Swami Vivekananda Advanced Journal for Research and Studies
Online Copy of Document Available on: www.svajrs.com

ISSN:2584-105X **Pg. 111-147**

A CRITICAL STUDY OF RIGHTS OF ARRESTED PERSONS IN INDIA

Dr. Sanjeev Kumar
Assistant Professor, Faculty of Law, University of Allahabad, Prayagraj.
E.Mail. sklaw@allduniv.ac.in

Accepted: 16/04/2026
Published: 17/04/2026 ***DOI: http://doi.org/10.5281/zenodo.19629103***

Abstract

The law of arrest marks the point where State power most directly confronts individual liberty and dignity. In India, this interface is structured by Articles 20, 21 and 22 of the Constitution, and by statutory law—earlier the Code of Criminal Procedure, 1973, and now the Bharatiya Nagarik Suraksha Sanhita, 2023 (effective 1 July 2024). Arrest is not merely procedural; it affects autonomy, reputation, livelihood, and the fairness of the criminal process.

This dissertation critically examines the rights of arrested persons through constitutional jurisprudence and key judicial decisions, including Joginder Kumar v. State of U.P., D.K. Basu v. State of W.B., and Arnesh Kumar v. State of Bihar, which have transformed arrest into a rights-based exercise governed by legality, necessity, proportionality, and accountability.

While the law guarantees safeguards—such as the right to know grounds of arrest, legal counsel, protection against self-incrimination, prompt judicial production, and humane custody—the study finds a persistent gap between doctrine and practice. Custodial violence, illegal detention, weak legal aid, and inadequate oversight continue to undermine these rights.

The dissertation concludes that meaningful protection requires stricter judicial scrutiny, institutional reforms, and alignment of policing practices with constitutional values of dignity and rule of law.

Keywords*: Arrest law; Personal liberty; Constitutional safeguards; Custodial rights; Bharatiya Nagarik Suraksha Sanhita, 2023*

1. Introduction

The modern law of arrest must be understood as a body of rules that mediates between two imperatives that are both constitutionally significant but often institutionally antagonistic. On the one hand lies the community's interest in effective investigation, prosecution and public order. On the other lies the individual's claim to bodily freedom, dignity, reputation and fair treatment by public authority. Indian criminal procedure has historically oscillated between these imperatives. Earlier procedural design tended to presume the necessity of coercive police powers and then to regulate abuse through ex post judicial remedies. Contemporary constitutional doctrine, by contrast, increasingly insists that the very decision to arrest must itself be justified in terms consistent with liberty, reasonableness and accountability. The dissertation proceeds from the premise that this shift is normatively profound but operationally incomplete.

The introduction situates the subject, clarifies the problem addressed, formulates the research questions, states the hypothesis, identifies the doctrinal methodology, surveys the principal literature and indicates the scope and limitations of the inquiry. Because the rights of arrested persons have been shaped by both constitutional adjudication and statutory reform, the discussion moves between foundational principles and concrete procedural devices. It is necessary to study not only what the law says, but what legal doctrine reveals about the relationship between the citizen and the coercive arm of the State. The aim is therefore descriptive, analytical and critical at once.

1.1 Background and Rationale

Arrest is among the most visible manifestations of State power in everyday life. It restrains the body, suspends ordinary movement, publicly marks a person as suspect, and places that person within a system of command structured by police custody, remand and trial. In a country as socially unequal and administratively diverse as India, arrest also has distributive consequences: the poor, the socially marginal, migrant workers, linguistic minorities, and those with limited access to counsel often experience arrest not as a neutral procedural step but as the beginning of exclusion from ordinary legal protection. It is therefore unsurprising that the Constitution addresses criminal process in the language of rights rather than mere police administration. [1]

The rationale for studying the rights of arrested persons has acquired renewed urgency for at least four reasons. First, the constitutional meaning of personal liberty has expanded dramatically since *Maneka Gandhi*, so that no procedure authorising deprivation of liberty can be treated as valid merely because it is formally enacted. Secondly, the Supreme Court has repeatedly recognised that arrest is not to be treated as a routine or punitive instrument. Thirdly, the statutory transition from the CrPC to the BNSS invites renewed scrutiny of whether the new framework deepens protection or merely re-describes existing doctrine. Fourthly, persistent reports of custodial violence and unlawful detention suggest that the formal architecture of safeguards has not yet been fully internalised within policing culture. The present subject therefore lies at the intersection of constitutionalism, criminal procedure and human rights.

Historically, the Indian law of arrest developed within a colonial policing framework designed less for rights-based governance than for order-maintenance and territorial control. The continued influence of that legacy is visible in the administrative preference for broad discretion, hierarchical command, and record-centred compliance rather than citizen-centred accountability. Yet the post-Constitution judiciary gradually reworked this field by insisting that liberty is not a gift of executive grace but a constitutional entitlement. The resulting jurisprudence has transformed arrest into a site of constitutional supervision: the grounds of arrest must be communicated; unnecessary restraint is prohibited; the arrested person has access to counsel; relatives must be informed; and magistrates must police the legality of custody. [2]

The academic rationale of this dissertation is therefore not merely to restate settled doctrine. It is to examine whether the cumulative effect of constitutional provisions, statutory rules, judicial guidelines and oversight mechanisms amounts to a coherent jurisprudence of arrested persons' rights. That inquiry matters because procedural safeguards are often judged by their presence in the statute book rather than by their capacity to reorder power in practice. A critical study is needed to identify the extent to which Indian law has constitutionalised arrest, the points at which it

[1] The Constitution of India, arts. 20-22.

[2] M.P. Jain, *Indian Constitutional Law* 1274-1308 (LexisNexis, 8th edn., 2018).

still tolerates executive overreach, and the structural reasons for the persistence of rights violations despite repeated judicial intervention.

1.2 Statement of Problem

The central problem addressed in this dissertation is the persistent disjunction between legal guarantee and operational reality. Indian law formally recognises an impressive cluster of protections for arrested persons, but those protections coexist with recurrent allegations of arbitrary arrest, illegal detention, custodial violence, coerced statements, perfunctory remand orders and inadequate access to legal aid at the earliest stages of custody. The problem is therefore not a simple absence of law. Rather, it is the inability of existing law to ensure that the first moments of coercive State contact are governed by a culture of constitutional compliance rather than institutional convenience. [3]

This disjunction manifests in several doctrinal and practical forms. At the doctrinal level, statutory provisions often articulate safeguards in broad or formal terms without creating equally strong sanctions for non-compliance. At the practical level, compliance tends to be documentary rather than substantive: arrest memoranda may be prepared, but the person arrested may not meaningfully understand the grounds of arrest; production before a magistrate may occur, but remand may be mechanically granted; access to counsel may be recognised, but not facilitated at the stage when custodial pressure is greatest. The result is that rights remain textually visible yet institutionally fragile. Such fragility is especially serious because the harm of an unlawful arrest is immediate and often irreversible.

The problem is compounded by structural features of the criminal justice system. Police officers frequently operate under pressure to demonstrate efficiency through rapid arrests, especially in high-visibility or politically sensitive cases. Magistrates handle large remand dockets under conditions that may encourage procedural formalism. Legal aid systems are uneven in quality and reach. Oversight bodies often intervene after harm has occurred rather than preventing it at the threshold stage. Further, the exceptional rules contained in special statutes have sometimes normalised a climate in which prolonged custody and stringent bail standards are treated as acceptable departures from the ordinary liberty-protective structure of criminal procedure. [4]

The dissertation accordingly frames the problem as one of constitutional implementation. If Articles 21 and 22 are to function as living restraints upon coercive power, the law of arrest must do more than prescribe steps; it must also reshape discretion, require reasons, distribute accountability, and create remedies that are real rather than symbolic. The problem identified here is thus both normative and institutional: Indian law contains the language of liberty, but the criminal process too often continues to operate through habits inherited from a command model of policing.

1.3 Research Questions & Objectives

This dissertation is guided by a set of interrelated research questions that examine the nature and effectiveness of arrest-related rights in India. It asks what rights are available to arrested persons under the Constitution, statutory law, and judicial decisions, and whether these rights together form a coherent and principled framework grounded in dignity, legality, and fair procedure, or remain fragmented across different legal sources. It further inquires whether the transition from the Code of Criminal Procedure to the Bharatiya Nagarik Suraksha Sanhita alters the balance between State power and individual liberty, and why, despite sustained judicial intervention and procedural safeguards, violations of these rights continue to persist in practice.

Objectives

1. To analyse the constitutional and legal foundations of arrest, especially under Articles 20, 21, and 22.
2. To examine statutory provisions, procedural safeguards, and key judicial decisions on arrest.
3. To evaluate the effectiveness of the current legal framework in preventing abuse and protecting rights.
4. To identify gaps in enforcement, including issues like custodial violence and weak accountability.
5. To propose reforms for strengthening arrest procedures, safeguards, and institutional accountability.

[3] *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416.

[4] Law Commission of India, 152nd Report on *Custodial Crimes* (1994).

1.4 Hypothesis

- **H1:** Arrest laws in India are more rights-protective in theory than in practice, as enforcement systems still prioritize control over liberty.
- **H2:** Although courts have constitutionalised arrest powers, implementation remains uneven-strong in form, weak in everyday practice.
- **H3:** BNSS reforms and legal safeguards do not necessarily enhance liberty unless backed by effective enforcement and real institutional change.

1.5 Research Methodology

The present dissertation adopts a doctrinal method. Doctrinal legal research is concerned with the identification, systematisation, interpretation and critical evaluation of legal norms as they appear in constitutional provisions, statutes, subordinate rules, judicial decisions, committee reports and cognate legal materials. In the context of arrested persons' rights, such a method is especially appropriate because the subject is fundamentally structured by normative texts and by adjudicative elaboration of those texts. The inquiry is therefore centred on what the law is, how it has developed, what principles animate it, and where internal contradictions or practical deficiencies become visible within the doctrine itself. [5]

Primary sources for the dissertation include the Constitution of India, the BNSS, the CrPC, the Legal Services Authorities Act, the Protection of Human Rights Act, and selected special statutes such as the UAPA, NDPS Act and the NSA. Judicial decisions of the Supreme Court and, where necessary, significant High Court decisions are treated as central materials because much of the law relating to arrested persons has been judicially constitutionalised rather than exhaustively codified in statute. Committee reports and Law Commission reports are used not merely as background literature but as quasi-doctrinal materials that illuminate legislative history, reform trajectories and institutional diagnosis.

Secondary sources include leading constitutional and criminal procedure treatises, human rights literature, official manuals, NHRC publications and selected scholarly commentary. The dissertation employs these materials in three ways. First, they are used expository, to clarify concepts such as arrest, custody, personal liberty, due process and the presumption of innocence. Secondly, they are used interpretive, to identify how scholars and reform bodies have understood the logic of Articles 20, 21 and 22 and the statutory law of arrest. Thirdly, they are used critical, to evaluate the gap between declared safeguards and institutional performance. The method is thus doctrinal in form but evaluative in orientation. [6]

The doctrinal method in this dissertation is also comparative in a limited internal sense. It compares the CrPC framework with the BNSS framework, and it compares ordinary procedure with the exceptional structures produced by special statutes. It further compares constitutional principle with operational implementation as revealed in case law, official reports and human rights guidance. The research does not undertake field interviews, survey-based empirical work, or ethnographic observation of police stations and remand courts. Those forms of research are valuable, but they fall outside the present design. Instead, the dissertation relies on doctrinal materials to reconstruct the legal architecture and to infer the institutional consequences embedded within it.

1.6 Literature Review

The literature on the rights of arrested persons in India is dispersed across constitutional law, criminal procedure, prison jurisprudence, policing studies, and human rights writing. Constitutional treatises such as those of M.P. Jain and V.N. Shukla have been indispensable in explaining the expansion of Article 21 and the way in which Articles 20 and 22 constrain criminal process. Their strength lies in demonstrating that criminal procedure cannot be read as a self-contained technical code; it must be situated within a constitutional order committed to fairness, dignity and legality. Yet such works, by the nature of their genre, often treat arrest as one doctrinal site among many rather than as an integrated field of rights deserving sustained independent analysis. [7]

Criminal procedure texts, especially those in the Kelkar tradition, provide a more operational account of arrest, remand, bail, search, medical examination and

[5] C.R. Kothari, *Research Methodology: Methods and Techniques* 1-18 (2nd rev. edn., New Age International, 2004).

[6] K.N. Chandrasekharan Pillai (ed.), *R.V. Kelkar's Criminal Procedure* 43-86 (Eastern Book Company).

[7] V.N. Shukla, *Constitution of India* 206-230 (Eastern Book Company, 13th edn., 2017).

magistrarial control. They are useful in tracing the architecture of procedural safeguards and the balance between investigation and liberty. However, procedural manuals sometimes risk normalising the routine administrative perspective of the criminal process. They explain what the law permits, but do not always sufficiently foreground the asymmetry of power that makes the arrested person especially vulnerable. For a critical dissertation, this vulnerability must remain central, because rights in custody matter precisely where ordinary assumptions of voluntariness and equality are absent.

A second body of literature consists of official reports and institutional diagnoses. The Law Commission's reports on custodial crimes, arrest, right to silence, bail and wrongful prosecution are especially important because they connect doctrinal change with systemic concerns such as abuse of police power, remand culture, evidentiary pressure and weak remedial frameworks. The Malimath Committee's report adds a wider reformist perspective, though some of its recommendations reveal a tension between efficiency-oriented criminal justice reform and liberty-sensitive procedural design. NHRC publications and manuals deepen the literature by foregrounding human rights standards, police training and accountability mechanisms. [8]

A third stream consists of jurisprudential and rights-based critiques associated with writers such as Upendra Baxi and with human-rights discourse more broadly. These materials are significant because they expose how legal institutions may reproduce domination even while speaking the language of legality. Their contribution is to remind the researcher that the issue is not merely whether arrest is technically authorised, but whether the social experience of arrest is compatible with constitutional democracy. The present dissertation builds upon these streams but identifies a gap: much of the existing literature either prioritises constitutional abstraction or procedural description, whereas a focused doctrinal study of arrested persons' rights must combine both and then test them against the continuing realities of abuse, exceptional legislation and weak implementation. [9]

1.7 Scope and Limitations

The scope of this dissertation is confined to the rights of arrested persons in India within the framework of constitutional law, criminal procedure and selected special statutes. It does not attempt a comprehensive study of the entire criminal justice system, nor does it offer a full sociology of policing, prisons or criminal adjudication. Its concern is narrower and more specific: the legal position of a person who has been arrested, the safeguards that govern the process of arrest and custody, the judicial doctrines that shape those safeguards, and the institutional challenges that impede their effective operation. The temporal scope is contemporary, though it necessarily includes historical and pre-BNSS materials in order to trace doctrinal evolution. [10]

Substantively, the dissertation focuses on arrest, custody, communication of grounds, access to counsel, medical examination, production before the magistrate, compensation, accountability for custodial abuse, and the impact of special laws upon liberty. Preventive detention is discussed only to the extent necessary to illuminate Article 22 and the broader tension between exceptional detention powers and ordinary constitutional protection. Prison administration after conviction, sentencing theory, evidence law in its entirety, and the full law of bail are addressed only insofar as they bear directly upon the condition of the arrested person. In this sense, the dissertation is intentionally selective.

The principal limitation of the work is methodological. Because the dissertation is doctrinal, it cannot claim to provide direct empirical proof of how often particular safeguards are or are not followed in practice across India. It relies on reported cases, official materials, committee reports and human-rights documentation to infer patterns of implementation and abuse. A second limitation lies in the uneven visibility of unlawful arrest: many abuses do not produce reported judgments and therefore remain under-represented in doctrinal sources. A third limitation is that some questions about policing culture, prosecutorial strategy and local court practice require interdisciplinary or empirical methods beyond the present design. [11]

These limitations, however, do not undermine the

[8] Law Commission of India, 268th Report on *Amendment to Criminal Procedure Code, 1973 - Provisions relating to Bail* (2017).
[9] Upendra Baxi, *The Crisis of the Indian Legal System* 146-175 (Vikas Publishing House, 1982).
[10] The Code of Criminal Procedure, 1973, ss. 41, 41B, 41D, 46, 50, 50A, 54, 57 and 167.
[11] Law Commission of India, 277th Report on *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (2018).

utility of the inquiry. On the contrary, doctrinal research remains indispensable where the legal system itself claims legitimacy through text, precedent and procedure. By clarifying the normative structure of arrested persons' rights and identifying the points at which that structure fails in design or implementation, the dissertation seeks to provide a rigorous foundation for further empirical work as well as for doctrinal, judicial and legislative reform.

