

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

Right to Freedom of Life and Liberty to Convicts, Detained and Accused under Constitutional and Criminal Regime and Practice in India

AISHWARYA KRISHNA KUMARI RANAWAT¹ AND DR. MONICA SINGH²

ABSTRACT

This paper critically examines the right to life and personal liberty guaranteed under Article 21 of the Indian Constitution and how it applies to convicts, undertrial prisoners, and detainees. It explores the evolution of judicial interpretations, statutory reforms introduced through the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), and the practical challenges in the criminal justice system that impede the realization of these rights. Through extensive case law, legislative analysis, and comparison with international standards, this paper highlights systemic gaps and proposes reformative measures aimed at ensuring dignity, justice, and constitutional compliance within the penal system.

Keywords: Fundamental rights, Article 21, Criminal justice system, Custodial rights

I. INTRODUCTION

The right to life and personal liberty is one of the most fundamental and sacrosanct rights guaranteed under the Constitution of India. Enshrined in Article 21, it serves as the cornerstone of all other fundamental rights, emphasizing that no person shall be deprived of life or personal liberty except according to a procedure established by law. This constitutional assurance applies equally to every person—regardless of whether they are a free citizen, an undertrial, a detainee, or a convict. The universality of this right signifies the strength of Indian democracy and the Rule of Law, which does not discriminate based on a person's legal status.

In a society governed by constitutional morality and democratic values, the treatment of the most vulnerable—particularly those who are in custody—serves as a litmus test for justice. It is a settled legal position that incarceration does not strip an individual of their constitutional rights, save for the restriction on movement as a consequence of lawful detention. However,

¹ Author is a Student at Jagannath University, Jaipur, India.

² Author is a Professor at Jagannath University, Jaipur, India.

the lived experiences of prisoners and undertrial detainees often contradict this legal ideal. Custodial deaths, prolonged pre-trial detentions, denial of legal aid, torture, and overcrowding in prisons are rampant in India's criminal justice ecosystem. These practices are not only in violation of constitutional safeguards but also constitute serious breaches of India's international obligations under human rights law.

The object of criminal law is not merely to punish, but also to ensure justice—both to the society and the accused. In this context, the Indian judiciary has played a pivotal role in interpreting Article 21 in a liberal and expansive manner. Landmark judgments have evolved the meaning of “life” to include the right to live with dignity, the right to health, legal aid, speedy trial, and freedom from torture. Yet, the gap between law and practice remains vast.

Recent reforms, such as the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, have aimed to modernize and humanize criminal law procedures. These laws contain specific provisions related to arrest, bail, and custodial protection. Despite these advancements, several systemic and structural challenges continue to plague the criminal justice system, particularly affecting those most susceptible to state excesses—the accused, detained, and convicted persons.

This research paper aims to undertake a comprehensive study of the constitutional and statutory safeguards available to persons deprived of liberty in India. It critically examines the application of Article 21 in the context of criminal law, evaluates key judicial decisions, explores the evolving statutory regime under the new criminal laws, and highlights practical challenges in the implementation of these protections. It also incorporates a comparative analysis with international standards and proposes recommendations for reform.

The goal is to reaffirm the constitutional vision that even within prison walls, the dignity of the individual must be preserved, and the rule of law must prevail over arbitrariness and abuse. In doing so, the paper seeks to contribute to the larger discourse on human rights, justice, and legal accountability in India.

A. Literature Review

The discourse on the rights of prisoners in India owes much to judicial activism, academic critique, and civil society intervention. The pioneering judgments of Justice V.R. Krishna Iyer initiated a shift from a retributive to a reformatory approach in penology. Scholars such as Upendra Baxi have highlighted the social exclusion of prisoners, particularly from marginalized backgrounds. The NHRC and Commonwealth Human Rights Initiative (CHRI)

have documented persistent issues of overcrowding, custodial torture, and lack of legal representation.

Academic literature also engages with the doctrine of “prison as a place of reformation,” juxtaposing it against the prevailing reality of dehumanization. There is growing literature supporting the inclusion of restorative justice frameworks to better protect the liberty and dignity of those in the criminal justice system.

