

# Accountability of the Public Authorities Vis-À-Vis Persons as Alleged Offenders: An Analysis of Protection of Human Rights of the Under-Trials

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## Abstract

The concept of accountability of public authorities in relation to individuals who are alleged offenders is a critical issue within the framework of human rights, justice, and governance. Public authorities, including law enforcement, prosecutors, and other administrative bodies, hold significant power in regulating, investigating, and prosecuting potential offenses. However, with such power comes the responsibility to ensure fairness, transparency, and respect for the rights of individuals under investigation. This paper explores the multidimensional aspects of accountability in the interaction between public authorities and persons alleged to be offenders, highlighting both legal frameworks and ethical considerations.

In examining the accountability mechanisms available to persons accused of offenses, this research reviews various legal instruments and procedural safeguards designed to protect individuals against arbitrary treatment and to promote justice. These include constitutional guarantees, statutory rights, and international treaties that bind public authorities to uphold certain standards in criminal investigations and trials. The focus is on the duties of public authorities to act within the scope of the law and to ensure that any action taken against alleged offenders is consistent with the principles of due process, equality, and non-discrimination. Key to this discussion is the role of oversight bodies, such as judicial review, ombudsman offices, and independent commissions, which provide a check on the powers of public authorities and ensure that any abuse or deviation from established protocols is addressed.

Moreover, the paper delves into the specific challenges that arise in ensuring accountability in diverse legal contexts, including within systems where political interference, corruption, or inadequate judicial resources may compromise the enforcement of these safeguards. It examines how public authorities are sometimes held to minimal standards of accountability and the resultant impact on the rights of individuals, including wrongful arrests, detention without trial, excessive use of force, and biased legal proceedings. Furthermore, the paper considers the increasing role of digital surveillance, artificial intelligence, and data gathering in modern law enforcement, which raises new concerns about the balance between state security and individual privacy rights.

Through a comparative analysis of different legal systems, the study identifies both best practices and weaknesses in various approaches to ensuring the accountability of public authorities toward alleged offenders. A particular focus is given to the importance of legal reforms and the establishment of robust institutional frameworks that can guarantee the protection of individuals from arbitrary state action. The paper ultimately argues for a stronger and more systematic application of accountability mechanisms that

not only hold public authorities to account but also promote greater trust between the state and its citizens. In conclusion, the paper asserts that a robust system of accountability is essential for the proper functioning of any democracy, ensuring that public authorities act responsibly and ethically in dealing with alleged offenders. This includes safeguarding the fundamental rights of accused individuals while fostering a just and effective legal system. It calls for continued efforts toward enhancing transparency, oversight, and legal reform to mitigate abuses of power and to protect individuals within the justice process.

Key words: Accountability, Public Authorities, Alleged Offenders, Human Rights, Judicial Review, Criminal Justice, Legal Reforms, Rule of Law, Public Trust.

## 1. Introduction

Accountability of public authorities in criminal justice systems is central to upholding democratic principles, rule of law, and respect for human rights. The state's responsibility does not end at ensuring that offenders are brought to justice; it also includes safeguarding the rights of individuals accused or under trial. A fundamental principle of justice is that individuals are presumed innocent until proven guilty. Under trials – people who are awaiting their trial but have not been convicted, deserve particular attention as they are in a liminal space, not yet found guilty but facing restrictions on their liberty. Therefore, public authorities are entrusted with the duty to ensure that their rights are protected during this period.

### 1.1 Objective of the Research:

“All human beings are born free and equal in dignity and rights and are endowed with reason and conscience and should act towards one another in the spirit of common brotherhood and conscience”<sup>1</sup>.

The legal system in India is established on the principle of “innocent until proven guilty”. Every person has to be treated with basic human rights, irrespective of the fact that such person is an alleged criminal or not. The accused persons are also granted certain rights, the most basic of which are found in the Indian Constitution<sup>23</sup>. The basic assumption behind these rights is that the Government has enormous resources available to it for the prosecution of individuals, and individuals, therefore, are entitled to some protection from misuse of those powers by the Government. An accused has certain rights during the course of any investigation, enquiry or trial of offence with which he is charged, and he should be protected against arbitrary or illegal arrest and detention.<sup>4</sup> Any violation of such rights by the authority needs to be strictly dealt with and persons responsible for such violations must be booked under law. However, there is need of proper and unambiguous guidelines to deal with such violations of basic human rights of the arrested and severe sanctions against such violations needs to be imposed.

