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CONSTITUTIONAL SAFEGUARDS AND RIGHT TO A FAIR TRIAL UNDER THE BNSS, 2023

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ABSTRACT

The enactment of the BNSS, 2023, replacing the Code of Criminal Procedure, 1973, represents an overhaul of India's procedural criminal jurisprudence. Central to this legislative shift is the tension between modernizing procedural efficacy and safeguarding fundamental constitutional guarantees—specifically the right to personal liberty, due process, and a fair trial under Articles 20, 21, and 22 of the Constitution of India. This paper critically evaluates the constitutional safeguards embedded within the BNSS against standard fair-trial doctrines. On one hand, the Sanhita strengthens fair-trial rights by introducing strict, time-bound procedural mandates for investigation, charge framing, and judgment delivery; statutorily codifying electronic summons and digital evidence frameworks; institutionalizing preliminary inquiry safeguards under Section 173(3); and rationalizing undertrial relief under Section 479. Conversely, several critical provisions pose constitutional challenges: the expansion of police remand in staggered intervals across a 40-to-60-day window under Section 187 raises concerns regarding custodial violence, self-incrimination, and prolonged deprivation of liberty; the allowance of trials *in absentia* for proclaimed offenders under Section 356 challenges the principle of natural justice (*audi alteram partem*) and the accused's right to be defended in their presence; and broadened provisions regarding physical restraints re-examine established judicial human-rights norms. Employing a doctrinal and comparative methodology, this study examines whether the BNSS satisfies the threshold of "just, fair, and reasonable" procedure established in *Maneka Gandhi case*. The paper concludes with judicial and statutory remedies to balance investigative state power with accused protections, ensuring procedural modernization does not erode constitutional due process.

Keywords: Bharatiya Nagarik Suraksha Sanhita (BNSS), Constitutional Safeguards, Fair Trial, Article 21, Due Process, Police Custody (Section 187), Trial in Absentia.

1. INTRODUCTION

The Constitution of India is the supreme law of the country. It establishes the structure of government, distributes public powers and guarantees rights that protect individuals from arbitrary State action. These constitutional values have particular importance in criminal justice because criminal proceedings may affect a person's liberty, reputation, livelihood and, in serious cases, life. A fair trial is a process in which the case is heard by an impartial court, the parties are treated fairly, the accused receives a meaningful opportunity to defend the case, and the decision is based on admissible evidence and law. Fairness is not limited to the final hearing. It begins with lawful investigation and arrest and continues through the supply of relevant documents, the presentation and testing of evidence, the judgment and any appeal permitted by law.

The BNSS, 2023 is the principal legislation governing criminal procedure in India. It replaced the Code of Criminal Procedure, 1973, with effect from 1 July 2024, subject to applicable repeal, savings and transitional provisions. It regulates matters such as arrest, investigation, bail, inquiry, trial and appeals. The BNSS must be read consistently with the Constitution. A procedural law cannot authorise a violation of fundamental rights. Constitutional safeguards provide the guiding principles, while procedural legislation supplies practical mechanisms for their enforcement.

2. IMPORTANCE OF THE CONSTITUTIONAL SAFEGUARDS:

The criminal justice system is legitimate only when it protects society while respecting individual rights. A conviction obtained through unfair procedures damages public confidence; equally, a process that ignores victims or witnesses may undermine justice. Fair trial principles seek to balance these interests through lawful, impartial and transparent proceedings.

3. MEANING AND ESSENTIAL ELEMENTS OF A FAIR TRIAL

A fair trial is a criminal proceeding conducted by a competent and impartial court in accordance with law, with a reasonable opportunity for both sides to present their case. The court must remain independent and must decide the matter on the evidence and legal rules applicable to it.

1. Presumption of innocence: an accused is treated as innocent unless guilt is proved according to law.
2. Independent and impartial tribunal: the decision-maker must not have bias or an improper interest in the outcome.