II. CONSTITUTIONAL FRAMEWORK

The Indian Constitution provides a robust and comprehensive framework for the protection of human rights, including the right to life and personal liberty. Central to this framework is Article 21, which has undergone a remarkable transformation through judicial interpretation to encompass a wide range of substantive and procedural rights. Alongside Article 21, other provisions such as Articles 20, 22, 32, and 39A work in tandem to ensure that convicts, detainees, and accused persons are not stripped of their dignity or fundamental protections solely due to their interaction with the criminal justice system.

In the context of convicts, undertrials, and detainees, constitutional safeguards assume even greater importance. These individuals are particularly vulnerable to state overreach, including illegal detention, custodial torture, and denial of fair trial rights. The constitutional scheme thus ensures that punitive action by the State must pass the test of legality, fairness, non-arbitrariness, and due process.

A. Article 21: Right to Life and Personal Liberty

Article 21 of the Indian Constitution reads:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Originally interpreted narrowly in *A.K. Gopalan v. State of Madras* (1950), where the Supreme Court took a formalistic approach, the meaning of “procedure established by law” was confined to legislative compliance. However, this understanding changed dramatically in *Maneka Gandhi v. Union of India* (1978), where the Court held that the procedure must not be arbitrary, unfair, or unreasonable, thereby introducing the concept of “substantive due process” into Indian jurisprudence.

This expansion has had profound implications. The right to life now encompasses not only mere animal existence but also the right to live with dignity, including access to health care, clean surroundings, legal aid, and humane treatment—rights that are particularly relevant to

those incarcerated. Courts have recognized that prisoners do not lose their fundamental rights upon incarceration, except those that are necessarily curtailed by the very fact of detention.

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981), the Supreme Court observed that the right to life includes the right to live with human dignity, which is not lost even when a person is lawfully detained. Likewise, in *Sunil Batra v. Delhi Administration* (1978), Justice V.R. Krishna Iyer emphatically ruled that torture and inhuman treatment in jails are incompatible with Article 21.

B. Article 20: Protection in Respect of Conviction for Offences

Article 20 of the Constitution offers critical safeguards against arbitrary conviction and punishment:

- Clause (1) prohibits *ex post facto* laws, ensuring that individuals are not prosecuted under laws that were not in force at the time of the alleged offence.
- Clause (2) enshrines the protection against double jeopardy, meaning no person can be tried and punished for the same offence more than once.
- Clause (3) safeguards against self-incrimination, particularly relevant during custodial interrogations.

These provisions provide an essential shield to accused and detained persons, reinforcing the principles of fairness and justice within the criminal trial process.

C. Article 22: Protection Against Arbitrary Arrest and Detention

Article 22 is divided into two categories—safeguards for general arrests (cl. 1–2) and for preventive detention (cl. 3–7):

1. For ordinary arrests (Clauses 1 & 2):
 - Every person arrested must be informed of the reasons for their arrest.
 - They must be given the right to consult and be defended by a legal practitioner.
 - They must be produced before a magistrate within 24 hours of arrest.
 - Detention beyond 24 hours requires the permission of the magistrate.
2. For preventive detention (Clauses 3–7):
 - Detention for more than three months must be reviewed by an Advisory Board.
 - Grounds of detention must be communicated to the detenu, enabling them to make a representation.

These provisions are crucial in guarding against arbitrary deprivation of liberty. However, preventive detention has often been criticized for allowing extended detention without trial, particularly under laws like the National Security Act (NSA), raising serious constitutional and human rights concerns.

D. Article 39A: Equal Justice and Free Legal Aid

Inserted by the 42nd Amendment, Article 39A under the Directive Principles of State Policy (DPSP) mandates the State to provide free legal aid and ensure that justice is not denied on account of economic or other disabilities.

The Supreme Court has read Article 39A along with Article 21 in several cases to hold that legal aid is a fundamental right of every accused person, especially in criminal trials. In *Khatri v. State of Bihar* (1981), the Court held that the State is under a constitutional obligation to provide free legal aid not only during the trial but even at the stage of police interrogation.

