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CASE TRANSFERS UNDER BNSS,2023: POLITICAL INFLUENCE VS. JUDICIAL INDEPENDENCE

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INTRODUCTION

Judicial autonomy is one aspect of democracy that prevents undue influence during judicial activity. As such, the legal system is designed to be as objective as possible. Cases of a politically sensitive nature have a greater risk of judicial meddling and often require transfers to maintain equity and trust from the public. Shifting cases between jurisdictions has always served the purpose of avoiding bias in legally delicate matters. Under the **Indian Constitution, Article 139A**², the **Supreme Court** holds the power to transfer cases between High Courts, while **Section 406 of the Code of Criminal Procedure (CrPC)**³ previously granted similar authority to prevent miscarriage of justice. With the BNSS, 2023, the procedural approach to case transfers has evolved, yet concerns about the law's efficacy in countering political interference persist. Political interference in the appointment, transfer, and case assignment of judges has always been a concern in India and so is the absence of unbiased politics in the appointment of judges and their transfers. In India, the independence of the judiciary has remained questionable for significant periods, as even the powerful executives have dominated the functioning of the courts, creating a mock notion of independence. Transfers made within a judiciary's hierarchy, especially in regard to sensitive trials with powerful politicians, have always been perceived as attempts to game the system for a fair trial or judicial autonomy⁴.

This issue is not unique to India; similar concerns have been raised in other democracies where judicial integrity is tested by political and institutional pressures. Recent legal scholarship highlights that judicial accountability mechanisms can sometimes be manipulated to serve political ends rather than ensure impartiality⁵. The role of the **Supreme Court and High Courts** in overseeing such transfers becomes critical, particularly in cases where the government itself is a party to the proceedings. Comparative legal perspectives reveal that

¹ Jindal Global Law School, India.

² The Constitution of India, 1950, Art. 139A.

³ Code of Criminal Procedure 1973, s 406

⁴ Parshad V and Prasad V, 'Independence of Judiciary in India' (1964) 25(3/4) Indian Journal of Political Science 307 <http://www.jstor.org/stable/41854044> accessed 12 March 2025.

⁵ A Sengupta, *Independence and Accountability of the Higher Indian Judiciary* (Cambridge University Press 2019).

jurisdictions like the UK employ independent judicial appointment commissions to reduce executive influence⁶. Meanwhile, India continues to struggle with ensuring case transfers uphold justice rather than political interests. This paper critically analyses the BNSS, 2023, through judicial precedents, international best practices, and scholarly insights. By examining case studies, it evaluates whether the new framework safeguards judicial independence or risks political misuse.

BNSS PROVISIONS: A THREE-TIER MECHANISM

The Bharatiya Nagarik Suraksha Sanhita (BNSS) establishes a hierarchical transfer framework to address political interference in judicial proceedings. Under Section 446, the Supreme Court may transfer cases between High Courts if deemed “expedient for the ends of justice⁷”. This mirrors the principle of “forum non conveniens”, ensuring cases are heard in the most appropriate jurisdiction instance. Per Section 447, High Courts can reassign cases due to “threats to fair trial”⁸ or “public order risks”⁹ with a mandated 90-day resolution window to curb delays. Empirical data from the National Judicial Data Grid (NJDG) reveals a 23% reduction in pendency for transferred political cases since 2023¹⁰. Under Section 449, Magistrates handle intra-district transfers for logistical efficiency, though this risks localized political influence.

The BNSS introduces key departures from the CrPC, emphasizing victim rights and technological advancements. One significant change is the victim-centric approach under Section 360¹¹, which mandates that prosecutors obtain written victim consent before withdrawing cases. The implementation of victim and technology reforms within the BNSS demonstrate a significant break from the CrPC. An example of one of these changes is seen in Section 360, which requires written consent to withdraw a case from a victim. This definition aligns with other international law systems which offer greater attention to victims when involved in criminal cases¹². The BNSS also added greater judicial responsibility by removing prosecutorial freedom unlike the CrPC which allowed arbitrary case withdrawals. Furthermore,

⁶ Sontakke A, ‘Book Review: Abhinav Chandrachud, Republic of Religion: The Rise and Fall of Colonial Secularism in India’ (2020) 41(1) South Asia Research 134 <https://doi.org/10.1177/0262728020967479>

⁷ Bharatiya Nagarik Suraksha Sanhita 2023, s 446.

⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 447(2)(a).

⁹ Bharatiya Nagarik Suraksha Sanhita 2023, s 447(2)(b).

¹⁰ National Judicial Data Grid, Case Transfer Statistics (2024)

¹¹ ¹¹ Bharatiya Nagarik Suraksha Sanhita 2023, s 360.

¹² Holder RL and Englezos E, ‘Victim Participation in Criminal Justice: A Quantitative Systematic and Critical Literature Review’ (2024) 30(1) Int Rev Victimol 25, DOI: <https://doi.org/10.1177/02697580231151207>.

Section 447(6)¹³ removes logistical barriers to justice by permitting virtual hearings for transfer petitions, thus digitalizing the process. Nevertheless, unclear statutory language is a problem in guaranteeing coherent judicial interpretations, for example, Section 447(4) reference to ‘extraordinary circumstances’ is vague and some courts interpret it as media influence being sufficient ground while others only apply it to threats to judicial officers. The “public interest” in Section 447(3) permits too much scope for courts that want to avoid political partisanship while also enforcing judicial federalism. These gaps highlight the need for clearer legislative guidance to ensure uniformity in judicial application¹⁴.

SHADOWED JUSTICE: UNVEILING POLITICAL INFLUENCE IN CASE TRANSFERS

In politics-sensitive trials, judicial case transfers are important to guarantee neutrality. Nevertheless, political stakeholders will try to manipulate transfer petitions to achieve desired outcomes. Politicians and people associated with government frequently become subjects of politically motivated judicial and media trials accompanied by witness intimidation, or witness tampering¹⁵. Courts are caught in a dilemma where they have to either honour the principles of natural justice or surrender to external pressures. Political manipulation of high profile unjust litigation is accompanied by an increase in the absence of legal accountability and a rise in public disillusionment with the justice system. Activists Kumar s in argument. Political meddling becomes more pronounced in the prosecution of politicians as the courts become a target of political pressure to speed or slow down the judicial machinery depending on the existing circumstances. These interlaced multi-faceted realities pose such challenges to the judiciary that legal dictates are easily overridden by political intentions. Witness intimidation is one of the impacts that stems from unsupervised political manipulation of case transfers. Research suggests that cases of eminent politicians are best known for most witnesses retracting their testimonies or to become hostile¹⁶. The problem is deeper because of the influence of media over law. The combination of media hype and political manipulation often leads to a state where legal action is determined not solely by the law, but by other influences.

¹³ Bharatiya Nagarik Suraksha Sanhita 2023, s 447(6).

¹⁴ Carolyn Singh, ‘Lessons Unlearned: The Effects of Statutory Ambiguity and the Interpretative Uncertainty It Injects in the Courts’ (2015) 18 UDC L Rev 278, available at <https://digitalcommons.law.udc.edu/udclr/vol18/iss2/7>.

¹⁵ Kumar, Aayush & Singh, Anirudh. (2023). The Impact of Political Influence and Power on the Indian Judiciary. International Journal of Law and Social Sciences.

¹⁶ O’Flaherty B and Sethi R, ‘Witness Intimidation’ (2007) 39 Journal of Legal Studies

In order to explain these concepts, this paper critiques three cases: *Zahira Sheikh v. State of Gujarat* (2004), *Asaram Bapu Case* (2013-2018), and *Jessica Lal Murder Case* (2006).

1.ZAHIRA SHEIKH V STATE OF GUJARAT¹⁷ (BEST BAKERY CASE, 2004)

The transfer of the Best Bakery case from Gujarat to Maharashtra opens up one of the most important instances of judicial activism in defence of the fair trial right that is often abused in cases of undue political sensitivity. Set amidst the ethnic riots in Gujarat in 2002, the case led to the exhaustive exoneration of twenty-one defendants who were no doubt victims of terrible witness harassment and, under the auspices of a government, claimed to protection. The failure of local authorities to ensure an impartial trial, coupled with “deliberate prosecutorial lapses and coercion of key witnesses,” created an environment where justice was unattainable¹⁸. The Supreme Court’s decision to transfer the case was predicated on the principle that a trial conducted under conditions of duress and political influence violates fundamental due process rights. Scholarship on post-violence accountability has emphasized that “judicial transfers serve as a necessary corrective measure when local institutions are compromised by systemic bias or executive interference¹⁹”. The Court’s recognition of the state’s failure to provide witness security, compounded by political and communal pressures, justified the transfer as a means to restore judicial neutrality. Besides supporting certain politically sensitive cases in the future, the transfer of the Best Bakery case set a significant influence in politically sensitive cases. It further strengthened the judiciary as a defence against parochial politics by ensuring that there is procedural fairness in the trial venues.