### 1.2 Hypothesis:

There is a legal regime in India that lays down rules and guidelines for the protection of the rights of the accused, yet cases of custodial violence and death continues to rise in our country. It is therefore very important that there should be a strong legal mechanism to ensure that the personnel, both in police and in prison, who violate the rules and guidelines, must be punished. Moreover, the courts should play a pivotal role in protecting such rights and come up with judgments that are unambiguous and not contradictory,

<sup>1</sup> U.N. Charter Art. 1, Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948)

<sup>2</sup> Article 21, 22, Constitution of India, 1950

<sup>3</sup> Arafat Khan, *Presumption of Innocence and Burden of Proof: Safeguarding Individual Rights in The Indian Judicial System by Ensuring Fair Trials*. LEGAL SERVICE INDIA, (Dec. 10, 2024, 12:00 PM), <https://www.legalserviceindia.com/legal/article-12149-presumption-of-innocence-and-burden-of-proof-safeguarding-individual-rights-in-the-indian-judicial-system-by-ensuring-fair-trials.h>

<sup>4</sup> Ibid.

thereby giving a clear direction to the authorities for enforcement of such mechanisms and also keep a check on such actions of the authorities.

### 1.3 Methodology:

The methodology followed in the present study is primarily doctrinal. The Researcher will survey the Supreme Court cases relating to the rights of the arrested persons and under-trial prisoners from 1996 till 2022 in order to understand the emerging trends and paradigm shifts. Books, Journals, Committee and Commission Reports will further fortify the work.

## 2. Accountability of Public Authorities:

This chapter explores the accountability of public authorities, such as the police, judiciary, and prison officials, in upholding the rights of accused under trials. By analyzing landmark judgments, it shall illustrate the evolution of these protections, examining the balance between enforcing law and ensuring fair treatment for individuals awaiting trial.

### 2.1 Types of Accountabilities:

In the criminal justice system is a multifaceted concept that ensures public authorities, including law enforcement and judicial bodies, are held responsible for their actions. It involves various mechanisms and standards to maintain transparency, integrity, and adherence to the law<sup>5</sup>. Here are the different kinds of accountability:

**2.1.1 Professional Accountability:** This involves adherence to professional standards and codes of conduct. Law enforcement officers and judicial officials are expected to follow ethical guidelines and best practices in their work. Professional accountability is often enforced through internal reporting and disciplinary mechanisms.

**2.1.2 Political Accountability:** This type of accountability is enforced by elected officials and political bodies. Law enforcement agencies and judicial institutions are accountable to the government and the public through political oversight. This includes budgetary control, legislative oversight, and public inquiries.

**2.1.3 Civil Accountability:** Civil accountability involves holding public authorities liable for their actions through civil litigation. Individuals who have been wronged by law enforcement or judicial misconduct can file lawsuits to seek compensation and justice. This mechanism ensures that victims have a legal recourse to address grievances.

**2.1.4 Criminal Accountability:** Criminal accountability refers to the prosecution of law enforcement officers and judicial officials for criminal acts committed in the course of their duties. This includes charges for corruption, abuse of power, and other criminal offenses. Criminal accountability is enforced through the criminal justice system itself.

**2.1.5 Community-Based Accountability:** This involves the participation of the community in holding law enforcement accountable. Community-based accountability mechanisms include citizen review boards, public forums, and community policing initiatives. These mechanisms allow the public to have a say in how law enforcement operates and to report misconduct.

**2.1.6 Internal Accountability:** Internal accountability mechanisms are those that are established within law enforcement and judicial institutions. These include internal affairs units, professional standards units, and internal audits. Internal accountability ensures that misconduct is identified and addressed within the

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<sup>5</sup> *Understanding the pillars of the criminal justice system*, THE LAW INSTITUTE, (Dec 10, 2024, 1:00 PM), <https://thelaw.institute/criminal-justice-system/pillars-criminal-justice-system/>.

organization.

**2.1.7 External Accountability:** External accountability involves oversight by independent bodies outside the law enforcement and judicial institutions. This includes commissions of inquiry, ombudspersons, and independent monitoring bodies. External accountability provides an additional layer of scrutiny and ensures that internal mechanisms are effective.

