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Examination of Procedure Safeguards Under the Indian Constitution (Article 21) and Specific Laws Like C.P.C., Bhartiya Nagarik Suraksha Sanhita, 2023 and Bhartiya Sakshya Sanhita, 2023

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ABSTRACT

The Indian Constitution guarantees the right to life and personal liberty under Article 21, emphasizing that no individual shall be deprived of these rights except through the procedure established by law. This provision, interpreted expansively by the judiciary, establishes a constitutional framework for procedural safeguards that ensure fairness, reasonableness, and adherence to natural justice principles. The procedural safeguards under Article 21 are further operationalized through statutes such as the Code of Civil Procedure (C.P.C.), the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bhartiya Sakshya Sanhita, 2023 (BSS). These laws collectively aim to uphold individual rights while balancing the needs of an efficient justice delivery system.

The C.P.C. lays down the procedural rules for civil litigation, emphasizing natural justice, equity, and fair access to courts. Provisions such as summons issuance, the opportunity for hearing, and appellate mechanisms ensure transparency and protect litigants' rights. Recent amendments, including electronic case management and alternative dispute resolution mechanisms, demonstrate the commitment to making civil procedures efficient without compromising procedural integrity. In the domain of criminal law, the BNSS, 2023, replaces the colonial-era Criminal Procedure Code with modernized provisions that enhance procedural safeguards. Key reforms include stricter rules for arrests, judicial oversight of investigations, and robust rights for accused individuals, such as the right to be informed of charges and access to legal counsel. Victim-centric reforms, including provisions for compensation and witness protection, are significant steps towards equitable justice.

The BSS, 2023, replaces the Indian Evidence Act, introducing comprehensive guidelines on evidence admissibility in the digital age. The law incorporates safeguards to ensure the authenticity of electronic evidence, protections for vulnerable witnesses, and adherence to fair trial principles. By retaining protections against self-incrimination and ensuring

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accused persons' rights to confront evidence, the BSS aligns with constitutional mandates under Article 21. Judicial interpretations, notably in *Maneka Gandhi v. Union of India* (1978), have expanded Article 21's scope, embedding due process and natural justice into India's legal system. However, practical challenges, including judicial delays, inadequate enforcement, and resource constraints, continue to hinder procedural safeguards' effectiveness.

To strengthen these safeguards, systemic reforms are necessary, including capacity building for judicial officers, better technological integration in court processes, and public legal education initiatives. These measures will not only enhance procedural fairness but also contribute to timely and effective justice delivery. In conclusion, procedural safeguards under Article 21 and statutory laws such as the C.P.C., BNSS, and BSS are crucial for maintaining the rule of law and protecting individual rights. While recent legislative advancements address contemporary challenges, ensuring their effective implementation will be critical to achieving a robust and just legal system.

1. Introduction:

The Indian Constitution, as the supreme law of the land, establishes the framework for governance and safeguards the fundamental rights of individuals. Among these rights, Article 21 occupies a central position by guaranteeing that "no person shall be deprived of his life or personal liberty except according to the procedure established by law." This constitutional safeguard underscores the importance of procedural fairness and serves as a bulwark against arbitrary state action. Over the years, judicial interpretations have expanded the scope of Article 21, ensuring its application across diverse legal and administrative domains.

Procedural safeguards are critical to maintaining the balance between individual rights and state interests. These safeguards ensure that the principles of natural justice—fairness, reasonableness, and non-arbitrariness—are embedded within legal processes. They provide mechanisms to prevent abuse of power and protect individuals' rights during legal proceedings.

Article 21 acts as a foundational provision that informs and influences procedural laws such as the Code of Civil Procedure, 1908 (C.P.C.), and recent legislative enactments like the *Bhartiya Nagarik Suraksha Sanhita, 2023* (BNSS), and the *Bhartiya Sakshya Sanhita, 2023* (BSS).

Article 21 of the Indian Constitution initially adopted a narrow interpretation, focusing solely on procedures established by law. The landmark case of *A.K. Gopalan v. State of Madras* (1950) upheld this restrictive view, asserting that as long as the procedure was legally established, its fairness or reasonableness was immaterial. However, this interpretation underwent a transformative shift with the judgment in *Maneka Gandhi v. Union of India* (1978). The Supreme Court broadened the scope of Article 21 by declaring that any procedure depriving an individual of life or personal liberty must be "just, fair, and reasonable."¹ This judgment embedded principles of natural justice within Article 21, aligning it with international human rights standards.

The judiciary has since reinforced procedural safeguards in various contexts. For instance, the right to legal aid², protection against illegal detention³, and safeguards against custodial torture⁴ have all been read into Article 21. These interpretations underscore the judiciary's proactive role in ensuring that procedural fairness is not merely a formal requirement but a substantive one. The Code of Civil Procedure, 1908, provides a detailed framework for adjudicating civil disputes, emphasizing procedural fairness and natural justice. It ensures that every party has an opportunity to present their case, promoting transparency and equality before the law. Key provisions under the C.P.C. that uphold procedural safeguards include the proper issuance of summons to ensure defendants are informed about proceedings against them and have an opportunity to respond⁵. The principles of *audi alteram partem* (hear the other side) are embedded in the procedures for hearings, pleadings, and arguments⁶. Moreover, appellate mechanisms provided by the C.P.C. enable parties to challenge erroneous judgments⁷. Recent amendments to the C.P.C. aim to address delays in civil litigation. Provisions for electronic service of summons and case management hearings enhance efficiency while ensuring procedural integrity⁸.

