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Equality Before the Law and the Reality of Unequal Justice in India's Criminal Justice System

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ABSTRACT

Equality before the law is one of the foundational guarantees of the Indian Constitution, yet its practical realisation within the criminal justice system remains deeply contested. Although Articles 14, 21 and 39A collectively establish a constitutional framework of equality, due process and meaningful access to justice, the operation of criminal law frequently produces unequal outcomes for individuals situated in different social and economic circumstances. Formal legal equality does not necessarily translate into substantive equality when access to rights depends upon financial capacity, quality of legal representation, social location and institutional responsiveness. Across every stage of the criminal process, from arrest and investigation to bail, legal aid, trial and adjudication, structural disadvantages significantly influence an accused person's ability to exercise constitutionally guaranteed protections. Empirical indicators, including undertrial incarceration, legal aid coverage, judicial capacity and the representation of marginalised communities within prisons, reveal persistent disparities that cannot be explained solely through the language of formally neutral legal rules. These patterns suggest that unequal justice often arises from structural and institutional conditions rather than from explicit legal discrimination. The constitutional jurisprudence developed by the Supreme Court has progressively expanded the meaning of equality, personal liberty and fair procedure; the effectiveness of these principles, however, continues to depend upon institutional capacity and implementation. Achieving genuine equality therefore requires moving beyond procedural uniformity towards a model of substantive justice that enables all individuals, irrespective of wealth, caste, gender or geography, to exercise legal rights on equal terms. Strengthening arrest safeguards, reforming bail practice, improving the quality of legal aid, enhancing judicial capacity and promoting transparent, technology-enabled accountability are essential steps towards narrowing the enduring gap between constitutional promise and lived reality within India's criminal justice system.

Keywords: *Equality before law, Substantive equality, Criminal justice system, Access to justice, Undertrial detention, Legal aid, Judicial capacity, Constitutional rights*

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I. INTRODUCTION

Article 14 of the Constitution of India guarantees to every person equality before the law and the equal protection of the laws. This guarantee acquires particular significance in the criminal justice system, where arrest, detention, trial and imprisonment represent some of the gravest exercises of State power over individual liberty.

Yet the relationship between this constitutional promise and the actual functioning of the criminal justice system remains problematic. A person accused of an offence enters that system carrying distinct social, economic and institutional realities that often shape arrest, bail, legal representation, trial and eventual outcomes. The central concern of this article is that formally equal legal rules may produce very different experiences in practice when individuals enter the criminal process from unequal social, economic and institutional positions. Articles 14, 21 and 39A together provide the constitutional foundation for equality, fair procedure and access to justice in India's criminal justice system.

A specific example illustrates the point. Criminal procedure law gives accused persons the ability to seek bail, subject to the nature of the offence and the applicable statutory and judicial requirements. In theory this entitlement applies equally to all. But the capacity to obtain bail rests on a set of prerequisites that lie outside the law itself: the ability to obtain competent legal counsel promptly, the ability to arrange sureties or comply with other conditions imposed for release, the ability to follow the process, and the ability to draw on social contacts that may assist. For a person who is economically secure and able to consult experienced criminal lawyers, bail is readily obtained. For a person facing the same charge but lacking comparable financial and social resources, the same right often becomes unattainable, not because the law is unwilling to grant it, but because the practical prerequisites for exercising it are absent.

The criminal justice system warrants particular emphasis because it operates directly upon individual liberty through arrest, detention, trial and confinement. Disparities in arrest, bail, legal services and trial delay can therefore carry grave consequences for persons from marginalised socio-economic groups. Other branches of law rarely carry comparable implications; the criminal process can result in incarceration before any finding of guilt. The research problem is accordingly framed as follows: a substantial gap exists between what the Constitution promises by way of equality before the law and the ability of differently situated persons to access the criminal justice system. The purpose of this paper is to examine that gap from several angles.

