



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

RIGHTS OF ACCUSED AND CONVICTED PERSONS **IN INDIA: A CRITICAL APPRAISAL OF NEW** **CRIMINAL LAWS**

AUTHORED BY - VIDISHA MISHRA

Research Scholar at Faculty of Law, BHU, Varanasi, U.P., India

CO-AUTHOR - DR. N.K. MISHRA

Associate Professor, Faculty of Law, BHU

ABSTRACT

The rights of accused and convicted persons form an essential component of a democratic criminal justice system and reflect the constitutional commitment to human dignity, fairness, and the rule of law. In India, these rights are primarily protected under the Constitution, judicial precedents, and procedural laws governing criminal administration. The present paper critically examines the rights available to accused and convicted persons in light of the newly enacted criminal laws, particularly the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaces the Code of Criminal Procedure, 1973. The study analyses various procedural and constitutional safeguards including the presumption of innocence, right to fair trial, right to legal representation, protection against self-incrimination, right to bail, protection against arbitrary arrest, and the right to speedy trial. It further discusses the rights of convicted persons such as protection against double jeopardy, right to appeal, humane treatment, healthcare, parole, furlough, and protection against inhuman punishment.

The paper also evaluates the impact of recent criminal law reforms, especially the increasing use of technology, digital procedures, victim-centric approaches, forensic investigation, and time-bound trial mechanisms. The research highlights the continuing tension between societal interests and individual rights within the criminal justice framework. It concludes that although India possesses a comprehensive legal structure for safeguarding the rights of accused and convicted persons, effective implementation remains a challenge due to judicial delays, overcrowded prisons, lack of legal awareness, and systemic inefficiencies. Continuous reforms, judicial vigilance, and institutional accountability are therefore necessary to ensure substantive justice and protection of human rights in contemporary India.

Keywords: *Accused Persons, Convicted Persons, Fair Trial, Criminal Justice System, Bharatiya Nagarik Suraksha Sanhita (BNSS).*

I. INTRODUCTION

India, as a democratic nation governed by the Constitution, ensures a robust framework for the protection of rights of individuals, including those accused and convicted of crimes. The balance between protecting society and safeguarding individual rights is the cornerstone of Indian criminal jurisprudence. With the advent of new criminal laws¹, there have been significant developments impacting these rights. The presumption of innocence can trace its roots back to Roman law, particularly the maxim *“Ei incumbit probatio qui dicit, non qui negat”* (“The burden of proof lies upon him who affirms, not upon him who denies”). This principle laid the foundation for modern interpretations of the concept. The presumption was further reinforced in the Middle Ages through canon law and later by philosophers of the Enlightenment, who championed individual rights and due process.

In modern times, the presumption of innocence has been explicitly articulated in international legal instruments, including the Universal Declaration of Human Rights² and the International Covenant on Civil and Political Rights³. These documents emphasize that everyone charged with a criminal offense has the right to be presumed innocent until proven guilty according to law, underscoring the principle’s universality. The principle of “innocent until proven guilty” is a cornerstone of modern legal systems, particularly in democratic societies. This principle is formally referred to as the presumption of innocence and is a foundational element of due process and fair trial standards. It means that every individual accused of a crime is considered innocent unless and until the prosecution proves their guilt beyond a reasonable doubt in a court of law. Research paper often involves technical terms or jargon that may not be immediately clear to all readers. Defining keywords ensures everyone understands the terms as the author intends, reducing ambiguity. So it is important for me start this paper with defining key words. An accused person refers to an individual who has been formally charged with or accused of committing a crime. In legal terms, the accused is considered innocent until proven guilty, and

¹ The BNSS was published in the Gazette of India on December 27, 2023, and will come into effect on July 1, 2024. It aims to replace the existing Code of Criminal Procedure.

² Article 11 of the Universal Declaration of Human Rights (UDHR) states that everyone is presumed innocent until proven guilty in a public trial.

