Page 1792 - 1802 **DOI:** *https://doi.org/10.63108/IJLMH.13306*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 6

2026

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The Three Pillars of Justice: Legal Aid, Fair Trial and Presumption of Innocence under the BNSS, 2023

H. VIMALAHARINI*

ABSTRACT

The criminal justice system is founded on certain fundamental principles that protect individuals from arbitrary and unjust treatment. Among these principles, legal aid, fair trial, and presumption of innocence constitute three essential pillars of justice. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replaced the Code of Criminal Procedure, 1973, to improve and modernise criminal proceedings in India while maintaining justice, fairness, and the protection of individual rights. Legal aid enables an accused person, particularly one who is unable to afford legal representation, to effectively participate in the criminal process. The principle of a fair trial ensures that criminal cases are heard by an unbiased court and that both the prosecution and the accused are given a fair opportunity to present their arguments. The presumption of innocence requires every accused person to be treated as innocent until guilt is established according to law. This paper explores these three principles under the BNSS and the Indian Constitution, focusing mainly on Articles 14, 21 and 39A. It examines key judicial decisions that have contributed to the development of these principles and explains how they protect the rights of accused persons and promote public confidence in the criminal justice system.

Keywords: *Legal Aid, Fair Trial, Presumption of Innocence, Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), Fundamental Rights, Article 14, Article 21, Article 39A, Criminal Justice System*

I. INTRODUCTION

Justice is not merely about punishing a person who commits an offence; it also requires that criminal proceedings are conducted in a fair, reasonable and lawful manner. The criminal justice system must protect society while simultaneously safeguarding the rights of individuals accused of offences. In this context, legal aid, fair trial and presumption of innocence form three important pillars of a just criminal process.

* Author is a Student at Anvikshiki School of Law for Women, Sri Chandrasekharendra Saraswathi Viswa Mahavidyalaya (SCSVMV) University, Kanchipuram, Tamil Nadu, India.

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The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) came into force on 1 July 2024 as the principal procedural criminal law, replacing the Code of Criminal Procedure, 1973.[1] It provides the procedure relating to investigation, arrest, inquiry, trial, bail, appeals and other stages of criminal proceedings. While procedural efficiency is important, such efficiency cannot come at the cost of constitutional guarantees and individual liberty.

Legal aid ensures that poverty does not prevent an accused person from defending himself or herself effectively. Article 39A of the Constitution directs the State to provide free legal aid so that opportunities for securing justice are not denied because of economic or other disabilities.[2] The BNSS also contains provisions relating to legal representation and the appointment of advocates for accused persons in appropriate circumstances.[3]

Fair trial is an essential component of the right to life and personal liberty under Article 21.[4] It includes an impartial judiciary, proper opportunity to defend oneself, access to relevant evidence, examination and cross-examination of witnesses, and a decision based upon law and evidence.

The presumption of innocence is another fundamental principle of criminal jurisprudence. A person accused of an offence is presumed to be innocent until the prosecution establishes guilt in accordance with law. The burden generally rests upon the prosecution to prove the case beyond reasonable doubt.[5] This principle protects individuals against wrongful conviction and reinforces the requirement that criminal courts must rely upon legally admissible evidence rather than suspicion.

These principles have been extensively discussed by constitutional scholars, criminal law researchers and Indian courts. Article 21 has developed from a narrow procedural guarantee into a broader protection of life and personal liberty,[6] and the safeguards available to an accused under Indian criminal procedure are treated in the standard works on the subject.[7] The Law Commission of India, in its 154th Report, considered it essential to amend the Code of Criminal Procedure, 1973, particularly for rendering speedy justice, and devoted a chapter to victims.[8]

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[1] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, INDIA CODE (2023). It came into force on July 1, 2024, except for the First Schedule entry relating to § 106(2) of the Bharatiya Nyaya Sanhita, 2023: MINISTRY OF HOME AFFAIRS, Notification S.O. 848(E) (Feb. 23, 2024), Gazette of India, Extraordinary, pt. II sec. 3(ii) (Feb. 24, 2024).

[2] INDIA CONST. art. 39A.

[3] Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, §§ 340–341.

[4] *Asha Ranjan v. State of Bihar*, (2017) 4 SCC 397, ¶ 61 (India).

[5] *Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808, ¶¶ 23–25, (1974) 1 SCR 722, 733–35 (India).