This paper adopts a holistic approach to the discrepancy between the constitutional ideal and its institutional application. It begins by analysing the constitutional and legal basis of equality and due process in the criminal justice system through Articles 14, 21 and 39A and the Supreme Court's decisions on those provisions. It then examines the areas in which inequality surfaces within the criminal process: arrest and investigation, bail and pre-trial detention, access to legal counsel, and trial delay. It goes on to analyse the structures that generate inequality, including economic and social status, caste, gender, geographic location and institutional capacity. Finally, it considers reform measures responsive to those inequalities. The paper does not contend that all inequality in the criminal process arises from discriminatory practice; the argument is rather that the same rules apply to people situated within unequal economic and social structures.

The article sets out to achieve four objectives. It examines the constitutional basis of equality in India's criminal justice system; it assesses the factors that account for inequalities within the criminal process; it reviews the progress made by the judiciary in addressing those inequalities; and it offers suggestions on how substantive equality within the criminal justice system might be attained.

II. CONSTITUTIONAL AND LEGAL FRAMEWORK

Equality is a foundational constitutional commitment in India, yet the relationship between constitutional guarantees and the actual operation of criminal justice remains contested. This section examines how Articles 14, 21 and 39A form a constitutional context in which equality can no longer be understood as mere formal uniformity. Taken together, these provisions establish that the criminal justice system must operate fairly, must protect personal liberty against arbitrary deprivation, and must ensure that economic disability does not prevent meaningful access to justice.

A. Article 14: Equality before law and equal protection of laws

Article 14 contains two complementary dimensions. The first is the principle of "equality before law", a negative obligation meaning that the law should confer no privilege on particular persons and should make no different provision for persons similarly situated. The concept derives from the classical conception of the rule of law, which requires that State power be applied equally and without arbitrariness.¹ The second is "equal protection of the laws", which imposes a positive obligation and permits the State to classify persons according to reasonable criteria, provided the classification rests on an intelligible differentia bearing a rational nexus to the object sought to be achieved.

¹ INDIA CONST. art. 14.

Police, prosecutors and courts exercise significant discretion in arrest, investigation, prosecution and sentencing, and Article 14 operates as an instrument to constrain that discretion. Criminal law makes no formal differentiation between individuals; Article 14 requires in addition that its application not be arbitrary or discriminatory against particular groups.² In *E.P. Royappa v. State of Tamil Nadu*, the Supreme Court held that equality is antithetic to arbitrariness, so that an arbitrary exercise of power by the State amounts to a denial of equality irrespective of any statutory classification.³ That proposition carries particular significance in criminal justice, where formal equality before the law may coexist with arbitrary differences in execution. Two persons may be arrested on similar charges under the same statute and yet be treated differently by the police for reasons having nothing to do with the alleged offence.

B. Article 21: Personal liberty and fair criminal procedure

Article 21 protects the right to life and personal liberty and qualifies that protection with the phrase "except according to procedure established by law". Arrest removes liberty, detention extends that removal, trial determines guilt or innocence, and conviction determines punishment. At each stage the constitutional framework must protect the individual against the arbitrary exercise of State power.

It was the landmark decision in *Maneka Gandhi v. Union of India* that redefined the scope of Article 21 by holding that the procedure established by law must itself be right, just and fair, and not arbitrary, fanciful or oppressive.⁴ The requirement is not merely that a law exist, but that it operate in a manner that advances constitutional rights. The point is critical in the criminal process, because a procedure that is formally equal but produces arbitrary detention, arbitrary investigation or protracted delay in trial offends Article 21. *Hussainara Khatoon (I) v. Home Secretary, State of Bihar* applied that principle in the criminal field, holding that a speedy trial is an integral and essential part of the right guaranteed by Article 21, and that the continued detention of undertrial prisoners for periods which in many instances exceeded the maximum sentence for the offence charged could not be sustained.⁵ Article 21 thus supplements Article 14. If Article 14 demands non-discrimination in legal regulation, Article 21 demands fair and non-arbitrary procedure in the operation of law, so that individual freedom is not restricted unreasonably.

