*International Journal of Juridical Studies & Research (IJJSR), Vol. 1, Issue 2, December 2024 Page 268 - 281*

# Beyond Anti: Section 41A Notices, Service Protocols, and the Realities of Bail Jurisprudence in India

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**Abstract**

*India's criminal procedure has long carried the weight of excessive pre-trial detention. Nearly three out of four prisoners remain undertrial, many for minor offences where arrest was neither necessary nor proportionate. The Supreme Court in Satender Kumar Antil v. CBI sought to reverse this pattern through a structured bail matrix and the mandatory use of Section 41A notices. Yet the promise of Antil has faltered in practice. States and police authorities began to rely on electronic service of notices, often through WhatsApp or email, creating a system where liberty could hinge on a double tick.*

*In January 2025, the Court intervened again, barring electronic service, directing States to issue fresh standing orders, and requiring High Courts to establish monitoring committees. A follow-up order in July 2025 reaffirmed this strict approach. Recent High Court decisions, such as Pavan Kumar in Karnataka, show that defective service is now being treated as a serious due process violation.*

*This paper argues that proper service is not a technical ritual but the threshold guarantee of fairness. Drawing on NCRB data, comparative perspectives from the UK and New Jersey, and Indian scholarship, it demonstrates that procedural fidelity in service of notices can directly reduce overcrowding and safeguard liberty.*

***Keywords:*** *Bail reform, Satender Kumar Antil, Section 41A CrPC, Section 35 BNSS, Supreme Court of India, undertrial prisoners, due process, service of notice, criminal procedure, liberty.*

## 1. Introduction and Background

In the barracks of an overcrowded jail in Uttar Pradesh, a nineteen-year-old boy accused of a petty theft spent two months behind bars. The charge was not grave, the punishment, if ever proved, would not have crossed a year, yet his liberty was lost to a technical defect. The police had sent him a notice through WhatsApp under Section 41A of the Code of Criminal Procedure. He never

saw the message. He was marked absent, and his arrest followed. A tiny procedural act, almost invisible to the system, ended up determining whether a young man would remain free or trapped inside prison walls.

The story is emblematic of the fragility of India's criminal process. For years, the Supreme Court has attempted to check arbitrary arrest and ensure bail becomes the rule rather than the exception. Despite these efforts, India's jails remain dominated by undertrial detainees. The most recent report of the National Crime Records Bureau, *Prison Statistics India 2023*, records that 73.5 percent of the national prison population consists of undertrial prisoners, numbering over 4.3 lakh out of a total of nearly 5.9 lakh.[1] The overall prison occupancy rate is 120 percent, with Delhi crossing 190 percent, while Uttar Pradesh, Bihar and Madhya Pradesh consistently record occupancy above 150 percent.[2] Far from being incidental, these figures mark a systemic failure of criminal procedure safeguards.

The Supreme Court first took a decisive step in *Arnesh Kumar v. State of Bihar* in 2014, warning against automatic arrests in offences punishable by less than seven years.[3] The Court held that reasons must be recorded before arrest and that police officers should issue a notice of appearance under Section 41A when arrest was not necessary. This ruling created a doctrinal foundation that liberty should not be surrendered lightly. In 2022, the Court deepened this jurisprudence in *Satender Kumar Antil v. CBI*.[4] It introduced a four-category offence matrix, made Section 41A notices mandatory in many categories, imposed time limits for disposal of bail applications, and directed magistrates to act as custodians of liberty rather than silent endorsers of police action. The Bharatiya Nagarik Suraksha Sanhita, 2023, has since carried Section 41A forward into Section 35 with minor modifications, showing legislative intent to codify what had begun as judicial safeguard.[5]

Yet even strong doctrine struggles against poor practice. Police authorities across several States began serving notices under Section 41A through WhatsApp or email, citing efficiency in a digital

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[1] Times of India, *74% of prisoners are undertrials, and that's an "improvement"* (Jan. 2025).
[2] NCRB, *Prison Statistics India 2023* (2024), at tbl. 1.
[3] *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
[4] *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.
[5] Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 35(3)–(6).

age. The danger was obvious. Service of notice is not about convenience, it is about proof and fairness. When a person never receives a digital message, liberty should not depend on whether a tick turns blue. In January 2025, the Supreme Court intervened again. In a compliance order in *Satender Kumar Antil*, the Court declared that service of notice through WhatsApp or other electronic modes cannot be treated as valid.[6] It directed all States and Union Territories to issue standing orders in line with the procedure prescribed by law, and called upon every High Court to constitute monitoring committees to ensure that bail safeguards were not reduced to hollow formalities.