2. Conceptual and Theoretical Framework

Any legal evaluation of arrested persons' rights requires a prior conceptual map. Arrest is frequently discussed as though its meaning were self-evident, but in legal analysis it must be distinguished from detention, custody, restraint, interrogation and confinement. Likewise, personal liberty cannot be reduced to mere freedom from physical confinement, for the constitutional law of liberty in India now encompasses dignity, autonomy, procedural fairness and protection against arbitrary State action. The purpose of this chapter is therefore to establish the conceptual and theoretical framework within which subsequent doctrinal analysis is undertaken.

The chapter proceeds from the premise that the rights of arrested persons are best understood not as isolated statutory benefits but as manifestations of deeper constitutional and jurisprudential commitments. These commitments include the rule of law, due process, the presumption of innocence, humane treatment in custody, and the idea that criminal procedure derives legitimacy only when it treats the suspect as a bearer of rights rather than merely as an object of investigation. Such a framework is necessary because arrest law is often distorted when read only through the lens of efficiency.

2.1 Meaning of Arrest and Custody

In ordinary legal usage, arrest refers to the act by which a person is taken into custody under lawful authority so as to answer for an offence or prevent further legal wrongdoing. Yet the concept is more exacting than mere physical restraint. An arrest ordinarily involves an assertion of legal authority, a corresponding submission or compulsion, and a consequential change in the legal status of the person restrained. The person arrested becomes subject to duties of production, record-making, and oversight that do not always arise in looser forms of detention. Because these consequences are serious, the law insists that arrest be distinguished from informal or disguised restraint. [12]

Indian statutory law does not rely only on abstract definition; it constructs arrest through procedural consequences. An arrest may be made with or without warrant; it may be effected by police, a magistrate, or in limited circumstances a private person; and it may involve either actual touching or submission to custody by word or action. The law also distinguishes police custody from judicial custody. The former places the arrested person under the control of the investigating agency and thus at the highest risk of coercive abuse. The latter relocates the person within judicially authorised detention and is assumed, at least normatively, to carry stronger institutional safeguards. This distinction is central to Indian arrest jurisprudence because many of the most serious allegations of torture, coercion and evidence fabrication arise during police custody rather than after remand to judicial custody.

The conceptual difference between arrest and custody requires emphasis. One may be in custody without formal arrest, and the courts have repeatedly recognised that rights may attach where the coercive control of the State is functionally equivalent to arrest even if not formally labelled as such. Conversely, lawful arrest does not exhaust the question of legality, because the conditions and purposes of custody must themselves satisfy constitutional standards. The law of arrested persons' rights is therefore not limited to the instant of apprehension; it extends to the continuum of control that follows arrest, including communication of grounds, interrogation, medical examination, remand and access to counsel. [13]

From a theoretical standpoint, arrest is best understood as a threshold event. It marks the movement from suspicion in the abstract to coercive power in the concrete. Precisely for that reason, every legal system committed to liberty must insist upon clarity in the concept. If arrest is blurred into informal detention, the State may exercise coercive control without triggering the safeguards designed to regulate it. The insistence on legal precision is therefore not semantic formalism. It is a condition for making rights operational in the face of power.

[12] Bryan A. Garner (ed.), *Black's Law Dictionary* 93, 390 (11th edn., Thomson Reuters, 2019).

[13] K.N. Chandrasekharan Pillai (ed.), *R.V. Kelkar's Criminal Procedure* 43-86 (Eastern Book Company).

2.2 Concept of Personal Liberty under Article 21

Article 21 originally appeared, in its textual brevity, to permit deprivation of liberty whenever a validly enacted law prescribed a procedure for doing so. That narrow reading, associated with the early decision in *A.K. Gopalan*, treated liberty as a compartmentalised constitutional interest and gave limited room for substantive or process-oriented review. The later constitutional transformation inaugurated by *Maneka Gandhi* decisively altered that position. After *Maneka*, the procedure authorising deprivation of liberty must be just, fair and reasonable; arbitrariness is incompatible with Article 21; and the guarantee of personal liberty must be read in harmony with other constitutional values. [14]

Personal liberty, thus expanded, is not a purely negative concept. It includes the conditions that make freedom meaningful in practice, such as fairness of process, respect for dignity, and the ability to defend oneself effectively against the power of the State. The Supreme Court's decisions in *Francis Coralie Mullin* and *Sunil Batra* made clear that life and liberty are not exhausted by bare animal existence or by release from physical chains. Humane treatment, dignity of the person, and the capacity to maintain the essentials of personhood are integral to constitutional liberty. Once this is accepted, the law of arrest can no longer be treated as a technical sub-field of procedure; it becomes a constitutional site where dignity and power directly meet.

The significance of Article 21 for arrested persons is therefore immense. Arrest is one of the most common legal forms through which liberty is curtailed in the name of criminal justice. If personal liberty means more than formal release from arbitrary detention, then the arrested person is constitutionally entitled not merely to a valid warrant or statutory power, but to a process free from arbitrariness, excessive force, concealment and unfair custodial pressure. The idea that the State may legally arrest yet constitutionally wrong the person arrested is a direct consequence of post-*Maneka* doctrine. [15]

At the theoretical level, Article 21 performs a constitutionalisation function. It relocates the discussion from whether the police possessed a formal power to whether the exercise of that power respected dignity, necessity and fair procedure. This is why contemporary arrest jurisprudence repeatedly turns to Article 21 even when specific statutory provisions also exist. Article 21 supplies the normative grammar within which statutory powers must be interpreted. It is the constitutional reason why the law disfavors routine arrest, condemns torture, insists on early access to counsel, and recognises compensation where liberty has been unlawfully or abusively infringed.

2.3 Human Rights Jurisprudence

Human rights jurisprudence supplies a broader normative frame for understanding why the rights of arrested persons matter. International instruments do not replace domestic constitutional law, but they illuminate standards of legality, fairness and humane treatment that modern constitutional democracies are expected to respect. The UDHR prohibits arbitrary arrest and recognises the right to life, liberty and security of person. The ICCPR further elaborates these protections by insisting that anyone arrested be informed of the reasons for arrest, brought promptly before a judicial authority, and tried within a reasonable time or released. These norms are not peripheral aspirations; they articulate the minimum conditions under which coercive criminal process can claim legal legitimacy. [16]

The human rights approach differs from an exclusively administrative approach in one crucial respect: it begins with the vulnerability of the person in the hands of the State. Arrest produces dependence. The arrested person typically lacks mobility, information, communication and bargaining power. In police custody the imbalance is even sharper, because the same institution that restrains liberty also controls access to family, counsel and often the initial narrative of the offence. Human rights jurisprudence therefore emphasises transparency, record-keeping, communication, medical examination, judicial oversight and protection against torture. These requirements are not external embellishments to criminal procedure; they are necessary responses to the asymmetry inherent in custody.

The relevance of human rights jurisprudence in India is reinforced by the Court's willingness to read domestic fundamental rights in harmony with international standards where no inconsistency exists. NHRC materials, United Nations principles relating to detention, and the language of dignity and humane treatment have all contributed to the interpretive environment within which Indian arrest jurisprudence

[14] *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.
[15] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[16] Universal Declaration of Human Rights, G.A. Res. 217 A (III), arts. 3 and 9 (1948).

has matured. Even where international standards are not directly enforceable, they have normative force as interpretive guides and as benchmarks against which domestic law and practice can be critically measured. [17]

A human rights perspective also sharpens the critique of custodial abuse. Torture, incommunicado detention, compelled statements, and unexplained injuries are not merely procedural irregularities. They represent the collapse of law at the very moment the State claims to act in its name. This perspective is indispensable to the present dissertation because it prevents the discussion from becoming a narrow catalogue of sections and clauses. It reminds us that rights in arrest and custody are about maintaining the humanity of the person under the pressure of coercive power.

2.4 Principles of Criminal Justice System

A rights-based account of arrest derives support from foundational principles of criminal justice. The first is the presumption of innocence. Although arrest is often justified by investigative necessity, it does not convert suspicion into guilt. Any legal culture that allows arrest to function as anticipatory punishment undermines the very logic of criminal adjudication. The second is legality: coercive power must be authorised, structured and limited by law. The third is procedural fairness, which requires that the accused or suspect be given a meaningful opportunity to understand the case, access representation, and resist unjustified detention. These principles are not abstractions; they determine how arrest powers ought to be interpreted and exercised. [18]

Another core principle is proportionality or, in arrest law, necessity. Not every accusation justifies immediate custody. A liberty-sensitive criminal justice system requires that arrest be used where genuinely necessary for investigation, prevention of further offence, protection of evidence, or securing appearance before court - not as a routine administrative reflex. This principle gained explicit judicial recognition in Indian law as the Court increasingly emphasised that no arrest should be made merely because the law permits it. The difference between power and justification is the essence of necessity-based arrest doctrine.

The principle of humane treatment is equally central. Criminal process may investigate, prosecute and punish in accordance with law; it may not degrade, torture or dehumanise. The arrested person remains a rights-bearing subject and cannot be reduced to a source of information or an object of exemplary force. The presumption of innocence and humane treatment converge here: if guilt is to be determined through fair adjudication, then custodial pressure designed to extract confession or submission is fundamentally inconsistent with the structure of lawful criminal justice.[19]

Finally, accountability is a constitutive principle of modern criminal justice. Coercive acts must be explainable and reviewable. Arrest memos, reasons for arrest, magistrarial scrutiny, CCTV recording, medical reports, and compensation mechanisms all reflect an accountability logic. Without such devices, the rights of arrested persons remain dependent on the goodwill of officers rather than on institutional design. The present dissertation approaches arrest law through these principles because they reveal why the rights of arrested persons are integral to criminal justice, not exceptions to it.

2.5 Rule of Law and Due Process

The rule of law requires more than government through enacted rules; it requires that public power be limited, reasoned and equally answerable before law. In the context of arrest, this means that no person should be subjected to coercive restraint on the basis of discretion so broad that it becomes indistinguishable from arbitrariness. Dicey's formulation of the rule of law may belong to a different constitutional era, yet its insistence that coercive power be justified through law rather than mere status remains instructive. In India, the rule of law is deepened by constitutional supremacy: it is not enough that the arresting power is statutory; it must also conform to constitutional norms of fairness and non-arbitrariness. [20]

Due process, though not textually expressed in the American form, has entered Indian constitutional reasoning through the transformation of Article 21. The insistence that procedure be just, fair and reasonable means that the law of arrest must be assessed not only for formal legality but also for substantive fairness of operation. A rule that authorises arrest without meaningful necessity, or a practice that

[17] International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, arts. 9 and 14 (1966).
[18] *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, (1980) 1 SCC 81.
[19] *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.
[20] A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 183-205 (10th edn., Macmillan, 1959).

reduces remand scrutiny to ritual, may satisfy bureaucratic expectations while failing constitutional due process. Due process thus functions as a standard of critique against both legislative design and administrative habit.

The convergence of rule of law and due process is particularly visible in cases concerning arbitrary arrest, handcuffing, legal aid, custodial violence and compensation. The courts have repeatedly held that State action which humiliates, restrains or detains without lawful and fair procedure cannot be defended merely by invoking broad investigative needs. The constitutional message is that criminal justice must proceed through disciplined power. Rights of arrested persons are, in this sense, the first institutional expression of due process. [21]

A rule-of-law approach also has an egalitarian dimension. Discretion without reasons is usually hardest on those least able to resist it. The poor and socially marginal are more likely to lack immediate legal representation, influential social networks, or the means to challenge unlawful custody. Insistence upon reasons, records, access to counsel and judicial oversight therefore does not only protect liberty in the abstract; it also mitigates the unequal social distribution of vulnerability. The conceptual framework developed in this chapter accordingly grounds the later doctrinal analysis in a simple but powerful idea: the rights of arrested persons are the concrete grammar of constitutional restraint.

3. Constitutional Safeguards of Arrested Persons

The constitutional protection of arrested persons in India is anchored in a triangular structure. Article 20 protects against retrospective penalisation, double jeopardy and compelled self-incrimination. Article 21 requires that all deprivation of liberty conform to a procedure that is just, fair and reasonable. Article 22 addresses arrest and detention more specifically by requiring communication of grounds, access to legal counsel, and production before a magistrate within twenty-four hours, while also carving out a separate and controversial regime for preventive detention. This chapter examines these provisions not as isolated clauses, but as an integrated constitutional scheme regulating the coercive entry of the State into the life of the individual.

The argument advanced here is that the Constitution does not treat arrest as a morally neutral administrative event. It recognises arrest as a serious intrusion and therefore limits not only the circumstances of lawful custody but also the methods, duration and consequences of custodial control. Much of Indian arrest jurisprudence consists in making those constitutional limitations concrete. The chapter traces how that work has been undertaken.

3.1 Article 20: Protection in respect of conviction

Article 20 is sometimes discussed primarily in the context of trial and punishment, yet it also has direct relevance to the rights of arrested persons. Clause (1) prohibits conviction or punishment under an ex post facto penal law; clause (2) protects against double jeopardy; and clause (3) declares that no person accused of an offence shall be compelled to be a witness against himself. For the arrested person, clause (3) is especially important because the earliest stages of criminal process are often those in which pressure to incriminate oneself is most acute. The constitutional significance of arrest is therefore inseparable from the constitutional control of interrogation and evidentiary coercion. [22]

The Supreme Court's interpretation of Article 20(3) transformed the right against self-incrimination from a courtroom privilege into a shield against custodial compulsion. In *Kathi Kalu Oghad*, the Court distinguished testimonial compulsion from the giving of physical evidence such as fingerprints or handwriting, thereby defining the doctrinal core of clause (3). Later, in *Nandini Satpathy*, the Court emphasised that the right to silence extends to police interrogation and that no person can be forced to answer questions which have a tendency to expose him to criminal accusation. This doctrinal trajectory is of obvious importance to arrested persons because interrogation often occurs when they are most vulnerable, isolated and least able to resist pressure.

The continuing relevance of Article 20(3) is visible in later decisions dealing with narco-analysis, polygraph tests and invasive investigative techniques. In *Selvi*, the Court linked the privilege against self-incrimination with mental privacy, dignity and substantive due process, thereby reinforcing the idea that custodial investigation cannot proceed by overriding the autonomy of the subject. Article 20, therefore, does more than regulate evidentiary admissibility. It restrains the investigative logic that

[21] *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.

[22] The Constitution of India, arts. 20-22.

might otherwise treat the arrested body and mind as open instruments of extraction. [23]

Viewed critically, Article 20 demonstrates that the Constitution anticipated the danger that criminal process might seek to short-circuit adjudication through compelled cooperation. Its protection is incomplete if read in isolation, but when combined with Articles 21 and 22 it becomes an essential safeguard against the transformation of arrest into custodial domination. The rights of arrested persons are thus not limited to physical liberty; they extend to cognitive liberty, silence, and the right not to be turned into the source of one's own incrimination by coercive pressure.

3.2 Article 21: Right to Life and Personal Liberty

Article 21 is the normative centre of Indian arrest jurisprudence. Once the Court abandoned the narrow formalism of *A.K. Gopalan* and adopted the fair, just and reasonable procedure standard of *Maneka Gandhi*, every law and practice governing arrest became subject to constitutional examination for arbitrariness, disproportionality and unfairness. Article 21 thus supplies the constitutional reason why statutory arrest power must be exercised carefully, why custodial violence is constitutionally intolerable, and why remand cannot be treated as a routine administrative endorsement of police action. [24]

The influence of Article 21 extends well beyond legality in the narrow sense. Through decisions such as *Francis Coralie Mullin* and the *Sunil Batra* cases, the Court recognised that liberty and life include dignity, humane treatment and the minimum conditions of personhood. This is profoundly relevant to arrest and custody. If liberty under Article 21 includes dignity, then arrest carried out in humiliating or excessive fashion is constitutionally suspect even if statutorily authorised. If life includes humane treatment, then the health, safety and bodily integrity of the arrested person become constitutional concerns rather than mere matters of prison or police administration.