² *Id.*

³ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

⁴ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁵ *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, (1980) 1 SCC 81.

C. Article 39A: The right to meaningful access to justice

Article 39A directs the State to secure that the operation of the legal system promotes justice on a basis of equal opportunity, and in particular to provide free legal aid so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.⁶

Legal representation is one of the conditions that must be satisfied before a person can participate effectively in the criminal process. Without proper representation an individual can neither present a case nor even understand his or her own position. The courts have held that the entitlement to legal aid flows not merely from welfare considerations but from the constitutional guarantees of equality and personal liberty.⁷

D. Rule of law and the concept of equality in criminal justice

Articles 14, 21 and 39A read together show that equality in criminal justice is not simply a matter of having the same laws. The guarantee requires procedural fairness, protection of personal liberty and the availability of legal assistance. What validates the criminal justice process, therefore, is not equality of laws alone but equality in their working.

III. DIMENSIONS OF UNEQUAL JUSTICE IN INDIA'S CRIMINAL JUSTICE SYSTEM

The equality promised by the Constitution is meaningful only if it is understood through the experience of people as they come into contact with the agencies of criminal justice. This section traces the ways in which legal equality may diverge from substantive equality at each stage of the criminal process. The analysis suggests that what is at work is not systematic discrimination by design but the consequence of discretionary decision-making, disparities in resources and related structural factors.

A. Inequality in arrest and investigation

Arrest is the most coercive and most visible intrusion of the criminal process upon personal liberty. Article 21 guarantees personal liberty, and the Bharatiya Nagarik Suraksha Sanhita, 2023 contains provisions designed to prevent arbitrary arrest. These safeguards require that arrest rest on credible information of criminal participation, that arrested persons be informed of the grounds of arrest and of any entitlement to bail, that a relative or nominated person be informed of the arrest and the place of detention, that the arrested person be produced before a magistrate within twenty-four hours, and that proper records of custody and investigation be maintained.⁸

⁶ INDIA CONST. art. 39A.

⁷ *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544; *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627.

⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 35-37, 47-48, 58.

These safeguards apply formally to every arrested person. The Supreme Court has repeatedly affirmed that arrest cannot be routine or casual and that the police power to arrest is constrained by constitutional and statutory limits.⁹ Yet the practical protection they afford varies considerably with the person arrested and with that person's ability to invoke remedies when the safeguards are breached. The decision whether and whom to arrest is by its nature discretionary. Police officers must decide on limited information, under time pressure and within a bureaucratic setting that demands prompt action on reports of crime. Within this framework of discretion, formally equal legal norms meet the unequal social position of those to whom they apply. A person who is educated and financially secure, who knows his or her rights and has immediate access to a lawyer, is in a position to invoke them.

By contrast, a person arrested from a disadvantaged community, without knowledge of his or her rights, without any means of contacting a lawyer immediately, and unfamiliar with police and court procedure, holds the same rights and guarantees but cannot use them. Such a person may not know that questioning may be declined in the absence of counsel, that there is a right to be told the grounds of arrest, or that prolonged custody without production before a magistrate is unlawful. The safeguards exist; they remain inert for the person unable to understand or invoke them. This inequality does not necessarily result from discrimination against particular individuals. It stems rather from the structural advantage that education, social capital and resources confer at the moment of greatest vulnerability, immediately after arrest. The question of who is best placed to use procedural safeguards when they are most needed is what exposes the gap between legal and real protection. Safeguards intended to restrain arbitrary arrest work only where the person has the capacity to use them.

