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## CONSTITUTIONAL VALIDITY OF BNS PROVISIONS: BALANCING FUNDAMENTAL RIGHTS AND CRIMINAL JUSTICE

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### **Abstract:**

*India's criminal justice system is built on protecting basic rights, which are key to the Constitution's democratic and moral foundation. Articles 14<sup>1</sup>, 19<sup>2</sup>, 20(3)<sup>3</sup>, 21<sup>4</sup>, and 22<sup>5</sup> ensure that everyone—witnesses, victims, and the accused—is treated fairly and respectfully. This paper looks at how the courts safeguard these rights by interpreting the law in a proactive way. It also looks at between criminal justice ideas and what the Constitution promises. The Maneka Gandhi v. Union of India case, a landmark case in the year 1978, was followed by Hussainara Khatoon v. State of Bihar of the year 1980 and D.K. Basu v. The State of West Bengal case in 1997. These three cases are primarily concerned with Article 21 concentrating the right to life, liberty and the right to fair trial. The justice system has really improved, but one cannot deny that it lacks a lot. People do not get a fair trial because of overcrowded prisons, custodial violence, the long-drawn-out court processes and most importantly the inability to afford justice because legal help is too difficult to find. This paper therefore advocated reforms, including immediate adoption of digital technologies in courts, alternative dispute resolution mechanisms, bail reform. Etc. Thus,*

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<sup>1</sup> The Constitution of India, art.14.

<sup>2</sup> The Constitution of India, art.19.

<sup>3</sup> The Constitution of India, art.20(3).

<sup>4</sup> The Constitution of India, art.21.

<sup>5</sup> The Constitution of India, art.22.

*those changes made to India's criminal justice make us face the fact that it is an ongoing process with efforts being made to make it more humane, speedier and rights-focused.*

**Keywords:** Fundamental Rights, **Article 21** - Right to Life and Personal Liberty, Fair Trial, Presumption of Innocence, Judicial Activism, Habeas Corpus, Custodial Violence

## I. Introduction

The basic element of fundamental rights is indispensable in the democratic and constitutional structure of India. They protect individual liberty and ensure a check on arbitrary discretion by the state so that justice is preserved, kept open, and fair. **Part III** of the **Indian Constitution** enshrines rights concerning equality, **Article 14**; freedom of speech, **Article 19**; life and personal liberty, **Article 21**; and constitutional remedies, **Article 32**<sup>6</sup> which confer moral and legal principles by which a citizen can question infringement of dignity and freedom.

Such rights guarantee that no one - whether an accused or a victim or even witnesses, would be denied non-discriminatory humane criminal justice from police, courts and correctional institutions. Finding such a balance between personal liberty and law enforcement, however, has never been easy task.

Of all the rights, **Article 21** has been the right reversal as the most important constitutional safeguard which states that no individual shall be deprived of his life or personal freedom except in accordance with the procedure established by law. Courts have been progressively interpreted the article into the ambit not just of arbitrary deprivation but also of substantive due process, fair trial, and humane treatment and access to justice.

The landmark case of **DK Basu v. State of West Bengal**, 1997; **Hussainara Khatoon v. State of Bihar**, 1980; and **Maneka Gandhi v. Union of India**, 1978, demonstrate the kind of judicial activism that has been practiced by the courts in enforcing the fundamental rights of the citizens in this country. These have dealt with custodial violence and prolonged detentions, as well as issues of procedural unfairness within India's entrenched system of justice.

## II. Principles of Criminal Justice and Fundamental Right

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<sup>6</sup> The Constitution of India, art.32.

### A. Presumption of Innocence

The doctrine of the presumption of innocence is the cardinal basis upon which rest the principles of criminal jurisprudence to protect an accused from being condemned till such time that his guilt is proved beyond reasonable doubt. This doctrine forms part of the idea of a fair trial and, thus, the moral and procedural backbone of justice under **Article 21**.

It directly impacts the process of bail, detention, and fair trial in which the onus of the proof must lie with the state. In the case of **State of U.P. v. Naresh**<sup>7</sup>, the Supreme Court held in 2011 that this presumption must guide both investigation and trial. Anything else would shake the edifice of justice and injure the constitutional protection of personal liberty.