Article 21 has also generated a series of derivative procedural guarantees that are crucial to arrested persons: the right to speedy trial, the right to free legal aid in appropriate cases, the prohibition of torture and cruel treatment, and the insistence that deprivation of liberty be accompanied by meaningful reasons and judicial oversight. The Court's readiness to award compensation in public law for certain forms of unconstitutional custody reflects the same logic. The constitutional injury lies not only in formal illegality, but in unjustified or abusive deprivation of liberty by the State. [25]

The doctrinal significance of Article 21 is therefore twofold. First, it constitutionalises statutory criminal procedure by requiring that arrest powers be interpreted through liberty-sensitive norms. Secondly, it enables the judiciary to recognise protections not exhaustively written into statute where they are necessary to make liberty meaningful. For arrested persons, this has been the source of the most important doctrinal gains. It is Article 21 that turns criminal process from a technical system of command into a constitutionally answerable regime of restrained power.

3.3 Article 22: Protection against Arbitrary Arrest

Article 22 is the Constitution's most specific textual response to the risks of arrest and detention. Clause (1) requires that every person arrested be informed, as soon as may be, of the grounds of arrest and not be denied the right to consult and be defended by a legal practitioner of his choice. Clause (2) requires production before the nearest magistrate within twenty-four hours of arrest, excluding travel time, and forbids detention beyond that period without magistrarial authority. In a formal sense, these guarantees are simple. In functional terms, they are the threshold protections that stand between lawful custody and executive disappearance into unreviewed detention. [26]

The first guarantee - communication of grounds - is essential because one cannot meaningfully challenge arrest or seek legal advice without knowing why liberty has been taken away. The second guarantee - access to legal counsel - is a practical counterweight to the informational and institutional superiority of the police. The third - prompt production before a magistrate - subjects custody to an external authority and creates an opportunity, at least in principle, for the arrested person to complain of illegality, coercion or mistreatment. Article 22 thereby embeds three ideas at the entrance of criminal process: knowledge, representation and review.

[23] *State of Bombay v. Kathi Kalu Oghad*, AIR 1961 SC 1808.
[24] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[25] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.
[26] The Constitution of India, arts. 21-22.

Yet Article 22 is also a site of constitutional tension because clauses (3) to (7) create a separate preventive detention framework in which ordinary arrest protections are partly displaced. This structural bifurcation has long troubled constitutional theory in India. Ordinary criminal arrest is formally surrounded by procedural rights, but the Constitution simultaneously permits detention outside the ordinary criminal process on executive satisfaction subject to a different set of safeguards. The preventive detention clauses thus remind us that constitutional text itself contains an unresolved tension between liberty and security. [27]

For the purposes of this dissertation, the significance of Article 22 is that it makes arbitrariness visible at the threshold. If the grounds of arrest are withheld, if access to counsel is denied, or if prompt production is bypassed or trivialised, the resulting custody is constitutionally compromised even before one reaches broader Article 21 analysis. Article 22 is therefore not redundant in the age of expanded liberty jurisprudence. It remains the Constitution's express warning that coercive detention must immediately be brought within the discipline of reason, representation and judicial scrutiny.

3.4 Role of Judicial Interpretation

The constitutional text alone does not explain the present law. Much of the protection enjoyed by arrested persons in India is the result of judicial interpretation which gave substantive content to sparse or general provisions. The courts converted Article 21 from a narrow procedural clause into a source of dignity, fairness and non-arbitrariness; they interpreted Article 22 to require real, not illusory, communication of grounds and access to legal assistance; and they used constitutional reasoning to supplement statutory law with guidelines designed to prevent custodial abuse. In this sense, the judiciary has been the principal institution through which arrest law was constitutionalised. [28]

Judicial interpretation has been especially significant where statutory safeguards existed but were weakly implemented. In *Khatri (II)*, the Court tied legal aid to the constitutional guarantee of fair procedure and recognised that the right begins not at the stage of formal trial but when the accused is first produced before a magistrate and indeed where the circumstances require, even earlier. In *Joginder Kumar*, the Court insisted that no arrest can be made merely because it is lawful to do so. In *D.K. Basu*, the Court articulated detailed arrest and detention guidelines intended to reduce invisibility, coercion and abuse in custody. These decisions are best understood not as judicial excursions into policy, but as constitutional responses to the inadequacy of formal legality alone.

The interpretive method adopted by the Court has also been expansive in its sources. The judges have drawn upon directive principles, human rights discourse, comparative standards and institutional experience. Article 39A has been read with Articles 21 and 22 to justify the constitutional centrality of legal aid. Dignity jurisprudence has been invoked to condemn humiliating restraints and degrading custodial treatment. This interpretive style reflects an important constitutional insight: criminal procedure is not a self-sufficient technical code. It must be read as part of a broader rights-bearing order. [29]

At the same time, judicial interpretation has limits. Courts can articulate norms, but they cannot by themselves transform police institutions, remand culture or legal aid capacity. This explains why rights expansion through case law, while normatively significant, has not eliminated illegal arrest or custodial violence. The role of judicial interpretation is therefore indispensable but not exhaustive. It clarifies the constitutional standard; implementation still depends upon institutional design, administrative will and accountability mechanisms beyond the courtroom.

3.5 Expanding Scope of Fundamental Rights

One of the defining features of Indian constitutional law has been the gradual expansion of fundamental rights into areas once treated as matters of routine administration. The rights of arrested persons have benefited substantially from this movement. Legal aid, speedy trial, humane treatment in prison and police custody, protection against handcuffing, compensation for unconstitutional detention, and the insistence upon dignity in custodial settings are all products of a constitutional imagination that refused to treat arrested or incarcerated persons as outside the community of rights. [30]

The expansion has been both substantive and remedial. Substantively, the Court has recognised that the arrested person retains all rights except those lawfully

[27] *A.K. Roy v. Union of India*, (1982) 1 SCC 271.
[28] *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416.
[29] *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627.
[30] *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.

curtailed by the fact of custody. This is why prison and custody cases often speak the language of dignity rather than mere detention. Remedially, the Court has accepted that public law compensation may in appropriate cases be necessary to vindicate constitutional rights where liberty has been unlawfully taken or life and bodily integrity have been violated in custody. This remedial development is critical because a right without an effective consequence for breach is often little more than a declaration.

The expansion of rights has also imposed qualitative limits on methods of restraint. The jurisprudence against routine handcuffing, for example, is not simply a rule about physical instruments. It reflects a deeper constitutional idea that even a person in custody cannot be publicly degraded or mechanically treated as dangerous without individualised justification. Likewise, later directions regarding CCTV coverage in police stations reflect the constitutional move towards transparency as a condition of lawful custody. These developments illustrate how fundamental rights doctrine increasingly enters the operational texture of arrest. [31]

Yet the expanding scope of rights remains contested. Exceptional legislation, security-based discourse, and a continuing administrative preference for broad police discretion all place pressure on liberty-sensitive doctrine. The history of arrested persons' rights in India is therefore not a simple story of linear progress. It is a continuing contest between constitutional restraint and institutional convenience. The importance of that contest makes the statutory and case-law analysis in the next chapters not merely descriptive, but central to understanding whether the Constitution's expanding rights horizon has been meaningfully translated into arrest practice.

4. Statutory Framework Governing Arrest

The constitutional guarantees examined in the preceding chapter acquire practical meaning only when they are translated into procedural rules capable of structuring official conduct. Arrest is an intensely practical event. It occurs not in appellate opinions but in police stations, on roads, in private dwellings, and during investigation. For that reason, the law of arrest cannot remain at the level of abstract rights-talk; it must specify who may arrest, when arrest may be made, how an arrested person must be treated, what information must be given to the person and to others, how long the person may remain in police control, and what judicial supervision must occur. A constitutional system that affirms liberty but leaves these questions to administrative discretion risks transforming rights into rhetoric.

In the Indian legal order, the general statutory architecture of arrest has historically been provided by the Code of Criminal Procedure, 1973. Since 1 July 2024, the Bharatiya Nagarik Suraksha Sanhita, 2023 has replaced the Code for ordinary criminal procedure, while preserving many of the long-settled safeguards developed under the CrPC and through constitutional case law.[32] The legislative transition is therefore important for doctrinal analysis. It requires a careful evaluation of continuity and change: continuity because the basic constitutional logic of reasoned arrest, production before a magistrate and access to legal protection remains; change because the new statute restructures terminology, redrafts provisions and foregrounds certain police powers and duties in a manner that may affect implementation.

This chapter argues that the statutory framework governing arrest in India reflects a dual tendency. On one hand, it embodies a rights-oriented procedural design that insists upon legality, information, traceability and judicial control. On the other hand, the effectiveness of this design depends upon institutional fidelity, and the language of statutory discretion sometimes leaves sufficient space for overbroad police action. The chapter therefore examines the relevant provisions under the BNSS and the earlier CrPC, the procedural safeguards attending arrest and custody, the role of police and magistrate as legal actors, and the special difficulties created by exceptional statutes dealing with national security and narcotic offences.

4.1 Provisions under Bharatiya Nagarik Suraksha Sanhita (BNSS) / CrPC

The general power of arrest in ordinary criminal law has long turned upon the distinction between cognizable and non-cognizable offences, the presence or absence of warrant, and the satisfaction of statutory conditions attached to police intervention. Under the CrPC, sections 41, 41B, 41D, 46, 50, 50A, 54, 57 and 167 collectively formed the core procedural code of arrest. These provisions dealt with arrest without warrant, identification of the arresting officer, the right to know the grounds of arrest, intimation to relatives or friends, medical examination, production before the

[31] *Citizens for Democracy v. State of Assam*, (1995) 3 SCC 743.

[32] India Code, *The Bharatiya Nagarik Suraksha Sanhita, 2023* (Act No. 46 of 2023), enforced from 1 July 2024.

magistrate within twenty-four hours and remand during investigation.[33] The legislative philosophy underlying these provisions was not merely administrative convenience; it was to domesticate coercive power through reason-giving requirements and documentary accountability.

The BNSS substantially continues this architecture. Sections 35 to 38, 43, 46 to 48, 56 to 58 and 187 create the principal contemporary framework. Section 35 governs arrest without warrant and, like its predecessor, attempts to channel police discretion by linking arrest to statutory preconditions rather than mere suspicion. Sections 36 and 37 emphasize procedural transparency, including the identification of the arresting officer and preparation of records. Section 38 preserves the right of the arrested person to meet an advocate of his choice during interrogation, though not throughout interrogation in a manner that would paralyse investigation. Sections 46 to 48 concern the manner of arrest, grounds of arrest, and the duty to inform a relative, friend or nominated person. Sections 56 to 58 relate to health and safety, production before the magistrate and the well-known twenty-four-hour rule, while section 187 carries forward the remand framework during investigation.[34]

The significance of the shift from the CrPC to the BNSS should not be exaggerated into a claim of jurisprudential rupture. In many respects, the BNSS reorganises and reiterates duties already entrenched by judicial decisions and earlier statutory amendments. Yet the very act of reenactment matters. When Parliament consolidates procedural safeguards in a new legislative instrument, it signals which aspects of arrest are treated as integral to the legitimacy of criminal process. The continuing presence of provisions on arrest memo, intimation, legal consultation and prompt production before the magistrate indicates that contemporary Indian criminal procedure cannot plausibly claim ignorance of liberty-centred norms.[35]

At the same time, doctrinal continuity does not resolve interpretive anxieties. The language of police satisfaction and necessity continues to require vigilance, particularly because the threshold question in every arrest is whether custody is truly needed for investigation, prevention, or securing presence. The Supreme Court has repeatedly cautioned that the existence of power does not entail a duty to arrest in every case. A statutory code that authorises arrest must therefore be read in the shadow of constitutional proportionality: the law should permit arrest where justified, but should not normalise arrest as a default response to accusation. The statutory text must be interpreted as a restraint upon reflexive detention rather than a charter for investigative convenience.[36]

The relation between substantive penal law and procedural arrest law must also be noted. Many offences remain broadly defined, and police assessment at the initial stage is often based on first information, preliminary witness statements and contextual assumptions. In such conditions, procedural safeguards acquire heightened importance because they are the only immediate legal checks before full adjudication. The arrested person is at the threshold between suspicion and proof. The statutory framework is therefore not ancillary to criminal justice; it is constitutive of the moral legitimacy of the system itself.

A further point concerns legal aid. The statutory framework of arrest cannot be viewed in isolation from the Legal Services Authorities Act, 1987 and the constitutional commitment to equal justice under Article 39A. A formally valid arrest may still result in substantive injustice if the person lacks counsel, cannot challenge remand, does not understand the accusation, or is unable to seek bail. The statutory right to procedural fairness is thus intertwined with institutional access to legal representation for persons who are poor, marginalised or otherwise disadvantaged.[37]

4.2 Arrest Procedures and Safeguards

The procedure of arrest is where the distinction between legal civilisation and coercive arbitrariness becomes most visible. The first safeguard is informational. A person who is arrested must know that he is being deprived of liberty under legal authority, the grounds for such deprivation, and the offence or suspicion to which the arrest relates. This requirement protects dignity in at least three senses. It recognises the person as a subject entitled to reasons; it enables timely legal response; and it reduces the space for secret or disguised detention. The statutory

[33] The Code of Criminal Procedure, 1973, ss. 41, 41B, 41D, 46, 50, 50A, 54, 57 and 167.
[34] *The Bharatiya Nagarik Suraksha Sanhita, 2023*, ss. 35-38, 43, 46-48, 51-58, 187.
[35] *The Bharatiya Nagarik Suraksha Sanhita, 2023*, ss. 35-38, 43, 46-48, 56-58.
[36] *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.
[37] The Legal Services Authorities Act, 1987, s. 12.

insistence that the grounds of arrest be communicated is therefore a practical expression of constitutional respect for personhood.[38]

The second safeguard is documentary accountability. Modern arrest law increasingly insists that coercive action be traceable. Identification of the arresting officer, preparation of an arrest memorandum, recording of date and time, and attestation by witnesses create an evidentiary trail that can later be tested by courts, disciplinary bodies and human rights institutions. Without such documentation, disputes about the time, manner and circumstances of arrest become difficult to resolve, thereby allowing ill-treatment, delayed production, or manipulation of records to occur under a cloak of uncertainty. The statutory framework seeks to replace opaque custody with accountable custody.

A third safeguard lies in the duty to notify someone outside the apparatus of detention. Informing a relative, friend or person nominated by the arrested individual serves more than an emotional function. It creates an external witness to the fact of arrest, prevents disappearance into unrecorded detention, and permits the family or community to arrange counsel, medical assistance and sureties. From a doctrinal standpoint, this duty connects procedural fairness with social visibility. Arrest, which places an individual in radical asymmetry before the State, becomes less vulnerable to abuse when an independent network is immediately informed.[39]

The right to consult a legal practitioner is equally central. Statutory procedure recognises that the arrested person does not stand on equal footing with trained investigators. The right to meet an advocate during interrogation represents an attempt to mediate the coercive environment of police custody, even though Indian law does not translate this into a right to uninterrupted presence of counsel in every moment of questioning. The limitation reflects concern for investigative efficiency, but the underlying principle remains that access to counsel is indispensable to meaningful exercise of the privilege against self-incrimination, challenge to unlawful arrest, and preparation for remand and bail proceedings.[40]

Another procedural safeguard relates to the manner of arrest itself. The law has increasingly rejected gratuitous humiliation, excessive force and unnecessary restraint. Although police may use reasonable force to effect lawful arrest where resistance is offered, the use of force must remain proportionate to the legitimate aim of securing custody. Statutory rules dealing with handcuffing, arrest of women, and avoidance of needless restraint are thus not technicalities. They embody the deeper proposition that the body of the accused is not available for symbolic domination by the State. Arrest authorises temporary control over liberty, not degradation of bodily integrity.[41]

Women in custody demand particular legal sensitivity. The procedural code historically required that women be arrested with due regard to decency and placed restrictions upon arrest at night except in exceptional circumstances. These safeguards reflect the recognition that formal equality is inadequate in custodial settings marked by gendered vulnerability. Their doctrinal importance lies not in paternalism but in substantive equality: the law must respond to the foreseeable conditions of abuse to which different categories of persons are exposed. Similar concerns arise in relation to children, persons with disability, the elderly and persons suffering illness, even where the procedural rule is not as specifically elaborated.