B. Bail and pre-trial detention: Equality under the shadow of poverty

The criminal procedure framework provides that bail shall ordinarily be granted to an accused person unless specific statutory conditions justify refusal, having regard to factors such as the gravity of the offence, the likelihood of absconding, risk to the safety of witnesses, or danger to the community.¹⁰

These conditions apply equally, and courts apply the same legal principles to all accused persons irrespective of economic status. But the power to obtain real freedom before trial does not depend only on satisfying the legal requirements for bail. Equally important is the capacity to comply with the conditions attached to it. Where a court grants bail on condition that the accused

⁹ *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260; *Armesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

¹⁰ *Bharatiya Nagarik Suraksha Sanhita*, 2023, ch. XXXV (ss. 478-496).

furnish adequate financial security, whether by deposit or by surety, the legal possibility of release becomes a practical one only for those who can afford it.

Where two persons charged with an identical offence are eligible for bail in identical circumstances, their experiences may nevertheless diverge widely. One, with access to funds and sureties, secures release within days; the other, without money or sureties, remains in prison though legally entitled to release. The difference in practical liberty is produced by economic capacity.

The inequality is compounded by its consequences. A person detained awaiting trial loses employment, sees family arrangements disrupted, finds it difficult to prepare a defence with counsel, and bears the psychological burden of incarceration while legally presumed innocent. That burden falls disproportionately on those unable to furnish bail. It is for this reason that pre-trial detention makes bail practice central to any account of substantive equality, and the scale of undertrial detention in India indicates how large the question is.

Year	Total prison population	Undertrial prisoners	Undertrials as percentage of total prison population
2022	5,73,220	4,34,302	75.76%
2023	5,30,333	3,89,910	73.52%

Table 1: Undertrial prisoners in India, 2022-2023

Source: NATIONAL CRIME RECORDS BUREAU, MINISTRY OF HOME AFFAIRS, Government of India, *Prison Statistics India 2022* and *Prison Statistics India 2023*.

The data show that undertrial prisoners formed almost three-quarters of India's total prison population in both years, although the proportion fell from 75.76 per cent in 2022 to 73.52 per cent in 2023. These figures do not by themselves establish that every undertrial prisoner is in custody because of poverty or of an inability to satisfy the conditions of bail.

Where release is conditional upon financial security or upon other terms that an accused person may be unable to meet, however, economic capacity becomes directly relevant. In *Moti Ram v. State of Madhya Pradesh*, the Supreme Court held that bail conditions must not be so onerous as to defeat the order granting bail, observing that an excessive surety amount and the rejection of a surety merely because he resided in another district reduced the liberty of the accused to a formality.¹¹

Bail depends not only on the financial capacity to secure release but also on the manner in which an accused person is able to approach the process of seeking it. A represented accused is better

¹¹ *Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47.

placed to advance legal arguments and to press for release on reasonable terms; an inadequately represented accused is not. The law is the same for everyone; its application is not.

As the Supreme Court held in *Hussainara Khatoon (I)*, unreasonably prolonged pre-trial detention violates Article 21, and the Court has since treated delay in the hearing of bail applications and unjustified remand to custody as encroachments on personal liberty.¹² The systemic response to this problem nevertheless remains inadequate. Bail is formally equal in law and substantively unequal in practice.

C. Access to legal aid and quality of legal representation

Article 39A requires the State to secure that the legal system operates so as to promote justice on a basis of equal opportunity, and to provide free legal aid so that justice is not denied to any citizen by reason of economic or other disabilities. The provision recognises that access to a court without the means to be represented before it is of little value. The working of legal aid programmes, however, reveals a persistent gap between design and implementation. The appointment of a lawyer does not by itself ensure representation of any given quality. Counsel appointed for a defendant may lack adequate time for consultation and preparation, or may carry an unmanageable caseload.

In *M.H. Hoskot v. State of Maharashtra*, the Supreme Court held that the denial of adequate legal representation to a person unable to afford counsel amounts to a deprivation of personal liberty contrary to Article 21.¹³ In *Khatari (II) v. State of Bihar*, the Court made clear that the constitutional obligation to provide free legal services arises when the accused is first produced before a magistrate and continues at every remand, and that the magistrate must inform the accused of that right, since a right of which an indigent accused is unaware is illusory.¹⁴

The institutional reach of legal aid has grown considerably in recent years. Figures published by the NATIONAL LEGAL SERVICES AUTHORITY show a consistent rise in the number of persons who received legal services through the legal services institutions. That growth should not, however, be read as conclusive proof of substantive equality in criminal justice. The numbers record how many persons were provided legal services; they say nothing about the quality or preparedness of the assistance provided. The point matters because the constitutional right of access to justice entails considerably more than the appointment of a lawyer.