³ Article 14 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to a fair trial and equality before the courts.

they are entitled to specific rights and protections under the law.

A "convicted person" refers to an individual who has been found guilty of a crime through a legal process, typically in a court of law. The conviction means that the court has determined, beyond a reasonable doubt, that the person committed the offense with which they were charged. The conviction follows a formal judicial process, which may include a trial by judge or jury. This document explores the constitutional, statutory, and procedural rights of accused and convicted persons in India, with special reference to the changes introduced by recent reforms in criminal law.

II. PART I: RIGHTS OF THE ACCUSED

1. Presumption of Innocence

The presumption of innocence is a cornerstone of justice and fairness within legal systems worldwide. Rooted in ancient legal traditions and codified in modern jurisprudence, this principle asserts that a person accused of a crime is considered innocent until proven guilty beyond a reasonable doubt. Its central aim is to safeguard individuals from wrongful convictions and ensure that justice is administered impartially and equitably. This essay explores the historical origins, legal significance, practical applications, and challenges of the presumption of innocence, illustrating its critical role in protecting human rights and maintaining the integrity of judicial systems. The presumption of innocence is an indispensable pillar of justice, reflecting the values of fairness, equality, and human dignity. It acts as a safeguard against the misuse of power, ensuring that individuals are not unjustly punished or stigmatized. While challenges to its implementation persist, a concerted effort by governments, legal professionals, and civil society can help uphold this principle and strengthen the foundations of democratic governance. In doing so, societies reaffirm their commitment to justice and the rule of law, ensuring that the rights of the accused are respected while safeguarding the public interest. This principle is enshrined in various Supreme Court judgments and supported by procedural safeguards in The Bharatiya Nagrik Suraksha Sanhita 2023 (Hereinafter BNSS).⁴

2. Right to Fair Trial

The Right to a Fair Trial is a fundamental legal principle that ensures individuals accused of a

⁴Criminal Procedure Code, 1973 (CrPC) was replaced by The Bharatiya Nagrik Suraksha Sanhita 2023.

crime or involved in legal disputes are treated justly, with respect to their legal and human rights, within a judicial process. This right is recognized under international law, including documents like the Universal Declaration of Human Rights⁵ and the International Covenant on Civil and Political Rights⁶ as well as in many national constitutions and legal systems. Indian constitution in Article 21 guarantees the right to life and personal liberty, encompassing the right to a fair trial. And Recent change in criminal law emphasize the need for time-bound trials to ensure justice without undue delay.⁷ January 20, 2022: The Supreme Court has observed that an accused is entitled for a fair trial which is guaranteed under Article 21 of the Constitution of India. A Larger Bench of Justice L. Nageswara Rao, Justice B.R. Gavai and Justice B.V.⁸ The Bharatiya Nagarik Suraksha Sanhita (BNSS) has several time-bound requirements for criminal trials, including:

Framing charges: A 60-day timeline for framing charges.⁹

Discharge application: A 60-day window for the accused to file a discharge application.¹⁰

Judgment: A 45-day timeline for the criminal court to pronounce judgment after the hearing concludes.¹¹

Committing a case to a sessions court: A 90-day timeline for the magistrate to commit a case to a sessions court, with the possibility of extending the period by up to 180 days.¹²

Filing a chargesheet: A 60–90 day timeline for filing a chargesheet against the accused.¹³

Completion of arguments: A 30-day timeline, extendable to 45 days, for completing arguments.¹⁴

The concept of fair trial has been enshrined not only in Article 21 and 39A of the Constitution of India, but also in Section 341 of the Code of BNSS¹⁵. Free and fair trial is sine qua non of

⁵Article 10 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to a fair and public hearing by an independent and impartial tribunal.

⁶Supra note 3.

⁷The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which seeks to replace the Code of Criminal Procedure, 1973, has prescribed strict timelines for several procedures for speedy trial. This includes submission of reports, qua examination of rape victims, by the medical practitioners, and pronouncing of judgments within stipulated timelines.