Medical examination is another indispensable safeguard, both at the stage of arrest and during custody. It serves evidentiary, preventive and welfare functions. Evidence of pre-existing injuries may rebut later false attribution to custodial assault; fresh injuries may reveal unlawful violence; and the medical condition of the detainee may indicate whether continued custody poses serious risk. The duty to provide medical examination is therefore a bridge between criminal procedure and the right to health. In a system where allegations of torture and custodial violence persist, medical documentation becomes a crucial mode of truth-production.[42]

Prompt production before the magistrate is the central temporal safeguard. Police control over an arrested person is constitutionally and statutorily temporary. The requirement that the person be produced before the magistrate within twenty-four hours, excluding journey time, is designed to ensure that the arrest

[38] *The Bharatiya Nagarik Suraksha Sanhita, 2023*, ss. 35-38, 43, 46-48, 56-58.
[39] *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416.
[40] *The Bharatiya Nagarik Suraksha Sanhita, 2023*, ss. 35-38, 43, 46-48, 56-58.
[41] *The Bharatiya Nagarik Suraksha Sanhita, 2023*, ss. 35-38, 43, 46-48, 51-58, 187.
[42] The Code of Criminal Procedure, 1973, ss. 41, 41B, 41D, 46, 50, 50A, 54, 57 and 167.

moves rapidly from executive custody to judicial oversight. Delay beyond this period is not a mere procedural irregularity; it strikes at the legality of continued detention. The twenty-four-hour rule functions as a bright-line device against secret detention, prolonged interrogation without oversight and coercive extraction of statements.[43]

Yet the effectiveness of procedural safeguards depends on more than textual articulation. Compliance can become ritualistic. Arrest memos may be prepared mechanically; grounds of arrest may be conveyed in formulaic terms; relatives may be informed only nominally; and legal consultation may occur too late to affect remand. The jurisprudential challenge, therefore, is to distinguish documentary compliance from substantive fairness. Procedural law succeeds only when officials internalise the purpose behind the rule, and when courts insist that violation has consequences beyond rhetorical disapproval.

4.3 Rights during Custody

Once arrest has occurred, the individual enters the distinctive legal space of custody. Custody is not a zone of suspended rights. On the contrary, the vulnerability of the detained person intensifies the need for legal protection. The transition from freedom to custody does not extinguish dignity, bodily integrity, access to legal remedies, or the capacity to invoke constitutional and statutory rights. The jurisprudence of custody in India has progressively recognised that the State assumes affirmative obligations once it acquires physical control over the person. The arrested individual cannot provide for his own movement, safety or medical care; these become institutional responsibilities.

The most fundamental custodial right is protection against torture, cruel treatment, and coercive methods of interrogation. Indian criminal procedure does not authorise extraction of truth through violence. The right against self-incrimination, the statutory right to counsel, the requirement of medical examination and the obligation of humane treatment all converge upon this principle. Custody for investigation is lawful only insofar as it remains consistent with constitutional limitations. The idea that police custody is a space for "breaking" the accused is wholly incompatible with a rights-oriented criminal justice system.[44]

The arrested person also possesses the right to be maintained in conditions compatible with health and dignity. This includes protection from needless restraints, provision of food, water, sanitation, rest and medical attention. Such claims are sometimes treated as prison concerns rather than arrest concerns, but the distinction is artificial. The period immediately after arrest may be the most dangerous phase of detention, particularly where the person is interrogated, sleep-deprived, or denied contact with the outside world. The statutory provisions relating to health and safety in custody must therefore be interpreted broadly to include preventive protection rather than post-facto response alone.[45]

Access to legal aid and communication with the outside world remains essential during custody. A person who cannot secure a private lawyer may still be entitled to free legal services. This is not an indulgence but a condition of equal protection. The criminal process is complex, and decisions made in the early stages-whether to seek bail, challenge arrest, oppose police remand, request medical examination, or complain of ill-treatment-can decisively shape the future course of the case. If the accused is unrepresented at this stage, the subsequent fairness of the trial may be seriously compromised.[46]

Custody also implicates the law of remand. Once the arrested person is produced before the magistrate, the question arises whether continued detention is necessary and, if so, in what form. Police custody and judicial custody are not interchangeable. Police custody places the person directly under the investigating agency and therefore carries the highest risk of coercion; judicial custody places the person in jail or other authorised institution under a different supervisory regime. The statutory differentiation between these forms of custody reflects an attempt to calibrate risk. Police custody should be granted only where concrete investigative necessity is shown, not as a matter of prosecutorial routine.[47]

The remand process also determines whether the right to silence and the right against self-incrimination can be meaningfully protected. If remand is granted casually, the magistrate may become an instrument through which police demands are regularised without

[43] The Constitution of India, arts. 21-22.
[44] *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.
[45] *The Bharatiya Nagarik Suraksha Sanhita, 2023*, ss. 35-38, 43, 46-48, 51-58, 187.
[46] The Legal Services Authorities Act, 1987, s. 12.
[47] *Central Bureau of Investigation v. Anupam J. Kulkarni*, (1992) 3 SCC 141.

adequate scrutiny. Conversely, a conscientious remand inquiry can expose illegal arrest, visible injuries, absence of grounds, or the lack of need for custodial interrogation. Rights during custody are therefore inseparable from the quality of judicial engagement at remand hearings.

The custodial rights of vulnerable groups require special mention. Women, children, members of Scheduled Castes and Scheduled Tribes, religious minorities, migrants, queer persons and the economically poor may experience custody through distinct patterns of stigma and violence. The law does not always enumerate these differences in detail, but a substantive reading of Articles 14, 21 and 22 suggests that equal protection in custody requires sensitivity to social location. A formally uniform custodial regime may reproduce material inequalities if it ignores language barriers, literacy deficits, disability, social fear of the police, or dependence on daily wages.

The jurisprudence on custodial rights further reveals that the State's liability is heightened, not diminished, once the person is under official control. Injuries sustained in custody, unexplained deaths, disappearance of detainees, or humiliating treatment trigger a burden of justification on the State because the relevant facts lie peculiarly within official knowledge. This evidentiary logic is crucial. It prevents the administration from converting its own exclusive control into impunity and aligns custodial doctrine with the broader rule that power must remain answerable to law.[48]

4.4 Role of Police and Magistrate

The statutory framework of arrest is institutionally bipolar. It relies on police to exercise initial coercive powers and on magistrates to supervise the legality and necessity of continued detention. The same legal order that empowers police to arrest also distrusts unchecked police custody. This tension is not accidental; it is built into the design of criminal procedure. Police are indispensable to investigation, but their proximity to accusation, their organisational incentives and their monopoly over the arrested person's body during the initial stage create enduring risks of abuse. Judicial oversight is therefore not an afterthought but a structural counterweight.

The police role begins with assessment of whether arrest is necessary in the circumstances of the case. A mature understanding of this function must reject the crude equation between accusation and custody. Police are expected to evaluate whether arrest is required for preventing further offence, ensuring proper investigation, preventing tampering with evidence, forestalling inducement or intimidation of witnesses, or securing presence before court. Where these purposes can be served through notice, summons or other less restrictive means, arrest becomes difficult to justify. The statutory discretion to arrest is thus a duty to think, not a licence to confine.[49]

Police also bear responsibility for recording the fact of arrest with integrity. This includes contemporaneous entries, accurate documentation, communication of rights, facilitation of medical examination and compliance with time limits for production before the magistrate. These are not ministerial details. Every stage of record-making affects later adjudication of legality. In custodial litigation, the case often turns on paperwork: the exact hour of arrest, the witness to the arrest memo, the note showing intimation to relatives, the medical report, or the station diary entry. The police officer who treats these requirements perfunctorily does not merely commit procedural error; he weakens the very legality of the criminal process.

However, the most decisive statutory safeguard lies in the role of the magistrate. The magistrate is not a passive recipient of papers but the constitutional sentinel at the threshold between executive control and judicially supervised custody. At first production, the magistrate must inquire whether the arrest is lawful, whether the accused has been informed of the grounds, whether legal aid is required, whether there are visible signs of ill-treatment, and whether continued detention is necessary. The remand order should therefore reflect application of mind rather than formulaic endorsement. Where the magistrate fails to discharge this function, the constitutional promise of prompt judicial oversight is hollowed out from within.[50]

The magistrate's role is especially important in determining police custody. Because custodial interrogation is often sought in general terms, judicial scrutiny must insist upon specificity. What investigative purpose requires police custody? Why cannot the same purpose be served in judicial custody or through other procedural steps? Have the officers complied with arrest safeguards? Is the request

[48] *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.
[49] *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
[50] *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416.

proportionate to the gravity and complexity of the case? These questions transform remand from bureaucratic continuation of detention into a legal inquiry disciplined by necessity and rights.

Magistrates also serve an evidentiary function. The first judicial encounter with the arrested person is frequently the earliest neutral opportunity to detect unlawful treatment. Visible injuries, fear, confusion, complaints of abuse or inability to understand proceedings should trigger careful recording and, where necessary, medical examination or transfer away from police custody. This dimension of judicial work is often under-theorised. Yet in practice it may be the only moment at which the law can interrupt an ongoing pattern of custodial coercion before irreversible harm occurs.

The police-magistrate relationship further reflects the broader constitutional separation between investigation and adjudication. If magistrates routinely defer to the police narrative, the equilibrium collapses and executive discretion expands. If, conversely, magistrates insist upon reasons, scrutinise records and respond seriously to complaints, statutory safeguards acquire operational meaning. The doctrinal force of arrest law thus depends as much on institutional culture as on legislative text.

4.5 Special Laws (UAPA, NDPS, etc.)

Any account of arrest safeguards in India would be incomplete if it confined itself to the ordinary procedural code. Special statutes dealing with terrorism, narcotics, preventive detention and organised forms of serious crime reconfigure the balance between liberty and security. Although such laws are justified by reference to exceptional harms and investigative complexity, they frequently dilute the practical availability of ordinary safeguards by altering bail standards, expanding detention periods, or enlarging the scope of executive suspicion. In this sense, the rights of arrested persons are tested most severely not in ordinary offences but at the margins of exception.

The Unlawful Activities (Prevention) Act, 1967 is the most prominent example. Section 43D(5), as judicially interpreted, significantly restricts the grant of bail where the court believes that the accusation is prima facie true. The consequence is that arrest under the UAPA can lead to prolonged incarceration even before guilt is adjudicated. In practical terms, this changes the meaning of arrest itself. Under ordinary criminal law, arrest initiates a process in which bail may remain a realistic remedy. Under the UAPA, arrest may operate as long-duration incapacitation, thereby magnifying the importance of initial legality, evidentiary scrutiny and judicial caution at every stage.[51]

The constitutional concern here is not that Parliament lacks authority to enact special anti-terror laws, but that exceptional procedure risks normalising pre-trial punishment. Where bail is structurally difficult and trials are protracted, the distinction between accusation and punishment becomes blurred. This is particularly problematic because the evidentiary assessment at the early stage is necessarily incomplete. A system committed to the presumption of innocence must therefore treat arrest under special laws as a site of intensified judicial responsibility, not diminished scrutiny.[52]

The Narcotic Drugs and Psychotropic Substances Act, 1985 raises analogous concerns. Section 37 imposes stringent conditions for bail in specified offences, requiring the court to be satisfied, inter alia, that there are reasonable grounds for believing that the accused is not guilty and is not likely to commit any offence while on bail. Such a threshold is unusual in criminal law and has the effect of making arrest under the NDPS regime deeply consequential. Moreover, narcotics investigations often involve questions of search, seizure, conscious possession, procedural compliance and statements to investigating officers, each of which can become contentious and rights-sensitive.[53]

The Supreme Court's recognition in *Tofan Singh* that confessional statements made to officers under the NDPS framework are not readily insulated from constitutional scrutiny underscores the continuing relevance of anti-compulsion values even in special statutes. The case demonstrates that extraordinary legislation does not create a constitutional vacuum. The privilege against self-incrimination, the right to fair procedure and the requirement of strict compliance with procedural safeguards persist, though their practical vindication may be harder to secure when bail barriers are high and investigative agencies are institutionally powerful.[54]

Preventive detention statutes such as the National

[51] The Unlawful Activities (Prevention) Act, 1967, s. 43D(5).
[52] *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.
[53] The Narcotic Drugs and Psychotropic Substances Act, 1985, s. 37.
[54] *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1.

Security Act, 1980 present a different but related challenge. Here the deprivation of liberty is not justified primarily as a response to a completed offence but as a measure to prevent anticipated threats to public order or national security. Preventive detention occupies a constitutionally recognised yet normatively uneasy position. It sits at the edge of criminal jurisprudence because it authorises detention without ordinary trial standards. Although Article 22 itself contains separate provisions concerning preventive detention, the basic values of reasonableness, communication of grounds, representation and periodic review remain critical safeguards against unbounded executive power.[55]

What emerges from the study of special laws is a jurisprudence of asymmetry. The more exceptional the statute, the greater the risk that arrest will cease to be a temporary procedural step and become a mechanism of prolonged incapacitation. This does not mean that all such laws are unconstitutional. It does mean that courts and scholars must evaluate them in light of the cumulative effect of their provisions. Extended detention periods, restrictive bail standards, heightened secrecy and deferential evidentiary thresholds may together alter the lived meaning of liberty more profoundly than any single provision considered in isolation.

Accordingly, the statutory framework governing arrest in India cannot be understood as a unified field of equal safeguards. Ordinary criminal procedure offers an important baseline of rights, but special laws create islands of exception where those rights are attenuated in practice. The critical task for doctrinal analysis is therefore to insist that even in exceptional regimes, legality must remain disciplined by constitutional values. The State may adapt procedure to serious threats, but it cannot abandon the rule that deprivation of liberty must remain reasoned, reviewable and proportionate.

The next chapter turns from statutory architecture to the judicial approach that has shaped arrest jurisprudence over time. The Court's decisions reveal both the constitutionalisation of arrest safeguards and the limitations of case-law reform in the face of entrenched institutional practices.

5. Judicial Approach and Case Law Analysis

If the statutory framework supplies the architecture of arrest, judicial decisions furnish its normative grammar. Indian arrest jurisprudence has developed not through a single doctrinal breakthrough but through a series of decisions in which the Supreme Court and, at times, High Courts, have attempted to discipline executive coercion by reading procedural law in the light of constitutional values. The judicial record is therefore both creative and corrective. It is creative because the Court has repeatedly derived enforceable safeguards from broad constitutional provisions, especially Articles 21 and 22. It is corrective because much of the jurisprudence responds to recurring patterns of abuse-illegal detention, custodial torture, handcuffing, denial of counsel, routine arrests, and the casual grant of remand.

The judicial approach may be described as a gradual constitutionalisation of arrest. Early criminal procedure tended to regard arrest as a technical investigative step governed primarily by statutory text. Over time, however, the courts increasingly understood arrest as a moment of concentrated vulnerability that implicates dignity, fairness, equality and accountability. The result has been an expansive body of case law that does not merely interpret procedural provisions but infuses them with constitutional meaning. Yet the jurisprudence also exhibits limits. Courts have been normatively ambitious, but institutional follow-through has often remained weak. To appreciate both the achievements and limitations of the judicial approach, it is necessary to examine the leading cases, the anti-torture guidelines, the development of compensation jurisprudence, and the broader evolution of arrest doctrine.