[6] *See generally* M.P. JAIN, INDIAN CONSTITUTIONAL LAW (9th ed., LexisNexis 2025).

[7] *See generally* R.V. KELKAR'S CRIMINAL PROCEDURE (K.N. Chandrasekharan Pillai rev., 7th ed., Eastern Book Company 2021).

[8] LAW COMM'N OF INDIA, Report No. 154, *The Code of Criminal Procedure, 1973* (Vol. I), chs. XV, XXI, XXII, ¶ 1 (1996).

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The examination of these principles specifically in the context of the BNSS is important because the new procedural framework seeks to modernise criminal justice while maintaining constitutional safeguards.

These three principles operate together. Legal aid provides the means to defend, fair trial provides the procedure for justice, and presumption of innocence provides the protective foundation for the accused. This paper examines their role under the BNSS and the constitutional framework, through the leading judicial decisions, and evaluates their importance in achieving a balanced and rights-oriented criminal justice system.

II. LEGAL AID UNDER THE BNSS

A. Meaning of legal aid

Legal aid refers to the provision of legal assistance to persons who cannot afford the services of a lawyer. It ensures that economic circumstances do not prevent an individual from accessing justice. Under Section 12 of the Legal Services Authorities Act, 1987, those entitled to legal services to file or defend a case include a member of a Scheduled Caste or Scheduled Tribe, a woman or a child, a person in custody, and a person whose annual income is below the prescribed limit.[9]

Legal aid is closely connected with Article 39A of the Constitution, which requires the State to ensure equal justice and provide free legal aid so that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.[10] It is also connected with Articles 14 and 21, which guarantee equality before law and protection of life and personal liberty.[11]

B. Legal representation under the BNSS

The BNSS recognises the importance of legal representation in criminal proceedings. Section 341 provides that where, in a trial or appeal before a court, the accused is not represented by an advocate, and it appears to the court that the accused has not sufficient means to engage one, the court shall assign an advocate for the defence at the expense of the State.[12] This provision is important because an accused person may not be capable of understanding complicated criminal procedure or effectively presenting a defence without professional assistance.

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[9] Legal Services Authorities Act, No. 39 of 1987, INDIA CODE (1987), § 12(a), (c), (g), (h); *see also id.* § 2(1)(c) (meaning of "legal service").
[10] INDIA CONST. art. 39A.
[11] INDIA CONST. arts. 14, 21.
[12] Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 341(1).

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C. Constitutional basis of legal aid

The constitutional basis of legal aid can primarily be found in Article 14, which guarantees equality before law, Article 21, which protects life and personal liberty, and Article 39A, which provides for equal justice and free legal aid.[13] Legal aid therefore transforms the constitutional promise of equality into practical access to justice.

D. Important case law on legal aid

In *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*, the Supreme Court noted that it was not uncommon for undertrial prisoners to be unable, on account of their poverty, to engage a lawyer who would help them to secure release on bail. It held that the right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in the guarantee of Article 21.[14]

In *Khatri (II) v. State of Bihar*, the Supreme Court reiterated this position and held that the State cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The obligation arises not only at the stage of trial but also when the accused is first produced before the magistrate and when remanded from time to time, and the magistrate or the Sessions Judge must inform the accused of the right.[15]

In *Suk Das v. Union Territory of Arunachal Pradesh*, the Supreme Court held that the fundamental right to free legal assistance cannot be denied merely because the accused did not apply for it. As the appellant, who was not informed of this right, remained unrepresented and was convicted, there was a violation of Article 21, and the conviction and sentence were set aside.[16] Thus, legal aid is not merely a welfare measure; it is an important component of constitutional justice.

III. Fair trial under the BNSS

A. Meaning of fair trial

A fair trial means a criminal proceeding conducted according to law in which the accused receives a genuine and reasonable opportunity to defend himself or herself before an impartial court.[17] It requires a balance between the interests of the accused, the victim, the prosecution

[13] India Const. arts. 14, 21, 39A.
[14] *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*, (1980) 1 SCC 98, ¶¶ 6–7, (1979) 3 SCR 532, 536–40 (India).
[15] *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627, ¶¶ 5–6, (1981) 2 SCR 408, 412–13 (India).
[16] *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401, ¶¶ 5–6, (1986) 1 SCR 590, 594–97 (India).
[17] *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158, ¶¶ 36, 39 (India).

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and society.[18] The objective is not simply to secure conviction but to ensure that justice is done according to law.