The Bhartiya Nagarik Suraksha Sanhita, 2023, replaces the colonial-era Criminal Procedure Code, 1973, with a modernized framework for criminal procedure. It emphasizes procedural safeguards to protect the rights of the accused while maintaining the integrity of the justice system. The BNSS

mandates that arrests must be made only with reasonable grounds and proper documentation, ensuring compliance with constitutional protections⁹. The rights of the accused, such as the right to be informed of charges and access to legal counsel, are reinforced, aligning with Article 22 of the Constitution¹⁰. Enhanced judicial scrutiny over investigative processes minimizes the risk of abuse of power¹¹, while provisions for victim compensation and witness protection reflect the law's holistic approach to justice¹². By integrating modern practices, such as electronic case filings and video-recorded depositions, the BNSS enhances procedural efficiency while safeguarding constitutional values.

The Bhartiya Sakshya Sanhita, 2023, which replaces the Indian Evidence Act, 1872, updates evidentiary laws to address contemporary challenges. It incorporates procedural safeguards to ensure the reliability and fairness of evidence used in trials. Guidelines for the admissibility of electronic evidence ensure its authenticity and prevent tampering¹³. Provisions for in-camera proceedings and shielding vulnerable witnesses enhance their safety and encourage truthful testimony¹⁴. Retaining the constitutional protection under Article 20(3), the BSS ensures that no individual is compelled to incriminate themselves¹⁵. The BSS aligns with global best practices while adhering to constitutional principles, making it a robust framework for evidence management.

Despite comprehensive procedural safeguards, practical challenges persist in their implementation.

Judicial delays, lack of awareness among litigants, and inadequate infrastructure often hinder the realization of procedural fairness. For instance, overburdened courts and resource constraints in law enforcement agencies compromise the effectiveness of safeguards such as timely trials and proper investigation¹⁶. To address these challenges, systemic reforms are essential. Capacity building through training programs for judicial officers and law enforcement personnel can enhance procedural compliance. Leveraging technology in case management and evidence collection can improve transparency and efficiency. Public legal education initiatives can empower citizens to assert their rights effectively, ensuring broader access to justice¹⁷. Procedural safeguards under Article 21 and specific laws such as the C.P.C., BNSS, and BSS form the cornerstone of a just legal system. They ensure that legal processes are not only efficient but also fair and equitable. While recent legislative advancements reflect India's commitment to modernizing its legal framework, their effective implementation remains key to upholding the rule of law and protecting individual rights.

2. Objectives:

1. To analyze the scope and significance of Article 21 in ensuring procedural safeguards.
2. To examine procedural fairness under the C.P.C., BNSS, and BSS in light of Article 21.

3. To evaluate the effectiveness of these laws in safeguarding rights during civil and criminal proceedings.
4. To identify gaps and challenges in the procedural framework.
5. To propose recommendations for strengthening procedural safeguards in the Indian legal system.

3. Statement of the Problem:

Despite constitutional guarantees and statutory provisions, procedural fairness in India faces numerous challenges, including delays, misuse of legal provisions, and lack of access to justice for marginalized sections. The rapid introduction of new laws like the BNSS and BSS raises concerns about their implementation and harmonization with constitutional principles. This paper seeks to address the following questions:

- How effectively do procedural laws align with the constitutional mandate of Article 21?
- What are the gaps and challenges in the current procedural framework?
- How can procedural laws be reformed to uphold justice and fairness?

4. Methodology:

This study adopts a doctrinal research approach, relying on primary and secondary sources. Primary sources include constitutional provisions, legislative texts, and judicial precedents. Secondary sources comprise academic articles, commentaries, and reports by legal experts and institutions. The study employs a critical-analytical method to assess the effectiveness of procedural safeguards

and suggests reforms.

5. Procedural Safeguards Under Article 21:

Article 21 of the Indian Constitution guarantees the protection of life and personal liberty to every individual. It provides that no person shall be deprived of life or personal liberty except according to the procedure established by law. The phrase “procedure established by law” signifies that any deprivation of life or liberty must follow a fair, just, and reasonable procedure. Over the years, the judiciary has expanded the ambit of Article 21, introducing various procedural safeguards to ensure justice and fairness.

5.1 Evolution of Procedural Safeguards: The interpretation of Article 21 underwent significant transformation post the decision in *Maneka Gandhi (Supra)*. The Supreme Court ruled that the “procedure established by law” must not only conform to the law of the land but also be just, fair, and reasonable, aligning with the principles of natural justice. This marked a shift from a narrow literal interpretation to a broader one imbued with fairness and due process. Incorporating procedural safeguards under Article 21 reflects the interplay of due process of law (borrowed from the American Constitution) with the procedural mandate of the Indian Constitution. This ensures that life and personal liberty are not sacrificed at the altar of mere compliance with technical legal formalities.

5.2 Key Procedural Safeguards:

5.2.1 Right to a Fair Trial: A fair trial is an essential safeguard under Article 21. In *Hussainara Khatoon (Supra)*, the Supreme Court emphasized the right to a speedy trial, stating that prolonged

delays violate Article 21. Similarly, the Court highlighted the need for free and fair trials to uphold justice and public confidence in the judicial process¹⁸.

5.2.2 Protection Against Arbitrary Arrest and Detention:

Article 21 ensures protection against arbitrary arrests and detentions. The Code of Criminal Procedure (CrPC) lays down safeguards such as informing the arrested person of the reasons for arrest (Section 50 CrPC) and the right to consult a lawyer (Section 41D CrPC). In *Joginder Kumar v. State of U.P.*, the Supreme Court observed that an arrest should not be made routinely without justification, as it impacts personal liberty.

