

New Criminal Laws: A Step Ahead in Protecting the Right to Life and Personal Liberty

Praveen Kumar Lal* & Dr. Anupam Kurlwal**

Abstract

The enactment of the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023 represents the most comprehensive restructuring of India's criminal justice system since independence. These laws aim to replace colonial-era statutes with a framework aligned to constitutional values, particularly the right to life and personal liberty under Article 21 of the Constitution. This article critically examines whether the new criminal laws genuinely advance constitutional protections or merely repackage existing powers in modernized form. Through doctrinal analysis grounded in binding Supreme Court jurisprudence, the article evaluates both the rights-enhancing features of the new laws and the constitutional risks inherent in their broad discretionary powers. It argues that while the new laws are normatively aligned with Article 21, they simultaneously create fresh possibilities for misuse unless restrained by judicial interpretation, institutional accountability, and rights-conscious implementation.

Keywords-: *Article 21; Criminal Law Reform; Personal Liberty; Judicial Oversight.*

I. Introduction

Article 21 of the Constitution of India¹ has emerged as the moral and legal axis around which the criminal justice system revolves. Judicial interpretation has consistently transformed it from a negative injunction against unlawful deprivation of liberty into a positive guarantee of fairness, dignity, and humane treatment at every stage of criminal process. Investigation, arrest, detention, trial, and punishment are no longer viewed as purely statutory domains but as constitutionally regulated spaces.

The replacement of the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872 by the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam has been projected as a decisive move toward constitutional criminal justice. However, constitutional fidelity depends not on legislative intent alone but on how power is structured, exercised, and restrained. This article evaluates the extent to which the

* Research Scholar, Department of Law, MDU Rohtak, Haryana.

** Associate Professor, MDU-CPAS, Gurugram, Haryana.

¹ INDIA CONST. Art.21.

new criminal laws advance the protection of life and personal liberty while remaining alert to their potential for constitutional misuse.

II. Article 21 as the Constitutional Foundation of Criminal Justice

The doctrinal transformation of Article 21 began with the rejection of procedural formalism in *Maneka Gandhi v. Union of India*², where the Supreme Court held that any procedure depriving liberty must be just, fair, and reasonable. This judgment constitutionalized criminal procedure and established that statutory compliance alone is insufficient if the procedure is arbitrary or oppressive.

Subsequent decisions entrenched Article 21 as the source of multiple criminal justice guarantees. In *Hussainara Khatoon v. State of Bihar*³, the Court recognized the right to speedy trial as an inseparable facet of personal liberty, exposing how procedural delay itself becomes punitive. In *D.K. Basu v. State of West Bengal*⁴, custodial violence was characterized as a gross violation of human dignity, underscoring that State power over the body of the accused is constitutionally limited. These decisions collectively impose a constitutional obligation on the legislature to design criminal laws that minimize arbitrariness, prevent abuse of power, and respect human dignity. The new criminal laws must therefore be judged against this jurisprudential standard.

III. Substantive Criminal Law Reform and Article 21 under the Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita seeks to modernize substantive criminal law by reorganizing offences and removing certain colonial constructs. From the standpoint of Article 21, proportionality and judicial discretion in punishment are of central importance. The Supreme Court has repeatedly held that mandatory or inflexible punishments offend constitutional liberty by eliminating individualized sentencing.

In *Mithu v. State of Punjab*⁵, the Court struck down mandatory death penalty provisions for violating Articles 14 and 21, emphasizing that sentencing must allow judicial consideration of circumstances. The general avoidance of mandatory sentencing under the BNS reflects alignment with this constitutional principle, preserving judicial discretion as a safeguard against excessive punishment.

However, constitutional compliance requires that clarity in offence definitions be matched with restraint in enforcement. The risk of over-criminalization, particularly in offences relating to

² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

³ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

⁴ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

⁵ *Mithu v. State of Punjab*, (1983) 2 SCC 277.

State security or public order, remains a latent concern under Article 21, which demands that penal provisions not be vague or overly broad.

IV. Procedural Liberty and the Bharatiya Nagarik Suraksha Sanhita

Procedural law is the most direct site of Article 21 protection. Arrest, detention, and investigation determine whether liberty is respected or violated in practice. The Supreme Court's jurisprudence has repeatedly emphasized that arrest is not synonymous with investigation.

In *Joginder Kumar v. State of Uttar Pradesh*⁶, the Court held that arrest must be justified by necessity and cannot be routine. This principle was strengthened in *Arnesh Kumar v. State of Bihar*⁷, where the Court issued binding guidelines to curb unnecessary arrests and protect personal liberty. The BNSS reflects these constitutional mandates by emphasizing documentation of reasons for arrest and procedural accountability.

