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ARTICLE 21 AND FAIR TRIAL IN INDIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

This paper explores the profound transformation of India's criminal justice system specifically the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC) through the evolving constitutional jurisprudence of Article 21. Moving away from colonial-era statutory literalism, the post-Maneka Gandhi paradigm has reimagined criminal procedures as substantive guarantees of "fair, just, and reasonable" state action. The study analyses the constitutional necessity of mens rea as a vital safeguard against the arbitrary deprivation of liberty, critically examining its friction with strict liability doctrines, reverse burden clauses, and involuntary conduct.

Furthermore, the paper investigates the intersection of bodily offences and constitutional rights, highlighting the establishment of a right to "mental privacy" which limits involuntary neuro-scientific investigations such as narco-analysis and polygraphs. It traces the operationalization of procedural fairness across crucial domains, including capital sentencing guidelines, anti-harassment measures during police investigations, and the evolution of bail jurisprudence.

Addressing modern challenges, the research evaluates the integration of cyber offences, emphasizing the stringent procedural safeguards required for digital evidence admissibility under Section 65B and the ongoing privacy concerns surrounding device seizures and self-incrimination. Finally, the analysis highlights a significant paradigm shift toward victim-centric fairness, detailing the expansion of victim rights to include statutory compensation, the right to appeal acquittals, and active participation in bail hearings. Ultimately, this paper demonstrates how the Indian judiciary has dynamically balanced the state's penal power with civil libertarian values, effectively rewriting the procedural DNA of Indian criminal law.

Keywords: Article 21, Mens Rea, Mental Privacy, Digital Evidence, Victim-Centric Fairness.

1.1 General Provisions (Ss. 1-75): The Constitutional Interface of Mens Rea and Actus Reus

The foundational architecture of the Indian Penal Code, 1860 (IPC), codified during the colonial era, was interpreted initially through the strict lens of statutory literalism. For over a century, the General Provisions in Sections 1 through 75, encompassing the territorial extent,

definitions, punishments, and general exceptions, were viewed as self-contained statutory commands. However, the post-1978 constitutional revolution, inaugurated by the Supreme Court's decision in *Maneka Gandhi v. Union of India*,³⁷⁴ fundamentally altered this landscape. The "procedure established by law" under Article 21 was no longer a mere formality

³⁷⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

of enacted statute but a substantive guarantee of "fair, just, and reasonable" process. This paradigm shift necessitated a re-reading of the IPC's General Provisions, particularly the concepts of *mens rea* (guilty mind) and *actus reus* (guilty act), not merely as elements of crime but as constitutional safeguards against arbitrary state action.

1.1.1 The Constitutional Necessity of Mens Rea: Beyond Statutory Silence

The maxim *actus non facit reum nisi mens sit rea*, that an act does not constitute guilt unless the mind is also guilty, is a cardinal principle of criminal common law. While the IPC explicitly incorporates mental elements in specific offences through terms such as "dishonestly" (Section 24), "fraudulently" (Section 25), and "voluntarily" (Section 39)³⁷⁵ The Code lacks a general "General Part" provision mandating *mens rea* for all offences. This statutory silence has historically permitted interpretations under which the mere commission of a prohibited act could trigger liability, particularly in socio-economic legislation.

However, contemporary jurisprudence under Article 21 suggests that convicting an individual without a blameworthy mental state offends the constitutional requirement of fairness. A criminal trial that imposes the stigma of conviction and the deprivation of liberty upon a morally innocent actor, one who acted without intent, knowledge, or recklessness, arguably fails the test of substantive due process.