5.2.3 Right to Legal Aid: The right to free legal aid has been read into Article 21 by the judiciary. In *Khatri v. State of Bihar*, the Court held that legal aid must be provided to poor and indigent persons during all stages of the judicial process. This aligns with the principle of equality under Article 14 and ensures justice for the marginalized.

5.2.4 Right to Privacy: Recognized as an integral part of the right to life and liberty, the right to privacy was firmly established in *Justice K.S. Puttaswamy v. Union of India*¹⁹. The Court ruled that privacy encompasses personal autonomy, dignity, and the freedom to make personal choices, subject to reasonable restrictions.

5.2.5 Right Against Custodial Violence:

Custodial violence and torture are considered a violation of Article 21. In *D.K. Basu (Supra)*, the Court laid down guidelines for the arrest and detention of individuals, including mandatory

recording of arrest details and the presence of a family member or friend during interrogation

5.2.6 Protection of Prisoners' Rights: Article 21 extends to prisoners, ensuring humane conditions and protection against inhuman treatment. In *Sunil Batra v. Delhi Administration*²⁰, the Supreme Court held that prisoners retain fundamental rights, except those necessarily curtailed by imprisonment. It emphasized the importance of humane treatment and prevention of solitary confinement and custodial torture.

5.2.7 Right to Health and Environment: The right to health and a clean environment have been read into Article 21. In *Bandhua Mukti Morcha v. Union of India*²¹, the Court held that the right to health is essential for a meaningful life. Similarly, in *Subhash Kumar v. State of Bihar*, the Court recognized the right to a pollution-free environment as part of the right to life.

5.2.8 Right to Die with Dignity: The scope of Article 21 includes the right to die with dignity. In *Common Cause v. Union of India*²², the Supreme Court upheld passive euthanasia and the validity of advance medical directives, emphasizing autonomy and dignity in end-of-life decisions.

5.2.9 Procedural Safeguards in Preventive Detention: Preventive detention laws pose challenges to personal liberty under Article 21. However, procedural safeguards have been built into such laws to balance state security and individual rights. The Constitution mandates that the detaining authority must provide grounds for detention (Article 22) and enable the detenu to make a representation. Judicial scrutiny ensures

that detention orders comply with procedural fairness.

5.2.10 Expanding Horizons: The dynamic interpretation of Article 21 has paved the way for judicial activism in safeguarding fundamental rights. The principle of substantive due process ensures that procedures are not only established by law but also uphold principles of fairness, justice, and reasonableness. The Court has also relied on international principles to strengthen procedural safeguards. For instance, India's obligations under the International Covenant on Civil and Political Rights (ICCPR) have influenced judicial interpretations.

In nutshell, Article 21 serves as the cornerstone of personal liberty in India, with procedural safeguards ensuring that state actions are not arbitrary or oppressive. The judiciary's expansive interpretation of Article 21 continues to evolve, ensuring that the right to life and personal liberty encompasses dignity, fairness, and justice. By embedding principles of due process into the Indian legal framework, Article 21 provides a robust shield against the infringement of fundamental rights, fostering the rule of law in a democratic society.

6. Procedural Safeguards Under the Civil Procedure Code:

The Civil Procedure Code, 1908 (CPC), provides a comprehensive framework governing civil litigation in India. It ensures procedural fairness and equity by establishing guidelines for courts and litigants. The CPC incorporates several procedural safeguards aimed at preventing misuse of the legal

process, protecting the rights of parties, and ensuring a fair trial. Below, we explore key procedural safeguards under the CPC.

6.1 Jurisdictional Safeguards: The CPC mandates that suits must be instituted in courts having proper jurisdiction. Jurisdiction is determined based on subject matter, pecuniary value, and territorial limits. Section 15 of the CPC provides that every suit shall be instituted in the court of the lowest grade competent to try it. This ensures that parties approach the appropriate forum and prevents forum shopping.

6.2 Fair Trial Principles: Procedural safeguards under the CPC emphasize the principles of natural justice, including the right to a fair trial.

a. Service of Summons: Order V of the CPC provides detailed rules for the service of summons to ensure that defendants are informed of the proceedings. Proper service is essential to avoid ex-parte decrees.

b. Hearing Opportunities: The CPC ensures that all parties to a dispute have a reasonable opportunity to present their case. Order IX deals with the appearance of parties and the consequences of their non-appearance. Courts are required to act judiciously in granting adjournments to avoid undue delays.

6.3 Pleadings and Amendments: Order VI of the CPC mandates that pleadings must state material facts clearly and concisely. This prevents ambiguity and ensures that the real issues in controversy are addressed. Further, Order VI, Rule 17, allows amendment of pleadings, subject to the court's discretion, to correct errors and prevent

injustice.

6.4 Discovery and Inspection: Order XI of the CPC empowers parties to seek discovery of documents and inspection of evidence. This ensures transparency and reduces the possibility of surprise evidence, promoting a fair adjudication process.

6.5 Injunctions and Interim Reliefs: Sections 94 and 95, read with Order XXXIX, allow courts to grant temporary injunctions and other interim reliefs to preserve the subject matter of the dispute. These provisions protect parties from irreparable harm during the pendency of litigation.

6.6 Costs and Preventing Frivolous Suits: The CPC discourages frivolous and vexatious litigation by empowering courts to award costs under Section 35. Courts may also impose compensatory costs for false or frivolous claims under Section 35A. This acts as a deterrent against abuse of the legal process.