¹² *Hussainara Khatoon (I)* (n 5).

¹³ *M.H. Hoskot* (n 7).

¹⁴ *Khatari (II)* (n 7).

Financial year	Persons benefited through legal services
2023-24	15,50,164
2024-25	16,57,527
2025-26	20,07,776

Table 2: Persons benefited through legal services in India

The figures indicate an appreciable rise in legal aid coverage, with the number of beneficiaries increasing from 15,50,164 in 2023-24 to 20,07,776 in 2025-26.¹⁵

That is a rise of roughly 29.5 per cent across the three financial years. The increase is significant in that it demonstrates a sustained institutional effort to make legal assistance available to those who would otherwise be disadvantaged in approaching the justice process. The statistics nevertheless record only the extent of legal aid coverage and cannot by themselves indicate the effectiveness of the representation provided. The question central to substantive equality therefore goes beyond whether the accused was represented at all. What must further be asked is whether there were adequate time, resources and opportunity to conduct that representation.

D. Trial delays and unequal criminal justice outcomes

Few parts of the criminal justice system illustrate the difference between formal and actual equality as sharply as delay in trial. Protracted proceedings do not affect all defendants equally. A person released on bail can work and live an ordinary life between hearings; a person held in custody forfeits liberty daily while presumed innocent.

The economic consequences of delay also vary from one individual to another. Repeated attendance at court entails travel costs, loss of earnings and interference with employment: inconveniences for a wealthy accused, but potentially ruinous for someone dependent on daily wages. Delay can in this way operate as a form of punishment before conviction. Although the Supreme Court has held a speedy trial to be an ingredient of personal liberty under Article 21, the reality of cases pending for years shows the distance between principle and practice.

The situation becomes more acute where delay combines with other disadvantages. An accused person without resources will struggle both to secure release on bail and to obtain competent counsel, and the longer the proceedings continue the more those difficulties compound. Although the criminal process may formally be identical for every accused, in practice it may

¹⁵ NATIONAL LEGAL SERVICES AUTHORITY, *Statement Showing the Number of Persons Benefited Through Legal Services Provided Under the Legal Services Authorities Act, 1987: April 2023 to March 2024* (2024); NATIONAL LEGAL SERVICES AUTHORITY, *Statement Showing the Total Number of Persons Benefited Through Legal Services Provided Under the Legal Services Authorities Act, 1987: April 2024 to March 2025* (2025); NATIONAL LEGAL SERVICES AUTHORITY, *Statement Showing the Number of Persons Benefited Through Legal Services Provided Under the Legal Services Authorities Act, 1987: April 2025 to March 2026* (2026).

be experienced very differently. Equality between individuals is therefore not measured by the fact that everyone passes through the same procedure.

IV. FACTORS LEADING TO INEQUALITIES IN THE JUSTICE SYSTEM

The disadvantages described in the preceding section cannot be attributed simply to the deliberate enactment of discriminatory laws or to individual misconduct on the part of officials. They arise from underlying structural inequalities that shape the way different persons interact with what is meant to be a single institution.

A. Socio-economic status

Economic division is the most common and most persistent structure influencing access to justice. Poverty affects not only an individual's ability to afford a lawyer but also the capacity to remain stable throughout the legal process. A poor person arrested for an offence faces immediate practical problems: how to earn while under investigation and trial, how to travel to court hearings, how to obtain the documents required to prepare a defence, and how to stay out of custody where bail requires financial security that cannot be furnished.