The significance of this intervention lies in its insistence that procedure is not a technicality. The Delhi High Court had earlier ruled in *Rakesh Kumar* and *Amandeep Singh Johar* that service of notice must follow the procedure of summons: personal service with acknowledgement, or postal modes where delivery can be proven.[7] The Supreme Court's 2025 orders adopted this reasoning and shut the door on electronic improvisations. When the State of Haryana sought a modification in July 2025, arguing for flexibility, the Court refused and reaffirmed its stance that only prescribed modes are valid.[8]

This turn might appear bureaucratic, but it carries deep constitutional meaning. The right to personal liberty under Article 21 is not abstract. It survives through concrete acts of fairness. Service of a notice is the first opportunity for an accused to respond without the threat of custody. If the notice is not properly served, the accused is set up to fail and the arrest follows as a foregone conclusion. Tom Tyler's theory of procedural justice demonstrates that people perceive law as legitimate when processes are transparent and consistent.[9] A notice properly served signals to the accused that the system offers fairness. A notice casually delivered on WhatsApp, invisible and unverifiable, sends the opposite message.

The comparative picture strengthens this claim. In the United Kingdom, the Police and Criminal Evidence Act, Code G, requires officers to justify arrest on grounds of necessity, with summons

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[6] *Satender Kumar Antil*, Order (Jan. 21, 2025) (SC).
[7] *Rakesh Kumar v. State* (Delhi HC 2014); *Amandeep Singh Johar v. State* (Delhi HC 2018).
[8] *Satender Kumar Antil*, Order (July 30, 2025) (SC).
[9] Tom R. Tyler, *Why People Obey the Law* (1990).

or notice as alternatives when feasible.[10] In New Jersey, the 2017 pre-trial reform shifted focus away from cash bail toward risk-based release, premised on accurate notice and monitoring. Evaluations showed detention rates fell and appearance rates remained steady.[11] Both examples illustrate that liberty can be preserved without compromising public safety, provided procedure is rigorous.

Indian scholars too have underlined the importance of non-monetary safeguards. Abhinav Sekhri has argued that reliance on sureties entrenches inequality and that procedural fidelity is a stronger weapon against unnecessary custody.[12] A notice properly served requires no financial burden, yet ensures appearance. It is the most democratic of bail safeguards.

The undertrial data makes the stakes clear. Over 73,000 prisoners were recommended for release by Undertrial Review Committees in 2023, but less than half were actually released.[13] The committees failed not because law was lacking, but because implementation faltered. Each defective service of notice feeds this larger failure.

This chapter therefore sets the frame for the inquiry. The Supreme Court has progressively built safeguards against arbitrary arrest, from *Arnesh Kumar* to *Antil* and now the compliance orders of 2025. The doctrinal arc is clear: liberty requires procedure, and procedure requires fidelity in even the smallest acts. The next chapters will examine how this compliance turn is being absorbed across States and High Courts, how empirical data reflects its urgency, and what institutional reforms can make the promise of *Antil* real.

## 2. The Compliance Turn

By January 2025, it was evident that the promise of *Satender Kumar Antil* was faltering. Courts across the country were flooded with complaints of defective service of notices, while police departments defended electronic service as efficient. The Supreme Court, faced with affidavits and reports, issued a sweeping compliance order. It insisted that liberty cannot depend on the vagaries

[10] Police and Criminal Evidence Act 1984, Code G (UK).
[11] New Jersey Courts, *2019 Report to the Governor and the Legislature* (2019).
[12] Abhinav Sekhri, *Rethinking Monetary Bail in India* (SSRN 2023).
[13] National Legal Services Authority, UTRC Data (2024).

of technology, and that the service of notice must follow the modes prescribed by law. This moment is often described as the compliance turn of Antil jurisprudence. It is not merely a procedural correction but a reminder that constitutional guarantees often rest on ordinary paperwork.