### B. Right to Fair Trial (Article 22)

So that, a person is said to have had the right to be arrested or detained against any law with a view to punishment or prevention. This means:

- No detention shall proceed for more than 24 hours without the approval of a judicial officer.
- You are entitled to consultation with your counsel and authorization to have that counsel speak for you.
- You have a right to know the reasons for your arrest.

The Supreme Court held in the *Hussainara Khatoon v. State of Bihar* case in 1980 that speedy trial is a right implied in **Article 21**. It observed that justice delayed is justice denied. This judgment spurred reforms for under trial prisoners confined in overcrowded jails and brought into focus the interdependence of **Articles 21 and 22**.

### C. Article 20(3): Right to Remain Silent

The essence of this right is to grant protection to an individual against self-incrimination by compelling him not to be made a witness in his own cause. It preserves human dignity from potential acts of intimidation during interrogation. The right was declared applicable in *Nandini*

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<sup>7</sup> State of U.P. v. Naresh, (2011) 4 SCC 324.

*Satpathy v. P.L. Dani*<sup>8</sup> not just at the trial stage but also during police investigation, with the added principle that confessions obtained through coercive threats were inadmissible. This section not only protects people from custodial torture but also elevates the standard of voluntary confession and assists in rendering fair administration of justice.

### **III. Judicial Interpretations about the Landmark Issues and Their Views**

Preventive detention has valid historical roots in personal liberty. Orders of this kind exist from ages past. According to law, such orders require the authorities to bring before a court any person's case, whether an arrest has been made under guise of preventive detention or by any other law.

This might be the controversial Supreme Court judgment of 1976 in which *ADM Jabalpur v. Shivkant Shukla*<sup>9</sup> was characterized by a high degree of controversy: it upheld even the suspension of fundamental rights during Emergency periods. The judgment eventually became overruled in *Maneka Gandhi* (1978) and following the 44th Amendment to the Constitution that stated that even during Emergencies, no one could be arbitrarily deprived of life and liberty.

**Judicial Activism and Human Rights Jurisprudence:** Without a doubt, judicial activism played a significant role in incorporating the human rights standards in the criminal justice domain. Via PIL's, access to court was granted to marginalized prisoners and victims of custodial rights.

The Supreme Court issued elaborate directions in 1997 in *DK Basu v State of West Bengal* to prevent custodial torture, including making arrest memos, conducting medical examinations, and notifying relatives of the arrest. The foregoing procedural safeguards thus became part of established police procedure.

### **IV. Challenges and Need for Judicial Reforms**

Despite numerous commendable strides in other ways, India's criminal justice mechanism suffers from serious structural defects.

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<sup>8</sup> Nandini Satpathy v. P.L. Dani, AIR 1978 SC 1025.

<sup>9</sup> *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207.

- More than 70% of the prisoners lodged in jails are under trials.
- The trial process is delayed because of backlogged court hearing and procedure inefficiencies.
- Extra-judicial killings and custodial violence.
- Non-existing legal aid provision for the economically weaker section.

1. Parsimony of under trial prisoners over 70% exists in the prisons of India, according to the latest figures released by the **National Crime Records Bureau** in 2023. This means that most of them have never been found guilty of any offence and have waited for many years for their case to be determined by the slow organs of justice because they cannot afford bail and/or have ineffective legal aid. This situation, apart from being a gross violation of the presumption of innocence, also infringes **Article 21**'s right to life and personal liberty. Long detention without trial causes inhuman physical and mental suffering to the detainees and even leads to loss of means of livelihood and social stigma.

2. One of the major barriers in the way of speedy justice in India has been with respect to the delayed disposal of cases because of judicial backlog and inefficiencies in processes. Current NJDG (National Judicial Data Grid) data say that millions of cases are pending at various levels of courts. Some criminal trials have had to last for terms of ten years or beyond. Being due to a multiplicity of structural problems such as lack of judicial officers, frequent adjournments of cases, underutilization of technology in case management, and unmanageable requirements at the **CrPC**, the other problems in the disposal of cases include aberrantly high utilization of oral evidence, lack of coordination between different arms of the prosecution and investigative agencies, and delays in obtaining forensic evidence. Long-running trials harm the public's confidence in the court and further impede the fundamental right of a speedy trial that any accused is guaranteed under **Article 21** of our Constitution via *Hussainara Khatoon v. State of Bihar* (1980). Thus, the principle gets reiterated again by the Supreme Court of India: With reason for evidence, as justice delayed becomes justice denied; indeed, systemic reforms that digitize records with time-framed trial would be empowered to enhance judicial capacity as well as ensure the right to justice.