The Supreme Court addressed this intersection in *State of West Bengal v. Mohammed Khalid* (1995), analysing the stringent provisions of the Terrorist and Disruptive Activities (Prevention) Act (TADA). The Court held that even in special statutes, the mental element is crucial. It noted that if bombs are possessed solely for self-defence, the specific *mens rea* required for a terrorist offence is absent, and thus no liability under TADA arises.³⁷⁶ Similarly, in *Jaswantraj Manilal Akhaney v. State of Bombay* (1956), the

Court elucidated that for criminal breach of trust, the prosecution must prove the specific mental state of dishonest misappropriation. The mere inability to return dues, which might suffice for civil liability, falls short of the criminal threshold required by a fair trial standard.³⁷⁷

This judicial insistence on *mens rea* serves as a check on the state's immense power. By reading mental culpability into statutory offences, the courts ensure that Article 21's protection extends to the internal sphere of the accused's volition, preventing the criminalisation of accidental or innocent conduct.

1.1.2 Strict Liability and the Challenge to Article 21

The doctrine of strict liability, under which the prosecution needs only prove the *actus reus* to secure a conviction, presents the most significant friction point with Article 21. The utilitarian argument for strict liability posits that, in matters of public welfare (e.g., food safety, environmental protection, economic stability), the requirement to prove intent imposes an impossible burden on the prosecution, thereby endangering society. Conversely, the rights-based perspective of Article 21 holds that imprisonment for a moral fault is an arbitrary deprivation of liberty.

The *locus classicus* of this debate in India is *State of Maharashtra v. Mayer Hans George* (1965). The case involved a German national who, while in transit through Bombay, was found in possession of gold in violation of a Foreign Exchange Regulation Act (FERA) notification issued just days prior. The accused pleaded ignorance of the law, arguing he had no intent to smuggle. The Supreme Court, in a majority decision, upheld the conviction, ruling that *mens rea* was not an essential ingredient of the offence under Section 8(1) of FERA.³⁷⁸

³⁷⁵ The Indian Penal Code, 1860, ss. 24, 25, 39.

³⁷⁶ The Indian Penal Code, 1860, ss. 24, 25, 39.

³⁷⁷ *State of West Bengal v. Mohammed Khalid*, (1995) 1 SCC 684.

³⁷⁸ *State of Maharashtra v. Mayer Hans George*, AIR 1965 SC 722.

The Court's reasoning in *Mayer Hans George* established a tripartite test for determining when *mens rea* can be excluded:

1. **Statutory Language:** Does the text expressly exclude intent?
2. **Subject Matter:** Is the statute regulatory or socio-economic in nature?
3. **Futility:** Would requiring proof of *mens rea* render the statute virtually unenforceable?

While *Mayer Hans George* remains good law for regulatory offences, its application to penal offences carrying significant imprisonment is increasingly scrutinised under the "just, fair, and reasonable" standard articulated in *Maneka Gandhi*. Modern constitutional analysis suggests that while the legislature may impose strict liability for minor regulatory infractions (quasi-criminal offences), imposing mandatory imprisonment for strict liability crimes may be disproportionate and violative of Article 21. The courts now tend to employ a presumption *in favour* of *mens rea* unless the statute clearly dictates otherwise, treating strict liability as an exception that requires strict justification.³⁷⁹

1.1.3 Presumptions, Reverse Burden, and the Right to be Presumed Innocent

A corollary of the *mens rea* requirement is the presumption of innocence, a human right recognised in international covenants and read into Article 21 by the Indian Supreme Court.³⁸⁰ However, to address heinous crimes for which evidence is challenging to obtain, the legislature has introduced "reverse burden" clauses that impose a presumption of guilt once specific foundational facts are established.

Section 304B of the IPC (Dowry Death) and Section 113B of the Indian Evidence Act, 1872 serve as prime examples. In *Sher Singh @ Partapa v. State of Haryana*, the Supreme Court upheld the constitutionality of these provisions.

³⁷⁹ *Nathulal v. State of Madhya Pradesh*, AIR 1966 SC 43; *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.

³⁸⁰ *Babu Singh v. State of Uttar Pradesh*, AIR 1978 SC 527.