3. Notice of accusation: the accused must receive adequate information about the allegation and charge.
4. Opportunity to defend: the accused must have a meaningful chance to challenge the prosecution case and present a defence.
5. Legal representation: the accused should be able to obtain assistance from an advocate, including legal aid where legally available.
6. Opportunity to test evidence: applicable procedure should allow the defence to question prosecution witnesses and challenge evidence.
7. Trial within a reasonable time: proceedings should not be delayed unreasonably.
8. Public hearing: proceedings are generally open to public scrutiny, subject to lawful exceptions.
9. Reasoned judgment: the decision should explain the material reasons for the court's conclusion.
10. Protection against compelled self-incrimination: an accused must not be forced to become a witness against themselves in violation of Article 20(3).

4. CONSTITUTIONAL SAFEGUARDS

Article 14 – Equality Before the Law

Article 14 guarantees equality before the law and equal protection of the laws to every person within its scope. In criminal justice, it requires public authorities to act non-arbitrarily and prevents unjustified discrimination in the administration of law. Similar cases should be treated according to consistent legal principles, while relevant differences may be considered where the law permits.

Article 20 – Protection in Respect of Conviction for Offences

Article 20 contains three important protections. Article 20(1) prohibits retrospective criminalisation and the imposition of a greater penalty than the law permitted when the offence was committed. Article 20(2) protects against being prosecuted and punished for the same offence more than once, within the constitutional meaning of that guarantee. Article 20(3) protects an accused person from being compelled to be a witness against themselves.

Article 21 – Life and Personal Liberty

Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Judicial interpretation has made clear that a procedure affecting liberty must be fair, just and reasonable. The protections associated with Article 21

include fair procedure, speedy trial and humane treatment in custody.

Article 22 – Safeguards Against Arrest and Detention

Article 22 provides important protections for arrested persons, including being informed of the grounds of arrest, the right to consult and be defended by a legal practitioner of choice, and production before a magistrate within the prescribed constitutional period. The Article also contains specific exceptions and separate rules concerning preventive detention.

Article 39A – Equal Justice and Free Legal Aid

Article 39A is a Directive Principle of State Policy. It directs the State to ensure that the legal system promotes justice on the basis of equal opportunity and to provide free legal aid through suitable legislation or schemes so that justice is not denied because of economic or other disabilities. It supports the practical effectiveness of the right to defend a case.

Relationship Between the Articles

These provisions operate together. Article 14 addresses equality and non-arbitrariness; Article 20 supplies specific protections in criminal law; Article 21 protects liberty and fair procedure; Article 22 regulates safeguards upon arrest and detention; and Article 39A supports access to justice. Together, they form a constitutional foundation for fair criminal proceedings.

5. IMPORTANT BNSS PROVISIONS SUPPORTING FAIR TRIAL

Section 35 – Arrest Without Warrant

Section 35 regulates specified circumstances in which a police officer may arrest without a warrant. The statutory conditions and safeguards are intended to ensure that arrest is based on legal authority and is not used unnecessarily. Police must assess whether the legal grounds for arrest are present and comply with the requirements applicable to the case.

Section 38 – Right to Meet an Advocate During Interrogation

Section 38 recognises the right of an arrested person to meet an advocate of their choice during interrogation, though not throughout the interrogation. Access to legal advice is an important safeguard against coercion and helps the arrested person understand and protect their rights.

Section 47 – Information About Grounds of Arrest and Right to Bail

Section 47 requires the arrested person to be informed of the grounds of arrest and, where applicable, of the right to be released on bail. This requirement supports personal liberty and allows the person to understand why they have been arrested and what legal options may be available.

Section 48 – Information of Arrest to Relative or Friend

Section 48 concerns the duty to inform a relative, friend or other nominated person about an

arrest, in accordance with the section's requirements. Such information reduces the risk of an arrested person being held without the knowledge of those who may assist them and supports accountability in custody.