3. The most severe form of custodial violence includes physical abuse, torture, and even killing in police or judicial custody. It remains probably among the most grievous forms of human rights violation in administering criminal justice in India. Quite shockingly regular reports of institutional custodial violence and even custodial death are in the face of constitutional protection specifically guaranteed under **Articles 20(3) and 21**, as well as statutory safeguards in the **Code of Criminal Procedure (sections 41-60A)**, with most not even making it into the public arena. The number of annual custodial deaths, as can be culled out from **NHRC**'s (National Human Right Commission) and **NCRB**'s ( National Crime Records Bureau) data, stands at dozens, sadly with many going unpunished on account of absence of strong mechanisms for accountability and the inherent reluctance of the authorities to prosecute police officers. Undermining gravely the right to life and personal liberty, they are eroding the faith of people in law enforcement agencies, converting the police from protectors of citizens into violators of their rights. The Supreme Court recognized this in *DK Basu v. State of West Bengal* (1997), where they perceived it as a systemic problem and laid down detailed guidelines to prevent custodial torture that included arrest memos, medical examination, and informing relatives of detention. In fact, most guidelines have been honored more in the breach than in observance by states.

4. The main enabling realities for an ideally just criminal justice system are effective legal representation and its enforcement. **Article 21** of the Constitution of India expressly vests the right to get justice on all, while **Article 39A**<sup>10</sup> mandates that justice must be accessible to all. Tragic sociologic realities show that the zealous effort by weaker sections for the effective availability of good legal assistance renders them particularly vulnerable to long periods of detention, wrongful conviction, and procedural undue process. The basic provisions for free legal services under the **Legal Services Authorities Act**, 1987, cover women, the Scheduled Castes, Scheduled Tribes, and prisoners. Unfortunately, a myriad of factors obstruct effective implementation in practice: seeds include too few legal aid lawyers available for a needy clientele, beneficiary unawareness, overburdened defenders, and disparate quality in representation. As a consequence, many under trial prisoners are secured very poorly or not at

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<sup>10</sup> The Constitution of India, art.39A.

all: which magnify a lot the misery of under trial incarceration, thereby exacerbating systemic inequity.

The following areas will need structural and procedural intervention:

- Empower the legal services authorities to effective counsel at the different stages of the case.
- Establish independent mechanisms for the accountability of the police.
- Put support into alternative dispute resolution and bail reform in order to limit pretrial detention.
- Investment in digital infrastructure-based judiciary will promote transparency and case management.

Legal Services Authorities will be able to provide effective legal services at every stage of the case.

1. **Capacity Building:** Increased number of specially trained legal aid lawyers, paralegals, and support staff available so that the accused persons in need of help would have constant and competent counsel from the moment of arrest, investigation session, pre-trial hearing, trial, and even until the appeal.
2. **Early Intervention:** All custodial abuse prevention efforts from detention should include warning him about his rights and being informed about bail application advice. The early intervention of legal aid lawyers will reduce the coercive environment behind forced confession and long detention and thereby correct wrongful conviction.
3. **Quality of Representation:** Training programs covering criminal procedures, constitutional guarantees, and human rights jurisprudence should be organized by the legal service authorities so as to assure the representation of standards of a fair trial.
4. **Monitoring and Accountability:** Setting up independent monitoring committees and performance evaluation mechanisms will ensure effective counseling by providers and will probe any systemic lapse, resolving it promptly.
5. **Public Awareness and Outreach:** Involving the creation of public awareness, especially in the rural population and among deprived sections of the citizens being considered, on

account of people being largely oblivious to their rights to free legal aid right from the starting point in their process.