## 2.2 Accountability of Public Authorities in Criminal Justice System

Public authorities, such as law enforcement agencies and judiciary, play a critical role in the criminal justice process. They have immense power over individuals' liberty, especially for those under trial. Accountability mechanisms are necessary to ensure that these powers are exercised lawfully, fairly, and with respect to human rights.<sup>6</sup> The principle of accountability requires that state actors can be held responsible for their actions, omissions, and abuse of power. For the accused under trials, accountability becomes crucial to ensure that their basic rights are protected despite restrictions imposed on them. This includes rights to a fair trial, protection from arbitrary detention, and humane treatment in custody. Judicial oversight, independent investigations, and procedural safeguards constitute the core mechanisms of accountability that protect under trials<sup>7</sup>.

## 2.3 Mechanisms for Accountability:

There have been few accepted mechanisms to ensure the fulfilment of such accountability of the public officials in order to protect the rights of the arrested under-trial prisoners and to protect them from being subjected to different forms of torture and inhuman treatment inside the custody, if they are not released on bail, either pretrial or during trial<sup>8</sup>. Here below are listed some of those accepted mechanisms adopted by the various public authorities:

**2.3.1 Oversight Bodies:** Independent oversight bodies, such as police complaints authorities and judicial commissions, play a crucial role in monitoring the conduct of law enforcement and judicial officials. These bodies investigate complaints, conduct audits, and recommend disciplinary actions<sup>9</sup>.

**2.3.2 Transparency and Reporting:** Transparency in the operations of law enforcement and judicial institutions is essential for accountability. This includes the publication of reports, statistics, and other relevant information. Regular reporting ensures that the public is informed about the activities and performance of these institutions.

**2.3.3 Training and Education:** Continuous training and education programs for law enforcement and judicial officials are vital for maintaining accountability. These programs focus on human rights, legal procedures, ethical conduct, and community relations. Training helps to prevent misconduct and promotes a culture of accountability.

**2.3.4 Whistleblower Protections:** Protecting whistleblowers who report misconduct within law enforcement and judicial institutions is crucial for accountability. Whistleblower protections ensure that individuals can come forward without fear of retaliation, thereby encouraging the reporting of misconduct.

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<sup>6</sup> Eklavya Vasudev, Thomas Blom Hansen, *Citizens and the state: Policing, Impunity and the Rule of Law in India*, THE HINDU CENTRE, (Dec 11, 2024, 3:00 PM), <https://www.thehinducentre.com/incoming/citizens-and-the-state-policing-impunity-and-the-rule-of-law-in-india/article67887312.ece>.

<sup>7</sup> Ibid

<sup>8</sup> Ayushi Priyadarshini & Madhurika Durge, *Under trial prisoners in India*, NLIU LAW REVIEW, (Dec. 11, 2024, 3:10 PM), <https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-VI-Issue-II-133-162.pdf>

<sup>9</sup> Id.

**2.3.5 Judicial Remedies:** Judicial remedies, such as habeas corpus petitions and judicial review, provide individuals with a legal avenue to challenge unlawful detention and misconduct. These remedies ensure that the judiciary plays a role in upholding the rights of individuals and holding public authorities accountable.

**2.3.6 Public Interest Litigations (PILs):** - PILs have become an important tool for holding public authorities accountable and addressing systemic issues. Individuals and organizations can file PILs to seek judicial intervention in cases of human rights violations and to demand reforms in the criminal justice system.

### 3. Protection of Rights of Accused Under-Trials

As already stated by the researcher, the rights of accused, under trials are derived from the fundamental principles enshrined in the Constitution of India, including Article 14 (right to equality), Article 21 (right to life and personal liberty), and Article 22 (protection against arbitrary arrest and detention) and several other relevant legislations ensuring the same. The judiciary has played a vital role in interpreting these rights and reinforcing accountability among public authorities<sup>10</sup>. Key rights of accused and under trial prisoners thus, include:

**3.1 Right to Fair Trial:** Ensuring that under trials are granted a fair and impartial trial, with adequate legal representation, is a fundamental requirement<sup>11</sup>.

**3.2 Right to Speedy Trial:** A prolonged delay in trial infringes upon the liberty of the accused and leads to psychological and social hardships<sup>12</sup>.

**3.3 Right against Custodial Violence:** Physical and psychological abuse of under trials by law enforcement officials has been a persistent concern<sup>13</sup>.

**3.4 Right to Bail:** The right to bail prevents unnecessary detention and balances individual liberty with the need for justice<sup>14</sup>.

**3.5 Right to Dignity and Humane Treatment:** The Constitution and international human rights conventions mandate humane treatment for all individuals, including those awaiting trial<sup>15</sup>.