E. Article 32 and 226: Enforcement of Rights

Article 32 provides the right to approach the Supreme Court directly for enforcement of fundamental rights through writs like habeas corpus, mandamus, certiorari, prohibition, and quo warranto. Similarly, Article 226 empowers High Courts to issue writs for enforcement of both fundamental rights and legal rights.

The writ of habeas corpus—a powerful constitutional remedy—has been widely used to challenge unlawful detention and custodial abuse. It has been instrumental in numerous cases of wrongful arrest, illegal custody, and prolonged detention without trial.

F. Doctrine of Constitutional Morality and Prison Jurisprudence

The judiciary has increasingly invoked the doctrine of constitutional morality, emphasizing that all state actions, including those involving prisoners and detainees, must be in harmony with constitutional values of dignity, equality, and justice.

The Supreme Court in *Navtej Singh Johar v. Union of India* (2018) stated that the Constitution must be read as a document that protects minorities and the marginalized—including convicts and undertrials—against majoritarian impulses.

III. STATUTORY FRAMEWORK

While the Constitution provides the fundamental guarantees of life and liberty, it is the statutory framework—comprising criminal law codes and special legislations—that operationalizes these guarantees. In India, criminal law was historically governed by three

primary statutes: the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872. However, these have recently been replaced with new criminal codes aimed at modernizing India's criminal justice system.

The Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) have been introduced with the goal of enhancing citizen-centric justice, ensuring speedy trials, protecting the rights of the accused, and harmonizing procedural safeguards with constitutional mandates. Together with other special legislations such as the Legal Services Authorities Act, 1987, and the Protection of Human Rights Act, 1993, these statutes establish a comprehensive framework for safeguarding the rights of convicts, detained, and accused persons in India.

G. Bharatiya Nyaya Sanhita, 2023 (BNS)

The BNS replaces the colonial-era Indian Penal Code and redefines various offences with a victim-centric and human rights-based approach. While primarily substantive in nature, the BNS introduces significant changes relevant to accused and convicted persons:

- **Decriminalization and Rationalization:** Certain minor offences have been decriminalized or made compoundable, reducing unnecessary incarceration.
- **Provisions on Community Service:** For select offences, BNS introduces community service as an alternative to imprisonment, thereby reducing prison populations and encouraging restorative justice.
- **Provisions on Organized and Cybercrime:** While expanding definitions of organized and terror-related crimes, the statute ensures that prosecutions must be in accordance with due process safeguards, minimizing misuse.

Though not directly focused on prisoner rights, the BNS influences sentencing structures and the scope of judicial discretion, which directly affect liberty.

A. Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

The BNSS, replacing the CrPC, is the principal statute governing criminal procedure in India. It plays a pivotal role in ensuring that the process of investigation, arrest, detention, bail, and trial is consistent with the constitutional commitment to life and liberty

Key protections include:

- **Procedural Safeguards in Arrest and Detention:**

- Section 35 mandates that arrest must be made only when necessary, thus discouraging arbitrary arrests. It also requires recording of reasons for arrest.
- Section 36 mandates that every arrested person must be informed of their rights, including the right to legal counsel and to inform a relative.
- Section 37 reiterates the requirement to produce the arrested person before a magistrate within 24 hours.
- **Use of Technology for Transparency:**
 - Section 183 introduces electronic recording of search and seizure, promoting accountability.
 - Section 195 mandates that statements of victims and witnesses in heinous crimes be recorded via audio-video means, reducing coercion and enhancing procedural fairness.
- **Bail and Legal Aid:**
 - The BNSS emphasizes bail for undertrial prisoners, particularly those held for longer than 50% of the maximum sentence.
 - Provisions support mandatory legal aid, reinforcing the right to counsel.
- **Custodial Reforms:**
 - The statute contains improved guidelines on police custody, including restrictions on handcuffing, custodial interrogation under judicial oversight, and better compliance with Supreme Court guidelines (e.g., D.K. Basu case).

These provisions are aimed at ensuring that procedural safeguards are not mere formalities but real protections for the vulnerable.