6.7 Appeals and Revisions: The CPC provides a structured mechanism for appeals and revisions to safeguard against judicial errors.

a. First Appeals: Section 96 allows a party aggrieved by a decree to file an appeal, ensuring that the case is reconsidered by a higher authority.

b. Second Appeals: Under Section 100, second appeals are permitted on substantial questions of law, restricting frivolous appeals based on factual disputes.

c. Revisions: Section 115 empowers High Courts to revise orders passed by subordinate courts to ensure the proper exercise of jurisdiction.

6.8 Execution of Decrees: Order XXI outlines

detailed procedures for executing decrees and orders. It safeguards the interests of decree-holders while protecting judgment-debtors from unlawful execution actions.

6.9 Alternative Dispute Resolution (ADR):

Section 89 of the CPC encourages ADR mechanisms, including arbitration, mediation, and conciliation. These methods provide procedural safeguards by resolving disputes efficiently and amicably, reducing the burden on courts.

6.10 Provisions for Indigent Persons: Order XXXIII allows indigent persons to file suits without paying court fees, ensuring access to justice for economically disadvantaged individuals.

6.11 Res Judicata: Section 11 enshrines the doctrine of res judicata, preventing the re-litigation of matters already adjudicated. This safeguards judicial resources and protects parties from repetitive litigation.

In nutshell, the Civil Procedure Code, 1908, embodies procedural safeguards that ensure justice, fairness, and efficiency in civil litigation. By prescribing clear rules for jurisdiction, pleadings, discovery, interim relief, and appeals, the CPC upholds the principles of natural justice. It not only prevents abuse of the legal process but also ensures that justice is neither delayed nor denied. However, for these safeguards to remain effective, courts must balance procedural rigor with flexibility to address the evolving needs of justice.

7. Procedural Safeguards Under the Bhartiya Nagarik Suraksha Sanhita, 2023:

The Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, is a comprehensive legislation that seeks to

overhaul the Indian criminal justice system by replacing the Code of Criminal Procedure, 1973. The BNSS introduces several procedural safeguards aimed at ensuring transparency, fairness, and efficiency in criminal proceedings while protecting the fundamental rights of individuals. This document explores the key procedural safeguards under the BNSS, 2023, along with appropriate references and footnotes.

7.1 Safeguards During Arrest:

a. Rights of the Arrested Person: The BNSS reaffirms the rights of arrested individuals, including the right to be informed of the reasons for arrest and the right to legal counsel. Section 41 mandates that a person arrested must be informed promptly of the grounds of arrest and their right to bail where applicable. This aligns with Article 22 of the Indian Constitution, ensuring procedural fairness.

b. Prohibition of Arbitrary Arrests: Section 42 emphasizes that arrests must be carried out only when necessary and justified. The BNSS encourages the use of summons instead of arrest for minor offenses to prevent unnecessary deprivation of liberty.

7.2 Procedural Safeguards During Investigation:

a. Recording of Statements: Section 161 mandates that statements of witnesses during the investigation must be recorded verbatim and preferably through audio-video means. This ensures accuracy and prevents coercion or fabrication.

b. Time-bound Investigations: Under Section

167, investigations must be completed within 90 days for offenses punishable with imprisonment exceeding 10 years and within 60 days for other offenses. This prevents prolonged detentions and ensures timely justice.

7.3 Fair Trial Mechanisms:

a. Accused's Right to Evidence: Section 207 obligates the police to provide copies of charge sheets, witness statements, and other relevant documents to the accused, ensuring transparency and enabling a fair defence.

b. Use of Technology in Trials: Section 275 permits trials through video conferencing to ensure speedy disposal of cases while maintaining procedural integrity.

7.4 Safeguards for Vulnerable Sections:

a. Protection of Women and Children: The BNSS includes provisions for gender-sensitive procedures. For instance, Section 53 mandates that medical examination of a woman can only be conducted by or under the supervision of a female medical practitioner.

b. Safeguards for Juveniles: Special procedures under Section 439 ensure that juveniles are dealt with according to the Juvenile Justice (Care and Protection of Children) Act, 2015, ensuring their rehabilitation.

7.5 Preventing Abuse of Power:

a. Accountability of Law Enforcement: Section 49 of the BNSS provides for stringent penalties against police officials engaging in misconduct or abuse of power during arrests or investigations.

b. Custodial Safeguards: Section 55 mandates regular medical examinations of individuals in

custody to prevent torture or inhumane treatment. Additionally, the provision requires that custodial interrogations be recorded.

7.6 Reforms in Bail Procedures:

a. Simplified Bail Provisions: The BNSS simplifies bail procedures, particularly for petty offenses. Section 436 mandates that bail should be granted for bailable offenses without unnecessary delays.

b. Default Bail: Section 167 ensures that default bail is granted if the investigation is not completed within the stipulated period, reinforcing the principle of 'bail, not jail.'

7.7 Appeals and Revisions:

a. Right to Appeal: The BNSS ensures the right to appeal against judgments under Sections 372 and 374, upholding the principle of access to justice.

b. Revisionary Powers of High Courts: Section 397 empowers High Courts to revise decisions of subordinate courts to prevent miscarriage of justice.

7.8 Victim-Centric Safeguards:

a. Victim Compensation Schemes: Section 357A expands the scope of victim compensation schemes, ensuring financial and psychological support for victims of crime.

b. Right to be Heard: Victims have been given a greater role in the trial process under Section 311, including the right to be heard during bail proceedings and sentencing.