The Court reasoned that the "deeming" fiction of Section 304B is a legislative device necessitated by the clandestine nature of dowry deaths, which typically occur within the privacy of the matrimonial home.³⁸¹

However, to ensure this reversal of burden does not violate the fair trial guarantee, the Court in *Sher Singh* clarified the threshold: the prosecution must first prove the "soon before" circumstance and the fact of cruelty beyond a reasonable doubt. Only then does the burden shift. This interpretation saves the provision from unconstitutionality by ensuring that the presumption of guilt is not triggered casually but is anchored in a robust evidentiary foundation provided by the state.³⁸²

Similarly, Section 114A of the Evidence Act presumes the absence of consent in rape cases where sexual intercourse is proved and the victim states in court that she did not consent. While this derogates from the pure presumption of innocence, it is justified as a "fair" procedure under Article 21, given the historical difficulty victims faced in proving the negative fact of non-consent against a patriarchal legal system.³⁸³

1.1.4 Automatism and the Voluntariness of Actus Reus

The concept of *actus reus* implies not just a physical movement but a *voluntary* one. While Sections 84 (Unsoundness of Mind) and 85 (Involuntary Intoxication) of the IPC provide specific defences, the Code does not explicitly codify the defence of "non-insane automatism" conduct performed without conscious control, such as during sleepwalking (somnambulism) or a reflex action.

Under a strict statutory reading, a sleepwalker who injures another might not fall under Section 84 if they are not medically "unsound." However, Article 21's requirement of a fair trial necessitates the recognition of voluntariness as

³⁸¹ *Sher Singh @ Partapa v. State of Haryana*, (2015) 3 SCC 724.

³⁸² *Ibid*.

³⁸³ *Tukaram v. State of Maharashtra*, AIR 1979 SC 185; *The Indian Evidence Act*, 1872, s. 114A.

a precondition for liability. Indian courts have begun to acknowledge that an act done "by the muscles without any control by the mind" cannot constitute the *actus reus* of a crime.³⁸⁴ Punishing involuntary conduct serves no penological purpose (neither deterrence nor reformation) and would be a cruel and arbitrary exercise of state power, violating the fundamental liberty of the individual.

1.2 Offences Against Body (Ss. 299–377): The Intersection of Science, Sentencing, and Dignity

The adjudication of offences against the human body, ranging from homicide to sexual assault, represents the state's most coercive intervention into the life of an individual. It is in the prosecution of these offences that the constitutional safeguards of Article 21 are most frequently tested against the societal demand for retribution and security.

1.2.1 Scientific Investigation and Mental Privacy: The Selvi Paradigm

The investigation of complex bodily offences often leads law enforcement to employ scientific techniques to obtain information from the accused. The use of Narco-analysis (truth serum), Polygraphy (lie detector), and Brain Electrical Activation Profile (BEAP) became contentious points where the investigatory powers of the state collided with the accused's constitutional immunities.

The landmark judgment in *Selvi v. State of Karnataka* (2010) represents a watershed moment in defining the limits of scientific investigation under Article 21.³⁸⁵ The Supreme Court was called upon to decide whether the involuntary administration of these neuro-scientific tests violated the Right against Self-Incrimination (Article 20(3)) and the Right to Life and Personal Liberty (Article 21).

The Constitutional Conflict:

The State argued that these tests were essential investigative tools for gathering evidence in heinous crimes where direct witnesses were absent. They contended that the public interest in solving crime outweighed the minor intrusion into the accused's person. Conversely, the petitioners argued that forcing a subject to reveal the contents of their mind constituted a violation of "mental privacy" and amounted to cruel, inhuman, and degrading treatment.

The Supreme Court's Verdict and Reasoning:

The Court struck down the involuntary administration of these tests, synthesising Article 20(3) and Article 21 into a robust protection of "mental privacy."