The consequences of economic scarcity are not merely social but legal, because they directly impede a person's ability to claim rights that the law makes available to all. Where the law assumes that an accused can attend hearings, retain counsel and gather material, a person without money confronts obstacles at every step. A person of means can absorb multiple hearings and lengthy proceedings; a person living hand to mouth must choose between attending court and earning a day's wage.

B. Caste and social marginalisation

Historically marginalised communities may face structural disadvantages in their encounters with police and court institutions that extend beyond poverty. Social prejudice and stereotyping can influence police discretion in decisions to arrest, investigate or prosecute. Where they do, persons from marginalised communities may be accorded lower credibility in institutional settings, encounter greater suspicion, and receive less benefit of procedural doubt than persons from dominant communities. The prison data set out below do not establish that this occurs; they identify a pattern of representation that calls for examination.

Year	Total undertrial prisoners	SC	%	ST	%	SC and ST combined (%)
2019	3,30,487	69,302	20.97%	34,756	10.52%	31.49%
2022	4,34,302	90,951	20.94%	40,221	9.26%	30.20%

Year	Total undertrial prisoners	SC	%	ST	%	SC and ST combined (%)
2023	3,89,910	80,192	20.57%	38,987	10.00%	30.57%

Table 3: Caste composition of undertrial prisoners in India

Scheduled Caste and Scheduled Tribe prisoners together accounted for between roughly 30 and 31.5 per cent of the undertrial prison population in each of the three years shown.¹⁶ These figures do not by themselves establish that caste caused any arrest or detention, nor do they prove discriminatory intent on the part of criminal justice institutions. They do disclose a persistent pattern of representation that warrants examination of the social and institutional conditions in which marginalised communities encounter the criminal justice system.

The interaction of caste and poverty can aggravate the difficulty. Those who experience the social marginalisation associated with caste are frequently also economically insecure, which makes it harder to contest institutional action or to obtain adequate legal assistance. Caste has no place in the formal criminal process; the way that process operates may nevertheless be influenced by the social and economic environment in which people encounter it. The significance of the data, therefore, is not that caste determines criminal justice outcomes, but that it shows why formal equality must be assessed against an unequal social setting.

C. Gender

Gender gives rise to distinct vulnerabilities in the criminal justice system. Women accused of offences may encounter procedural difficulties arising from bail conditions framed around assumptions about women's mobility, family dependence and domestic roles. Questions of credibility that arise where women are complainants are linked to wider social attitudes towards the reliability of women's testimony. Women who are both poor and female confront these vulnerabilities in combination, at the intersection of gender and economic disadvantage.

D. Regional inequality

A person's geographical location may affect how accessible justice is, because the capacity of courts to deliver justice is not evenly distributed across India. Variation in the availability of judges and courts means that the same right may be worth different amounts in different places. Reported differences in judicial capacity make the point clear.¹⁷

¹⁶ NATIONAL CRIME RECORDS BUREAU, MINISTRY OF HOME AFFAIRS, Government of India, *Prison Statistics India 2019*, tbl. 2.11D; *Prison Statistics India 2022*, tbl. 2.11D; *Prison Statistics India 2023*, tbl. 2.11D.

¹⁷ DEPARTMENT OF JUSTICE, MINISTRY OF LAW AND JUSTICE, Government of India, state-wise data on the strength of the district judiciary and the judge-population ratio.

Region or State	Judges per ten lakh population
West Bengal	12.05
Uttar Pradesh	18.52
Delhi	53.43

Table 4: Regional variation in judicial capacity

Source: DEPARTMENT OF JUSTICE, MINISTRY OF LAW AND JUSTICE, Government of India.

Judicial capacity varies considerably. In West Bengal the ratio was 12.05 judges per ten lakh of population, in Uttar Pradesh 18.52, and in Delhi 53.43. These figures say nothing about the quality of justice a person will receive in any particular region. What they indicate is that the capacity through which justice is delivered is not evenly distributed across India. Judicial vacancies, distance from the court and variation in infrastructure may all affect how accessible justice is in practice.