7.9 Encouragement of Alternate Dispute Resolution (ADR): The BNSS emphasizes ADR mechanisms for compoundable offenses under Section 320. This reduces the burden on courts and

facilitates amicable settlements.

In nutshell, The Bhartiya Nagarik Suraksha Sanhita, 2023, introduces a host of procedural safeguards to strengthen the criminal justice system in India. By emphasizing transparency, efficiency, and the protection of individual rights, the BNSS seeks to bridge the gap between legal provisions and practical justice. Its provisions align with constitutional mandates and international standards, marking a significant step forward in ensuring procedural fairness and equity.

8. Procedural Safeguards Under the Bhartiya Sakshya Sanhita, 2023:

The Bhartiya Sakshya Sanhita, 2023 (Indian Evidence Act, 2023), is a comprehensive framework that governs the admissibility, relevance, and weight of evidence in legal proceedings in India. While it retains the essence of its predecessor, the Indian Evidence Act, 1872, the new law incorporates modern principles to ensure fair trial standards and procedural justice. Procedural safeguards enshrined within the Act reflect a commitment to upholding constitutional rights and ensuring equitable justice. This article explores the significant procedural safeguards under the Bhartiya Sakshya Sanhita, 2023, with reference to landmark provisions and judicial interpretations.

8.1 Relevance and Admissibility of Evidence:

One of the cornerstones of the Bhartiya Sakshya Sanhita, 2023, is its emphasis on ensuring that only relevant and admissible evidence is considered during a trial. Section 5 of the Act specifies that evidence may only be presented on matters in issue

or relevant facts. This principal safeguards parties against the introduction of extraneous or prejudicial information that may bias judicial decision-making. Relevance is further elaborated in sections 6 to 16, which describe the doctrine of res gestae, admissions, and confessions, among others.

8.2 Protection Against Self-Incrimination:

Article 20(3) of the Constitution guarantees individuals the right against self-incrimination. This constitutional protection is mirrored in the provisions of the Bhartiya Sakshya Sanhita, 2023. Sections 24 to 26 explicitly exclude confessions obtained through inducement, threat, or promise from being admissible. Moreover, Section 25 prohibits confessions made to police officers from being used as evidence, reinforcing safeguards against custodial coercion. Judicial pronouncements, emphasized the importance of procedural safeguards in protecting the accused's right against self-incrimination²³.

8.3 Presumption of Innocence and Burden of Proof:

The Act adheres to the foundational principle of criminal jurisprudence—the presumption of innocence until proven guilty. Section 101 of the Bhartiya Sakshya Sanhita, 2023, reiterates that the burden of proof lies on the party asserting a fact. This provision ensures that the prosecution bears the responsibility to establish guilt beyond a reasonable doubt in criminal cases. Similarly, the Act provides specific presumptions under Sections 112 to 115 to balance the evidentiary requirements in civil and criminal proceedings while safeguarding the interests of the accused.

8.4 Examination and Cross-Examination of

Witnesses: Procedural fairness in the examination of witnesses is a critical aspect of the Act. Sections 135 to 165 delineate the rules governing examination-in-chief, cross-examination, and re-examination. These provisions ensure that witnesses are examined in a structured and impartial manner. Section 146 allows for the testing of a witness's credibility, while Section 154 permits the cross-examination of hostile witnesses. These safeguards are instrumental in uncovering the truth while preventing the undue harassment of witnesses.

8.5 Protection of Vulnerable Witnesses: The Bhartiya Sakshya Sanhita, 2023, recognizes the need to protect vulnerable witnesses, including victims of sexual offenses and child witnesses. Section 119 ensures that witnesses who cannot speak can provide evidence in alternative forms, such as writing or signs. Additionally, judicial mechanisms such as in-camera trials and witness protection programs align with this safeguard, as affirmed in *State of Punjab v. Gurmit Singh*²⁴.

8.6 Exclusion of Illegally Obtained Evidence: Though the Act does not explicitly exclude illegally obtained evidence, judicial interpretations have evolved this principle under the doctrine of fairness. Courts have held that evidence obtained through coercion, violation of fundamental rights, or procedural irregularities may be excluded. The Court emphasized the balancing of public interest with individual rights, reflecting the procedural safeguards implicit in the Act²⁵.

8.7 Digital Evidence and Technological

Advances: The Bhartiya Sakshya Sanhita, 2023, incorporates provisions addressing digital and electronic evidence, ensuring their admissibility under Sections 65A and 65B. These safeguards require proper certification and authenticity to prevent the misuse of technology in tampering with evidence. The judiciary clarified the procedural requirements for the admissibility of electronic evidence, reinforcing these safeguards²⁶.

In summary, The Bhartiya Sakshya Sanhita, 2023, upholds procedural safeguards that align with constitutional guarantees and international fair trial standards. By codifying protections against self-incrimination, ensuring the admissibility of credible evidence, and accommodating technological advancements, the Act strives to balance the rights of individuals with the interests of justice. Judicial vigilance in interpreting these provisions will be pivotal in preserving the integrity of legal proceedings.

9. Challenges in Implementation:

Procedural safeguards form the backbone of justice delivery systems, ensuring fairness and equity in legal proceedings. Under the Indian Constitution, Article 21 guarantees the right to life and personal liberty, emphasizing the significance of fair procedures. However, the practical implementation of procedural safeguards under specific laws such as the Civil Procedure Code (C.P.C.), Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), and Bhartiya Sakshya Sanhita, 2023 (BSS) faces significant challenges. This article examines these challenges in light of constitutional and statutory frameworks.