1. **Testimonial Compulsion:** The Court distinguished between physical evidence (like DNA, fingerprints) and testimonial acts. It held that the results of Narco-analysis and Polygraphy are testimonial because they rely on the subject's mental processes and knowledge. Since the subject loses conscious control during these tests (especially Narco-analysis), the resulting statements cannot be considered voluntary. Compelling such testimony violates Article 20(3).
2. **Substantive Due Process and Mental Privacy:** Crucially, the Court expanded the scope of Article 21 to include a "Right to Mental Privacy." It held that the state cannot intrude into the sanctuary of the mind. The involuntary administration of these substances or techniques was held to violate the standard of "substantive due process" required for restricting personal liberty. The Court reasoned that an individual's decision to speak or remain silent is a matter of personal autonomy.³⁸⁶
3. **Fair Trial Reliability:** The Court also questioned the scientific reliability of these tests, noting that relying on

³⁸⁴ *Bratty v. Attorney-General for Northern Ireland*, AC 386; *R. v. Charlson*, 1 All ER 859.

³⁸⁵ *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

³⁸⁶ *Ibid*, at paras 165-167.

uncertain neuro-scientific data could distort the fact-finding process, thereby compromising the fairness of the trial itself.

Impact on Fair Trial:

The judgment clarified that while the state has a duty to investigate, it cannot use methods that strip the accused of their cognitive sovereignty. Today, these tests can be administered only with the accused's voluntary, informed consent, and the consent is recorded before a Judicial Magistrate. Even then, the test results are not admissible as substantive evidence, though any physical evidence discovered in consequence (under Section 27 of the Evidence Act) may be admissible.

1.2.2 Capital Sentencing and the Fairness Doctrine: The Manoj Guidelines

In cases of murder punishable by death (Section 302 IPC), the fair trial guarantee of Article 21 extends rigorously to the sentencing phase. The "rarest of rare" doctrine evolved in *Bachan Singh*.³⁸⁷ mandated a balancing of aggravating and mitigating circumstances. However, empirical reality showed that sentencing was often judge-centric and arbitrary, with courts frequently ignoring the possibility of reformation.

In *Manoj v. State of Madhya Pradesh* (2022), the Supreme Court recognised that a "fair trial" includes a "fair sentencing hearing." The Court observed that the scales were often tipped against the accused, who lacked the resources to present mitigating evidence effectively.³⁸⁸

The Manoj Guidelines for Fair Sentencing:

To operationalise Article 21 in death penalty cases, the Court issued binding guidelines:

1. **Mandatory Psychological Evaluation:** The State must conduct a psychiatric and psychological evaluation of the convict before the sentencing hearing.

This report is vital to assess the convict's mental state and potential for reform.

2. **Mitigation Analysis:** The Court mandated the collection of wider socio-economic data, including the convict's family background, education, and social milieu, by a probation officer. This ensures that the court judges the "criminal" rather than merely the "crime."
3. **Opportunity to Present Evidence:** The sentencing hearing cannot be a mere formality. The accused must be given a real and meaningful opportunity, including sufficient time, to rebut the state's demand for the death penalty.³⁸⁹

This jurisprudence marks a shift from a retributive focus to a restorative and humane approach, ensuring that the ultimate penalty is not imposed through a procedure that ignores the complexity of human life.

1.2.3 Fairness in Rape Trials: Section 327 CrPC and In-Camera Proceedings

For offences under Sections 376–376D (Rape and Sexual Assault), the concept of a fair trial involves balancing the accused's right to an open public trial against the victim's right to dignity and privacy.

In-Camera Proceedings (Section 327 CrPC):

Section 327 of the Code of Criminal Procedure (CrPC) mandates that the inquiry and trial of rape cases shall be conducted in camera. This is a statutory exception to the general rule of open justice. The Supreme Court has upheld this provision as a necessary measure under Article 21 to prevent the "secondary victimisation" of the survivor. A public trial often exposes the victim to social stigma and humiliating cross-examination. By shielding the proceedings from public scrutiny, the law aims to create a conducive environment for the victim to testify truthfully, which is essential to a fair adjudication of the truth.³⁹⁰

³⁸⁷ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

³⁸⁸ *Manoj v. State of Madhya Pradesh*, (2023) 2 SCC 353.

³⁸⁹ *Ibid*, at paras 164-166.