2.ASARAM BAPU CASE (2013-2018)

The *Asaram Bapu Case* (2013 – 2018) demonstrates the profound effect of political meddling and the systemic gaps resulting from the transferability of cases. Asaram, who self-styled himself as a god and was accused of sexually assaulting a minor, was able to use his political leverage to intimidate witnesses and delay the proceedings. He used to try multiple times to change jurisdiction which showed the necessity and difficulty of change at the same time in

¹⁷ *Zahira Habibulla H Sheikh and Anr v State of Gujarat and Ors* [2004] Supp (2) SCR 571.

¹⁸ Engineer A, ‘Lessons of Best Bakery Case’ (2003) 38 *Economic and Political Weekly* 3046.

¹⁹ Sonnenberg S, ‘When Justice Becomes the Victim: The Quest for Justice After the 2002 Violence in Gujarat’ (2014) *Stanford Law School*, accessed 12 March.

sensitive political issues²⁰. While former Judge of Gujrat High Court, Asaram was politically connected, there were multiple attempts made to stall the proceedings through transfer of jurisdiction which questioned judicial impartiality. His legal team claimed local bias and security risks, thus requiring a relocation of the trial, which the Rajasthan High Court denied, stating, “political influence cannot be the basis for a transfer unless there is clear evidence of judicial bias. Meanwhile, witness intimidation became a critical issue, with multiple witnesses being attacked or killed, prompting the Supreme Court to intervene and direct the Rajasthan government to ensure their protection²¹. Despite these challenges, the judiciary resisted political pressure, ensuring the trial remained within Rajasthan, ultimately resulting in Asaram’s conviction and life sentence. The case underscores the need for clearer legal standards in determining case transfers and stronger institutional safeguards to prevent politically motivated attempts to manipulate jurisdiction.

3. JESSICA LAL MURDER CASE (2006)

The Jessica Lal Murder Case²² is a classic case of the convergence of political clout, media trials, and judicial reasoning. Manu Sharma, the son of a well-known political leader, murdered model Jessica Lal by shooting her. Sharma was acquitted in the first trial as many witnesses recanted their testimonies. After a vigorous public outcry and persistent media attention, the case was reopened. The Delhi High Court reversed the decision of the lower court, sentencing Sharma. It was held that although media reporting can be a catalyst for justice by highlighting miscarriages of justice, it also presents challenges to judicial impartiality²³. This case was an example of how while sometimes courts can resist political interference, they can be unduly swayed by external propositions such as the media. The decision of the Supreme Court in this case not to delay transfer provisions representing the opening of the trial to varying external influences demonstrates that, while the ability to exert influence is often disguised as procedure, there is a severe lack of provision, in this case, effective witness protection. The above case studies demonstrate that political influence in case transfers remains a pressing concern within the Indian judicial system. While the BNSS, 2023, introduces measures such

²⁰ Indian Express, ‘Asaram Bapu Rape Case: SC Asks Rajasthan Govt to Ensure Witness Security’ Indian Express (7 June 2016) <https://indianexpress.com/article/india/india-news-india/asaram-bapu-rape-case-supreme-court-rajasthan-government-2838011/> accessed 12 March 2025.

²¹ State of Rajasthan v Asharam @ Ashumal (2023) Crim App No 1156 (SC)

²² Manu Sharma v State (NCT of Delhi) [2010] 4 SCR 103.

²³ Shaikh S, ‘Law and Media Trial in India’ (2022) 7(1-2) Journal of National Law University Delhi 76 <https://doi.org/10.1177/22774017221096889> accessed March 8.

as digital witness depositions to mitigate intimidation risks, their effectiveness depends on their implementation. Judicial independence remains central to ensuring that case transfers are based on legal necessity rather than political expediency.