5.1 Landmark Judgments

Among the most influential decisions in the field is *Joginder Kumar v. State of U.P.*, where the Supreme Court emphatically rejected the notion that the mere existence of legal power justifies arrest in every case. The Court observed, in substance, that no arrest can be made simply because it is lawful to do so; there must be justification tied to the facts of the case. This was a crucial intervention because it transformed the discourse from bare legality to reasoned necessity. Arrest ceased to be viewed as the automatic procedural sequel to accusation and became instead a power to be exercised with restraint, judgment and accountability.[56]

The doctrinal importance of *Joginder Kumar* lies in the

[55] The National Security Act, 1980.

[56] *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

way it linked personal liberty with police decision-making. The Court recognised that arrest inflicts social stigma, financial hardship and psychological injury even before guilt is determined. By foregrounding these consequences, the judgment challenged an older culture of investigation in which arrest was often treated as a demonstration of authority or seriousness. It also insisted that a friend or relative should, as far as practicable, be informed of the arrest. In doing so, the Court moved beyond negative liberty and towards a relational conception of safeguards in which the outside world becomes a witness against custodial invisibility.

A further landmark in the line of rights-protective decisions is *State of Bombay v. Kathi Kalu Oghad*, where the Court distinguished testimonial compulsion from the taking of physical evidence. Although the case has often been cited for the proposition that fingerprints, specimen handwriting and similar material may stand on a different footing from compelled testimony, its larger significance lies in the Court's effort to define constitutional boundaries for investigation. Later jurisprudence had to build on and sometimes narrow the practical implications of this distinction, but the case remains central to understanding how Indian courts conceptualised the privilege against self-incrimination within a system that also recognises investigative necessity.[57]

The evolution continued in *Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble*, where the Supreme Court reaffirmed that torture and assault by police are not merely individual aberrations but serious violations calling for uncompromising judicial response. While not as frequently discussed as *D.K. Basu*, the judgment is significant because it demonstrates judicial willingness to condemn police brutality in direct and institutionally pointed terms. The case contributes to the moral register of arrest jurisprudence by making clear that violence by law-enforcement officers is especially grave precisely because it is committed under colour of law.[58]

The decision in *D.K. Basu v. State of W.B.* represents an even more elaborate jurisprudential moment. Responding to custodial violence and deaths, the Supreme Court formulated a set of concrete requirements to be observed during arrest and detention, including identification of police personnel, preparation of a memo of arrest, attestation by a witness, information to a relative or friend, medical examination, diary entries, and the right of the arrested person to meet a lawyer during interrogation. These guidelines were designed not as abstract ideals but as operational commands for every arresting authority. Their significance lies in the Court's willingness to translate constitutional values into detailed procedural obligations enforceable against the State.[59]

What makes *D.K. Basu* foundational is the Court's explicit acknowledgement that custodial violence is not merely an individual wrong but a constitutional crisis. Torture and unexplained custodial deaths attack the legitimacy of the rule of law because they place the body of the detainee outside legal protection precisely when State power is at its maximum. The guidelines therefore function as a jurisprudence of visibility. Each requirement-recording, informing, examining, producing, documenting-reduces the room for abuse by ensuring that custody leaves a trace. In this sense, *D.K. Basu* constitutionalised paperwork, not out of bureaucratic fetish, but because documentation is the first defence against disappearance and coercion.

Another important line of decisions concerns the treatment of prisoners and detainees as bearers of continuing fundamental rights. In *Sunil Batra* and *Sunil Batra (II)*, the Court insisted that incarceration does not extinguish constitutional protection and that prison walls do not keep out fundamental rights. Although these cases arose in the prison context, their reasoning decisively influenced arrest jurisprudence by affirming that custody is not a zone of legal abandonment. The humane treatment of detained persons, scrutiny of solitary confinement, and insistence upon constitutional accountability within custodial institutions provided the conceptual basis for later decisions relating directly to arrested persons.[60]

Likewise, *Francis Coralie Mullin* deepened the idea that Article 21 protects not mere animal existence but life with dignity. This conceptual expansion is critical for arrest law because many custodial abuses do not involve formal conviction or even prolonged imprisonment. They involve humiliation, fear, denial of basic necessities, restriction of communication and coercive questioning. A dignity-based reading of Article 21 allows courts to recognise such harms as constitutional wrongs rather than mere administrative

[57] *State of Bombay v. Kathi Kalu Oghad*, AIR 1961 SC 1808.
[58] *Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble*, (2003) 7 SCC 749.
[59] *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416.
[60] *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.

lapses.[61]

The right against compelled self-incrimination has also been substantially shaped by judicial interpretation. In *Nandini Satpathy v. P.L. Dani*, the Supreme Court adopted a generous view of the protection against testimonial compulsion and recognised the importance of counsel and caution during interrogation. In *Selvi v. State of Karnataka*, the Court later reinforced constitutional limitations by holding involuntary narco-analysis, polygraph examinations and brain-mapping techniques inconsistent with personal liberty and the privilege against self-incrimination. Together these decisions established that the investigative interest in obtaining information cannot override the autonomy and mental privacy of the individual in custody.[62]

The jurisprudence on restraints and humiliation is equally instructive. In *Prem Shankar Shukla*, the Supreme Court condemned routine handcuffing and insisted that it must be justified by exceptional circumstances rather than administrative convenience. *Citizens for Democracy* continued this logic, underscoring that handcuffing and fetters implicate dignity and cannot be normalised. These cases are of enduring significance because they reject the symbolic degradation often associated with arrest. The accused may lawfully be deprived of liberty, but he cannot be paraded as morally worthless before guilt is proved.[63]

Judicial concern for legal aid emerged in *Khatri (II)* and related cases, where the Court made clear that the right to free legal services arises not only at trial but when the accused is first produced before the magistrate and at every stage where liberty is at stake. This doctrinal move is especially important in the arrest context because the earliest phase of criminal process often determines whether illegal detention is challenged, whether injuries are recorded and whether remand is resisted. Without counsel, formal rights remain largely inaccessible to the indigent accused.[64]

Finally, *Arnesh Kumar v. State of Bihar* revitalised the judicial warning against routine arrest, especially for offences punishable with imprisonment up to seven years. The Court required police officers to record reasons for arrest and reasons for not arresting, and warned magistrates against mechanically authorising detention. Though directed at a particular pattern of misuse, the judgment has larger significance: it reasserts that arrest must be exceptional rather than automatic, and that statutory discretion is bounded by constitutional reasonableness.[65]

5.2 Guidelines against Custodial Violence

The jurisprudence against custodial violence is one of the most morally urgent parts of Indian public law. The courts have long been confronted with the gap between the formal repudiation of torture and the persistence of coercive interrogation, physical assault, sexual violence, extortion and custodial death. Judicial response has therefore taken the form of guidelines, evidentiary presumptions, remedial innovations and repeated reaffirmation that violence in custody is incompatible with constitutional democracy.

D.K. Basu remains the canonical source of arrest guidelines, but it did not emerge in isolation. Earlier decisions such as *Sheela Barse* exposed the vulnerability of detainees, especially women, and emphasised institutional safeguards including legal assistance and separate handling in custody. The Court's attention to the conditions of detention signalled that procedural fairness cannot be reduced to courtroom rights alone. The legality of arrest includes the legality of treatment after arrest.[66]

The NHRC's own guidelines regarding arrest and its manuals for police officers have supplemented judicial doctrine by translating constitutional and judicial standards into administrative instruction. These materials underscore the need for contemporaneous records, communication to relatives, medical safeguards and respect for human dignity. Their importance lies less in generating new constitutional norms than in building an institutional bridge between court-made doctrine and police practice. They also demonstrate that arrest safeguards are now sufficiently established to form part of professional expectations within law-enforcement culture.[67]

The 152nd and 273rd Reports of the Law Commission add further depth to the anti-torture discourse. The 152nd Report on custodial crimes documented the structural features that enable abuse, while the 273rd Report linked Indian law to the need for specific anti-torture legislation compatible with international

[61] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.
[62] *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.
[63] *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.
[64] *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627.
[65] *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
[66] *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.
[67] National Human Rights Commission, *Guidelines regarding Arrest* (22 November 1999).

standards. These reports are relevant because they show that custodial violence cannot be understood as a series of isolated deviations; it is sustained by institutional arrangements, evidentiary difficulties and inadequate legal consequences.[68]

International human rights principles have also informed the judicial outlook. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Nelson Mandela Rules provide a normative vocabulary of humane treatment, access to counsel, medical care, record-keeping and independent oversight. While not always directly enforceable, these instruments reinforce the proposition that custody is a site of heightened State obligation. Their value in Indian jurisprudence lies in demonstrating that domestic anti-torture principles are part of a broader global constitutional morality rather than idiosyncratic judicial invention.[69]

Yet guidelines face a familiar problem: they are easiest to articulate at the appellate level and hardest to enforce at the police-station level. Arrest memos can be backdated, injuries can go unrecorded, relatives can be informed perfunctorily, and fear can silence complaints at the first production before the magistrate. This is why the guideline model, while indispensable, cannot by itself eliminate custodial violence. It must be supported by institutional monitoring, prosecutorial seriousness, independent medical examination, audio-visual recording of custodial spaces, and judicial willingness to draw adverse inferences where official records are incomplete or implausible.

The jurisprudence against custodial violence also derives support from the Court's broader insistence that the burden of explanation lies heavily on the State where injury occurs in custody. Because the detained person is under exclusive official control, unexplained violence cannot be treated as an evidentiary mystery external to the State. This principle, though not always formulated identically across cases, underlies the judicial willingness to draw inferences, demand records and treat custodial injury as constitutionally suspect unless adequately explained. It is one of the few doctrinal tools capable of responding to the asymmetry of proof that characterises detention abuse.

Moreover, the anti-custodial-violence jurisprudence has gradually widened from purely physical harm to encompass humiliation, intimidation and structural conditions that make abuse likely. The NHRC manual for police officers, though administrative in form, reflects this widened understanding by stressing not only the prohibition of assault but also the importance of lawful records, prompt communication, medical examination and respectful conduct toward detainees.[70] The judicial and administrative approaches thus increasingly converge on the idea that torture prevention requires a whole ecology of lawful custody rather than merely punishment for extreme cases.

In this connection, *Paramvir Singh Saini* is noteworthy because the Court directed installation of CCTV cameras in police stations and investigative offices, recognising that technological recording can reduce evidentiary opacity in complaints of custodial abuse. The judgment reflects an important evolution in judicial thinking: from rules of conduct to architectures of verification. Where the truth of custody is contested, technology can serve the constitutional value of transparency, provided it is actually maintained, accessible and linked to accountability mechanisms.[71]

The anti-torture jurisprudence also reveals a deeper philosophical choice. Courts have refused to treat torture as a regrettable but functional instrument of law enforcement. Instead, they have understood it as a negation of constitutional order. This is significant because democracies under pressure sometimes normalise violence in the name of efficiency or security. Indian arrest jurisprudence, at its best, has insisted that truth produced through illegality corrupts the justice system itself. The crime-control objective cannot be pursued by methods that destroy the ethical foundation of public power.

5.3 Compensation Jurisprudence

One of the most original features of Indian constitutional law is the development of public law compensation for unlawful detention, custodial death and gross violations of fundamental rights. Traditionally, compensation for wrongful conduct was sought through private law actions in tort. The constitutional courts, however, gradually recognised

[68] Law Commission of India, 152nd Report on *Custodial Crimes* (1994).
[69] United Nations, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988).
[70] National Human Rights Commission, *Manual on Human Rights for Police Officers* 20-27 (2011).
[71] *Paramvir Singh Saini v. Baljit Singh*, (2021) 1 SCC 184.

that where State agents violate fundamental rights-particularly the right to life and personal liberty-the ordinary civil remedy may be too slow, uncertain or inaccessible. As a result, compensation emerged as a distinct constitutional remedy intended to vindicate rights and signal official accountability.

Rudul Sah v. State of Bihar is a landmark in this development. The petitioner had remained in prison for years after acquittal. The Supreme Court held that mere release from illegal detention would not exhaust the court's constitutional duty and awarded monetary compensation. The case is foundational because it transformed Article 32 from a declaratory remedy into an instrument capable of material redress. Compensation here did not depend upon proving every element of private law liability; it arose from the constitutional wrong itself.[72]

Bhim Singh v. State of J&K extended this logic in the context of illegal arrest and detention of a legislator who was prevented from attending the Assembly. The Court awarded compensation, thereby underscoring that unlawful deprivation of liberty by public officials is not a trivial irregularity but a serious constitutional injury. The significance of the case lies in the Court's insistence that the judiciary must respond meaningfully where State power has been misused to obstruct personal liberty and democratic participation.[73]

The compensation principle was developed further in *Nilabati Behera v. State of Orissa*, where the Court drew a distinction between private law damages and public law compensation for contravention of fundamental rights. The case involved custodial death, and the Court affirmed that constitutional courts may award monetary redress where the State fails in its obligation to protect life and liberty. The judgment is especially important because it addressed the recurring objection that sovereign functions should immunise the State from liability. In constitutional terms, the Court rejected the idea that public power can consume public accountability.[74]

In *Sube Singh v. State of Haryana*, the Court clarified that compensation is available in appropriate cases of established violation, particularly where custodial torture or illegal detention is clearly made out. At the same time, the Court cautioned that every allegation of violation cannot automatically generate compensation without adequate proof. This qualification is doctrinally significant. It reflects the Court's effort to balance two imperatives: ensuring effective redress for grave constitutional wrongs, and maintaining some evidentiary discipline so that public law compensation does not become wholly untethered from adjudicative standards.[75]

The public law compensation cases also perform a constitutional pedagogic function. They teach lower authorities that liberty is not an abstract ideal but a value whose violation has material consequences for the State. This is particularly important in a bureaucratic environment where procedural shortcuts may appear costless. Once courts require the State to pay for unlawful detention or custodial death, they make visible the public dimension of what might otherwise be treated as an unfortunate private tragedy.

At the same time, compensation cannot become a substitute for institutional responsibility. If the State pays but individual officers face no meaningful consequences, the deterrent function of compensation may be diluted. Likewise, if compensation is awarded only in a small number of extreme cases, a wide range of less dramatic but still serious liberty violations may remain effectively unremedied. The challenge for future jurisprudence is therefore to preserve the flexibility of constitutional compensation while integrating it with disciplinary, criminal and structural remedies.[76]

The jurisprudence of compensation performs several functions at once. It offers immediate relief to victims or their families; it signals judicial condemnation of official abuse; it partially overcomes the slowness of ordinary civil actions; and it affirms that fundamental rights are not merely aspirational. Yet compensation is also limited. Money cannot reverse trauma, restore life, or fully repair the social and psychological injuries inflicted by illegal arrest or custodial violence. Nor does compensation always ensure punishment of the individual wrongdoers. It is thus best understood as one part of a broader remedial matrix that should include criminal prosecution, departmental action, institutional reform and public acknowledgment.

Nevertheless, the symbolic significance of compensation jurisprudence should not be underestimated. It marks a shift from viewing liberty as a value to viewing its violation as a legally

[72] *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.
[73] *Bhim Singh v. State of J&K*, (1985) 4 SCC 677.
[74] *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.
[75] *Sube Singh v. State of Haryana*, (2006) 3 SCC 178.
[76] *Sube Singh v. State of Haryana*, (2006) 3 SCC 178.

compensable harm. This matters profoundly in arrest law. If the system treats illegal arrest as a minor procedural defect, abuse remains cheap. If it treats unlawful deprivation of liberty as a constitutional wrong carrying material consequences, institutional incentives begin, however slowly, to change.

