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## Challenges in Investigation and Prosecution in India: A Constitutional and Comparative Analysis of Safeguarding Article 21

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### Abstract

Article 21 of the Constitution of India occupies a central position in the country's constitutional architecture, guaranteeing that no person shall be deprived of life or personal liberty except according to procedure established by law. Judicial interpretation has transformed this provision from a narrow procedural safeguard into a substantive guarantee encompassing fairness, reasonableness, and dignity throughout the criminal justice process. Investigation and prosecution, as the earliest and most decisive stages of criminal adjudication, directly determine whether this constitutional promise is fulfilled or betrayed. This article examines the systemic challenges faced in criminal investigation and prosecution in India and evaluates their constitutional implications under Article 21. Through doctrinal analysis and comparative perspectives drawn from other constitutional democracies, it argues that persistent investigative and prosecutorial deficiencies amount to structural violations of Article 21. The article concludes by emphasizing the need for institutional reform, prosecutorial independence, and a rights-oriented criminal justice culture to meaningfully safeguard personal liberty.

**Keywords-** *Article 21; Fair Investigation and Prosecution; Procedural Due Process; Criminal Justice System.*

### I. Introduction

The relationship between state power and individual liberty lies at the heart of constitutional criminal jurisprudence. In India, this relationship is governed primarily by Article 21<sup>1</sup> of the Constitution, which serves as the foundational guarantee against arbitrary deprivation of life and personal liberty. While the judiciary has been vigilant in expanding the scope of Article 21, the

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<sup>1</sup> INDIA CONST. Art.21.



lived reality of criminal investigation and prosecution reveals a persistent gap between constitutional ideals and institutional practice.

Investigation and prosecution are not neutral administrative exercises; they are coercive processes capable of profoundly affecting human dignity, liberty, and reputation. Errors or abuses at these stages are often irreversible, as courts adjudicate on the basis of the evidentiary record produced before them. Consequently, the constitutional legitimacy of criminal trials depends substantially on the fairness of investigation and prosecution. This article critically analyses the challenges inherent in these processes in India and situates them within both constitutional doctrine and comparative criminal justice frameworks.

## II. Evolution of Article 21 and Criminal Justice Jurisprudence

Article 21 was initially interpreted narrowly, most notably in *A.K. Gopalan v. State of Madras*<sup>2</sup>, where the Supreme Court held that “procedure established by law” meant any procedure enacted by the legislature, irrespective of its fairness. This formalistic approach was decisively rejected in *Maneka Gandhi v. Union of India*<sup>3</sup>, which marked a constitutional turning point by holding that any procedure depriving personal liberty must be just, fair, and reasonable.

Following *Maneka Gandhi*<sup>4</sup>, Article 21 became the constitutional source for a wide range of procedural safeguards within criminal law. The Court has repeatedly emphasized that fairness under Article 21 extends beyond trial to include investigation and prosecution. In *Babubhai v. State of Gujarat*<sup>5</sup>, the Supreme Court explicitly recognized the right to a fair investigation as an intrinsic component of Article 21. Similarly, in *Pooja Pal v. Union of India*<sup>6</sup>, the Court held that a tainted investigation undermines the entire criminal justice process and violates the fundamental rights of both victims and accused persons. Thus, investigation and prosecution are constitutionally

<sup>2</sup> *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

<sup>3</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>4</sup> *Id.*

<sup>5</sup> *Babubhai v. State of Gujarat*, (2010) 12 SCC 254.

<sup>6</sup> *Pooja Pal v. Union of India*, (2016) 3 SCC 135.



conditioned processes, and their failures must be examined not merely as administrative lapses but as violations of fundamental rights.

### III. Investigative Challenges and Article 21

The investigative stage in India is beset by structural and institutional weaknesses that systematically compromise constitutional guarantees. Police forces across states suffer from chronic understaffing, inadequate training, and overwhelming workloads. Investigating officers are frequently tasked with multiple roles, including law-and-order duties, intelligence gathering, and administrative responsibilities, leaving insufficient time and resources for careful investigation.

Judicial concern over investigative deficiencies has been repeatedly expressed. In *State of Haryana v. Bhajan Lal*<sup>7</sup>, the Supreme Court acknowledged the prevalence of abuse of police powers, including malicious prosecution and arbitrary investigation. While the Court laid down illustrative categories for judicial intervention, it also implicitly recognized that investigative discretion in India often operates without effective institutional accountability.

A further challenge arises from the limited integration of forensic and scientific methods. Despite technological advances, investigations continue to rely heavily on confessions and eyewitness testimony. The Supreme Court has cautioned against such practices, particularly given the prevalence of custodial coercion. In *D.K. Basu v. State of West Bengal*<sup>8</sup>, the Court underscored that custodial violence is a direct assault on human dignity and a grave violation of Article 21. The persistence of coercive interrogation methods reflects both institutional inertia and a failure to internalize constitutional norms within investigative culture.

Political interference presents an additional structural challenge. Investigative agencies are often subject to executive control through transfers, postings, and disciplinary mechanisms. In *Prakash Singh v. Union of India*<sup>9</sup>, the Supreme Court recognized that political control over policing

<sup>7</sup> *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335.