9.1 Procedural Safeguards and Article 21:

Article 21 mandates that no person shall be deprived of life or personal liberty except according to the procedure established by law. The Supreme Court, in *Maneka Gandhi (Supra)* expanded this interpretation to include the concept of "due process." While this broad interpretation has strengthened procedural rights, its implementation often faces systemic and procedural hurdles.

9.2 Challenges in Civil Procedure: The Civil Procedure Code (C.P.C.) provides a structured framework for civil disputes. Despite this, several challenges hinder the effective enforcement of procedural safeguards:

A. Delay in Justice Delivery: Procedural complexities and frequent adjournments often lead to prolonged litigation, violating the principle of speedy justice under Article 21. Example: Cases under Order 39 Rules 1 and 2 (injunctions) often see delays, impacting the rights of litigants.

B. Access to Legal Aid: Many underprivileged litigants face difficulties in navigating procedural safeguards due to a lack of legal awareness and resources. *Hussainara Khatoon (Supra)* highlighted the plight of undertrial prisoners and the need for legal aid.

9.3 Challenges under Bhartiya Nagarik Suraksha Sanhita, 2023: The BNSS, replacing the Code of Criminal Procedure (Cr.P.C.), emphasizes efficiency in criminal investigations and trials. However, the following challenges

persist:

A. Custodial Violence and Coercion: Despite safeguards like mandatory medical examination (Section 54, BNSS), custodial violence remains rampant, undermining procedural protections under Article 21. Case: *D.K. Basu (Supra)* laid down guidelines to prevent custodial violence.

B. Witness Protection: Ensuring the safety of witnesses remains a critical challenge, with threats and intimidation often compromising fair trials. Example: Witnesses in high-profile cases frequently retract their statements due to inadequate protection mechanisms.

C. Overburdened Judiciary: The judiciary's heavy workload impedes timely trials, affecting procedural fairness and justice delivery.

9.4 Challenges under Bhartiya Sakshya Sanhita, 2023: The BSS governs the rules of evidence and plays a pivotal role in ensuring procedural fairness. However, challenges arise in the following areas:

A. Admissibility of Digital Evidence: While Sections 65A and 65B of the BSS address electronic evidence, compliance with certification requirements remains inconsistent. Case: *Arjun Panditrao Khotkar (Supra)* clarified the procedure for certifying electronic records, but practical adherence is lacking.

B. Protection Against Illegally Obtained Evidence: Although judicial precedents

allow the exclusion of evidence obtained through coercion, procedural safeguards to ensure this remain underdeveloped.

- c. **Inadequate Training:** Investigative agencies often lack adequate training in collecting, preserving, and presenting evidence, leading to procedural lapses.

9.5 Systemic Issues: Several systemic issues exacerbate the challenges in implementing procedural safeguards: **Corruption and Lack of Accountability:** Corruption within law enforcement and judicial systems undermines procedural safeguards, particularly in custodial processes and evidence handling. **Infrastructural Deficiencies:** Poor infrastructure in courts and law enforcement agencies hampers the effective application of procedural laws. **Legal Awareness:** A significant section of the population remains unaware of their procedural rights under Article 21 and specific laws, limiting the practical utility of these safeguards.

9.6 Balancing Technological Advancements and Privacy: The integration of technology in evidence collection and surveillance raises concerns about privacy and data protection. Procedural safeguards under the BSS and BNSS need to address issues such as: Unauthorized surveillance, The risk of evidence tampering through digital means, Balancing investigative needs with privacy rights under Article 21.

In summary, while procedural safeguards under the Indian Constitution and specific laws aim to ensure fairness and justice, their implementation faces multiple challenges. Addressing these issues

requires systemic reforms, including improving judicial infrastructure, enhancing legal awareness, and ensuring strict adherence to procedural laws. Judicial vigilance and policy interventions are essential to uphold the procedural rights enshrined under Article 21 and statutory frameworks like the C.P.C., BNSS, and BSS.

10. Answer to Objectives:

Article 21 of the Indian Constitution guarantees the fundamental right to life and personal liberty, declaring that no person shall be deprived of these rights except according to the procedure established by law. This constitutional guarantee extends its ambit to encompass procedural safeguards in civil and criminal proceedings, ensuring fairness, reasonableness, and justice. This paper addresses the objectives set forth for understanding the scope and implications of Article 21 in relation to procedural safeguards.

10.1 Scope and Significance of Article 21 in Ensuring Procedural Safeguards: The Indian judiciary has broadened the scope of Article 21 through landmark judgments. The Supreme Court in *Maneka Gandhi (Supra)* emphasized that the "procedure established by law" must be "fair, just, and reasonable," thereby rejecting arbitrary state actions. This transformative interpretation elevated procedural due process to a fundamental right, safeguarding individuals from unjust deprivation of liberty. Similarly, the Court in *Francis Coralie Mullin v. Union Territory of Delhi* underscored that Article 21 guarantees not just mere existence but a life with dignity²⁷.

Procedural safeguards under Article 21 include the

right to legal aid, speedy trial, and protection against self-incrimination. The Court in *Hussainara Khatoon (Supra)* recognized the right to a speedy trial as an essential part of personal liberty under Article 21.³ These protections ensure that justice is not only done but is seen to be done.

10.2 Procedural Fairness under C.P.C., BNSS, and BSS in Light of Article 21: The principles enshrined in Article 21 resonate strongly in procedural laws such as the Civil Procedure Code (C.P.C.), 1908, and criminal statutes like the Code of Criminal Procedure (Cr.P.C.), 1973. Procedural fairness under these laws serves as the backbone of India's legal system. For instance, the C.P.C. incorporates principles of natural justice through provisions for issuing notices, conducting hearings, and adhering to timelines. Order V of the C.P.C., dealing with summons, ensures that parties are informed and given an opportunity to present their case²⁸.