B. Bharatiya Sakshya Adhiniyam, 2023 (BSA)

The BSA replaces the Indian Evidence Act, 1872. Although primarily concerned with rules of evidence, it includes provisions that affect the rights of the accused and detained:

- **Presumption of Innocence:** The BSA upholds the foundational principle that a person is presumed innocent until proven guilty.
- **Protection against Coerced Confessions:** Confessions made to police officers are inadmissible unless made in the presence of a magistrate, thereby safeguarding against custodial coercion and torture.

- Digital Evidence and Forensic Reforms: Enhanced provisions for the use of electronic and forensic evidence aim to reduce reliance on confessions, a common source of custodial abuse.

C. Legal Services Authorities Act, 1987

This Act institutionalizes free legal aid for economically or socially disadvantaged persons, including those in custody. It establishes State Legal Services Authorities (SLSAs) and District Legal Services Authorities (DLSAs) to provide:

- Free legal representation at every stage—pre-trial, trial, and appellate.
- Lok Adalats for resolution of minor criminal matters.
- Legal awareness programs inside jails.

The Supreme Court in *Hussainara Khatoon v. State of Bihar* (1979) held that free legal aid is not a charity but a constitutional obligation under Article 39A read with Article 21.

D. The Protection of Human Rights Act, 1993

This Act establishes the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) with powers to:

- Investigate custodial deaths and torture.
- Recommend prosecution and compensation.
- Conduct inspections of prisons and detention centers under Section 12(c).

The NHRC has played a proactive role in identifying systemic violations and recommending policy reforms. Although its recommendations are not binding, they carry moral and persuasive value and often influence judicial decisions.

E. Special Laws and Their Impact on Liberty

Several special laws contain preventive detention and anti-terror provisions which impact the liberty of the accused:

- National Security Act, 1980 (NSA) allows preventive detention without trial for up to 12 months.
- Unlawful Activities (Prevention) Act, 1967 (UAPA) imposes stringent bail conditions and extended detention periods.
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) places the burden of proof on the accused and limits bail access.

While these laws are often justified on grounds of national security and public order, their use has raised concerns regarding misuse, arbitrary detention, and violation of due process, especially when safeguards under the BNSS and the Constitution are circumvented.

IV. JUDICIAL INTERPRETATION: EXPANDING THE HORIZON OF LIBERTY

The Indian judiciary has played a pivotal role in interpreting and expanding the meaning of the right to life and personal liberty, especially concerning the rights of convicts, detainees, and accused persons. Judicial pronouncements have progressively infused substantive content into the constitutional and statutory provisions, especially Article 21, and have emphasized that even those in custody retain their basic human rights, subject only to restrictions that are necessary and reasonable under the law.

Through landmark decisions, the Supreme Court and High Courts have reiterated that incarceration does not negate fundamental rights and that prison walls do not separate prisoners from the Constitution. This progressive judicial trend has ensured that the criminal justice system evolves in consonance with the ideals of justice, dignity, and procedural fairness.

A. Expanding Article 21: From Negative Liberty to Positive Rights

The transformation of Article 21 began with the watershed case of *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. In this case, the Court overruled the earlier narrow interpretation given in *A.K. Gopalan v. State of Madras* (1950), and held that “procedure established by law” must be just, fair, and reasonable, thereby introducing due process into Indian constitutional law.

This paved the way for a broader reading of Article 21, encompassing not just protection from arbitrary arrest or detention but also positive rights such as:

- Right to live with dignity,
- Right to legal aid,
- Right against custodial torture,
- Right to speedy trial,
- Right to bail,
- Right to healthcare and clean environment in prison,
- Right to communication and visitation.

The judiciary has consistently held that these rights must be respected even for those in custody, unless their curtailment is sanctioned by law and serves a legitimate objective.

B. Rights of Prisoners and Convicts

One of the most progressive developments in Indian constitutional jurisprudence has been the recognition of prisoners as rights-bearing citizens. Several landmark cases illustrate this:

- *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494: This case is a cornerstone in Indian prison jurisprudence. The Supreme Court condemned solitary confinement and custodial torture, holding that prisoners are not denuded of fundamental rights. Justice Krishna Iyer held that “prisoners are persons” and “bars and fetters cannot eclipse constitutional guarantees.”
- *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608: The Court declared that the right to life includes the right to live with dignity, which extends to people in preventive detention. The Court held that excessive restrictions on detainees violate Article 21.
- *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96: The Court emphasized humane treatment of women prisoners and called for separate lockups and facilities for female detainees, underlining that custodial rights must be gender-sensitive.
- *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526: The use of handcuffs on undertrial prisoners without judicial sanction was declared unconstitutional unless justified by a clear and present danger of escape or violence.