Police accountability to be ensured via independent oversight mechanisms. These challenges point to the need to have independent scrutiny bodies with the remit, among others:

1. **Investigation of Complaints:** Complaints against custodial abuse, misconduct, and/or dereliction of duty should be independently investigated by an agency that is external to the police hierarchy, in order to ensure neutrality and credibility.
2. **Monitoring Compliance to Legal and Human Rights Standards:** Such oversight mechanisms are themselves going to ensure that there is scrupulous compliance with the Supreme Court directions issued in the matter of **D.K. Basu v. State of West Bengal**, regarding manner and procedure to be adhered to, in all instances of arrest, detention, and interrogation, so as to stave off the incidences of abuse.
3. **Recommendation of Disciplinary and Legal Action:** These agencies would be able to recommend administrative sanctions in this regard or to refer certain cases for criminal prosecution thereby performing an effective deterrent role.
4. **Data Collection and Publication:** To further enhance transparency, there would be strong need for monitoring agencies that will collect data on police complaints and custodial deaths to publish their regular annual reports, including on the action taken on these, for the purposes of public scrutiny and policy reform.
5. **Training and Guidance:** It is through training in human rights, procedural justice and ethical conduct that the oversight agencies would effectively professionalize the police forces and help in disengaging them from reliance on punitive methods of enforcement.

Bail reforms and other alternative dispute resolution schemes would help avoid pre-trial detention.

These big populations in prisons are actually increased by the multitude of under trial residents in this country: They remain idle in custody while cases remain pending disposal for months and

years. Other co-applicant initiative measures to alternative dispute resolution (**ADR**) and bail reform must come into strictest priority.

## 1. The ADR

Mediation, conciliation, plea bargaining, and arbitration are themselves **ADR** mechanisms that assist more in settling disputes outside the courts with **ADR** law under **Section 89<sup>11</sup>** of the **CrPC** enabling the courts to direct settlement of cases amenable for **ADR**.

Advantages:

- Clear the judicial backlog so that courts will concentrate on serious crimes.
- Speed up the settlement of disputes so as to avoid slaughterhouse detention prior to trial.
- Adversarial conflict is minimal but preference is given for amicable solutions and rehabilitation rather than punishment for petty offenses.

## 2. Reform in Bails

A bail is that cardinal presumption that arbitrary detention before the trial is kept upon the belief of innocence until guilt is shown against the accusation. But the fact is that such kinds of *ab initio* (word from the beginning) restrictive conditions regarding bail, prolonged procedures, and absence of legal counsel keep one in the prison cell. This is certain, as this makes all those subjects have problems concerning some of the things effective reform on the administration of bail needs to tackle:

- Provisions for less serious or non-violent offenses should be simplified when granting bail.
- Bail applications are to be resolved at the earliest possible time; this is practiced to avoid long periods of unjust detention.
- Legal aid is to be provided for indigent accused persons to access bail.
- Standardization of bail guidelines should be introduced across jurisdictional boundaries to put a brake on arbitrary refusals.

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<sup>11</sup> Code of Criminal Procedure, 1973, s. 89.

Thus, judicial pronouncements such as that in *Hussainara Khatoon v. State of Bihar*, 1980, clearly laid down those extensive periods of pre-trial detention were violate of **Article 21** and that unnecessary incarceration could be avoided if grants of bail were made. Hence, it will decant the chances of detaining citizens and decongest prisons while holding on to all constitutional guarantees of liberty and equity in the criminal justice system by integrating **ADR** mechanisms with improved bail reforms.

Investing in the digital judicial infrastructure which allows faster case processing with more transparency in it.

## **1. Digital Judicial Infrastructure :What is It Consist of In total**

Digital judicial infrastructure targets measures annexing or integrating technology in the diverse forms of functioning of the court.

- **Case Management System:** It is an electronic platform for case-filing, tracking, and management of a case throughout its life cycle.
- **E-Filing Portal:** In the future, litigants and lawyers will be able to file petitions, documents, and evidence through the internet.
- **Hearing via Digital/Videoconferencing:** This means that hearings will be able to be conducted remotely and hence avoid delays normally experienced when all parties are required to be present before Court.
- **Scheduling of Hearings:** A system that provides automatic and efficient scheduling of hearings and assignment of judges. **Online Legal Research Tools:** Enhanced access to a wealth of case-law, precedent, and law databases. **Transparency Platforms:** Public web portals for tracking case advance, judgments, and court performance.

## **2. How fast track case management Indian courts embraced a lot of backlogs. This is how digital technologies could play a part:**

- Removal of manual procedures: Paper filing systems and physical movement of files and their tracking take too much time. Digital records remove those delays.
- Real-time updates for case status: Updating immediately would save time for lawyers and litigants to go to court for wasteful trips, knowing already that it's possible to be notified

when the statuses of their cases are allowed to change. The new use of resources: AI and analytics could very much help support the urgent prioritization of cases or flagging of repetitive delays.