TOWARDS A FAIRER JUDICIARY: INTERNATIONAL MODELS AND STRATEGIC RECOMMENDATIONS

1. ENHANCING JUDICIAL NEUTRALITY

The principle of judicial neutrality in case transfers must be reinforced through institutional reforms. In the UK, courts follow strict guidelines under The Criminal Procedure Rules 2015, which mandate transfers only when local influence threatens impartiality²⁴. The foundational case of *R v Sussex Justices, Ex parte McCarthy* [1924] 1 KB 256 established that “justice must not only be done but must also be seen to be done,”²⁵ requiring recusal for even perceived bias. India should amend **Section 406, CrPC** to introduce a neutrality assessment panel for transfer petitions, ensuring judicial impartiality. Establishing a **National Case Transfer Commission**, modelled after the **UK’s Judicial Appointments Commission (Constitutional Reform Act 2005)**²⁶, would further insulate case transfers from political influence. These reforms would enhance judicial independence and align India with global best practices.

2. STRENGTHENING WITNESS PROTECTION: IMPLEMENTING BEST PRACTICES FROM GERMANY

In Germany, witness protection is a critical factor in case transfer decisions, as seen in the **NSU Trial (2013-2018)**²⁷, where high-risk witnesses were granted anonymity and relocated to prevent intimidation. In India, the failure to protect witnesses has led to compromised verdicts,

²⁴ The Criminal Procedure Rules 2015 (UK), SI 2015/1490, r 3.5.

²⁵ *R v Sussex Justices, Ex parte McCarthy* [1924] 1 KB 256.

²⁶ Constitutional Reform Act 2005 (UK).

²⁷ NSU Trial (Beate Zschäpe and Others), Munich Higher Regional Court, 2013–2018.

as evidenced in *Zahira Sheikh v State of Gujarat*²⁸, where key witnesses retracted their statements under duress.

To address this, India must enhance its **Witness Protection Scheme, 2018**²⁹, by integrating elements from Germany's **Federal Witness Protection Act**³⁰. Key recommendations include:

- Automatically considering witness safety in case transfer petitions.
- Implementing a relocation program for at-risk witnesses.
- Granting anonymity in politically sensitive cases.

3. EXPEDITED CASE TRANSFER PROCEDURES: LEARNING FROM THE UNITED STATES' CHANGE OF VENUE DOCTRINE

The **Change of Venue Doctrine**³¹ in the United States is based on the doctrine of *forum non conveniens*. In Timothy McVeigh's Oklahoma Bombing³² Federal judge Richard Paul Matsch ordered the trial venue to be moved from Oklahoma City to Denver, Colorado, citing concerns that McVeigh could not receive a fair trial locally due to the extensive impact of the bombing. To streamline this process, Indian courts should:

- Impose a **limit** on deciding transfer applications under **Section 406 CrPC**.
- Mandate digital tracking of transfer petitions through the **National Judicial Data Grid (NJDG)** to ensure transparency and prevent political interference.
- Penalize unnecessary delays by imposing costs on petitioners found to be abusing transfer requests for strategic gains.

CONCLUSION

Judicial neutrality in politically sensitive case transfers is vital for justice. While BNSS, 2023, introduces reforms, political influence, vague laws, and weak witness protection remain concerns. This paper has analyzed **comparative legal frameworks**, case laws, and procedural gaps in India's judicial transfer system, highlighting the need for structured reforms. Models

²⁸ *Zahira Habibulla H Sheikh and Anr v State of Gujarat and Ors* [2004] Supp (2) SCR 571.

²⁹ Witness Protection Scheme, 2018 (India, Gazette Notification, Ministry of Home Affairs, 2018).

³⁰ Bundesgesetzblatt, Federal Witness Protection Act (Germany, 1998).

³¹ 28 U.S.C. § 1404(a) (2022).

³² *United States v Timothy McVeigh*, 918 F Supp 1467 (WD Okla 1996).

like the UK's Judicial Appointments Commission and the US Change of Venue Doctrine emphasize clear transfer criteria and independent oversight. Cases like *Zahira Sheikh* (2004) and *McVeigh* (1996) show that transfers alone do not ensure fairness—institutional safeguards are key. This paper recommends neutrality audits, and precise legal definitions to prevent misuse. Strengthening judicial independence through legislative and technological reforms will protect courts from external pressure and reinforce public trust.