### 4. Challenges to Accountability and Rights of Under-Trials

Despite judicial and legislative efforts, challenges persist in ensuring accountability and protecting the rights of under trials. These challenges possess serious threat to the protection of rights of the accused, under trial prisoners. However, these challenges cannot be avoided in the world's largest democracy but definitely can be and needs to be reformed. Below mentioned are some of those challenges faced by the public authorities while discharging their statutory duties:

<sup>10</sup> Chahat Gugliya, *Right of Accused Persons under Article 22: Principles and Important Cases*, Lawfoyer, (Jan. 11, 2024, 3:10 PM), <https://lawfoyer.in/right-of-accused-persons-under-article-22-principles-and-important-cases/>

<sup>11</sup> Leisna Aribam, *Right to free trial in India*, LEGAL SERVICE INDIA, (Jan. 11, 2024, 3:10 PM), <https://www.legalserviceindia.com/legal/article-10420-right-to-fair-trial-in-india-all-you-need-to-know.html>

<sup>12</sup> Right to Speedy Trial Under Article 21 of the Constitution: An Analysis, Legal Service India, (Dec. 7, 2024, 3:10 PM), <https://www.legalserviceindia.com/legal/article-18342-right-to-speedy-trial-under-article-21-of-the-constitution-an-analysis.html>.

<sup>13</sup> Vani Khandelwal, Vansika Chandarana & Meet Shah, *Right Against Custodial Violence*, IJLLR, (Dec. 11, 2024, 3:10 PM), <https://www.ijllr.com/post/right-against-custodial-violence>

<sup>14</sup> Art 21, Constitution of India, 1950

<sup>15</sup> *ibid*

**4.1 Overcrowding in Prisons:** Overcrowding in prisons is a significant issue, leading to inadequate living conditions and strained resources. Overcrowded prisons make it difficult to ensure the humane treatment of under-trial prisoners and exacerbate issues related to healthcare, sanitation, and safety<sup>16</sup>.

**4.2 Delays in the Judicial Process:** Delays in the judicial process result in prolonged detention of under-trial prisoners. The high backlog of cases, insufficient number of judges, and procedural inefficiencies contribute to these delays. Prolonged detention undermines the principle of “innocent until proven guilty” and leads to unnecessary incarceration.

**4.3 Custodial Violence and Abuse:** Instances of custodial violence, including torture and ill-treatment of prisoners, continue to be reported. Lack of accountability mechanisms, inadequate training of law enforcement personnel, and a culture of impunity contribute to this issue. Ensuring strict enforcement of guidelines and disciplinary action against perpetrators is essential<sup>17</sup>.

**4.4 Lack of Legal Representation:** Many under-trial prisoners lack access to legal representation, resulting in unfair trials and prolonged detention. Despite provisions for free legal aid, the availability and quality of such services are often inadequate, particularly for marginalized and economically disadvantaged individuals.

**4.5 Inconsistent Application of Bail Provisions:** The application of bail provisions can be inconsistent, leading to disparities in granting bail. Factors such as socio-economic status, influence, and corruption can affect bail decisions, undermining the fairness of the process. Moreover, lack of a proper framework for granting or rejecting bail, often questions the judicial discretions which more than not is found to be influenced by internal of external factors.

## **5. Accountability of Public Authorities as laid down by the Indian Judiciary: Post Dk Basu Judgment**

### **5.1 DK Basu v. State of West Bengal<sup>18</sup>, (followed by subsequent reaffirmations post 2000)**

The Supreme Court has laid down comprehensive guidelines for the protection of the rights of arrested persons, including the mandatory preparation of an arrest memo and informing the arrested individual's family.

### **5.2 Shiv Kumar Sharma v. Union of India<sup>19</sup>**

The Judiciary has addressed police misconduct and emphasized the need for stringent action against officers involved in unlawful activities.

### **5.3 Prakash Singh v. Union of India<sup>20</sup>**

The highest court directed the establishment of Police Complaints Authorities at the state and district levels to address complaints against police officers regarding misconduct and custodial violence.

### **5.4 State of Gujarat v. Kishanbhai<sup>21</sup>**

It was held by the Supreme Court that that the police and prosecution are responsible for conducting a fair investigation, and any lapse in the investigation process can result in the miscarriage of justice.

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<sup>16</sup> *Addressing the critical issue of prison overcrowding: A legal Perspective*, PRIME LEGAL, (Dec. 13, 2024, 2:15 PM), <https://blog.primelegal.in/addressing-the-critical-issue-of-prison-overcrowding-a-legal-perspective/>

<sup>17</sup> Smt. Supriya M. Swami, *Custodial Violence: A Growing Abuse of Human Rights in India*, JETIRLI, (Dec. 11, 2024, 3:10 PM), <https://www.jetir.org/papers/JETIR2002532.pdf>.