These decisions have collectively laid down the principle that detention is not equivalent to dehumanization, and any custodial policy must conform to constitutional mandates of fairness and dignity.

C. Rights of the Accused and Undertrials

Undertrials form a substantial portion of the prison population in India. The Supreme Court has consistently highlighted the need to protect their rights and to minimize pre-trial incarceration.

- *Hussainara Khatoon v. State of Bihar*, (1979) AIR 1369: This case revealed the inhumane reality of thousands of undertrials languishing in Bihar jails for periods far exceeding the maximum punishment for their alleged offences. The Court recognized speedy trial as a fundamental right under Article 21 and called for systemic reform.

- *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627: The Court held that the right to free legal aid is part of Article 21 and that failure to inform the accused about their right to legal counsel is a violation of fundamental rights.

- *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260: The Court emphasized that an arrest must not be mechanical and must be based on necessity. The judgment laid down guidelines to prevent arbitrary arrest by police, asserting that liberty is too precious to be sacrificed at the altar of administrative convenience.

D. Custodial Violence and Deaths: Judicial Response

Custodial violence and deaths remain a stark reality in Indian criminal justice. The judiciary has responded with condemnation and remedial guidelines:

- *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416: This landmark judgment laid down detailed guidelines for arrest and detention, including:
 - The right of the arrested person to inform a relative or friend.
 - Medical examination at regular intervals.
 - Preparation of arrest memos signed by witnesses.
 - Right to meet a lawyer during interrogationThese guidelines were later incorporated into the CrPC (now BNSS) and have been repeatedly upheld by the courts.
- *In Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700: The Court took suo motu cognizance of overcrowded and inhumane prison conditions, ordering the installation of CCTVs and accountability for custodial deaths.

E. Bail Jurisprudence and Presumption of Innocence

The principle that bail is the rule and jail the exception has been recognized in several cases, emphasizing the presumption of innocence:

- *State of Rajasthan v. Balchand*, (1977) 4 SCC 308: The Court famously declared that “bail is the rule and jail the exception,” particularly when the accused is not likely to tamper with evidence or flee justice.
- *Arnab Manoranjan Goswami v. State of Maharashtra*, (2020) 16 SCC 593: The Supreme Court strongly reiterated that personal liberty cannot be sacrificed and that courts must be vigilant against arbitrary denial of bail.

However, despite strong jurisprudence, bail continues to be routinely denied in lower courts, especially under special laws like UAPA and NDPS, leading to prolonged incarceration of the accused in pre-trial stages.

F. Compensation and Judicial Remedies

The judiciary has also used the power to award compensation for violation of life and liberty. In *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141, the Supreme Court awarded compensation for illegal detention, marking a shift towards compensatory jurisprudence.

Similar compensation has been awarded in custodial death cases and illegal arrest scenarios, reinforcing the notion that state accountability is integral to fundamental rights enforcement.

V. CHALLENGES IN PRACTICE: GAPS BETWEEN LAW AND REALITY

Despite a robust constitutional and statutory framework supported by progressive judicial interpretations, the implementation of rights relating to life and personal liberty for convicts, detained, and accused persons remains severely deficient in practice. The criminal justice system in India suffers from numerous systemic, procedural, and infrastructural shortcomings that contribute to the erosion of fundamental rights, especially of those most vulnerable—undertrials, socio-economically marginalized individuals, women, and minorities.

This section identifies and analyses the key practical challenges that obstruct the realization of constitutionally and legally guaranteed liberties for convicts, detained, and accused individuals.

A. Arbitrary Arrests and Detentions

Although the BNSS and judicial guidelines (e.g., D.K. Basu guidelines) prohibit arbitrary arrest, violations are rampant:

- Police frequently arrest individuals without sufficient cause or proper documentation, often to show action or under political pressure.
- There is widespread non-compliance with arrest protocols, such as informing relatives or producing arrest memos.
- Many arrests are made for minor, bailable offences, which should not result in incarceration.