<sup>8</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

<sup>9</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1.



undermines professionalism and directed structural reforms to insulate the police from undue influence. The limited implementation of these directives has allowed investigative arbitrariness to persist, weakening the constitutional promise of equality and fairness.

#### **IV. Prosecutorial Deficiencies and Constitutional Fairness**

The prosecution occupies a unique constitutional position as an officer of justice rather than a partisan litigant. However, in India, prosecutorial institutions often suffer from lack of independence, inadequate resources, and excessive dependence on investigative agencies. Prosecutors are frequently appointed on political considerations, undermining their professional autonomy and ethical obligations.

The Supreme Court has consistently emphasized that the prosecutor's duty is not to secure convictions at any cost but to assist the court in discovering the truth. In *Shiv Kumar v. Hukam Chand*<sup>10</sup>, the Court held that a prosecutor must present the case fairly and disclose exculpatory material where necessary. Despite such judicial pronouncements, a conviction-centric culture continues to dominate prosecutorial practice.

Poor coordination between investigators and prosecutors further weakens prosecutions. Prosecutors are often involved only after the filing of charge-sheets, leaving little scope to correct investigative flaws. This systemic disconnect leads to weak cases, avoidable acquittals, and prolonged trials, all of which have constitutional implications under Article 21.

Delay is perhaps the most visible manifestation of prosecutorial failure. In *Hussainara Khatoon v. State of Bihar*<sup>11</sup>, the Supreme Court declared the right to a speedy trial to be an essential component of Article 21. Yet, decades later, prosecutorial unpreparedness and adjournment culture continue to result in inordinate delays, particularly affecting undertrial prisoners.

<sup>10</sup> *Shiv Kumar v. Hukam Chand*, (1999) 7 SCC 467.

<sup>11</sup> *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.



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## V. Undertrial Detention and Structural Injustice

The cumulative failures of investigation and prosecution are most acutely felt by undertrial prisoners, who constitute a substantial majority of India's prison population. Many undertrials are incarcerated on the basis of weak or incomplete investigations and face prolonged detention due to prosecutorial delays.

In *Union of India v. K.A. Najeeb*<sup>12</sup>, the Supreme Court acknowledged that prolonged incarceration without trial violates Article 21, even in serious offences. The Court's intervention highlights a deeper structural problem: when investigation and prosecution fail, pre-trial detention becomes punitive rather than preventive, contradicting the presumption of innocence. This phenomenon reflects what comparative scholars describe as "process as punishment," where the mere existence of criminal proceedings results in deprivation of liberty, irrespective of eventual guilt or innocence. Such systemic injustice strikes at the core of constitutional criminal jurisprudence.

## VI. Comparative Perspectives

Comparative constitutional analysis reveals that other democracies have adopted institutional safeguards to minimize investigative and prosecutorial abuse. In the United Kingdom, the Crown Prosecution Service operates independently of the police and applies a structured evidentiary and public interest test before initiating prosecutions. This separation reduces investigative bias and enhances accountability.

In the United States, constitutional jurisprudence under the Due Process Clause imposes stringent obligations on prosecutors to disclose exculpatory evidence, as established in *Brady v. Maryland*<sup>13</sup>. Violations of these obligations can result in dismissal of charges or reversal of convictions, reinforcing prosecutorial accountability.

Civil law jurisdictions such as Germany employ judicial supervision at the investigative stage, where investigating judges oversee evidence collection and authorize coercive measures. This

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<sup>12</sup> *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.

<sup>13</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).



model embeds constitutional oversight directly into the investigative process, reducing the scope for arbitrary state action. India's criminal justice system, by contrast, places extensive discretionary power in the hands of the police and executive-controlled prosecutors, with judicial oversight largely confined to post-investigation stages. This structural imbalance contributes to repeated Article 21 violations.

## **VII. Judicial Oversight and Its Limits**

Indian courts have played a crucial role in expanding Article 21 protections and correcting egregious failures through monitoring investigations, ordering reinvestigations, and granting constitutional remedies. However, judicial intervention is inherently reactive. Courts intervene after violations have occurred and are constrained by the evidentiary record produced by investigative agencies.

Excessive reliance on judicial correction risks masking deeper institutional dysfunction. As observed in *Zahira Habibullah Sheikh v. State of Gujarat*<sup>14</sup>, a fair trial is not possible without a fair investigation and prosecution. Judicial vigilance, while essential, cannot substitute for systemic reform.

## **VIII. Conclusion**

The challenges in investigation and prosecution in India represent not isolated administrative shortcomings but structural constitutional failures that undermine Article 21. Despite an expansive and progressive jurisprudence, the practical realization of the right to life and personal liberty remains compromised by investigative arbitrariness, prosecutorial dependence, and systemic delay.

Comparative perspectives demonstrate that constitutional democracies safeguard liberty not merely through judicial declarations but through institutional design that embeds fairness, independence, and accountability into investigative and prosecutorial structures. For Article 21 to

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<sup>14</sup> *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158.



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achieve its full transformative potential, India must move beyond episodic judicial intervention toward comprehensive institutional reform.

Safeguarding life and liberty requires that investigation and prosecution function as instruments of justice rather than power. Only then can Article 21 operate not as a post-violation remedy but as a living constitutional guarantee shaping everyday criminal justice practice.