Section 58 – Person Arrested Not to Be Detained More Than Twenty-Four Hours

Section 58 reflects the rule against keeping an arrested person in police custody beyond the prescribed period without production before a magistrate, subject to the applicable statutory provisions concerning calculation of time and lawful remand. Judicial oversight is a safeguard against arbitrary detention.

Section 230 – Supply of Police Report and Other Documents

Section 230 deals with supplying the accused and, where applicable, the victim represented by an advocate with copies of the police report and specified documents in cases instituted on a police report. Access to relevant documents is important because the accused must understand the case they have to meet and prepare an effective defence.

Section 340 – Right of Person Accused of an Offence to Be Defended

Section 340 recognises the right of a person accused of an offence before a criminal court, or against whom proceedings are instituted under the Sanhita, to be defended by an advocate of their choice, subject to the law. Effective legal representation is a central component of a fair trial.

Section 341 – Legal Aid to Accused at State Expense in Certain Cases

Section 341 provides for legal aid at State expense in specified circumstances where an accused person lacks sufficient means to engage an advocate. The court's role in arranging representation helps reduce the disadvantage faced by an accused person who cannot afford legal assistance.

Section 346 – Day-to-Day Proceedings

Section 346 addresses the conduct of inquiries and trials on a day-to-day basis, subject to the statutory rules and exceptions for adjournments. Its purpose includes reducing avoidable delay and supporting the speedy disposal of criminal proceedings.

6. CORE PRINCIPLES OF A FAIR TRIAL

6.1 Presumption of Innocence

The presumption of innocence is a fundamental principle of criminal justice. It requires the prosecution to establish the charge in accordance with the required standard of proof. The accused should not be treated as guilty merely because an investigation has begun or a charge

has been filed. The principle also encourages objective investigation and careful judicial evaluation.

6.2 Burden and Standard of Proof

In an ordinary criminal prosecution, the prosecution generally bears the burden of proving guilt beyond reasonable doubt. This standard recognises that wrongful conviction can cause severe harm. The court must consider the whole evidence and must not substitute suspicion or public pressure for proof. Certain statutory presumptions may apply in particular offences, but they must be understood within the governing law.

6.3 Right to Legal Representation

Legal representation helps the accused understand the charges, identify relevant legal issues, challenge inadmissible or unreliable evidence and present a defence. A lawyer can also advise on bail, procedural rights and available remedies. Legal aid is especially important where poverty would otherwise prevent a person from defending a case effectively.

6.4 Right to Know the Accusation

An accused person must receive adequate notice of the allegations and the charge in accordance with law. Without clear information, the accused cannot properly prepare a defence, identify witnesses or challenge the prosecution's version. The framing and communication of charges therefore serve both fairness and efficiency.

6.5 Right to Challenge Evidence

A fair trial ordinarily provides a meaningful opportunity to test prosecution evidence through cross-examination and other procedures permitted by law. Cross-examination can reveal inconsistencies, mistaken identification, bias or gaps in a witness's account. The court must evaluate evidence fairly and should not assume that a witness is automatically correct merely because the witness appears for one side.

6.6 Right to an Impartial Court

The judge must be independent and impartial. A judge should disclose or avoid circumstances that create a legally relevant conflict or reasonable apprehension of bias. Decisions must be based on evidence, law and reasoned judicial assessment, rather than personal views, political pressure or public sentiment.

6.7 Speedy Trial

Unreasonable delay may cause anxiety, financial hardship, prolonged detention and deterioration of evidence. The right to a speedy trial, recognised under Article 21, requires the criminal justice system to avoid unnecessary adjournments and to manage cases effectively. Speed must not, however, be achieved by denying either side a reasonable opportunity to

present its case.

6.8 Open Court and Transparency

Public hearings generally allow citizens to observe the administration of justice and strengthen confidence in the courts. However, open-court principles are subject to lawful exceptions, including certain proceedings involving sexual offences, children or sensitive information. Transparency must be balanced with privacy, safety and statutory restrictions.