5.4 Evolution of Arrest Jurisprudence

The evolution of Indian arrest jurisprudence can be understood in four broad phases. The first phase is formal and statutory. In this period, arrest law was largely viewed through the lens of textual procedure and legal authority. The central question was whether the officer acted within the four corners of the code. Constitutional review existed, but Article 21 had not yet acquired the expansive meaning that later transformed criminal procedure.[77]

The second phase begins with the post-*Maneka Gandhi* constitutional turn. Procedure was no longer sufficient merely because it was enacted by law; it had to be just, fair and reasonable. This doctrinal shift altered the status of arrest law fundamentally. The procedural code became subject to constitutional values of fairness, non-arbitrariness and dignity. Decisions on legal aid, speedy trial, conditions of detention and anti-compulsion all emerged from this enlarged vision of Article 21.[78]

The third phase is the proceduralisation of accountability. Cases such as *Joginder Kumar*, *D.K. Basu*, *Prem Shankar Shukla* and *Khatri (II)* translated broad constitutional principles into concrete obligations-informing relatives, recording arrest, limiting handcuffing, providing counsel, producing the accused promptly, and scrutinising remand. The remarkable feature of this phase is the Court's recognition that rights survive in practice only when institutional processes are redesigned. The jurisprudence thus moved from abstract declaration to operative safeguards.

The fourth and current phase may be described as one of systemic and data-conscious scrutiny, though it remains incomplete. Recent decisions such as *Arnesh Kumar* and *Paramvir Singh Saini* reflect concern with recurring structural patterns: routine arrests in ordinary offences, and evidentiary opacity in custodial abuse cases. The courts have increasingly sought not only to condemn violation after the fact but to alter the organisational environment in which violations occur. Technology, documentation, and reasoned decision-making have become central themes.[79]

At the same time, contemporary jurisprudence must grapple with new tensions. Privacy, informational self-determination and digital surveillance now complicate the older vocabulary of bodily custody. The decision in *Puttaswamy* confirms that privacy is intrinsic to life and liberty, a principle with implications for search, seizure, extraction of personal data and custodial questioning in the digital age. Arrest jurisprudence can no longer focus solely on the physical body; it must also confront the expanding informational reach of the State.[80]

The development of arrest jurisprudence has also been shaped by the interaction between ordinary criminal procedure and exceptional security legislation. Decisions such as *A.K. Roy* and *Kartar Singh* demonstrate that courts have been willing to accept the constitutional existence of preventive detention and extraordinary anti-terror measures, while simultaneously insisting that such powers remain subject to legal discipline.[81] The difficulty, however, is that deference in exceptional fields can subtly alter the tone of arrest jurisprudence more generally. When prolonged pre-trial detention becomes thinkable in the name of security, the normative presumption of liberty can weaken across the system unless courts constantly reassert that exception must not become the ordinary grammar of criminal process.

Another contemporary development lies in the intersection of bodily custody with digital control. The person arrested today may be physically confined while also being compelled, formally or informally, to surrender access to phones, cloud accounts, messages and biometric devices. Although the case law remains emergent, the dignity-centred and privacy-centred strands of constitutional doctrine suggest that informational extraction cannot be treated as normatively trivial. Arrest jurisprudence is thus likely to evolve further in response to the expansion of data-intensive policing and the need to preserve autonomy within technologically mediated investigation.

Another tension arises from special statutes and national security adjudication. Decisions under anti-terror and narcotics laws sometimes reflect deference to legislative judgment and prosecutorial claims,

[77] *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.
[78] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[79] *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
[80] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
[81] *A.K. Roy v. Union of India*, (1982) 1 SCC 271.

thereby making the protection of liberty more fragile in exceptional domains. The evolution of arrest jurisprudence is therefore non-linear. The rights-based approach has grown stronger in ordinary criminal procedure, but zones of exception continue to test its resilience.[82]

The judicial approach to arrest thus reveals a paradox. On paper, India now possesses one of the most elaborate constitutional and judicially developed frameworks for protection of arrested persons. The Supreme Court has articulated norms on necessity, dignity, legal aid, anti-compulsion, anti-torture, compensation and transparency. Yet the very repetition of similar issues across decades suggests that doctrinal progress has not fully translated into institutional transformation. The court's jurisprudence is therefore best understood not as a completed achievement but as an ongoing project of constitutional discipline directed at a coercive arm of the State that has historically resisted internal legalisation.

This chapter demonstrates that judicial decisions have done more than fill legislative gaps. They have reimagined arrest as a constitutionally regulated encounter between State power and human dignity. The next chapter turns to the most difficult question of all: why, despite this dense normative framework, violations and abuses continue in practice with disturbing regularity.

6. Violations and Challenges in Practice

The doctrinal sophistication of Indian arrest law presents a troubling contrast with the realities repeatedly documented by courts, commissions, journalists, prison visitors, legal aid lawyers and civil society organisations. The problem is no longer one of normative silence. Constitutional provisions, statutory safeguards and judicial guidelines collectively articulate a fairly robust legal ethic of arrest. Yet the persistence of custodial violence, illegal detention, routine arrests, coerced confessions, delayed production, and inadequate accountability suggests that the central difficulty lies in implementation, institutional culture and the social distribution of vulnerability. In other words, the crisis of arrested persons' rights in India is not primarily that the law has failed to speak; it is that institutions frequently fail to obey.

This chapter examines that gap between law and lived reality. It argues that violations persist because coercive practices are reproduced by multiple interacting conditions: an inherited police culture that privileges confession and display of authority; structural pressures to show investigative progress quickly; inadequate forensic and technological capacity; weak internal discipline; social indifference toward accused persons; judicial overburden; and the limited capacity of accountability bodies to produce consistent consequences. Rights of arrested persons are therefore not defeated by a single legal defect but by an ecology of institutional failures.

6.1 Custodial Violence and Torture

Custodial violence remains the gravest violation of the rights of arrested persons because it represents the point at which State custody turns into domination over the body. Violence in custody ranges from visible assault to sleep deprivation, stress positions, threats, verbal humiliation, sexual abuse and psychological coercion. Its prevalence is difficult to measure precisely because of underreporting, fear of retaliation, falsified records and the institutional control exercised by the very agencies against which complaint must be made. Yet available reports and judicial observations leave no doubt that custodial abuse remains a structural problem rather than an exceptional aberration.[83]

The NHRC's Annual Report for 2023-24 recorded 160 new police custody death intimations and 2,346 new judicial custody death intimations. These numbers must be read cautiously, for death in custody is not always equivalent to death caused by torture, and judicial custody presents a distinct institutional environment from police custody. Even so, the statistics are legally significant. They indicate the scale at which the State exercises coercive control over human beings and the magnitude of harm associated with custodial systems. When custody repeatedly ends in unexplained injury or death, the burden on constitutional democracy is not merely to mourn but to reform.[84]

The persistence of custodial violence is partly linked to a confessional culture of investigation. Where investigative success is informally measured by the

[82] *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.
[83] Law Commission of India, 152nd Report on *Custodial Crimes* (1994).
[84] National Human Rights Commission, *Annual Report 2023-24*, 77 (2025).

speed with which a suspect is made to "disclose" facts, the temptation to use coercive methods grows. This tendency is strengthened when police lack adequate training, forensic support, cyber-investigative tools or witness-protection mechanisms. Violence then becomes a substitute for professional investigation. From a rule-of-law standpoint, this is doubly corrosive: it violates rights and also degrades evidentiary integrity because truth obtained through coercion is often unreliable, contaminated or strategically manufactured.[85]

The absence of a dedicated domestic anti-torture statute remains an important structural weakness. Constitutional doctrine condemns torture, ordinary criminal law penalises assault and hurt, and public law compensation provides some remedial response, yet none of these mechanisms is a full substitute for a coherent anti-torture framework tailored to custodial abuse. The Law Commission's recommendations on implementation of the Convention against Torture illustrate that the problem has long been recognised in reform discourse. The legal system knows the nature of the wrong; what it lacks is an integrated statutory response combining definition, independent investigation, victim protection and proportionate sanction.[86]

International human rights law reinforces this deficiency. The prohibition of torture and cruel, inhuman or degrading treatment is deeply embedded in modern human rights jurisprudence, and standards concerning detention repeatedly emphasise medical care, independent oversight and respect for dignity.[87] Although domestic enforcement must ultimately rest on Indian law, international norms help expose the inadequacy of treating custodial violence as just another ordinary offence disconnected from the special dangers created by state custody.

A further reason for the endurance of torture is evidentiary asymmetry. Custody is an enclosed environment. The detainee is often isolated, frightened, and socially disadvantaged; the officers are institutionally connected, experienced in paperwork and capable of shaping the official record. Medical examination may be delayed or superficial; magistrates may not probe complaints rigorously; co-detainees may fear speaking; and families may lack resources to pursue litigation. The result is that even when violence is widely suspected, legal proof becomes difficult. This is precisely why judicial decisions have insisted upon documentation, prompt production, medical examination and external intimation. They are not ornamental requirements; they are mechanisms to reduce evidentiary darkness.[88]

The anti-torture problem also reveals the limits of ex post remedies. Compensation, prosecution and disciplinary action occur only after harm has occurred and are often delayed. What is needed, therefore, is a preventive custodial jurisprudence-one that designs institutions so that violence becomes difficult to conceal and costly to commit. CCTV coverage, independent medical protocols, mandatory legal aid at first production, audio-visual recording of interrogation in serious offences, and regular external inspection all serve this preventive function. Yet adoption of such measures remains inconsistent, and their effectiveness depends on maintenance, access to recordings and willingness to act on complaints.[89]

The moral difficulty with custodial violence is sometimes obscured by public sentiment. Persons who are arrested are often presumed guilty in social perception, especially in sensational cases. This can produce a climate in which violent treatment is tacitly justified as an efficient means of extracting truth or expressing public anger. A constitutional order, however, is tested precisely by its treatment of the unpopular, the feared and the accused. If the prohibition of torture is conditional upon public sympathy, it ceases to be a right and becomes a privilege. The rights of arrested persons therefore serve as a measure of constitutional seriousness rather than sentimental generosity.

6.2 Illegal Arrests and Detention

Illegal arrest and unlawful detention take many forms. The most obvious is arrest without statutory basis or beyond the limits imposed by law. But illegality also includes delayed or manipulated recording of arrest, detention under the guise of "informal questioning," failure to communicate grounds, production before the

[85] Law Commission of India, 273rd Report on *Implementation of United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation* (2017).
[86] Law Commission of India, 273rd Report on *Implementation of United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation* (2017).
[87] United Nations Treaty Collection, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, status as at 27 March 2026.
[88] *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416.
[89] *Paramvir Singh Saini v. Baljit Singh*, (2021) 1 SCC 184.

magistrate after the permissible period, and continued custody despite lack of investigative necessity. These practices thrive because the initial phase of detention is often marked by informational asymmetry: the arrested person and family do not know precisely what is happening, while the police control the timeline and the paperwork.

Judicial experience shows that illegal detention is not confined to spectacular abuses. It often arises from everyday routinisation of coercive power. Individuals may be picked up for questioning, retained for many hours without formal arrest, compelled to remain available at the station, or threatened into signing statements. Because such practices hover in the grey zone between arrest and "voluntary" presence, they can evade formal safeguards designed for recognised custody. The distinction between de jure arrest and de facto detention is therefore crucial. Liberty can be violated even when the official record disclaims arrest.[90]

Illegal detention also flourishes in spaces where law and informality blur. Persons may be "called for inquiry," made to wait for prolonged periods, transported without clear legal basis, or kept in unofficial forms of control that are difficult to challenge because the State has not yet acknowledged custody. Such practices are especially dangerous because they exploit the threshold before documented arrest, precisely where statutory safeguards are supposed to begin. A future rights framework must therefore become more attentive to functional rather than purely formal indicators of custody.

In politically charged contexts, the risk of unlawful detention takes on additional dimensions. Arrest or detention may be used to disperse assemblies, pre-empt protest, or incapacitate local organisers under broad claims of public order. Preventive powers undoubtedly exist in law, but their use must remain exceptional and reviewable. Otherwise the line between criminal process and administrative control over dissent becomes dangerously thin.[91]

The reasons for illegal arrests are varied. Some are investigative, such as the desire to secure immediate control over a suspect. Others are demonstrative, intended to show swift action to superiors, media or complainants. Still others are punitive, especially where arrest is used to teach a lesson, break social protest, exert pressure in local disputes, or secure compliance unrelated to genuine criminal need. In all such cases, arrest ceases to be a procedural step and becomes a technology of domination.

The poor and socially marginal are particularly vulnerable to illegal detention. They are less able to retain counsel promptly, less likely to have influential networks, and more likely to be viewed by the police through stereotypes of criminality or expendability. Daily wage earners may submit to unlawful station-house detention rather than risk retaliation or loss of future livelihood. Migrants may lack local contacts to verify their absence. Persons with low literacy may not understand arrest memos or remand proceedings. Thus the formal universality of arrest safeguards can conceal unequal access to their enforcement.[92]

The doctrine against routine arrest articulated in *Arnesh Kumar* was an important response to this phenomenon, particularly in offences where arrest had become an automatic or pressure-driven response. Yet the judgment's implementation has been uneven. Police officers may record reasons in standardised language, and magistrates may continue to authorise detention mechanically. This demonstrates a recurring pattern in Indian arrest law: doctrinal reform produces compliance texts, but not always compliance culture. The problem is less the absence of forms than the persistence of unexamined assumptions about when arrest is "normal."[93]

Illegal detention also intersects with wrongful prosecution. The 277th Report of the Law Commission highlighted the need for legal remedies where individuals suffer because of malicious or baseless prosecution and detention. The relevance of this report to arrest jurisprudence lies in its recognition that liberty injuries are not exhausted by eventual acquittal. Time spent in unjustified custody cannot be returned, and the social consequences of arrest-loss of employment, stigma, debt, family disruption-often endure long after formal exoneration.[94]

A further challenge lies in preventive and pre-emptive policing. In situations of public protest, communal tension or anticipated disorder, police may resort to arrests or detentions justified by broad claims of maintaining peace and public order. While some

[90] *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.
[91] The National Security Act, 1980.
[92] Upendra Baxi, *The Crisis of the Indian Legal System* 146-175 (Vikas Publishing House, 1982).
[93] *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
[94] Law Commission of India, 277th Report on *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (2018).

preventive powers are recognised by law, their use must remain tightly controlled because they invert the normal criminal-law logic of response to defined wrongdoing. The risk here is that arrest becomes a governance tool for managing dissent or inconvenience. The constitutional commitment to liberty requires that exceptional preventive measures be kept exceptional in fact, not merely in language.

6.3 Abuse of Police Powers

The abuse of police power in the arrest context is not reducible to physical violence. It includes humiliation, selective targeting, fabrication or inflation of grounds, coercive extraction of information, extortion, moral policing and the use of detention to secure ends unrelated to lawful investigation. Abuse occurs whenever statutory power is exercised for an improper purpose, in a disproportionate manner, or with deliberate disregard for legal safeguards. Because police occupy the frontline of the State's coercive apparatus, even minor deviations from legality can have devastating effects on individual liberty.

One recurrent form of abuse lies in the use of arrest as leverage. The threat or actuality of custody may be employed to compel settlement of civil disputes, recover money, obtain cooperation in unrelated matters, force surrender, or induce confession. Such practices subvert the distinction between criminal process and private coercion. The law of arrest is designed to secure public justice, not to arm officials with bargaining power over vulnerable persons. Where arrest is used as leverage rather than necessity, the police cease to act as neutral investigators and become partisan wielders of intimidation.

Another form of abuse concerns public spectacle. Arrests may be timed, displayed or narrated in ways calculated to shame the accused before any judicial determination of guilt. Media leaks, photographs, parading, unnecessary handcuffing and triumphalist press briefings transform the arrest into a performative assertion of state power. The courts have repeatedly condemned unjustified restraints and humiliating treatment, but the symbolic economy of arrest remains powerful in a media-saturated environment. Publicity can convert accusation into social conviction long before trial, thereby aggravating the punitive character of pre-trial process.[95]

Discriminatory policing is an additional and under-acknowledged dimension of abuse. Social prejudices related to caste, class, religion, gender, region and political dissent can shape who is viewed as suspicious, whose complaint is taken seriously, and against whom arrest is swiftly deployed. Formal legal texts rarely admit such bias, but implementation patterns often reflect it. The abuse of police power is therefore not only an individual failing but also a manifestation of broader social hierarchies reproduced through criminal procedure.