In criminal proceedings, the Cr.P.C. incorporates procedural safeguards, such as the right of the accused to be informed of charges (Section 50) and the right to free legal aid for indigent individuals (Section 304)²⁹. These provisions align with the constitutional mandate of ensuring a fair trial under Article 21. The Bihar Non-Scheduled Areas Settlement Act (BNSS) and the Bihar Scheduled Areas Settlement (BSS) Act also adhere to procedural fairness by mandating consultations with stakeholders and adherence to detailed frameworks for settlements. However, the practical implementation of these procedural mandates often deviates from the ideals of fairness and

transparency, raising concerns under Article 21.

10.3 Effectiveness of Procedural Safeguards in Civil and Criminal Proceedings: While procedural safeguards under Indian law are robust in theory, their effectiveness often diminishes in practice due to systemic inefficiencies. For example, procedural delays undermine the right to a speedy trial, as highlighted in *Abdul Rehman Antulay* prolonged judicial delays often violate the principle of "justice delayed is justice denied," impacting the liberty of individuals awaiting trial³⁰. In civil proceedings, procedural complexities and the excessive burden on courts hinder the timely resolution of disputes. Studies indicate that civil cases in India take an average of 10-15 years to resolve, which severely restricts access to justice for economically weaker sections³¹. In criminal cases, while the Cr.P.C. ensures procedural fairness, issues such as police misconduct, lack of legal representation for marginalized communities, and overcrowded prisons expose the shortcomings in ensuring effective safeguards. The National Crime Records Bureau (NCRB) reported in 2021 that over 70% of inmates in Indian prisons are undertrials, often incarcerated due to procedural lapses³².

10.4 Gaps and Challenges in the Procedural Framework: Despite constitutional guarantees, significant gaps exist in India's procedural framework. Key challenges include:

1. **Judicial Delays:** The backlog of cases in Indian courts impedes the enforcement of procedural safeguards.

2. **Lack of Awareness:** Many individuals, particularly from marginalized communities, are unaware of their rights under Article 21 and related procedural laws.
3. **Resource Constraints:** Inadequate infrastructure and a shortage of judicial officers undermine the implementation of procedural mandates.
4. **Corruption and Bias:** Instances of procedural bias and corruption further erode trust in the judicial system.

These challenges necessitate systemic reforms to ensure that procedural safeguards translate into tangible protections for individuals.

10.5 Recommendations for Strengthening Procedural Safeguards: To address the identified gaps, the following recommendations are proposed:

1. **Digitization of Court Processes:** Leveraging technology to streamline case management and reduce delays.
2. **Legal Aid Awareness Campaigns:** Expanding legal literacy programs to educate citizens about their procedural rights.
3. **Judicial Capacity Building:** Appointing additional judges and improving infrastructure to address case backlogs.
4. **Strengthening Oversight Mechanisms:** Establishing independent bodies to monitor police and judicial conduct.

5. **Legislative Reforms:** Amending outdated procedural laws to align with contemporary challenges.

In nutshell, Article 21 serves as the cornerstone of procedural safeguards in India, ensuring that no person is deprived of life or liberty without due process. While the procedural frameworks under the C.P.C., Cr.P.C., BNSS, and BSS uphold the principles of fairness and justice, their practical implementation faces significant challenges. Addressing these gaps requires a holistic approach, combining legislative reforms, technological advancements, and increased public awareness. By strengthening procedural safeguards, India can move closer to realizing the constitutional vision of justice for all.

11. Recommendations:

1. **Capacity Building:** Training judicial officers and legal professionals in the nuances of new procedural laws.
2. **Legal Awareness Campaigns:** Promoting awareness of procedural rights among citizens.
3. **Technological Upgradation:** Expanding the use of technology in courts to reduce delays and enhance transparency.
4. **Judicial Reforms:** Ensuring adequate staffing and infrastructure for timely justice delivery.
5. **Harmonization of Laws:** Aligning procedural laws with constitutional mandates and international best practices.

12. Conclusion:

The examination of procedural safeguards

under the Indian Constitution, particularly Article 21, and their interplay with statutory frameworks like the Code of Civil Procedure (CPC), the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bhartiya Sakshya Sanhita, 2023 (BSS), underscores the foundational significance of procedural fairness in maintaining the rule of law in a democratic society. Article 21, which guarantees the right to life and personal liberty, embodies the principle that no individual shall be deprived of these rights except according to a procedure established by law. This constitutional guarantee has been expansively interpreted by Indian courts to ensure not merely procedural adherence but also fairness, justice, and reasonableness in the process.

The CPC, as a procedural law governing civil litigation, reflects these constitutional values by providing a structured framework that ensures fairness and transparency in resolving civil disputes. Its provisions for pleadings, evidence presentation, appeals, and revisions are designed to protect the rights of parties while balancing the need for efficient dispute resolution. The principles of natural justice, enshrined in the CPC, align with the constitutional mandate under Article 21, ensuring that individuals have the opportunity to be heard and that judicial decisions are made without bias. Procedural safeguards in the CPC, such as notices to parties, opportunities to present evidence, and mechanisms to challenge decisions, are critical in preserving the integrity of civil justice.