Similarly, delay in investigation and trial has been recognized as a constitutional violation. The BNSS's emphasis on timelines and digital processes seeks to respond to the structural injustice identified in *Hussainara Khatoon*⁸. While these reforms are normatively consistent with Article 21, their effectiveness depends on institutional capacity and compliance rather than statutory text alone.

V. Fair Trial, Evidence, and the Bharatiya Sakshya Adhiniyam

The right to a fair trial has been firmly recognized as part of Article 21. In *Zahira Habibullah Sheikh v. State of Gujarat*⁹, the Supreme Court held that a fair trial is not merely a procedural formality but a substantive guarantee of justice. Evidence law plays a decisive role in ensuring that trials are not distorted by unreliable or coerced material.

The Bharatiya Sakshya Adhiniyam builds upon judicial developments concerning electronic evidence. In *Anvar P.V. v. P.K. Basheer*¹⁰, the Court laid down mandatory requirements for admissibility of electronic records, later reaffirmed in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*¹¹. By statutorily incorporating these principles, the BSA strengthens evidentiary fairness and reduces discretionary abuse, thereby reinforcing Article 21 protections.

⁶ *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.

⁷ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

⁸ *Supra* note 2.

⁹ *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

¹⁰ *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.

¹¹ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

VI. Victims' Rights, Dignity, and Article 21

The Supreme Court has clarified that Article 21 protects not only the accused but also victims of crime. In *State of Punjab v. Gurmit Singh*¹², the Court recognized that the dignity and privacy of victims, particularly in sexual offence cases, form an integral part of the right to life. The new criminal laws' emphasis on victim participation and compensation reflects this evolving constitutional understanding. This victim-centric orientation aligns with the dual dimension of Article 21, which seeks to protect both liberty and security within a constitutional framework.

VII. Constitutional Risks and Possibilities of Misuse

Despite their rights-oriented framing, the new criminal laws are not immune from constitutional risk. Article 21 jurisprudence warns that broad discretionary powers, even when procedurally regulated, can become instruments of coercion if not narrowly interpreted. The Supreme Court has repeatedly cautioned that statutory safeguards must be real and effective, not illusory.

In *Manubhai Ratilal Patel v. State of Gujarat*¹³, the Court emphasized that procedural compliance must be substantive and meaningful. Merely recording reasons or following formal steps does not satisfy Article 21 if the underlying decision is arbitrary. This principle assumes heightened relevance under the BNSS, where expanded use of technology, preventive powers, and investigative discretion could potentially mask constitutional violations beneath procedural formalism.

Similarly, while expedited procedures and digital mechanisms aim to reduce delay, they also raise concerns regarding access, transparency, and equality. If technological processes exclude marginalized populations or are used to accelerate coercive action without adequate safeguards, they may undermine rather than enhance personal liberty.

The history of criminal law reform in India demonstrates that constitutional violations often arise not from absence of law but from its misuse. The Supreme Court's observation in *State of Haryana v. Bhajan Lal*¹⁴ regarding abuse of criminal process remains instructive: criminal law can easily become a tool of harassment unless strictly confined to its legitimate purpose.

¹² *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

¹³ *Manubhai Ratilal Patel v. State of Gujarat*, (2013) 1 SCC 314.

¹⁴ *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335.

VIII. Judicial Oversight as a Constitutional Necessity

Judicial oversight remains the final constitutional safeguard against misuse of criminal law. Decisions such as *Satender Kumar Antil v. CBI*¹⁵ reaffirm that bail jurisprudence must be liberty-centric and that incarceration cannot be justified by procedural inertia. Courts will play a crucial role in interpreting the new laws in harmony with Article 21, preventing them from degenerating into instruments of unchecked State power.

However, judicial intervention is necessarily reactive. Sustainable protection of life and liberty requires that constitutional values be internalized by police, prosecutors, and trial courts as part of everyday practice.

IX. Conclusion

The Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam represent a constitutionally informed attempt to modernize India's criminal justice system. Rooted in established Article 21 jurisprudence, these laws aim to enhance fairness, dignity, and procedural justice.

Yet, constitutional history teaches that liberty is threatened not only by obsolete laws but also by unrestrained discretion. The new criminal laws mark a step ahead in protecting the right to life and personal liberty only to the extent that they are interpreted, implemented, and enforced within the strict discipline of Article 21. Their ultimate constitutional legitimacy will be determined not by legislative ambition but by everyday fidelity to the principles of fairness, restraint, and human dignity.

¹⁵ *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.