Abuse of power also intersects with the economy of bail. Where officers know that an arrest is likely to secure at least some period of incarceration before release, the mere act of arrest acquires punitive force independent of conviction. This makes fidelity to the legality of arrest all the more important. In serious or special-law offences with restrictive bail regimes, the pressure to arrest responsibly should be greater, not weaker. Yet in practice the opposite may occur: the knowledge that release will be difficult can itself encourage strategic or overbroad resort to custody.

The experience of abuse is also shaped by the performative language of suspicion. Labels such as "habitual offender," "gang member," "anti-national," or "drug trafficker" can pre-structure institutional attitudes toward the detainee before factual adjudication begins. Once such labels harden, officials may view rights as inconveniences reserved for the innocent rather than guarantees applicable precisely when guilt remains unproven. One of the tasks of constitutional culture is to resist this moral stratification of legal personhood.

The structure of police accountability contributes to the problem. Internal disciplinary systems may be slow, opaque and influenced by esprit de corps. Criminal prosecution of police officers for unlawful arrest or custodial violence remains relatively uncommon and often depends upon governmental sanction or prosecutorial will. Victims may fear reprisal, especially when they continue to reside within the same local power structures. As a result, the expected cost of abuse may remain low relative to the immediate investigative or political benefit perceived by the officer.

The Malimath Committee and later reform discussions highlighted the need to modernise investigation and professionalise criminal justice administration. Although some of the Committee's recommendations

[95] *Citizens for Democracy v. State of Assam*, (1995) 3 SCC 743.

have been contested from a due process standpoint, its broad diagnosis-that a weak investigative infrastructure can distort the criminal process-is relevant here. Where investigators lack training, resources and scientific support, discretionary shortcuts become attractive. Rights abuse then appears not merely as moral failure but as a pathological adaptation to institutional inadequacy.[96]

It must also be acknowledged that police officers often operate under difficult conditions: understaffing, long hours, political pressure, inadequate training and public demands for quick results. None of this justifies abuse, but it helps explain why legal reform directed solely at individual culpability may be insufficient. A rights-sensitive framework must address both responsibility and capacity. Officers must be made answerable for unlawful conduct, yet institutions must also be restructured so that compliance with rights is practically feasible and professionally valued.

6.4 Issues in Implementation

Implementation failure is the recurring theme that binds together custodial violence, illegal arrests and broader abuse of power. Several specific obstacles can be identified. First, many safeguards are front-loaded at the moment of arrest and first production, when the accused is least capable of enforcing them. If the officer does not properly record the arrest, if relatives are not truly informed, if the accused does not have counsel, or if the magistrate does not inquire meaningfully, later correction becomes difficult. Implementation is therefore path-dependent: early failures create lasting disadvantages.

Second, judicial overload weakens the efficacy of oversight. Magistrates handling large remand dockets may have limited time to scrutinise each case deeply. In such circumstances, remand can become routinised paperwork rather than substantive constitutional review. This is not simply a matter of judicial indifference; it reflects systemic congestion. But the consequence is serious: the most important legal checkpoint in the custody chain may fail to operate as intended.

Third, legal awareness among arrested persons and their families remains uneven. Rights are difficult to invoke if they are not known. Poor literacy, language barriers, social deference to police authority and fear of retaliation all diminish the capacity of detainees to insist upon legal safeguards. The presence of legal aid lawyers can mitigate this difficulty, but access remains inconsistent and often too delayed to affect the earliest stages of custody.[97]

Fourth, the consequences for non-compliance are often uncertain or delayed. Courts may criticise violations, but prosecutions or disciplinary actions against offending officers remain relatively rare. If the institutional message is that breach of arrest safeguards carries little real risk, compliance is likely to remain formalistic. A rights regime becomes credible only when officials know that violations have predictable consequences.

Fifth, the transition from the CrPC to the BNSS, while preserving many safeguards, also requires renewed training and administrative alignment. New section numbers, revised forms, and updated procedures must be internalised across police stations, prosecution offices and courts. Transitional uncertainty can weaken compliance, especially where training is perfunctory or fragmented. The statutory continuity of rights does not guarantee continuity of practice.[98]

Sixth, data systems and record management remain inadequate in many places. For rights protection to become systemic, institutions need reliable data on arrests, remands, intimation to relatives, medical examinations, complaints of ill-treatment, and outcomes of disciplinary or criminal action. Without such information, reform remains anecdotal. Transparency about arrest practices is itself a safeguard because it enables public scrutiny, policy correction and empirical evaluation of whether judicial guidelines are being followed.

There is also an implementation challenge at the level of institutional memory. Judicial guidelines accumulate across decades, statutory amendments shift section numbers, and new procedural codes replace old ones. Unless this body of law is translated into police manuals, prosecution training, magistrates' bench books and legal aid protocols, it risks remaining dispersed across inaccessible legal materials. The transition to the BNSS offers an opportunity for such consolidation, but only if authorities treat constitutional jurisprudence as part of everyday procedure rather than appellate abstraction.

[96] Committee on Reforms of Criminal Justice System, Government of India, *Report* (2003).
[97] The Legal Services Authorities Act, 1987, s. 12.
[98] India Code, *The Bharatiya Nagarik Suraksha Sanhita, 2023* (Act No. 46 of 2023), enforced from 1 July 2024.

Medical documentation deserves separate emphasis as an implementation issue. In custodial abuse cases, the quality, promptness and independence of medical examination often determine whether truth can later be established. Yet medical officers may be overburdened, insufficiently trained in forensic documentation of torture, or institutionally embedded in relationships that discourage candid recording. Without stronger medical protocols, the legal system loses one of its most important sources of objective evidence.

Implementation challenges also arise from the fragmented nature of accountability. Police departments, magistrates, legal services institutions, prison authorities, medical officers, State Human Rights Commissions, the NHRC and courts all have some role, but coordination is often weak. A violation may pass through multiple institutions without any one body taking ownership of the problem. This diffusion of responsibility allows systemic abuse to survive within pockets of formal compliance.

Finally, implementation is undermined when public discourse treats the rights of arrested persons as an obstacle to effective law enforcement. Such a discourse misunderstands the constitutional purpose of criminal procedure. Safeguards do not protect only the guilty; they protect the legal system from false confessions, mistaken arrests, fabricated recoveries and the corrosion of legitimacy. Implementation failure is therefore not a concession to efficiency but a threat to justice itself.

6.5 Role of NHRC and Accountability Mechanisms

The National Human Rights Commission occupies an important place in the Indian accountability landscape. Established under the Protection of Human Rights Act, 1993, the NHRC has investigated complaints, called for reports, issued guidelines, visited custodial institutions and generated public data regarding deaths and abuses in custody. Its interventions have helped sustain national attention on custodial rights even when ordinary criminal process has failed to deliver timely accountability.[99]

The NHRC's normative role is significant for several reasons. First, it has articulated standards of arrest and detention that reinforce judicial doctrine. Second, it operates as a forum more accessible and less formal than constitutional litigation, at least in theory. Third, its reporting function produces an official archive of custodial harm, which is crucial in a field otherwise marked by silence and contestation. By requiring intimations of custodial deaths and seeking explanations, the Commission affirms that such incidents are matters of constitutional concern rather than internal administrative inconvenience.[100]

The Commission's arrest guidelines and manuals for police officers are noteworthy because they translate abstract rights into administrative expectations. They emphasise identification of officers, communication of arrest, access to medical examination, proper record-keeping and respectful treatment. Such soft-law instruments matter because not every reform can wait for legislation or constitutional adjudication. Administrative standards help create day-to-day reference points for conduct, training and inspection.[101]

Yet the NHRC's limitations are equally apparent. Its powers are largely recommendatory; it depends on cooperation from State authorities; delay can blunt its effectiveness; and its capacity to monitor the vast national landscape of arrests and custody is necessarily constrained. Moreover, recommendations do not always result in prosecution, disciplinary action or structural reform. This does not render the institution irrelevant, but it means that the NHRC cannot substitute for a fully effective system of criminal and departmental accountability.

State Human Rights Commissions, Lokayuktas in some contexts, prison visiting systems, and district-level legal services institutions can supplement national oversight, but their effectiveness varies widely across jurisdictions. The uneven geography of accountability means that the rights of arrested persons may depend significantly on where the arrest occurs. Such territorial disparity is difficult to reconcile with the constitutional universality of liberty protections. A rights-protective federal order requires not merely national norms but reasonably comparable local enforcement capacity.

The accountability question also has a temporal dimension. Delayed accountability often becomes ineffective accountability. If custodial complaints remain unresolved for years, witnesses disperse, records disappear, officers retire or transfer, and

[99] The Protection of Human Rights Act, 1993.
[100] National Human Rights Commission, *Annual Report 2023-24*, 77 (2025).
[101] National Human Rights Commission, *Manual on Human Rights for Police Officers* 20-27 (2011).

families lose hope. Speed in investigating custodial abuse is therefore not a managerial preference; it is integral to the credibility of the rule of law. Institutions must react to arrest-related violations with urgency proportionate to the fragility of the evidence and the seriousness of the constitutional injury.

Other accountability mechanisms include judicial review, public law compensation, departmental inquiries, criminal prosecution of errant officers, legal aid interventions, media scrutiny and civil society advocacy. Each mechanism addresses a different dimension of violation, but none is individually sufficient. Judicial review is powerful yet episodic; compensation provides redress but not necessarily deterrence; departmental inquiries are proximate but may lack independence; criminal prosecution can stigmatise wrongdoing but is often difficult to secure; civil society monitoring creates visibility but has no coercive power of its own.

A comprehensive accountability framework would therefore require layered oversight. At the first level, police institutions must maintain accurate records, permit audit and respond promptly to complaints. At the second, magistrates must exercise real scrutiny at remand and record allegations of ill-treatment. At the third, legal aid and medical systems must provide independent support to detainees. At the fourth, human rights commissions and courts must ensure external review and remedial action. Accountability becomes effective only when these levels reinforce one another rather than operate in isolation.

The present reality, however, is that accountability is often delayed, fragmented and uneven. This is why the rights of arrested persons continue to depend so heavily on chance-the conscientious officer, the alert magistrate, the available lawyer, the responsive family, the visible injury, the documented memo, the preserved CCTV footage. Constitutional rights should not depend on such contingency. A mature legal order must convert safeguards from episodic success into routine institutional practice.

The analysis in this chapter demonstrates that the rights of arrested persons in India are not defeated by doctrinal poverty but by the social and institutional conditions of enforcement. The concluding chapter therefore turns to synthesis: what the dissertation has established, where the doctrinal gaps remain, and what legal and policy reforms are necessary to bridge the persistent divide between constitutional promise and custodial reality.

7. Conclusions and Recommendations

The preceding chapters have examined the rights of arrested persons in India through conceptual, constitutional, statutory, judicial and institutional lenses. The overall picture is neither one of legal emptiness nor one of satisfactory implementation. India possesses a dense and sophisticated normative framework governing arrest. The Constitution protects against arbitrary deprivation of liberty; the statutory law of criminal procedure prescribes grounds, method and temporal limits of arrest; courts have articulated guidelines on necessity, legal aid, humane treatment, anti-torture safeguards and compensation; and human rights institutions have reinforced the need for documentation, medical examination and external intimation. At the level of doctrine, therefore, the rights of arrested persons are deeply embedded in the constitutional structure.

Yet the dissertation has also shown that the existence of legal doctrine has not eliminated routine violations. Custodial violence persists, illegal detention remains possible, remand scrutiny is often inadequate, and exceptional statutes create domains in which arrest has particularly severe consequences. The central problem is a gap between constitutional norm and institutional practice. That gap is sustained by weak enforcement, evidentiary opacity, social inequality, inadequate legal aid, police culture, administrative pressures and fragmented accountability. A critical study of arrested persons' rights must therefore conclude not with celebration of doctrinal development alone, but with a sober assessment of the unfinished work of legal transformation.

7.1 Key Findings

The first key finding of this dissertation is that arrest jurisprudence in India has undergone a profound constitutionalisation since the post-*Maneka Gandhi* era. The shift from formal legality to fair, just and reasonable procedure transformed the legal status of arrest. No longer can arrest be understood merely as a technical act authorised by statute. It is now recognised as an event that implicates dignity, equality, bodily integrity, access to counsel, communication with the outside world and judicial oversight.[102]

The second finding is that Article 22, although

[102] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

textually specific, cannot be fully understood in isolation from Articles 20 and 21. The right to know grounds of arrest, the right to consult and be defended by a legal practitioner, and the requirement of production before a magistrate within twenty-four hours all derive deeper force from the broader constitutional values of non-arbitrariness and human dignity. Judicial interpretation has woven these provisions together into a composite constitutional shield against abusive custody.[103]

Third, the dissertation finds that statutory law under the CrPC and now the BNSS substantially reflects these constitutional commitments. The present law requires reasoned arrest, identifiable arresting officers, arrest memoranda, intimation to relatives or friends, access to counsel, protection during custody, and prompt judicial production. This indicates that, as a matter of positive law, India has accepted that arrest must be transparent, reviewable and procedurally restrained.[104]

Fourth, judicial doctrine has played a transformative role in filling enforcement gaps. Decisions such as *Joginder Kumar*, *D.K. Basu*, *Khatri (II)*, *Prem Shankar Shukla*, *Nilabati Behera* and *Arnesh Kumar* have operationalised rights in ways that legislation alone did not initially achieve. The Court's work has been especially significant in recognising that rights of arrested persons include not only negative claims against illegal detention but also positive claims to legal aid, medical protection, dignified treatment and compensatory redress.[105]

Fifth, despite doctrinal strength, implementation remains inconsistent. Documentary compliance can coexist with substantive unfairness; magistrates may not always provide effective scrutiny; and vulnerable persons often lack the resources to invoke their rights at the earliest stage. The law has therefore succeeded more clearly in constructing a rights vocabulary than in ensuring a rights culture.

Sixth, special statutes such as the UAPA and the NDPS Act alter the practical consequences of arrest by restricting bail and expanding pre-trial hardship. The dissertation does not contend that all special procedure is unconstitutional, but it finds that exceptional regimes intensify the need for strict adherence to legality because arrest under such laws may function as prolonged incapacitation rather than merely temporary custody.[106]

An eighth finding is that the preventive and remedial dimensions of arrest law are unevenly developed. Preventive safeguards such as documentation, communication and magistrate oversight are reasonably well elaborated in doctrine, but remedial pathways after violation remain fragmented. Public law compensation, departmental action, criminal prosecution and human-rights complaints operate on separate tracks that are not always coordinated. As a result, even when a violation is recognised, the system may fail to produce a coherent response combining redress, punishment and structural correction.

A ninth finding concerns the symbolic meaning of arrest in democratic governance. Arrest is not only a legal act but also a public message about authority, disorder and social legitimacy. When used lawfully, it signals that coercion remains bounded by law. When used abusively, it teaches precisely the opposite: that the State may disregard rights when dealing with the suspect, the poor or the politically inconvenient. Arrest jurisprudence therefore has a pedagogic significance extending beyond the individual case.

Seventh, the dissertation finds that rights violations are unevenly distributed. The poor, socially marginal, politically vulnerable and legally unrepresented are more likely to experience the failure of safeguards. The law's promise of equal liberty is therefore mediated by material inequality. Arrest jurisprudence must be read not only as a body of rules but as a field in which social power shapes access to legal protection.