³⁹⁰ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

However, the Court has clarified that this protection does not imply a secret trial that would be detrimental to the accused. The accused retains the right to be present and to be represented by counsel, ensuring that the core of the adversarial process remains intact while stripping it of its voyeuristic elements.

1.3 Offences Against Property and Public Tranquillity (Ss. 378–505): Procedural Fairness in Investigation and Bail

The enforcement of IPC provisions regarding property (Theft, Extortion, Cheating) and public tranquillity (Rioting, Unlawful Assembly) often involves the extensive use of police powers, including arrest, search, and detention. Here, Article 21 serves as a check on the executive's procedural machinery, ensuring that the process of law does not become a tool of harassment.

1.3.1 Abuse of Process and the Quashing of FIRs: The Bhajan Lal Doctrine

The power of the police to register a First Information Report (FIR) is vast, but it is not unbridled. A malicious FIR can drag a citizen through years of investigative trauma. Section 482 of the CrPC, which preserves the inherent power of the High Court to prevent abuse of process, is the statutory vehicle for enforcing Article 21 at the pre-trial stage.

The seminal judgment in *State of Haryana v. Bhajan Lal* (1992) established the parameters under which the judiciary may intervene to quash an investigation.³⁹¹ The Court identified seven categories of cases where quashing is justified to protect the accused:

1. Where the allegations in the FIR, even if accepted in their entirety, do not prima facie constitute any offence.
2. Where the allegations are so absurd and inherently improbable that no prudent person could conclude that there is sufficient ground to proceed.

3. Where the criminal proceeding is manifestly attended with *mala fide* (bad faith) or is maliciously instituted with an ulterior motive (e.g., political vendetta or personal grudge).
4. Where there is an express legal bar in any statute to the institution of the proceedings.

The *Bhajan Lal* guidelines function as a "Bill of Rights" for the accused during the investigation phase. They affirm that a "fair trial" presupposes a "fair investigation." If the foundation of the case, the FIR is rotten with malice or absurdity, permitting the investigation to continue would be a violation of the procedure established by law.³⁹²

1.3.2 Freedom from Fetters: The Jurisprudence of Handcuffing

In the prosecution of offences such as theft or rioting, police practice often involved the routine handcuffing of undertrials during transit. In *Prem Shankar Shukla v. Delhi Administration* (1980), the Supreme Court addressed whether this practice violated the dignity guaranteed under Article 21.³⁹³

The Judicial Mandate:

Justice V.R. Krishna Iyer, writing for the Court, held that "handcuffing is prima facie inhuman and, therefore, unreasonable, is over-harsh and is at the first flush arbitrary." The Court ruled that routine handcuffing is constitutionally impermissible. Handcuffs can be used only in extreme cases where there is a "clear and present danger" of escape or violence, and the police must record the reasons for this apprehension in writing. Furthermore, the magistrate before whom the accused is produced must inquire whether they were handcuffed and verify the justification.³⁹⁴

This decision established that a prisoner does not shed their fundamental rights at the prison gate. The state's interest in secure custody must

³⁹² *Ibid.*

³⁹³ *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.

³⁹⁴ *Ibid.*, at paras 22-23.

³⁹¹ *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335.

be balanced against the individual's right to bodily integrity and dignity.

1.3.3 Bail Jurisprudence: Economic Offences and the Triple Test

The grant of bail is the most direct application of the "presumption of innocence" in procedural law. In property and economic offences (such as Cheating and Criminal Breach of Trust), courts have had to balance the magnitude of the financial loss against the liberty of the accused.

The Satender Kumar Antil Guidelines:

In *Satender Kumar Antil v. Central Bureau of Investigation* (2022), the Supreme Court categorised offences to streamline bail and reduce the burden of undertrial incarceration.³⁹⁵

- **Category A (Offences punishable with < 7 years):** For ordinary property offences, the Court held that if the accused was not arrested during the investigation and cooperated, they should not be arrested merely on the filing of the charge sheet. Bail should be the norm.
- **Category D (Economic Offences):** The Court clarified that while economic offences are serious, they do not automatically warrant the denial of bail. The principle that "Bail is the rule, Jail is the exception" applies equally here.