- **Remote hearings:** Courts could continue with their normal operations even on interruption occasions like those caused by pandemics or other natural disasters without piling more backlog work into their already existing ones.

### **3. How It Enhances Transparency Trustworthy courts. Digital systems are Public: With this, anyone can find out about the status of any case, any past judgment, or any court calendars.**

- **Corruption dry up:** An automated process of filing and keeping track reduces engagement of humans.
- **Audit Trails:** Activity in the system can now be traced, and, therefore, the delays managed more efficiently. Predictive analytics could disaggregate the bottlenecks and patterns for delaying cases and establish data-driven solutions.

### **4. Benefits Beyond speed**

- **Savings:** Reduced paper consumption, lesser transportation for attorneys and litigants, and diminished manual administrative tasks. Inclusiveness: In nations where some of their citizens are rural or otherwise marginalized, remote access allows all the entitled citizens to partake in the legal activity. Data-driven reforms entail harnessing information from the digital records in order to engage with policy changes and judicial reforms.
- It came into being under the Mission Mode e-Courts Programme in India, which formed part of the National e-Governance Plan. Digital courts are meant to bring electronic filing, tracking, and case management in the judiciary. It promises to reflect cuts in time and boosts in transparency that can be measured effects. Investment on the digital infrastructure of the judiciary thus goes beyond the mere embedding of computers and other electronic hardware mechanization into courts. It becomes the model of intelligent, fast, yet transparent justice services to citizens, attorneys, and judges.

## Conclusions:

Indeed, the moral value underscoring the stewardship of the Constitution will re-engineer the entire criminal justice system in India completely. Core concepts of that **Article 21** stretch beyond mere procedural protections; they harbor within themselves elements of human dignity, justice, equity, and fairness. Although this has been to some measure enforceable through judicial interpretation of the norms, a significant chasm separates the promise of the Constitution from its daily life. Therefore, India's repositioning of its criminal justice system has to be in the spirit of conserving a humane and rights-centric system. Institutional fortification would, then, take place regarding police accountability and reform before considerations of punishment and clearly, reflect upon the vision articulated by the Constitution's framers regarding liberty and equality.

### 1. Constitutional Morality and Working on Fundamental Rights:

- Constitutional morality consists of all principles and tenets widely acknowledged to constitute justice, liberty, equality, and dignity inscribed down in the Constitution to inspire all laws and institutions. Fundamental Rights, especially **Article 21**, extend way into beyond the formal rules of legal process as they guarantee human dignity, personal liberty, and fair process.
- This argument advances the dimension of criminal justice, devoid of punitive crimes: all persons should be treated equally, and no matter what the occurrence of an offence, dignity cannot be deprived.

### 2. Judicial Interpretation Over time, however, courts have shown that they could expand the scope of Article 21 and other rights to bring principles that were once elusive in courts into enforceable law: There are:

- Right to speedy trial. Protection from custodial violence. Rights of prisoners and rights of marginalized groups

- These then are those judicial interpretations which substantiate the idealizations under the Constitution with their practical internalization into everyday criminal justice practices.

**3. Promise Vs Practice** Alas, however, slow trials turn into years for both accused and victim. Police misuse and corruption turn the public against the police. Overcrowding in prisons and harsh sentencing reflect that the system was more about retribution than justice. This indicates some degree of disconnection between the constitutional vision and its realization.

**4. Moving towards a Rights-Approach System** Pragmatically harmonizing reforms on human rights safety would mean translating constitutional ideals into practical individual enjoyment via:

- **Humane Justice:** Dignity accrues to the accused and convict; torture would never be used; and human rights would be respected.
- **Efficency:** Expedite trials and reduce backlogs; technology has to be adopted for case management.
- **Police Accountability:** Law enforcement must follow due legal procedures and be answerable for any wrongdoing
- **Reform not Retribution, Rehabilitation, Restorative Justice, and Reintegration:** not punishment
- **Institutions Should Be Strengthened:** Strategies involve bolstering infrastructure, forensic capacities, and victim services.

**5. The Central Message:** This polemic holds that constitutional morality's entry into the Indian criminal jurisprudence should thus combat the abstraction of liberty and equality to make it a reality onscreen.

Systemic reform is to facilitate how criminal justice principles work practically from the ideals narrated by our Constitutional fathers.