<sup>18</sup> D.K. Basu v. State of W.B., (1997) 1 S.C.C. 416.

<sup>19</sup> Shiv Kumar Sharma v. Union of India, (2003) 7 S.C.C. 438.

<sup>20</sup> Prakash Singh v. Union of India, (2006) 8 S.C.C. 1.

<sup>21</sup> State of Gujarat v. Kishanbhai, (2014) 5 SCC 108

### 5.5 Arnesh Kumar v. State of Bihar<sup>22</sup>

The Supreme court delivered a landmark ruling provided guidelines to prevent unnecessary arrests and detention in cases where the offense is punishable with imprisonment for a term that may extend to seven years or less. This judgment has advanced the procedure of investigation to a fairer and more non-biased approach.

### 5.6 Lalita Kumari v. Govt. of Uttar Pradesh<sup>23</sup>:

The Apex Court made it mandatory for the police to register an FIR in cases of cognizable offenses, emphasizing accountability in the registration of cases. Thus, public authorities has been directed to be more vigilant and any reluctance to register complaints shall be viewed very strictly.

### 5.7 Shreya Singhal v. Union of India<sup>24</sup>:

The Supreme Court of India had struck down Section 66A of the Information Technology Act, which was often misused by law enforcement authorities to curb free speech of the citizens of the country. Also mentioned that free speech cannot be curtailed always on the pretext of public interest or protecting the Government from criticisms.

### 5.8 Independent Thought v. Union of India<sup>25</sup>

The Apex Court has addressed the protection of minors and underscored the broader principle of accountability within the criminal justice system.

### 5.9 Common Cause v. Union of India<sup>26</sup>

The Supreme Court again addressed reformulation of police reforms and the need for accountable policing practices, stressing the importance of implementing recommendations from various commissions and committees.

### 5.10 Paramvir Singh Saini v. Baljit Singh<sup>27</sup>

The Supreme Court mandated the installation of CCTV cameras in police stations to monitor police conduct and prevent custodial torture inside the police lockup.

## 6. Conclusion

### 6.1 Reforms to enhance accountability in the criminal justice system:

**6.1.1 Independent Oversight Mechanisms:** Establishing independent bodies to oversee the conduct of law enforcement and judicial officials. These bodies should have the authority to investigate complaints and recommend disciplinary actions.

**6.1.2 Enhanced Training and Sensitization:** Regular training programs for police personnel on human rights, legal procedures, and ethical conduct. Sensitization workshops can help address issues of gender bias and custodial violence.

**6.1.3 Judicial Reforms:** Measures to reduce judicial delays, including the appointment of additional judges and the use of technology to streamline case management processes.

**6.1.4 Community Policing:** Encouraging community policing initiatives to build trust between the police and the public. Community involvement can enhance accountability and transparency in law enforcement practices.

<sup>22</sup> Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

<sup>23</sup> Lalita Kumari v. Govt. of Uttar Pradesh, (2014) 2 SCC 1.

<sup>24</sup> Shreya Singhal v. Union of India, (2015) 5 SCC 1.

<sup>25</sup> Independent Thought v. Union of India, (2017) 10 SCC 800.

<sup>26</sup> Common Cause v. Union of India, (2018) 5 SCC 1.

<sup>27</sup> Paramvir Singh Saini v. Baljit Singh, (2020) 2 SCC 413.

**6.1.5 Legal Aid and Support Services:** Strengthening legal aid services to ensure that individuals, especially those from marginalized communities, have access to legal representation and support.

**6.1.6 Technological Advancements:** Utilizing technology, such as body-worn cameras and digital record-keeping, to monitor police conduct and ensure transparency in law enforcement activities.

**6.1.7 Strict Enforcement of Guidelines:** Ensuring strict adherence to guidelines laid down by the Supreme Court and other judicial bodies regarding the rights of arrested persons and the conduct of law enforcement officials.

Thus, the accountability of public authorities in the criminal justice system is crucial for upholding the rule of law, protecting individual rights, and maintaining public trust. While significant strides have been made through landmark judgments and proposed reforms, challenges remain. Continuous efforts to enhance oversight, training, and transparency are essential to create a fair and just criminal justice system. The judiciary, law enforcement agencies, and the public must work together to ensure that accountability is not just an ideal but a reality in India's criminal justice system.