⁸*Bhagwani V. The State Of Madhya Pradesh*

⁹Section 251(1)(b) and 263(1) mandate that charges against an accused should be framed within sixty days from the date of first hearing on charge.

¹⁰Section 262(1) stipulates that a discharge application can be filed within sixty days from the date of framing of charge.

¹¹Section 258 of the BNSS prescribes that a judge, after hearing the arguments, shall give its verdict within a period of thirty days (extendable up to 45 days).

¹²Section 232: This section of the BNSS states that a magistrate has 90 days to commit a case to a sessions court from the date of taking cognizance.

¹³Section 193 of BNSS.

¹⁴Section 258 of BNSS.

¹⁵Earlier Section 304 of the Code of Criminal Procedure

Article 21, and after the formative decision in *Maneka Gandhi vs. UOI*¹⁶, it has been made clear that the procedure in criminal trials must be right, just and fair and not arbitrary, fanciful or oppressive. Article 39 A provides for free legal aid to the poor and weaker sections of the society and ensures justice for all.¹⁷

The right to a fair trial ensures justice is served while protecting individuals from arbitrary or oppressive use of power by the state or other parties. It upholds the rule of law and builds public trust in the legal system.

3. Right to Legal Representation

The Right to Legal Representation is a fundamental legal principle that ensures individuals involved in legal proceedings have access to a qualified attorney or legal counsel to defend their rights and interests. This right is crucial for maintaining fairness and justice in legal systems, particularly in criminal cases, where the consequences of legal actions can significantly affect an individual's freedom and reputation.

Article 22(1) guarantees the right to be defended by a legal practitioner of one's choice. BNS ensures the right to legal representation through Section 341, which provides for the state to pay for an advocate to defend the accused in certain cases. This section reinforces the legal aid provisions of Article 39-A and 22(1) of the Constitution. The Legal Services Authorities Act, 1987, provides free legal aid to marginalized sections. This right serves to balance the scales of justice by ensuring that individuals have the knowledge and expertise necessary to navigate complex legal systems effectively.

4. Protection Against Self-Incrimination

Protection against self-incrimination is a legal principle that safeguards individuals from being compelled to provide testimony or evidence that could incriminate themselves in a criminal case. This protection is a fundamental aspect of many legal systems, particularly those that adhere to the principle of due process and individual rights. Article 20(3) provides provision to protect against self-incrimination, ensuring that no person accused of an offense is compelled to testify against themselves. This principle has been upheld in landmark cases like *Nandini Satpathy v. Dani (P.L.) and Others*¹⁸. A provision has been made wherein the Magistrate may order specimen or sample without the person being arrested. Further there is no existing

¹⁶(1978) 1 SCC 248.

¹⁷Criminal appeal no. 612 of 2019; 19.04.2022 *Mohd. Firoz versus state of Madhya Pradesh*.

¹⁸(1978) 2 SCC 424.

provision in CrPC for taking finger impression or voice sample which has been provided for in BNSS.

5. Right to Be Informed of Charges:

The Right to Be Informed of Charges is a fundamental legal principle that guarantees an individual accused of a crime the right to be notified of the charges against them. This right is rooted in constitutional protections in many countries, including the United States under the Sixth Amendment. It ensures that defendants are aware of the nature and cause of the accusations they face, allowing them to prepare an adequate defence. Failure to inform a defendant of the charges in a timely and clear manner can result in a violation of due process. In some cases, it may lead to dismissal of the charges or other legal remedies. Section 47 of the BNSS mandates that the accused must be informed of the grounds of arrest¹⁹. This ensures transparency and accountability in the legal process.

6. Right to Bail:

The Right to Bail is a legal principle that allows an accused individual the opportunity to be temporarily released from custody while awaiting trial, under specific conditions. This right is generally grounded in the idea that a person is presumed innocent until proven guilty, and they should not be unnecessarily detained. The right to bail aims to balance the individual's freedom with public safety and the integrity of the judicial process. Provisions for bail under Sections 478 to 483 of the BNSS aim to balance individual liberty with societal interests.²⁰ Recent laws emphasize bail reforms to reduce the burden of undertrial detention.