The lack of accountability mechanisms and weak internal oversight in police departments allows such practices to continue unchecked.

B. Overcrowding in Prisons

India's prison system is plagued by chronic overcrowding, exacerbating human rights violations:

- As per the National Crime Records Bureau (NCRB) 2023 report, prisons in India operate at 130-140% occupancy, with some states exceeding 180%.
- Undertrial prisoners make up nearly 77% of the prison population, many of whom are incarcerated for years without conviction.
- Inadequate infrastructure, poor ventilation, limited access to healthcare, and insufficient staffing worsen the conditions.

Overcrowding directly undermines the dignity and liberty of inmates and leads to violations of Article 21 on a daily basis.

C. Delays in Investigation and Trials

One of the gravest systemic failures is the inordinate delay in trials, which results in prolonged pre-trial detention:

- Courts are overburdened, with more than 5 crore pending cases across various levels of judiciary.
- Investigation agencies are under-resourced and poorly trained, leading to delays in filing chargesheets.
- Repeated adjournments, absentee witnesses, and backlog in forensic testing cause denial of timely justice.

The Supreme Court has held in *Hussainara Khatoon v. State of Bihar* that speedy trial is a part of the right to life and liberty, yet implementation remains ineffective.

D. Limited Access to Legal Aid and Representation

Despite the mandate under Article 39A and the Legal Services Authorities Act, 1987, legal aid is often inadequate, delayed, or ineffective:

- Many accused persons are unaware of their right to free legal aid.
- Legal aid lawyers are often underpaid, undertrained, and overburdened, leading to poor representation.
- In rural areas and smaller courts, legal aid infrastructure is weak or entirely absent.

This leads to structural inequality in justice access, particularly harming those from marginalized communities.

E. Custodial Violence and Deaths

Custodial torture, abuse, and deaths continue to be a grim reality:

- NCRB 2022 reported over 180 custodial deaths in a single year, though the actual numbers are likely higher due to underreporting.
- Victims are mostly undertrials or those arrested in minor offences, and often from Dalit, Adivasi, or Muslim backgrounds.
- Torture is used to extract confessions or settle personal scores, despite Supreme Court guidelines in D.K. Basu and the prohibition under Indian law.

The absence of an independent authority to investigate custodial crimes, along with lack of accountability and weak prosecution, perpetuates impunity.

F. Misuse of Special Laws and Preventive Detention

Special legislations like:

- Unlawful Activities (Prevention) Act (UAPA),
- National Security Act (NSA), and
- Narcotic Drugs and Psychotropic Substances Act (NDPS)

are frequently misused, leading to:

- Detention without charge for extended periods,
- Denial of bail due to reverse burden of proof clauses,
- Harassment of political activists, journalists, and minorities.

Preventive detention under NSA and state laws bypasses safeguards of regular criminal procedure, posing a serious threat to personal liberty.

G. Discrimination and Marginalization

The criminal justice system disproportionately targets and disadvantages:

- Poor and illiterate individuals, who cannot navigate legal processes.
- Dalits, Adivasis, and Muslims, who are overrepresented in prison populations due to systemic bias and socio-economic vulnerability.

- Women in custody, who face specific issues such as lack of menstrual hygiene, sexual abuse, and lack of childcare facilities.

There is a failure to apply constitutional equality and liberty protections in a non-discriminatory manner in practical terms.

H. Poor Prison Conditions and Lack of Rehabilitation

Convicts face harsh prison conditions that often amount to cruel and degrading treatment:

- Limited access to medical care, nutritious food, vocational training, or education.
- Lack of proper classification of prisoners (e.g., hardened criminals with first-time offenders).
- Minimal efforts toward reintegration or rehabilitation of convicts.

The idea of reformatory justice, advocated by courts in cases like *Sunil Batra* and *Charles Sobhraj*, remains a distant goal in daily prison life.