### 2.1 The January 2025 Order

The order of 21 January 2025 declared that service of notice through WhatsApp, email or similar electronic means could not be recognised as valid.[14] The Court directed all States and Union Territories to issue standing orders prescribing the exact procedure of service. It required High Courts to create monitoring committees that would examine compliance and place reports on record.[15] The order cited the Delhi High Court rulings in *Rakesh Kumar* and *Amandeep Singh Johar*, which had held that Section 41A notices must follow the logic of summons: personal service, postal service with acknowledgment, or other legally sanctioned means.[16] The Supreme Court's order therefore gave nationwide authority to what had until then been limited to Delhi's jurisdiction.

The language of the order revealed the Court's concern. It stressed that liberty could not hinge upon whether an accused received a message on a personal device, especially in a country where digital access is uneven.[17] It further held that proof of service is critical to judicial oversight, because magistrates must verify at the remand stage whether the police had complied with the notice requirement. Without verifiable service, the judicial check collapses.

### 2.2 The July 2025 Modification Plea

The State of Haryana sought modification, arguing that electronic service should be permitted where physical delivery was difficult.[18] On 30 July 2025, the Court refused. It reaffirmed that only modes prescribed by law could be used, and endorsed the Delhi High Court's insistence on

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[14] *Satender Kumar Antil*, Order (Jan. 21, 2025) (SC).
[15] Id.
[16] *Rakesh Kumar v. State* (Delhi HC 2014); *Amandeep Singh Johar v. State* (Delhi HC 2018).
[17] *Satender Kumar Antil*, Order (Jan. 21, 2025) (SC).
[18] *Satender Kumar Antil*, Order (July 30, 2025) (SC).

physical acknowledgment.[19] The rejection is significant because it shows the Court preferred uniformity across jurisdictions to experimentation by States. By choosing clarity over flexibility, the Court made service of notice a non-negotiable due process right.

### 2.3 Responses from States and Police Departments

Following these directions, several police departments issued new circulars. The Jammu and Kashmir Police instructed officers to avoid electronic service and to maintain detailed registers of notices served.[20] The Uttar Pradesh Police circulated the Supreme Court's January order to all district units, with instructions to ensure compliance.[8] These responses show that the order was not symbolic; it pushed the executive machinery to alter its administrative practice.

However, compliance is uneven. Reports from Karnataka in February 2025 reveal that notices were still being served through WhatsApp, leading the High Court to quash such proceedings in *Pavan Kumar*.[21] The judgment cited the Supreme Court's order and emphasised that defective service vitiates subsequent arrest. This example demonstrates the tension between judicial insistence and police inertia.

### 2.4 Practical Meaning of Monitoring Committees

The requirement of High Court monitoring committees has opened a new institutional chapter. In several jurisdictions, registrars have been tasked with collating monthly reports from magistrates.[22] These reports are supposed to capture how many notices were served, by what mode, and whether defects were noted at the remand stage. Although this is an important innovation, the effectiveness of such committees depends on whether their findings are made public and whether non-compliance triggers consequences. If committees merely collect data without follow-up, the reform risks fading into ritual.

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[19] Id.

[20] Jammu and Kashmir Police Circular, Feb. 2025

[21] Uttar Pradesh Police Circular, Mar. 2025

[22] *Pavan Kumar v. State of Karnataka* (Karnataka HC, Feb. 2025).

### 2.5 Doctrinal Consequences

The compliance orders also change the doctrinal posture of Antil jurisprudence. The 2022 judgment had created a bail framework, but left much of the operational detail to State practice. The 2025 orders closed that gap. They converted service of notice from an administrative step into a constitutional guarantee linked to Article 21. The Court's refusal to tolerate WhatsApp service indicates that due process is about verifiable and accountable procedure. It signals that the judiciary is willing to police even seemingly minor acts when they bear directly on liberty.

This doctrinal shift is also visible in the way magistrates are now expected to function. At the remand stage, they must actively verify whether service has been valid. Without a copy of acknowledgment or a postal receipt, the magistrate is bound to question the legality of custody. The magistrate's role is no longer passive; it has been recast as a gatekeeper.