The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the court. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, or a report seeking extension of time is preferred before the Magistrate or any other competent court, the right to default bail would be extinguished. The court would bear liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the BNSS.²¹

¹⁹Earlier it was Section 50 of the CrPC

²⁰ Earlier Sections 436 to 439 of the CrPC.

²¹Criminalappealno.1011of2023JudgebirSingh@JasbirSinghSamra@jasbir&ors.Versus national investigation

7. Right against Arbitrary Arrest:

Sections 35 of the BNSS provide guidelines to prevent arbitrary arrests.²² Judicial oversight in arrests has been reinforced through landmark rulings like *Arnesh Kumar v. State of Bihar*²³.

8. Right to Speedy Trial:

'Speedy trial' and 'fair trial' to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of an accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered.²⁴ The Bharatiya Nagarik Suraksha Sanhita (BNSS) is designed to expedite criminal procedures and uphold the right to a speedy trial in India. The BNSS includes several provisions to ensure a speedy trial. The BNSS sets timelines for various procedures, such as:

- **Framing charges:** Sessions courts must frame charges within 60 days of the first hearing
- **Delivering judgments:** Judgments must be delivered within 30 days of completing arguments, or within 60 days if extended

agency

²²Earlier Sections 41 and 41A of the CrPC

²³AIR 2014 SC 2756

²⁴In the supreme court of India criminal appellate jurisdiction criminal appeal nos.119-122of2017 *Ajay kumar Ghosh aletc. Versus state of Bihar & anr.*

- **Plea bargaining:** Plea bargaining applications must be filed within 30 days of framing charges
- **Medical reports:** Medical practitioners must submit reports within seven days of examining rape victims
- **Informing victims:** Victims must be informed of the investigation's progress within 90 days.

New legislations stress digitalization and streamlined procedures to enhance efficiency. Judicial precedents, including the case of *Hussainara Khatoon v. State of Bihar*²⁵, have highlighted the significance of timely trials.

III. Part II: Rights of Convicted Persons

1. Protection against Double Jeopardy: Section 337 BNSS provides protection against double jeopardy in India. This section expands on the partial protection against double jeopardy provided by Article 20(2) of the Constitution of India.²⁶

The rule of double jeopardy is based on the principle that a person cannot be subjected to a criminal prosecution for the same offense after they have been convicted or acquitted. The terms "autrefois acquit" and "autrefois convict" refer to previously acquitted and previously convicted, respectively.

The doctrine of double jeopardy originated in the 12th century during a dispute between Henry II and Archbishop Thomas Becket. The principle was introduced into English common law after King Henry exempted Becket from further punishment.

2. Right to Appeal: Convicted individuals have the right to appeal against their conviction under statutory provisions in the BNSS. The concept of review, revision, and mercy petitions are integral to ensuring justice.

3. Right to Humane Treatment: Article 21 ensures humane conditions for prisoners, upheld in cases like *Sunil Batra v. Delhi Administration*. Recent prison reforms have focused on rehabilitation and reintegration.

²⁵AIR 1979 SC 1369

²⁶Article 20(2) Protects individuals from being prosecuted and punished more than once for the same offense. This is known as the rule against double jeopardy. Section 337 of the BNSS Covers both previous convictions and acquittals, providing a more comprehensive safeguard for criminal justice rights.

4. **Right to Health and Dignity:** Convicted individuals are entitled to basic healthcare and dignified living conditions. Judicial activism has emphasized the need for medical facilities in prisons.
5. **Right to Parole and Furlough:** Provisions for parole and furlough provide temporary relief, aiding in social reintegration. Guidelines vary across states but are underpinned by principles of equity.
6. **Protection against Inhuman Punishment:** Article 21 of Indian constitution and judicial precedents prohibit inhuman or degrading punishment. The Supreme Court's judgments have consistently opposed custodial torture and abuse.