I. Non-Compliance with Judicial Directives

Judicial guidelines are frequently ignored or only partially implemented:

- D.K. Basu guidelines on arrest procedures are often violated.
- Directions for speedy trial, free legal aid, or bail for undertrials are not monitored or enforced.
- Prisons fail to adhere to recommendations of NHRC and State Human Rights Commissions due to lack of will or capacity.

There is no structured mechanism to ensure compliance with constitutional obligations laid down by courts.

VI. COMPARATIVE PERSPECTIVES: GLOBAL STANDARDS ON LIBERTY AND CUSTODIAL RIGHTS

A comparative analysis of international human rights norms and the criminal justice practices of other democracies reveals best practices that can inform and inspire reforms in India. Although India has a rich constitutional tradition and proactive judiciary, it significantly lags behind many countries in actual enforcement of rights for prisoners, detainees, and accused persons. This section examines select international conventions and national systems that demonstrate a more rights-based, transparent, and humane approach to criminal justice.

A. International Human Rights Framework

a. Universal Declaration of Human Rights (UDHR), 1948

- Article 3 states: “Everyone has the right to life, liberty and security of person.”
- Article 9 prohibits arbitrary arrest and detention.
- Article 10 guarantees a fair and public hearing by an impartial tribunal.

Though not legally binding, the UDHR provides foundational moral authority and has inspired binding treaties like the ICCPR.

b. International Covenant on Civil and Political Rights (ICCPR), 1966

India is a signatory to the ICCPR, which mandates:

- Right to liberty and security of person (Article 9),
- Presumption of innocence (Article 14(2)),
- Prompt and fair trial, and
- Humane treatment of prisoners (Article 10).

In practice, however, India has not fully incorporated these provisions into domestic law, and non-compliance with ICCPR standards is a frequent concern raised by international human rights bodies.

B. United Kingdom: Emphasis on Due Process and Fair Trial

The UK criminal justice system is deeply influenced by the European Convention on Human Rights (ECHR) and the Human Rights Act, 1998, which guarantee:

- Protection against arbitrary detention (Article 5),
- Right to a fair trial (Article 6),
- Legal representation at state expense if justice requires it.

Importantly:

- Custodial deaths are thoroughly investigated through independent oversight bodies, such as the Independent Office for Police Conduct (IOPC).
- Prisons are subject to independent inspections and must meet minimum standards for health, safety, and rehabilitation.

India lacks similarly empowered and independent bodies overseeing custodial conduct and prison management.

C. United States: Strong Procedural Safeguards and Due Process

The U.S. Constitution contains several rights protections for accused and convicted individuals, including:

- The 4th Amendment (protection against unlawful search and seizure),
- The 5th Amendment (protection against self-incrimination and double jeopardy),
- The 6th Amendment (right to a fair, speedy, and public trial),
- The 8th Amendment (protection against cruel and unusual punishment).

The Miranda warning—which requires that accused persons be informed of their right to remain silent and have an attorney—has no Indian equivalent in practice, although legal aid is constitutionally guaranteed.

While the U.S. has issues like racial bias and prison overcrowding, the robust procedural guarantees and compensation mechanisms offer stronger protection to personal liberty than in India.

D. South Africa: Constitutional Emphasis on Dignity and Fairness

South Africa's Constitution is one of the most progressive globally:

- Section 12 guarantees freedom and security of the person, including protection against torture and arbitrary detention.
- Section 35 provides rights of arrested, detained, and accused persons, including:
 - Right to remain silent,
 - Right to be informed of charges promptly,
 - Right to legal representation,
 - Right to be brought before a court within 48 hours.

South African courts actively monitor prison conditions and have established precedents for compensating victims of unlawful detention, setting a model for judicial enforcement of liberty.

E. Scandinavian Countries: Emphasis on Rehabilitation over Punishment

Countries like Norway, Sweden, and Finland have adopted a humanistic approach to criminal justice, viewing imprisonment as a last resort and emphasizing:

- Open prisons with freedom of movement,

- Emphasis on education, job training, and therapy,
- Minimal use of pre-trial detention.

The guiding principle in Norway is that “the punishment is the restriction of liberty—nothing more.” This philosophy has resulted in some of the lowest recidivism rates in the world.

In contrast, India’s prisons are still governed by a punitive mindset, with limited rehabilitative services.