The "Triple Test" in *P. Chidambaram v. ED*:

In high-profile economic offences, the state often opposes bail, citing the "gravity" of the offence. In *P. Chidambaram v. Directorate of Enforcement* (2019), the Supreme Court refined the criteria for bail, often referred to as the "Triple Test".³⁹⁶

1. **Flight Risk:** Is the accused likely to flee the country?
2. **Tampering:** Is there a likelihood of evidence tampering?

3. **Witnesses:** Is there a possibility of influencing witnesses?

The Court held that if these three factors are secured, the mere gravity of the allegation cannot be a ground to keep an individual in indefinite custody. Doing so would amount to pre-trial punishment, which is anathema to Article 21.³⁹⁷

Conditions of Bail and *Munish Bhasin*:

Further protecting the accused from onerous processes, the Court in *Munish Bhasin v. State (NCT of Delhi)* (2009) held that bail conditions must be reasonable. Imposing excessive financial conditions (e.g., demanding the deposit of the entire alleged disputed amount) as a prerequisite for bail effectively denies bail to the poor, rendering the right to liberty illusory and violating Articles 14 and 21.³⁹⁸

1.3.4 Unlawful Assembly and Omnibus Allegations (Section 149 IPC)

Section 149 of the IPC creates constructive liability, making every member of an unlawful assembly liable for offences committed by any other member in prosecution of the everyday object. In rioting cases, police often implicate large numbers of bystanders based on "omnibus allegations."

Recent judicial trends, particularly in the context of the Delhi Riots, have applied a stricter scrutiny to such allegations. Courts have held that vague assertions of presence at a mob site are insufficient to deny liberty. A fair trial under Article 21 requires that the state attribute specific roles or acts to the accused before depriving them of freedom, thereby guarding against the danger of collective punishment inherent in Section 149.³⁹⁹

1.4 Cyber and Emerging Offences (IT Act Integration): Article 21 in the Digital Age

The integration of the Information Technology Act, 2000 (IT Act), with the IPC has created a

³⁹⁵ *Satender Kumar Antil v. Central Bureau of Investigation*, (2021) 10 SCC 773; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.
³⁹⁶ *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24.

³⁹⁷ *Ibid*, at para 23.

³⁹⁸ *Munish Bhasin v. State (NCT of Delhi)*, (2009) 4 SCC 45.

³⁹⁹ *Shabrukh v. State*, 2022 SCC OnLine Del 134; *Devangana Kalita v. State of Delhi*, 2021 SCC OnLine Del 3262.

hybrid legal regime where the *locus delicti* is the digital realm. The primary challenge to Article 21 in this domain is ensuring the integrity of digital evidence and protecting privacy during digital investigations.

1.4.1 Section 65B Evidence Act: The Gatekeeper of Digital Fairness

Electronic evidence is volatile and easily susceptible to tampering. Unlike a physical document, a digital file can be altered without leaving evident traces. To ensure a fair trial, the Indian Evidence Act includes Section 65B, which mandates a special procedure for the admissibility of electronic records.

The Jurisprudential Journey: From Navjot Sandhu to Arjun Panditrao

For years, the legal position was unsettled. In *State (NCT of Delhi) v. Navjot Sandhu (2005)*,⁴⁰⁰ The Court held that a certificate under Section 65B(4) was not mandatory and that secondary evidence could be admitted under the general provisions. This view was overruled in *Anvar P.V. v. P.K. Basheer (2014)*,⁴⁰¹ which held that the certificate was mandatory.

The law was finally settled in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020)*.⁴⁰² The Supreme Court held that the certificate under Section 65B(4) is a **mandatory condition precedent** for the admissibility of any secondary electronic evidence (e.g., printouts, CDs, USB drives).