### 2.6 A Human Reading of Compliance

The compliance turn can be read not just as a matter of legal formality but as a human response to a chronic crisis. Every defective notice increases the probability of an unnecessary arrest. Every unnecessary arrest increases prison overcrowding. Behind each number is a life suspended in the limbo of undertrial detention. The insistence on physical service ensures that an accused has a fair chance to appear voluntarily, avoiding both custody and stigma. The Supreme Court's order therefore acts as a bridge between abstract constitutional rights and the everyday realities of accused persons navigating a hostile system.

## 3. Ground Impact and Empirical Realities

Doctrine becomes real only when it touches the ground. *Satender Kumar Antil* promised a rational arrest regime. The compliance orders of January and July 2025 tried to anchor that promise in verifiable service of notices. Yet the story of liberty in India is told as much through numbers as through judgments.

### 3.1 The Weight of Numbers

The National Crime Records Bureau's *Prison Statistics India 2023*, released in 2024, records a total prison population of 5,91,423. Out of this, 4,34,302 were undertrials, representing 73.5 percent of all inmates.[23] The national occupancy rate was 118.7 percent. Delhi prisons were the most extreme, operating at 190.1 percent of sanctioned capacity. Uttar Pradesh stood at 168.3 percent, Bihar at 153 percent, and Madhya Pradesh at 151 percent.[24] These are not dry percentages. They mean prisoners sleeping in shifts, long queues for toilets, and barely any space to meet legal aid lawyers.

One might expect that *Arnesh Kumar* in 2014 or *Antil* in 2022 would have lowered these numbers. The data says otherwise. The undertrial proportion has barely shifted.[25] That is why the compliance turn of 2025 is so vital. It speaks to the first contact point between an individual and the criminal process, the service of a notice.

### 3.2 The Faltering Machinery of Release

To tackle overcrowding, the Supreme Court in *In Re: Inhuman Conditions in 1382 Prisons* directed the establishment of Undertrial Review Committees in every district.[26] By 2023, these committees recommended the release of more than 73,000 undertrials. Yet fewer than half of those recommended were actually freed.[27] The reasons are revealing: magistrates hesitant to adopt recommendations, prison authorities slow to process paperwork, and police officers reluctant to verify addresses.

The lesson is obvious. Liberty cannot be left to committees that meet once a month and write reports. The better strategy is to prevent unnecessary custody at the very threshold. A properly served notice ensures appearance without arrest, reducing the inflow of undertrials before committees need to intervene.

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[23] NCRB, *Prison Statistics India 2023* (2024), at tbl. 1.
[24] Id.
[25] Id.
[26] *In Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700.
[27] National Legal Services Authority, UTRC Data (2024).

### 3.3 Section 436A and the Slow March of Justice

Section 436A of the Code of Criminal Procedure, now Section 479 of the Bharatiya Nagarik Suraksha Sanhita, provides that an undertrial who has served half of the maximum prescribed sentence is entitled to bail.[28] The Supreme Court and several High Courts have regularly invoked this safeguard. In 2023, the Court released prisoners in Maharashtra and Uttar Pradesh who had already served more than half the statutory term while awaiting trial.[29] Yet the very fact that thousands of prisoners reach the half term mark is an indictment. It shows that safeguards at the earlier stage, especially proper service of notices, are not working. If notices had been correctly served and arrests avoided, many of these individuals would never have crossed the prison gates.

### 3.4 Courts Reacting to Defective Service

The judiciary has begun to connect defective service with liberty outcomes. In *Pavan Kumar v. State of Karnataka*, decided in February 2025, the High Court quashed proceedings where the police had served a Section 41A notice on WhatsApp.[30] Citing the Supreme Court's January 2025 order, the Court held that such service was not legally valid and violated the accused's right to due process. Magistrates in Delhi and Lucknow have also started to demand acknowledgment slips or postal receipts at remand hearings, in line with the monitoring mechanism directed by the Supreme Court.[31] These small acts show judicial willingness to treat service as a serious constitutional matter rather than a clerical step.