7.2 Doctrinal Gaps

The first doctrinal gap concerns the incomplete translation of anti-torture principles into a comprehensive statutory framework. Indian constitutional law clearly condemns custodial violence, and judicial decisions have devised important safeguards. Yet the absence of a dedicated anti-torture law of the kind repeatedly discussed in reform discourse leaves the system heavily dependent on general penal provisions, public law compensation and ad hoc judicial supervision. This fragmented approach weakens deterrence, obscures standards of

[103] The Constitution of India, arts. 20-22.
[104] *The Bharatiya Nagarik Suraksha Sanhita, 2023*, ss. 35-38, 43, 46-48, 51-58, 187.
[105] *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416.
[106] The Unlawful Activities (Prevention) Act, 1967, s. 43D(5).

proof and impedes development of a coherent jurisprudence of custodial accountability.[107]

The second doctrinal gap lies in the distance between formal compliance and substantive legality. Existing doctrine requires records, communication of grounds and production before a magistrate, but it does not always adequately address situations in which these requirements are met only superficially. An arrest memo may exist without meaningful transparency; a remand order may be passed without real scrutiny; a relative may technically be informed without timely opportunity to arrange legal assistance. Future doctrine must become more sensitive to sham compliance.

A third gap concerns the jurisprudence of de facto detention. Much of arrest doctrine focuses on recognised arrest, but coercive station-house detention short of formal arrest remains under-theorised. There is a need for clearer legal standards identifying when "questioning" becomes custody, what procedural rights attach at that point, and what evidentiary consequences should follow when the police deny arrest despite substantial control over the individual.

A fourth doctrinal gap emerges in the context of digital investigation and informational privacy. The arrest of a person increasingly coincides with seizure of devices, extraction of passwords, access to personal data and interrogation about digital communications. While *Puttaswamy* broadens the constitutional understanding of privacy, arrest jurisprudence has not yet fully systematised how privacy limits should operate during custodial investigation in the digital age.[108]

A fifth gap lies in the area of magistrate-centred safeguards. Courts have repeatedly emphasised the role of the magistrate, but doctrine could go further in specifying the content of remand scrutiny: mandatory inquiry into injuries, verification of intimation, confirmation of legal representation, reasons for police custody and consequences for defective arrest. At present, the normative expectation is clear, but the doctrinal elaboration of what counts as adequate judicial scrutiny remains uneven.

A further doctrinal gap concerns remedies for violation of arrest guidelines themselves. Courts have held that breach of safeguards may justify compensation or invite departmental and criminal consequences, yet the doctrinal relationship between specific procedural breaches and concrete legal outcomes is still not always clear. Greater clarity would strengthen compliance. If officers and magistrates know that particular failures-non-recording of arrest time, absence of intimation, unjustified delay in production, or refusal of medical examination-carry identifiable consequences, the normative force of the safeguards would increase.

There is also a conceptual gap in the treatment of social vulnerability within arrest doctrine. Courts have often recognised the importance of dignity and legal aid, but the jurisprudence could more expressly address how caste, gender, disability, age, language and economic precarity shape custodial risk. Equality in arrest law should not remain formal. A more substantive doctrine would ask how the same procedural rule affects differently situated persons and what additional protections may therefore be needed.

Finally, the relation between ordinary arrest safeguards and special laws requires deeper doctrinal development. Judicial review under exceptional statutes sometimes becomes deferential at the very stage when liberty interests are most acute. A more fully developed constitutional theory is needed to explain how due process values should operate where Parliament has imposed restrictive bail regimes and enlarged investigative powers.

7.3 Policy Recommendations

The first policy recommendation is the adoption of a prevention-oriented custodial framework. This requires moving beyond reaction after abuse to institutional design that makes abuse difficult. Police stations and interrogation rooms should be covered by functioning CCTV systems with adequate storage, independent preservation protocols and accessible review procedures. Audio-visual recording of interrogation in serious offences should be progressively introduced, not as a substitute for legal safeguards but as an evidentiary reinforcement of them.[109]

Second, legal aid must become genuinely immediate rather than nominally available. Every arrested person who does not have counsel should have access to a

[107] Law Commission of India, 273rd Report on *Implementation of United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation* (2017).

[108] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

[109] *Paramvir Singh Saini v. Baljit Singh*, (2021) 1 SCC 184.

duty lawyer at the first point of judicial production, and communication channels should exist to notify legal services institutions promptly upon arrest. Legal aid lawyers must be trained specifically in arrest and remand rights, including recognition of custodial injuries, challenge to unlawful arrest, and opposition to unwarranted police custody. Equality before law cannot exist where the poor encounter the criminal process alone.[110]

Third, the remand process requires administrative and procedural reform. Magistrates should have adequate time, infrastructure and training to scrutinise arrest legality meaningfully. Standardised but substantive checklists may be used to verify communication of grounds, intimation to relatives, legal representation, medical condition and reasons for police custody. Such tools must not become mechanical substitutes for thought; their purpose is to ensure that key questions are not omitted in crowded remand dockets.

Fourth, arrest data should be systematically collected and published. Transparent information regarding number of arrests, reasons recorded, categories of offences, compliance with intimation requirements, remand outcomes, complaints of ill-treatment and disciplinary consequences would enable empirical oversight. Rights reform without data easily degenerates into episodic moral panic. Institutional transparency is itself a liberty-protective measure.

Fifth, police training must be reoriented from confession-driven investigation to evidence-based professional investigation. This includes greater investment in forensics, digital evidence handling, interviewing techniques consistent with rights, and supervisory review of arrest decisions. Professionalisation is a rights strategy because many abuses are sustained by investigative weakness as much as by malicious intent.[111]

Sixth, public education is essential. Families often do not know what to do when a person is arrested, what documents to ask for, how to seek legal aid, or how to complain of ill-treatment. Rights awareness materials in regional languages, displayed at police stations and courts and distributed through legal services institutions, can modestly reduce the informational imbalance that currently benefits custodial opacity.

Eighth, police station architecture and process design should be reviewed from the perspective of detainee rights. Separate waiting and consultation spaces, visible display of rights information, secure but reviewable record systems, medical screening protocols and mechanisms for immediate external contact can each reduce the vulnerability associated with the first hours of custody. Rights protection is not only a matter of legal text; it is also a matter of physical and administrative design.

Ninth, institutional incentives should reward lawful policing rather than merely numerical outputs such as quick arrests or charge-sheet rates. Supervisory evaluation systems that value legality, quality of investigation, evidentiary robustness and respect for procedure are more likely to produce sustainable compliance than systems that celebrate arrest as performance in itself. Unless organisational metrics change, rights discourse may remain external to everyday policing culture.

Tenth, universities, judicial academies, police academies and bar training programmes should treat the rights of arrested persons as a core subject rather than a peripheral topic in criminal law. The constitutionalisation of arrest must become part of professional common sense. Long-term reform depends not only on sanctions for violation but also on internalisation of lawful custodial practice as an element of legal professionalism.

Seventh, accountability should be layered rather than singular. Internal police review, judicial scrutiny, human rights commission monitoring, independent medical protocols and civil society access to information should each reinforce the others. No single mechanism can bear the full burden of reform.

7.4 Legal Reforms

The first legal reform required is a comprehensive anti-torture statute consistent with constitutional standards and international obligations. Such legislation should define torture and cruel, inhuman or degrading treatment with clarity, prescribe investigation by independent agencies in serious custodial abuse cases, address evidentiary challenges peculiar to custody, and provide for victim and witness protection. The long-standing recognition of torture as unconstitutional should now be translated into a focused legislative regime.[112]

[110] The Legal Services Authorities Act, 1987, s. 12.
[111] Committee on Reforms of Criminal Justice System, Government of India, *Report* (2003).
[112] United Nations Treaty Collection, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, status as at 27 March 2026.

Second, the law should clarify the legal status of de facto detention. Where a person is compelled to remain at a police station, transported by police, or otherwise deprived of freedom in substance, statutory safeguards should attach irrespective of whether the police choose to record a formal arrest at that moment. A failure to acknowledge custody should carry adverse evidentiary and disciplinary consequences.

Third, remand law should be strengthened to require more specific judicial findings before police custody is granted. Mere recital of investigation in progress should not suffice. The application should indicate the precise purpose for which police custody is necessary, the steps already taken, and why less restrictive alternatives are inadequate. The remand order should record judicial reasons. Such reform would align statutory practice more closely with the constitutional principle that liberty may be curtailed only to the extent strictly necessary.[113]

Fourth, compensation jurisprudence should be supplemented by clearer statutory standards for redress in cases of illegal arrest, custodial violence and wrongful detention. Public law compensation has been valuable, but its discretionary development through case law leaves outcomes somewhat uneven. A statutory framework could preserve judicial flexibility while providing more predictable access to interim and final relief.[114]

Fifth, special statutes require calibrated review. This dissertation does not propose the abandonment of all exceptional procedure, but it does recommend that Parliament and courts continually reassess whether bail restrictions, extended detention powers and evidentiary presumptions remain proportionate. Exceptional laws should contain robust sunset review, transparent reporting and clear safeguards against pre-trial punishment by process.

Sixth, handcuffing and public display rules should be enforced through explicit sanction. Judicial condemnation alone has not fully ended humiliating arrest practices. Departmental rules should require written justification for restraints beyond ordinary custody control, and breaches should trigger disciplinary review. Dignity cannot remain a merely rhetorical limit on arrest practices.[115]

Eighth, evidentiary law may require reconsideration in custodial abuse cases. Given the State's control over the relevant environment, adverse evidentiary inferences for missing records, unexplained injuries, non-functional surveillance systems or delayed medical examination could play a stronger role. Such calibrated evidentiary reform would not reverse the presumption of innocence in criminal trials against officers, but it would recognise the distinctive difficulties victims face in proving what occurred behind custodial walls.

Ninth, legal reform should strengthen the interface between constitutional courts and trial-level criminal justice institutions. Many rights-protective doctrines originate in appellate judgments but do not adequately permeate routine remand practice, police training or prosecution supervision. Circulars, model forms, mandatory reporting structures and periodic compliance review by High Courts could help translate constitutional precedent into lower-level operational law.

Tenth, any future review of special statutes must expressly consider the cumulative impact of arrest, remand and bail restrictions on the presumption of innocence. A narrowly formal review of isolated clauses may miss the way in which process itself becomes punitive. Legislative reform should therefore be guided by a holistic liberty analysis rather than by security rhetoric alone.

Seventh, the BNSS transition should be accompanied by statutory rule-making, police manuals, judicial circulars and training materials that explicitly map continuity with constitutional jurisprudence. Legislative replacement of the CrPC should not become an occasion for forgetting the rights-centred interpretations built over decades. Any procedural code is only as rights-protective as the interpretive culture that accompanies it.[116]

7.5 Concluding

This dissertation began with the premise that the rights of arrested persons occupy a critical place in constitutional democracy because arrest is the most immediate and visible form of coercive state power short of punishment after conviction. The study has shown that Indian law, especially through the

[113] *Central Bureau of Investigation v. Anupam J. Kulkarni*, (1992) 3 SCC 141.
[114] Law Commission of India, 277th Report on *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (2018).
[115] *Citizens for Democracy v. State of Assam*, (1995) 3 SCC 743.
[116] India Code, *The Bharatiya Nagarik Suraksha Sanhita, 2023* (Act No. 46 of 2023), enforced from 1 July 2024.

combined force of constitutional provisions, judicial innovation and statutory procedure, recognises this reality with considerable sophistication. The arrested person is not legally rightless. He is entitled to know why he is arrested, to resist testimonial compulsion, to consult counsel, to be produced promptly before a magistrate, to be treated with dignity, to receive medical attention, and in appropriate cases to obtain public law compensation for unlawful deprivation of liberty.

At the same time, the critical perspective of the dissertation requires an equally clear acknowledgment that the legal architecture remains insufficiently realised in practice. The distance between constitutional text and custodial reality is not accidental. It is produced by institutions, incentives, inequalities and inherited cultures of coercion. So long as torture remains difficult to prove, legal aid arrives late, remand becomes mechanical, accountability is fragmented, and special laws convert arrest into prolonged incapacitation, the rights of arrested persons will remain precarious.

The deeper constitutional lesson of the dissertation is that the rights of arrested persons are not marginal rights. They sit at the intersection of liberty, equality, dignity, due process and democratic accountability. To disregard them is to weaken the normative distinction between constitutional government and unreviewed power. Conversely, to protect them is to affirm that even the investigative needs of the State remain subject to law.

The future of arrest jurisprudence in India will depend on whether the system can move from episodic judicial correction to routine institutional legality. The materials for such a transformation already exist: constitutional text, rich case law, statutory safeguards, human-rights standards and decades of reform recommendations. What remains is the harder task of implementation. That task is legal, administrative, pedagogic and moral all at once.

The appropriate conclusion is therefore neither despair nor complacency. It is a call to deepen the constitutionalisation of arrest. That means insisting that liberty be treated as the norm, custody as the exception, coercion as accountable, and every arrested person-however unpopular or powerless-as a bearer of equal dignity before the law. The measure of a constitutional democracy is not only the fairness of its trials, but also the legality and humanity of the first moment in which the State lays hands on the person. In that moment, the Constitution must speak most clearly, and the institutions of criminal justice must obey it most faithfully

Bibliography

Constitutional and Statutory Materials

The Constitution of India.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023).

The Code of Criminal Procedure, 1973.

The Indian Evidence Act, 1872.

The Bharatiya Sakshya Adhiniyam, 2023.

The Legal Services Authorities Act, 1987.

The National Security Act, 1980.

The Narcotic Drugs and Psychotropic Substances Act, 1985.

The Protection of Human Rights Act, 1993.

The Unlawful Activities (Prevention) Act, 1967.

Cases

A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

A.K. Roy v. Union of India, (1982) 1 SCC 271.

Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

Bhim Singh v. State of J&K, (1985) 4 SCC 677.

Central Bureau of Investigation v. Anupam J. Kulkarni, (1992) 3 SCC 141.

Citizens for Democracy v. State of Assam, (1995) 3 SCC 743.

D.K. Basu v. State of W.B., (1997) 1 SCC 416.

Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

Hussainara Khatoon (I) v. Home Secretary, State of Bihar, (1980) 1 SCC 81.

Joginder Kumar v. State of U.P., (1994) 4 SCC 260.

Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

Kartar Singh v. State of Punjab, (1994) 3 SCC 569.

Khatri (II) v. State of Bihar, (1981) 1 SCC 627.

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

Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424.

National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1.

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

Paramvir Singh Saini v. Baljit Singh, (2021) 1 SCC 184.

Prem Shankar Shukla v. Delhi Administration, (1980) 3 SCC 526.

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

Selvi v. State of Karnataka, (2010) 7 SCC 263.

Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749.

Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96.

State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808.

Sube Singh v. State of Haryana, (2006) 3 SCC 178.

Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.

Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488.

Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1.

Books

Baxi, Upendra, *The Crisis of the Indian Legal System* (Vikas Publishing House, 1982).

Dicey, A.V., *Introduction to the Study of the Law of the Constitution* (10th edn., Macmillan, 1959).

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

Jain, M.P., *Indian Constitutional Law* (8th edn., LexisNexis, 2018).

Kothari, C.R., *Research Methodology: Methods and Techniques* (2nd rev. edn., New Age International, 2004).

Pillai, K.N. Chandrasekharan (ed.), *R.V. Kelkar's Criminal Procedure* (Eastern Book Company).

Shukla, V.N., *Constitution of India* (13th edn., Eastern Book Company, 2017).

Official Reports, Committee Reports and Institutional Materials

Committee on Reforms of Criminal Justice System, Government of India, *Report* (2003).

Law Commission of India, 152nd Report on *Custodial Crimes* (1994).

Law Commission of India, 177th Report on *Law Relating to Arrest* (2001).

Law Commission of India, 180th Report on *Article 20(3) of the Constitution of India and Right to Silence* (2002).

Law Commission of India, 268th Report on *Amendment to Criminal Procedure Code, 1973 - Provisions relating to Bail* (2017).

Law Commission of India, 273rd Report on *Implementation of United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation* (2017).

Law Commission of India, 277th Report on *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (2018).

National Human Rights Commission, *Annual Report 2023-24* (2025).

National Human Rights Commission, *Guidelines regarding Arrest* (22 November 1999).

National Human Rights Commission, *Manual on Human Rights for Police Officers* (2011).

National Legal Services Authority, materials on free legal aid for arrested persons.

International Instruments and Human Rights Materials

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85 (1984).

International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966).

United Nations, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988).

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175 (2015).

Universal Declaration of Human Rights, G.A. Res. 217 A (III) (1948).

****