B. Constitutional foundation

The right to a fair trial is primarily derived from Article 21 of the Constitution. Article 14 also contributes to fairness by requiring equality before law. The criminal procedure established under the BNSS must therefore satisfy the constitutional requirement of being fair, just and reasonable.

C. Elements of fair trial

Important elements include the following:

1. **Independent and impartial judge.** The accused must be tried by a competent and impartial court.[19]
2. **Notice of accusation.** The accused must know the allegations and charges against him or her. In a case instituted on a police report, Section 230 of the BNSS requires the Magistrate to furnish to the accused, free of cost, without delay and in no case beyond fourteen days from the date of production or appearance, copies of the police report, the first information report and the other statements and documents listed in that section.[20]
3. **Right to legal representation.** The accused should have an effective opportunity to obtain legal assistance. Section 340 of the BNSS provides that a person accused of an offence may of right be defended by an advocate of his choice, and Section 38 entitles a person arrested and interrogated by the police to meet an advocate of his choice during interrogation, though not throughout it.[21]
4. **Opportunity to cross-examine witnesses.** The defence must have a meaningful opportunity to challenge prosecution evidence.
5. **Opportunity to present defence.** The accused should be allowed to place relevant evidence and arguments before the court.
6. **Reasonable opportunity to be heard.** The principle of *audi alteram partem* requires that the accused must be given a proper opportunity to be heard. Under Section 356 of the BNSS, where a proclaimed offender has absconded to evade trial and there is

[18] *See id.* ¶ 35 (accused, victim and society).
[19] *Id.* ¶ 36.
[20] Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 230.
[21] Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, §§ 38, 340.

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no immediate prospect of arresting him, this is deemed a waiver of the right to be present and tried in person, and the court is to proceed with the trial in the interest of justice after recording reasons in writing. The trial cannot commence until ninety days have passed from the framing of the charge, the steps of notice listed in the section must be followed, and a proclaimed offender who is not represented must be provided with an advocate at the expense of the State.[22]

7. **Speedy trial.** Unreasonable delay in criminal proceedings can violate Article 21.[23] Section 346(1) of the BNSS requires proceedings to be continued from day to day until all the witnesses in attendance have been examined, unless the court finds an adjournment beyond the following day necessary for reasons to be recorded.[24] Under Section 479(1), an undertrial prisoner who has been detained for a period extending up to one-half of the maximum period of imprisonment specified for the offence is to be released on bail, and a first-time offender on bond after one-third of that period; the provision does not apply where death or life imprisonment is one of the specified punishments, and it is subject to its provisos and to sub-section (2).[25]
8. **Decision based on evidence.** The court must determine guilt on the basis of legally admissible evidence rather than suspicion or public pressure.[26]

D. Important case law on fair trial

In *Maneka Gandhi v. Union of India*, the Supreme Court held that the procedure under Article 21 must be fair, just and reasonable and not arbitrary.[27] In *Zahira Habibulla H. Sheikh v. State of Gujarat*, the Court observed that the principle of fair trial "now informs and energises many areas of the law", that the denial of a fair trial is as much injustice to the accused as to the victim and society, and that courts have an overriding duty to maintain public confidence in the administration of justice.[28] In *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, it recognised a reasonably expeditious trial as an integral and essential part of the fundamental right to life and liberty under Article 21.[29]

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[22] Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 356(1)–(3).
[23] *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, (1980) 1 SCC 81, 89, ¶ 5, (1979) 3 SCR 169, 179–80 (India).
[24] Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 346(1).
[25] Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 479(1)–(2).
[26] *Zahira Habibulla H. Sheikh*, *supra* note 17, ¶ 38; *Narendra Singh v. State of M.P.*, (2004) 10 SCC 699, ¶ 30 (India).
[27] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 283–84, ¶ 7, (1978) 2 SCR 621, 658 (Chandrachud, J.), 674 (Bhagwati, J.) (India).
[28] *Zahira Habibulla H. Sheikh*, *supra* note 17, ¶¶ 33, 35–36.
[29] *Hussainara Khatoon (I)*, *supra* note 23, ¶ 5.