E. Political influence and institutional bias

Inequality in justice may also arise from differences in the ability of individuals to attract the attention and the resources of institutions. Persons with political connections, social prominence or institutional access are better placed to make their interests known or to obtain favourable decisions within the process. Those who are politically marginalised lack comparable avenues of influence. The legal system is universal in form, but institutional responsiveness may vary with the social and political visibility of the individual.

The culture and working practices of particular courts or police stations may likewise embed decision-making patterns which, although not discriminatory in design, affect different persons differently. All five structural elements described in this section operate within a formally uniform criminal procedure and, in combination, produce substantive inequality. Genuine equality must therefore attend not only to how laws are framed but to how structural inequalities affect real access to their protection.

V. CHALLENGES AND REFORMS

The inequities identified in this article do not stem from any single defective provision. They accumulate across the stages of arrest, remand, trial and legal representation, with the result that an individual's passage through the criminal process is governed less by the letter of Article 14 than by means, location and institutional capacity. Reform therefore cannot consist of one legislative amendment; it must be addressed at each stage separately.

A. Arrest and police reforms

Arrest is often treated as a preliminary administrative step, yet it is the stage at which State coercion operates under the least judicial supervision. In *D.K. Basu v. State of West Bengal*, the Supreme Court laid down procedural requirements for arrest and detention as an incident of Article 21, including a memorandum of arrest attested by a witness, intimation of the arrest to a relative or friend, and medical examination of the arrested person at regular intervals.¹⁸ *Arnesh Kumar v. State of Bihar* carried the position further, holding that arrest under Section 41 of the Code of Criminal Procedure, 1973, now Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023, must not be mechanical and must be supported by reasons recorded for its necessity.¹⁹ The persistence of arbitrary arrest despite these decisions suggests that the defect lies in implementation rather than in principle. The reform required is not more policing in the abstract but a documentary process capable of surviving judicial scrutiny: contemporaneously recorded reasons for arrest, reviewed by a magistrate and available to defence counsel, together with an independent complaints mechanism able to examine broader patterns of non-compliance.

A protection unaccompanied by a reviewable record is hypothetical, and it is accused persons from socially disadvantaged backgrounds who bear the cost of that deficiency.

B. Bail

No area of criminal procedure better illustrates how a formally neutral rule can produce substantive inequality than the law of bail. The criteria for granting bail, namely the risk of absconding, the risk of tampering with evidence and the gravity of the offence, are identical for all accused persons; yet release in practice turns on the availability of sureties. A person who can furnish sureties is released, while a person who cannot remains in custody irrespective of the actual risk he or she presents. In *Satender Kumar Antil v. Central Bureau of Investigation*, the Supreme Court addressed the burden of undertrial custody by categorising offences for the purpose of bail, holding that arrest ought not to follow automatically upon the filing of a charge-sheet where the accused has cooperated in the investigation, directing that undertrial prisoners unable to comply with bail conditions be identified and their cases reviewed, and requiring the High Courts to monitor implementation.²⁰ This is an important jurisprudential development, whose value will depend on the willingness of trial courts to accept personal bonds rather than monetary security where the accused has no record of absconding.

¹⁸ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

¹⁹ *Arnesh Kumar* (n 9).

²⁰ *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.

This reform does not abolish judicial discretion; the risk of flight and the possibility of influencing witnesses remain valid considerations. It requires, rather, that discretion be exercised on an individual assessment and not through an automatic preference for money. A facially equal bail requirement is difficult to reconcile with Article 14 if in practice it operates by wealth.

C. Improving access to legal aid

Article 39A and the case law developed under it, in *M.H. Hoskot v. State of Maharashtra*,²¹ *Khatrri (II) v. State of Bihar*²² and *Suk Das v. Union Territory of Arunachal Pradesh*,²³ make clear that legal representation is a fundamental right and not a matter of discretion. What is less clear from that body of law is the distinction between assignment and representation. Legal aid furnished by a lawyer appointed late in the proceedings, carrying a heavy workload and without confidential access to the client, may satisfy the letter of Article 39A but not its spirit. Real reform must include early assignment, incentives directed at preparation rather than volume, and evaluation based on outcomes and client consultation rather than on the number of cases allotted. Rising beneficiary figures unaccompanied by such safeguards measure activity, not equality.