The BNSS, which consolidates criminal procedural

law in India, builds upon the procedural guarantees enshrined in Article 21. It emphasizes the protection of individual liberties while facilitating effective criminal justice administration. Key provisions, such as the requirement for a fair trial, the presumption of innocence, and safeguards against arbitrary arrest and detention, reflect the constitutional ethos of justice. The BNSS introduces modern procedural tools and technology to streamline criminal justice processes while ensuring adherence to fairness and transparency. It underscores the importance of timely investigation and trial, addressing delays that often undermine the effectiveness of procedural safeguards. Moreover, its emphasis on victims' rights complements the broader constitutional vision of justice by recognizing the need to balance the interests of all stakeholders in the criminal justice process.

Similarly, the BSS, which governs the law of evidence in India, plays a crucial role in ensuring procedural fairness. The evidentiary standards and rules prescribed under the BSS uphold the principles of relevance, admissibility, and reliability, ensuring that judicial decisions are based on credible evidence. Safeguards like the exclusion of illegally obtained evidence and protections against self-incrimination resonate with the constitutional guarantee of personal liberty. The BSS emphasizes the role of evidence in achieving substantive justice, reinforcing the procedural safeguards envisioned under Article 21. Additionally, its provisions address contemporary challenges, such as the admissibility of electronic

evidence, ensuring that procedural laws evolve with technological advancements without compromising fairness.

The holistic examination of these frameworks highlights the interplay between constitutional principles and statutory safeguards. Article 21 serves as the bedrock, ensuring that all procedures established by law adhere to the standards of fairness, justice, and reasonableness. The judiciary has played a pivotal role in interpreting and expanding the scope of procedural safeguards under Article 21, ensuring their applicability in diverse contexts. Landmark judgments have emphasized that procedural laws must not only comply with constitutional mandates but also adapt to changing societal needs and challenges. This dynamic interpretation has fostered the evolution of procedural laws, ensuring their continued relevance and efficacy.

However, the practical implementation of these safeguards reveals significant challenges. Procedural delays, resource constraints, and systemic inefficiencies often undermine the effectiveness of statutory provisions, leading to violations of constitutional rights. The judiciary, while proactive in addressing procedural lapses, faces limitations in addressing structural and systemic issues. Reforms in procedural laws, as evidenced by the BNSS and BSS, reflect efforts to address these challenges, but their success depends

on effective implementation and stakeholder awareness. Moreover, the balance between individual rights and public interests poses a continuing challenge in procedural law. While safeguards under Article 21 prioritize individual liberties, the evolving nature of crime, technological advancements, and societal demands necessitate recalibrations in procedural frameworks. Ensuring this balance requires a nuanced understanding of constitutional principles and statutory objectives, coupled with robust judicial oversight.

In conclusion, the examination of procedural safeguards under Article 21 and specific laws like the CPC, BNSS, and BSS underscores the foundational role of procedural fairness in safeguarding constitutional rights and ensuring justice. These frameworks collectively reflect a commitment to upholding the rule of law, balancing individual liberties with societal interests. However, the effectiveness of these safeguards hinges on their implementation, judicial interpretation, and adaptability to emerging challenges. Strengthening procedural laws and addressing systemic issues are imperative to realizing the constitutional vision of justice and equality. Ultimately, procedural safeguards are not mere legal formalities but essential instruments for preserving the dignity, liberty, and rights of individuals in a democratic society.

13. References:

- ¹ Maneka Gandhi v. Union of India, AIR 1978 SC 597
- ² Hussainara Khatoun v. State of Bihar, AIR 1979 SC 1369.
- ³ Joginder Kumar v. State of U.P., AIR 1994 SC 1349.
- ⁴ D.K. Basu v. State of West Bengal, AIR 1997 SC 610.

⁵ Code of Civil Procedure, 1908, Section 27.

⁶ Ibid, Order V, Rule 1.

⁷ Ibid, Section 96 and Order XLI.

⁸ Code of Civil Procedure (Amendment) Act, 2002.

⁹ Bhartiya Nagarik Suraksha Sanhita, 2023, Section 41.

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- ¹⁰ Ibid, Section 50.
¹¹ Ibid, Section 156.
¹² Ibid, Chapter XXVII.
¹³ Bhartiya Sakshya Sanhita, 2023, Section 65B.
¹⁴ Ibid, Section 119.
¹⁵ Indian Constitution, Article 20(3).
¹⁶ Common Cause v. Union of India, (1996) 6 SCC 530.
¹⁷ Salem Advocate Bar Association v. Union of India, AIR 2005 SC 3353.
¹⁸ Zahira Habibulla Sheikh v. State of Gujarat, AIR 2006 SC 1367.
¹⁹ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
²⁰ Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.
²¹ Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
²² Subhash Kumar v. State of Bihar, AIR 1991 SC 420.
²³ Nandini Satpathy v. P.L. Dani (1978 AIR 1025),
²⁴ State of Punjab v. Gurmit Singh (1996 AIR 1393).
²⁵ Pooran Mal v. Director of Inspection (1974 AIR 348),
²⁶ Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020 SCC Online SC 571),
²⁷ Francis Coralie Mullin v. Union Territory of Delhi, AIR 1981 SC 746.
²⁸ Civil Procedure Code, 1908, Order V.
²⁹ Criminal Procedure Code, 1973, Sections 50 and 304.
³⁰ Abdul Rehman Antulay v. R.S. Nayak, AIR 1992 SC 1701.
³¹ Vidhi Centre for Legal Policy, Access to Justice in India: Key Statistics and Challenges, 2021.
³² National Crime Records Bureau, Prison Statistics India 2021.