- **Significance for Article 21:** This procedural requirement is a substantive safeguard. By requiring a certificate from the person responsible for the computer system, the law establishes a chain of accountability. Admitting digital evidence without this check would expose the accused to fabricated evidence, thereby violating the core of the right to a fair trial.⁴⁰³

1.4.2 Search and Seizure of Digital Devices: The Privacy Vacuum

While Section 65B protects the *admissibility* of evidence, the *collection* of that evidence remains largely unregulated. Investigating agencies frequently seize smartphones and laptops, which contain the entirety of a person's private life.

Ram Ramaswamy v. Union of India:

A petition titled *Ram Ramaswamy v. Union of India* is pending before the Supreme Court, underscoring the absence of guidelines governing digital seizures.⁴⁰⁴ The petitioners argue that the power to seize a device is akin to seizing a person's entire memory and personal history.

- **The Article 21 Challenge:** Unlike a physical search for a specific weapon, a digital seizure is often a roving inquiry ("fishing expedition").
- **Proposed Safeguards:** The petition seeks guidelines mandating judicial warrants for digital seizures and the generation of "Hash Values" at the point of seizure. A Hash Value is a unique digital fingerprint of a file. If the hash value at the time of seizure matches the hash value in court, integrity is preserved. If not, the evidence is compromised.⁴⁰⁵

Chain of Custody and Hash Values:

Courts are increasingly holding that a break in the "chain of custody" of digital evidence, such as a failure to record hash values or unexplained delays in sending devices to forensic labs, is fatal to the prosecution's case. In a regime of digital evidence, the "integrity" of the file is synonymous with the "fairness" of the trial.⁴⁰⁶

⁴⁰⁰ *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600.

⁴⁰¹ *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.

⁴⁰² *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

⁴⁰³ *Ibid*, at paras 59-61.

⁴⁰⁴ *Ram Ramaswamy v. Union of India*, W.P. (CrI) No. 138/2021 (Pending).

⁴⁰⁵ *Virendra Khanna v. State of Karnataka*, 2021 SCC OnLine Kar 5032.

⁴⁰⁶ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

1.4.3 Self-Incrimination and Passwords: The Virendra Khanna Ruling

A critical unresolved question is whether an accused can be compelled to disclose their password or unlock their device. This directly engages Article 20(3) (Right against Self-Incrimination).

In *Virendra Khanna v. State of Karnataka* (2021), the Karnataka High Court took a controversial stance, holding that directing an accused to provide a password or biometrics **does not** violate Article 20(3).⁴⁰⁷

- **The Reasoning:** The Court analogised a password to a physical key. Just as an accused can be compelled to produce a key to a locker containing incriminating documents, they can be forced to provide the "key" (password) to the smartphone. The Court reasoned that the password itself is not incriminating; it merely creates a basis for potential evidence.
- **The Article 21 Critique:** Critics argue this ignores the *Selvi* doctrine of "mental privacy." A password is information stored in the mind. Compelling its disclosure forces the accused to assist actively in their own prosecution, arguably violating the right to silence.⁴⁰⁸ This issue represents a frontier where the IPC's investigative demands clash with the evolving digital rights under the Constitution.

1.5 Victim-Centric Fairness: Balancing Accused Rights with Victim Participation

Historically, the Indian criminal justice system was adversarial, viewed as a contest between the State and the Accused. The victim was relegated to the status of a mere witness, often forgotten once their testimony was recorded. Over the last decade, Article 21 jurisprudence has evolved to recognise that "Fair Trial" implies

fairness not only to the accused but also to the victim.

1.5.1 Victim Compensation Scheme (Section 357A CrPC)

The insertion of Section 357A in the CrPC in 2009 was a legislative acknowledgement of the state's failure to protect its citizens. It mandates the State to compensate victims for loss or injury, irrespective of whether the accused is convicted or even identified.