IV. Part III: Impact of New Criminal Laws

1. Victim-Centric Reforms

Recent changes emphasize victim rights, potentially altering the rights of accused and convicted persons. Balance between victim justice and accused rights is pivotal. The Bharatiya Nyaya Sanhita (BNSS) is a new criminal law in India that includes several victim-centric reforms, such as:

Police custody

Police custody is extended from 15 days to 90 days to protect victims during investigations.

Investigation progress

The police must inform victims of the investigation's progress within 90 days, and may continue to investigate for an additional 90 days with court permission.

First Information Report (FIR)

The police must register an FIR within 14 days if a preliminary investigation is promising. The BNSS introduces zero FIR and e-FIR provisions.²⁷

Victim compensation

The state and central governments will work together to create a compensation scheme for victims who have been injured or lost something and need rehabilitation.

Exemptions from police station visits

Women, people under 15, people over 60, and those with disabilities or acute illnesses are exempt from visiting police stations.

²⁷Section 173 of BNSS

Victim hearing

Section 360 of the BNSS mandates that a victim be heard before prosecution is withdrawn.

Technology

The BNSS uses technology more in investigations, and allows victims to record their statements using audio and video. Use of artificial intelligence, e-courts, and digital evidence has introduced challenges and opportunities in ensuring fair trials. Use of Technology is now envisaged in all stages of New Criminal Laws from e - FIR to investigation to submission of documents to trials. Further, forensic experts have been mandated²⁸ to visit the crime scene to collect forensic evidence in all cases where offence attracts punishment of seven or more years. It has been provided that in offences prescribing imprisonment for 7 years or more, police officer shall cause forensics expert to visit the crime scene to collect forensic evidence. States may from such date, as may be notified by them, as early as possible but not later than 5 years, shall make it compulsory. It has been permitted that accused (in custody) may be examined by a Magistrate through electronic means i.e. Video Conferencing/ VC facility available in the police station, court, prison or any other such place notified by the State Government. It has been provided that if the accused has been examined through VC, his signature on the statement shall be taken within 72 hours.

V. CONCLUSION

This article provides a detailed account of the rights of accused and convicted persons in India while highlighting the dynamic interplay of legal, constitutional, and societal factors. While societies can work to reduce crime through education, economic equity, strong justice systems, and community development, completely eradicating crime is unlikely. Human diversity, imperfection, and the dynamic nature of societies ensure that some level of crime will persist. The goal, therefore, is not a crime-free society but a society where crime is minimized, justice is accessible, and individuals can thrive in safety and fairness. The ongoing evolution of criminal law demands continuous assessment to uphold the principles of justice and equity. The rights of accused and convicted persons in India serve as a cornerstone of the nation's commitment to justice, fairness, and the rule of law. Enshrined in the Constitution and fortified by various statutory provisions and judicial pronouncements, these rights aim to balance individual liberty with societal interests. They uphold the principles of presumption of innocence, due process, and equality before the law. For accused individuals, protections such

²⁸Section 105 BNSS

as the right to a fair trial, legal representation, and protection from arbitrary arrest ensure that justice is not only done but is seen to be done. Similarly, convicted persons are afforded dignity and humane treatment, reflecting India's adherence to the principle of reformative justice. However, the practical realization of these rights remains a challenge, with systemic issues such as overcrowded prisons, judicial delays, and lack of awareness often undermining their effectiveness. Therefore, ongoing reforms, enhanced legal literacy, and a strengthened justice delivery system are imperative to ensuring that the rights of accused and convicted persons are not merely theoretical but actively contribute to a just and equitable society. In conclusion, while India's legal framework robustly protects the rights of accused and convicted individuals, constant vigilance and reform are essential to uphold these rights in practice, reinforcing the nation's commitment to justice and human dignity.