### 3.5 The Human Dimension of Data

Statistics can be numbing. To say that 73.5 percent of prisoners are undertrials is to say that three out of every four people in jail have not been convicted of any crime. It is to say that a father accused of a bailable offence may spend weeks away from his children because his notice was not properly delivered. It is to say that a woman charged with a minor property offence can lose her

[28] CrPC § 436A; BNSS § 479.
[29] Supreme Court of India, *X v. State of Maharashtra*, Order dated Aug. 2023.
[30] *Pavan Kumar v. State of Karnataka* (Karn HC, Feb. 2025).
[31] LawBeat, *High Courts monitor Antil compliance after SC orders* (Apr. 2025).

job and housing because her presence was marked absent when she never saw the WhatsApp message that determined her liberty.

This is why the Supreme Court's insistence on physical, verifiable service is not a matter of paperwork. It is a ritual of fairness. It ensures that the accused has a real opportunity to comply. It reminds police and magistrates that procedure is not ornamental, it is the substance of liberty.

### 3.6 Comparative Empirical Insights

Comparative experience supports the same conclusion. In the United Kingdom, Code G of the Police and Criminal Evidence Act requires that arrests be justified on necessity. Police must consider whether issuing a notice or summons is sufficient.[32] The insistence on justification has reduced unnecessary arrests in minor cases. In New Jersey, after bail reform in 2017, the pretrial jail population dropped by nearly 40 percent within two years while court appearance rates remained above 90 percent.[33] These examples show that procedure, rigorously applied, can lower detention without harming public order.

India already has doctrine as strong as any of these jurisdictions. What it lacks is fidelity in execution. The compliance turn of 2025 gives courts and police no excuse for shortcuts. It declares that a notice is not a text message but a constitutional guarantee.

The numbers are grim. More than 4.3 lakh undertrials, prisons bursting at 150 to 190 percent of capacity in several States, and thousands of release recommendations left unimplemented. The narrative is clear: liberty in India is lost in everyday neglect. The Supreme Court's compliance orders of 2025 try to fix that by insisting on a simple act, proper service of notice. The act looks small, but its consequences are enormous. Every correctly served notice prevents an unnecessary arrest. Every prevented arrest keeps one more bed free in an overcrowded jail. Every preserved liberty is a vindication of Article 21. The next chapter will ask what comparative models and institutional reforms can make this promise sustainable.

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[32] Police and Criminal Evidence Act 1984, Code G (UK).

[33] New Jersey Courts, *2019 Report to the Governor and the Legislature* (2019).

## 4. Comparative Insights and Reform Proposals

The compliance turn of 2025 placed the service of notice at the centre of liberty in India. Yet, questions remain about sustainability. Can one Supreme Court order transform everyday practices across thousands of police stations and magistrate courts? Can service protocols alone undo decades of entrenched arrest culture? To answer these questions, one must look outward, to comparative experiences, and then return inward, to institutional reforms that can fit the Indian setting. This chapter draws on international models, theoretical frames, and local realities to propose concrete reforms that could make Antil's promise real.

### 4.1 Lessons from the United Kingdom

In the United Kingdom, the Police and Criminal Evidence Act Code G insists that an arrest must be justified by necessity.[34] The code demands that officers explain why arrest is required and whether less intrusive alternatives, such as a summons, would suffice. Studies following the enactment of this code show a visible decline in arrests for minor offences, and greater judicial scrutiny of police justifications.[35] The lesson for India is not to transplant Code G word for word, but to embrace the culture it represents, a culture where police power is constantly justified and recorded.

If Section 41 and Section 35 notices are to become real, magistrates must adopt the same stance. At the remand stage, they must ask why a summons or notice was not sufficient. This simple act would bring the spirit of Code G into Indian practice.

### 4.2 Lessons from New Jersey

The United States offers another perspective. New Jersey's 2017 bail reform eliminated most monetary bail and shifted to a risk based assessment of whether an accused should remain free pending trial.[36] Within two years, the pretrial jail population fell by nearly forty percent, while appearance rates in court stayed above ninety percent.[37] These results show that rigorous

[34] Police and Criminal Evidence Act 1984, Code G (UK).
[35] David Dixon, *Law in Policing: Legal Regulation and Police Practices* (1997).
[36] New Jersey Criminal Justice Reform Act, 2017.
[37] New Jersey Courts, *2019 Report to the Governor and the Legislature* (2019).

procedural tools, when combined with monitoring, can lower detention without endangering public order.