In *Nipun Saxena v. Union of India* (2019), the Supreme Court elevated this statutory right to a constitutional obligation. The Court emphasised that compensation is not merely ex gratia relief but a tool for "rehabilitation" under Article 21.⁴⁰⁹ The Court directed the National Legal Services Authority (NALSA) to frame specific schemes for women survivors of sexual assault, ensuring that the compensation is meaningful and accessible. This jurisprudence recognises that the "Right to Life" includes the right to live with dignity after suffering a crime.⁴¹⁰

1.5.2 The Right to Appeal: Mallikarjun Kodagali

Until 2019, a victim had no automatic right to appeal an acquittal; they had to seek special leave of the court, a hurdle not faced by the State. In *Mallikarjun Kodagali v. State of Karnataka* (2019), the Supreme Court corrected this imbalance.⁴¹¹

- **The Judgment:** Interpreting the definition of "victim" under Section 2(wa) CrPC, the Court held that the victim has a substantive statutory right to file an appeal against acquittal, conviction for a lesser offence, or inadequate compensation.
- **Fair Trial Implication:** This decision integrates the victim as an active stakeholder in the justice process. A trial where the victim is silenced after the verdict, denied the right to challenge a

⁴⁰⁷ *Virendra Khanna v. State of Karnataka*, 2021 SCC OnLine Kar 5032.

⁴⁰⁸ *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

⁴⁰⁹ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

⁴¹⁰ *Karan v. State (NCT of Delhi)*, 2020 SCC OnLine Del 1638.

⁴¹¹ *Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752.

perceived injustice, cannot be called "fair."

1.5.3 Victim's Right to be Heard in Bail: The Jagjeet Singh Doctrine

The tension between the liberty of the accused and the rights of the victim is most acute at the bail stage. In *Jagjeet Singh v. Ashish Mishra* (2022) (the Lakhimpur Kheri violence case), the Supreme Court established a new precedent regarding victim participation.⁴¹²

The Mandate:

The Court held that a "victim" has a legally vested right to be heard at every step of the criminal proceeding, including the stage of bail adjudication. The Court reasoned that the victim has a legitimate concern regarding the possibility of evidence tampering or threats to their safety. Denying the victim a hearing in a bail petition violates their right to a fair trial and access to justice.⁴¹³

Balancing Rights:

Crucially, the Court clarified that this does not mean the victim has a "veto" over bail. The Antil guidelines (favouring bail) remain applicable. However, the Jagjeet Singh mandate requires the court to consider the victim's perspective before exercising its discretion. It transforms the bail hearing from a bilateral (State-Accused) to a trilateral (State-Accused-Victim) process.

1.5.4 Protecting Identity and Privacy: The Nipun Saxena Guidelines

Finally, Article 21 encompasses the right to privacy for victims, particularly in sexual offence cases. In *Nipun Saxena*, the Supreme Court laid down strict guidelines prohibiting the disclosure of the rape victim's identity in FIRs, judgments, and media reports.⁴¹⁴

- **Rationale:** The "open trial" principle, while essential for the accused, can become an instrument of social stigma for the victim. By anonymising the proceedings,

the law balances the public's right to know with the victim's right to dignity. This protection encourages victims to come forward, thereby strengthening the criminal justice system as a whole.

Conclusion

The analysis of specific IPC provisions through the prism of Article 21 reveals a profound transformation in the Indian legal landscape. The "Procedure Established by Law" has evolved from a static colonial command into a dynamic constitutional ecosystem. Whether it is the insistence on *mens rea* in general offences, the prohibition of scientific intrusion into the mind in bodily offences, the protection of dignity during arrest, or the empowerment of victims in the trial process, the judiciary has consistently engaged in a delicate balancing act.

The Supreme Court has effectively rewritten the procedural DNA of the IPC and CrPC. It has established that the state's power to punish is not absolute but is constrained by the civil libertarian values of the Constitution. As new challenges emerge from digital evidence to victim advocacy, this dialectic between the penal code and the Constitution ensures that the Indian criminal trial remains a robust, albeit evolving, mechanism for delivering justice that is fair, just, and reasonable.

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⁴¹² *Jagjeet Singh v. Ashish Mishra*, (2022) 9 SCC 321.

⁴¹³ *Ibid*, at paras 22-24.

⁴¹⁴ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

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