Checklist and Explanation. Ann Intern Med. 2018;169(7):467–473.
31. Page MJ, McKenzie JE, Bossuyt PM, Boutron I, Hoffmann TC, Mulrow CD, et al. The PRISMA 2020 statement: an updated guideline for reporting systematic reviews. BMJ. 2021;372:n71.
32. International Bridges to Justice. India Criminal Defense Manual — Rights of the Accused and Exceptional Circumstances [Internet]. [cited 2026 Oct 17]. Available from: https://defensewiki.ibj.org/index.php/India_Criminal_Defense_Manual_-_Rights_of_the_Accused_and_Exceptional_Circumstances
33. International Covenant on Civil and Political Rights, 1966, Arts. 7, 9, 14; Universal Declaration of Human Rights, 1948, Art. 11.
34. Miranda v. Arizona, 384 U.S. 436 (1966).
35. Police and Criminal Evidence Act 1984 (UK); Bail Act 1976 (UK).
36. LexForti. Right to Consult a Legal Practitioner in Different Countries — An Overview [Internet]. [cited 2026 Oct 17]. Available from: <https://lexforti.com/legal-news/right-to-consult-legal-practitioner-in-different-countries-an-overview/>
37. Legal Services Authorities Act, 1987 (India).