6.9 Reasoned Judgment

A judgment should explain the material facts, evidence, issues and legal reasons supporting the court's decision. A reasoned judgment helps the parties understand the result and enables appellate review where available. It also demonstrates that the decision was reached through judicial reasoning rather than arbitrary choice.

6.10 Protection from Self-Incrimination

Article 20(3) protects an accused person from being compelled to be a witness against themselves. The protection is intended to prevent coercive interrogation and preserve the fairness of criminal proceedings. Its precise application depends on the facts and the relevant constitutional and evidentiary rules.

7. LANDMARK JUDICIAL DECISIONS

7.1 Maneka Gandhi v. Union of India⁽¹⁾, the case concerned restrictions affecting the petitioner's passport and raised questions about personal liberty and procedural fairness. The Supreme Court interpreted Article 21 in conjunction with other constitutional guarantees and held that a procedure affecting personal liberty must be fair, just and reasonable rather than arbitrary or oppressive. The judgment forms a major foundation for understanding procedural fairness under Article 21. Criminal procedures affecting arrest, detention and trial must be consistent with constitutional requirements.

7.2 Hussainara Khatoon v. State of Bihar⁽²⁾, the litigation highlighted undertrial prisoners who had remained in custody for long periods while their cases were pending. The Supreme Court recognised the importance of a speedy trial as part of Article 21 and drew attention to the hardship caused by prolonged detention and delays. The case supports timely investigation and trial, appropriate case management and attention to undertrial prisoners' rights.

7.3 Nandini Satpathy v. P.L. Dani⁽³⁾, the case considered the protection against compelled self-incrimination in the context of questioning during a criminal investigation. The Supreme Court discussed the scope of Article 20(3) and the protection of an accused person against compelled testimonial self-incrimination. The case is important for safeguards during

questioning and for ensuring that investigative methods respect constitutional rights.

7.4 Zahira Habibulla H. Sheikh v. State of Gujarat⁽⁴⁾, the case arose from concerns about the fairness of a criminal trial and the reliability of the process used to determine the truth. The Supreme Court emphasised that a fair trial is central to the administration of justice and must protect the interests of the accused, the victim and society. The judgment shows that fair trial is not simply a technical formality. Courts must ensure a genuine and impartial process that allows the truth to be tested.

7.5 D.K. Basu v. State of West Bengal⁽⁵⁾, the case addressed concerns about custodial violence and deaths in police custody. The Supreme Court laid down safeguards and procedural requirements concerning arrest and detention to promote accountability and protect persons in custody. The case remains an important authority on arrest-related safeguards and the need to prevent custodial abuse.

7.6 Hussain v. Union of India⁽⁶⁾, the case addressed the need to improve the handling of criminal cases and reduce unnecessary delay, including issues affecting undertrial prisoners. The Supreme Court considered measures relating to speedy trial and the practical administration of criminal justice. The decision supports the principle that procedural safeguards must work in practice and that courts and authorities should take reasonable steps to avoid undue delay.

8. CONCLUSION

The enactment of the BNSS, 2023, marks a paradigm shift toward technological integration, reduced case pendency, and modernized criminal justice administration, yet its procedural efficacy must not come at the expense of core constitutional liberties. While progressive strides such as mandatory timelines, digitised procedural records, and expanded bail relief for first-time undertrials under Section 479 reinforce fair-trial rights, countervailing provisions—most notably staggered police remand across extended periods under Section 187 and trials *in absentia* under Section 356—place severe pressure on the protections guaranteed under Articles 20, 21, and 22 of the Constitution. For the BNSS to satisfy the enduring constitutional standard of a procedure established by law that is "just, fair, and reasonable" under *Maneka Gandhi*, the judiciary must serve as an active bulwark, strictly construing discretionary state powers, curbing prolonged custodial vulnerability, and ensuring that the pursuit of speed and administrative efficiency never eclipses fundamental due process and human dignity.

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