F. Lessons for India

India can adopt several best practices from international jurisdictions:

- Independent oversight mechanisms for police and prison accountability,
- Strict enforcement of bail guidelines to reduce undertrial incarceration,
- Ensuring informed legal aid access at the time of arrest,
- Establishing monitoring bodies for custodial deaths and police conduct,
- Enhancing rehabilitative infrastructure within prisons.

Importantly, aligning domestic practices with ICCPR commitments will reinforce India’s constitutional values and global human rights obligations.

VII. REFORMS AND RECOMMENDATIONS

To bridge the gap between constitutional guarantees and practical realities, a multi-pronged approach is essential. The following reforms can significantly enhance the protection of life and liberty for convicts, detained, and accused persons in India:

A. Police and Investigative Reforms

- Mandatory implementation of arrest protocols under BNSS and D.K. Basu guidelines.
- Establish independent Police Complaints Authorities in all states.
- Invest in training and sensitization of police personnel on human rights.

B. Speedy Trial Mechanisms

- Set up fast-track courts for undertrial cases.
- Enforce strict timelines for filing charge sheets and concluding trials.
- Increase judicial appointments to reduce case backlog.

C. Bail Reform and Undertrial Reduction

- Encourage liberal bail policies, especially for minor and non-violent offences.
- Promote non-custodial alternatives, such as community service and probation.
- Implement Section 479 of the BNSS effectively to prevent unnecessary detention.

D. Legal Aid and Representation

- Strengthen District Legal Services Authorities (DLSA) and ensure quality legal aid.
- Appoint dedicated public defenders with proper training and remuneration.
- Use technology for virtual legal consultations and court appearances.

E. Prison Reform

- Improve infrastructure, sanitation, and healthcare in prisons.
- Ensure proper classification of prisoners and protect vulnerable groups.
- Promote education, vocational training, and mental health services inside prisons.

F. Accountability for Custodial Violence

- Make custodial torture a separate offence, in line with proposed legislation.
- Ensure independent and time-bound inquiries into custodial deaths.
- Ratify the UN Convention Against Torture (UNCAT).

G. Human Rights Oversight

- Empower the NHRC and SHRCs with enforcement authority and adequate resources.
- Regular prison inspections by judicial officers and civil society groups.
- Public disclosure of custodial data and legal compliance audits.

H. Public and Judicial Awareness

- Launch legal literacy campaigns to inform people of their rights upon arrest.
- Conduct judicial and police training on evolving jurisprudence and human rights norms.
- Encourage media and civil society to act as watchdogs.

VIII. CONCLUSION

The right to life and personal liberty enshrined in Article 21 of the Constitution of India lies at the very heart of democratic governance and the rule of law. Yet, for convicts, detainees, and

accused individuals—especially those from socio-economically disadvantaged backgrounds—this right often remains a distant ideal rather than an experienced reality.

Through a robust constitutional and legal framework, supported by landmark judicial pronouncements, India has laid down the principles necessary to uphold the dignity and freedom of all individuals, regardless of their status in the criminal justice system. However, the practical enforcement of these rights continues to be undermined by structural inefficiencies, custodial abuses, prolonged pre-trial detentions, lack of legal aid, prison overcrowding, and discriminatory practices.

This research reveals a serious disjuncture between theory and practice—a gap that requires urgent, multi-level reform. Comparative analysis shows that other democracies have successfully implemented mechanisms for independent oversight, humane detention, and meaningful rehabilitation. India must adopt a rights-based approach that integrates due process, accountability, transparency, and reformatory justice at every stage—from arrest to conviction to reintegration.

To move from paper to practice, it is essential to:

- Strengthen institutional capacity and accountability,
- Promote access to justice for all, especially the marginalized,
- Recognize the humanity of every prisoner and accused individual,
- And reimagine the criminal justice system not merely as a tool for punishment, but as a vehicle for justice, rehabilitation, and constitutional morality.

Only then can the Indian legal system fulfill the constitutional promise that no person shall be deprived of their life or personal liberty except according to procedure established by law—a promise that must apply equally to the free citizen and the confined accused, to the law-abiding and the law-breaker alike.