India may not adopt risk algorithms wholesale, given the dangers of bias and opacity. Yet New Jersey demonstrates the importance of two things: valid notice and active judicial monitoring. When people are given a real chance to appear, and when courts check compliance at every stage, detention falls without chaos.

### 4.3 Indian Scholarly Critiques

Indian legal scholarship has consistently warned against over reliance on monetary bail. Abhinav Sekhri has argued that surety systems deepen inequality and that procedural fidelity is the true safeguard of liberty.[38] A properly served notice requires no money, no property, and no guarantor. It relies only on fairness in communication. By insisting on valid service, the Court has effectively created a non monetary safeguard that protects the poorest accused.

### 4.4 Institutional Reform Proposals

The comparative experiences and scholarly critiques point towards three practical reforms.

First, model standing orders must be drafted and circulated nationwide. These orders should specify permissible modes of service, require acknowledgment receipts, and impose accountability on officers who fail to comply. Without uniform standing orders, each State will continue to improvise, and liberty will depend on geography.

Second, High Court monitoring committees must not remain silent clerks. Their reports should be placed on public websites, listing the number of notices served, the modes used, and the number found defective. Transparency will create pressure for compliance and allow civil society to track progress.

Third, magistrates must adopt a checklist approach. At the first remand hearing, they should ask whether a notice was served, whether acknowledgment exists, and whether Section 41 or Section

[38] Abhinav Sekhri, *Rethinking Monetary Bail in India* (SSRN 2023).

35 was followed. If the answer is negative, bail should be automatic. This small institutional practice would change incentives across the system.

### 4.5 Theoretical Frame: Procedure as Liberty

Behind these reforms lies a deeper theoretical claim. Liberty in criminal law is not preserved by grand declarations alone, but by the fidelity of small procedures. The service of a notice may appear mundane, yet it is the first act that signals fairness. Tom Tyler's work on procedural justice shows that legitimacy rests on fair treatment and transparent process.[39] A notice personally delivered and acknowledged builds that legitimacy. A WhatsApp message that goes unseen destroys it.

### 4.6 Conclusion

Comparative lessons show that rigorous procedure reduces detention without disorder. The United Kingdom demands necessity for every arrest, New Jersey reduced detention by trusting process over money, and Indian scholars have called for procedural fidelity over surety. India now stands at a similar crossroad. The compliance orders of 2025 provide the doctrinal push. What remains is to build institutions around that push: standing orders, monitoring committees, and magistrate checklists. If these reforms take root, every notice served properly will be more than a piece of paper, it will be a ritual of liberty.

## 5. Conclusion

The story of bail reform in India reflects both ambition and inertia. From *Arnesh Kumar* in 2014 to *Satender Kumar Antil* in 2022, and finally to the compliance orders of 2025, the Supreme Court has consistently tried to reshape the culture of arrest and custody. Each judgment has expanded the space of liberty in principle. Yet the reality of prisons, where undertrials make up more than seventy three percent of the population, shows that principle alone is not enough.[40]

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[39] Tom R. Tyler, *Why People Obey the Law* (1990).

[40] NCRB, *Prison Statistics India 2023* (2024), at tbl. 1.

The compliance turn of 2025 is significant because it moves attention from outcomes to process. By declaring that a Section 41A or Section 35 notice must be served physically and verifiably, the Court has treated procedure as a constitutional guarantee. It has reminded police and magistrates that liberty is lost not only through unlawful conviction but also through defective paperwork. Comparative lessons from the United Kingdom and New Jersey confirm that rigorous procedure prevents unnecessary custody without harming public order.[41]

The reforms needed are modest yet profound: standing orders that clarify service, monitoring committees that publish compliance, and magistrates who check service before authorising custody. If these practices take root, the promise of *Antil* will no longer be symbolic. Every properly served notice will become a ritual of fairness, and each prevented arrest a vindication of Article 21.

[41] New Jersey Courts, *2019 Report to the Governor and the Legislature* (2019); Police and Criminal Evidence Act 1984, Code G (UK).