D. Reform of trials and the judiciary

Delay is not experienced equally. An accused who can afford to litigate for years finds it merely inconvenient, while undertrial prisoners without means experience it as prolonged imprisonment amounting to punishment without trial. Addressing this calls for a judiciary adequately staffed in relation to its workload, case management that prioritises matters in which the accused is in pre-trial detention, and better coordination between prosecution, police and defence so as to avoid avoidable adjournments.

E. Technology and accountability

Digital systems for tracking cases and monitoring remand periods can make visible the delays and detentions that manual records obscure. Digitisation does not, however, correct problems on its own: a system built on incomplete information, or one that lawyers and litigants can access unequally, is likely to reproduce existing disparities. Technology must therefore be deployed as an instrument of transparency that is itself open to scrutiny.

²¹ *M.H. Hoskot* (n 7).

²² *Khatrri (II)* (n 7).

²³ *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.

VI. CONCLUSION

What the Constitution demands is not merely identical treatment but equality that means something. Articles 14, 21 and 39A, taken together, exclude arbitrariness in State action, require that criminal procedure be fair and reasonable, and make legal aid part of what a free person is entitled to. That is a demanding constitutional standard, and it is against that standard, rather than against some thinner idea of non-discrimination, that the working of India's criminal justice system has been assessed in this paper.

The central conclusion is a persistent mismatch between the two. Every accused person may have the same procedure available, through arrest, remand, bail and trial, but the same procedure does not bear equally on everyone. Whether the criminal process is experienced as a temporary inconvenience or as continued imprisonment turns on factors the law does not mention: whether counsel is available when it matters, whether release is conditioned on financial capacity, whether repeated attendance at court is financially feasible, and whether an unlawful arrest can in fact be challenged. The ultimate measure of equality, in other words, is not whether a norm treats everyone identically, but whether persons differently situated have a genuine opportunity to benefit from it. A norm may be equal in its wording and unequal in its substance.

The empirical picture examined above, covering undertrial imprisonment, disparities in the availability of legal assistance, patterns associated with caste and region, and variation in judicial capacity between States, does not show that all these inequalities result from discrimination or unlawful conduct. Such a conclusion would overstate what the data can bear. But the presence of systematic and specific disadvantages associated with particular social groups at several stages of the process cannot be ignored in any account of the justice produced by formal equality.

Nor has the response to this gap been indifferent. Over decades of precedent the Supreme Court has built a body of doctrine on arbitrariness, due process, speedy trial, legal aid and protection against custodial abuse that has given Article 21 its present content. The difficulty lies elsewhere: what is declared in a judgment does not automatically become part of police custody, remand proceedings or legal aid delivery. Judicial decisions can settle what the law says, but they cannot by themselves generate the judicial strength, institutional capacity or social conditions required to ensure that the law is followed. To attribute the gap to judicial failure would be to misdiagnose a problem whose roots are largely institutional and social.

This is why the reforms proposed above are not stand-alone solutions but a connected response to a single underlying problem. Reducing unnecessary arrests, weakening the link between bail

and money, directing legal aid reform towards quality rather than quantity, improving judicial capacity, and using technology to expose rather than conceal delay each address one point at which the gap between the letter of the law and its actual operation opens up.

From this emerges a narrow but demanding criterion for assessing equality in criminal justice. A statute is not equal merely because it draws no distinction between rich and poor, between dominant and marginalised, or between urban and rural litigants. It is equal only if the absence of wealth, standing, proximity or legal awareness does not determine whether an individual is able to benefit from it. India's difficulty is not the absence of a constitutional guarantee of such equality, but the unequal capacity of individuals to make use of it.