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Therefore, fair trial is not limited to the trial stage alone. It extends throughout the criminal process wherever the rights and liberty of an individual are involved.[30]

IV. PRESUMPTION OF INNOCENCE UNDER THE BNSS

A. Meaning of the presumption

The presumption of innocence is a fundamental principle of criminal justice which states that a person charged with an offence must be treated as innocent unless the prosecution proves his or her guilt in accordance with law. The responsibility of establishing the guilt of the accused normally rests upon the prosecution.[31] Mere suspicion or allegations, even when they appear convincing, cannot by themselves justify a conviction.[32]

This principle is reflected in the maxim *ei incumbit probatio qui dicit, non qui negat*, which conveys that the burden of proving a fact generally rests upon the person who makes the assertion and not upon the person who denies it.[33]

B. Importance of the principle

The presumption of innocence serves as an important safeguard for an accused person. It protects against:

- conviction based only on suspicion or unverified allegations;
- arbitrary or unjustified punishment;
- improper use of criminal proceedings;
- treating an accused as guilty before the completion of trial; and
- placing the burden of proof upon the accused without a valid legal basis.

The principle also places a duty upon the court to assess the prosecution evidence carefully and objectively before finding the accused guilty.

C. Relationship with burden of proof

In criminal proceedings, the prosecution ordinarily bears the responsibility of proving all the essential elements of the alleged offence beyond reasonable doubt. The accused is not normally required to establish his or her innocence. Section 104 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) provides that whoever desires a court to give judgment as to a legal right or liability

[30] *Zahira Habibulla H. Sheikh*, *supra* note 17, ¶ 36; *Khatri (II)*, *supra* note 15, ¶ 5.
[31] *Kali Ram*, *supra* note 5, ¶ 23.
[32] *Narendra Singh*, *supra* note 26, ¶ 30.
[33] DIG. 22.3.2 (Paulus, Ad Edictum 69).

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dependent on the existence of facts which he asserts must prove that those facts exist, and its first illustration applies the rule to a person who asserts that another has committed a crime.[34]

Nevertheless, certain statutory provisions may impose a limited burden on the accused to establish particular facts or circumstances. Section 108 of the BSA places on the accused the burden of proving circumstances that bring the case within a General Exception in the Bharatiya Nyaya Sanhita, 2023, or within a special exception or proviso in that Sanhita or in any law defining the offence, and the court presumes the absence of such circumstances.[35] Section 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) requires the court to presume a culpable mental state where the offence requires one, and makes it a defence for the accused to prove that there was none.[36] Section 29 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) requires the Special Court, where a person is prosecuted for committing, abetting or attempting an offence under Sections 3, 5, 7 and 9 of that Act, to presume that the person has done so unless the contrary is proved.[37] Such exceptions do not mean that the prosecution is relieved of its basic responsibility to prove the essential ingredients of the offence in accordance with law; the presumptions under Section 35 of the NDPS Act and Section 29 of the POCSO Act arise only where the foundational facts exist.[38]

D. Important case law on the presumption

State of Rajasthan v. Balchand is a decision on bail. The Supreme Court stated that the basic rule "may perhaps be tersely put as bail, not jail", except where there are circumstances suggestive of fleeing from justice, thwarting the course of justice, or creating other troubles such as repeating offences or intimidating witnesses.[39]

The presumption itself is stated in *Kali Ram v. State of Himachal Pradesh*, where the Supreme Court also held that if two views are possible on the evidence, one pointing to the guilt of the accused and the other to his innocence, the view favourable to the accused should be adopted.[40] The decision reinforces the protection given to an accused by the presumption of innocence.

In *Narendra Singh v. State of M.P.*, the Supreme Court described the presumption of innocence as a human right which gets stronger when a judgment of acquittal is passed, and reiterated that

[34] Bharatiya Sakshya Adhiniyam, No. 47 of 2023, INDIA CODE (2023), § 104 & illus. (a).
[35] Bharatiya Sakshya Adhiniyam, *supra* note 34, § 108.
[36] Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, INDIA CODE (1985), § 35(1).
[37] Protection of Children from Sexual Offences Act, No. 32 of 2012, INDIA CODE (2012), § 29.
[38] *Noor Aga v. State of Punjab*, (2008) 16 SCC 417, ¶¶ 55, 58 (India) (NDPS Act, § 35); *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat*, 2024 INSC 987, ¶ 29 (India) (POCSO Act, § 29); *see also Kali Ram*, *supra* note 5, ¶ 23 (statutory presumptions generally).
[39] *State of Rajasthan v. Balchand*, (1977) 4 SCC 308, ¶ 2, (1978) 1 SCR 535, 536 (India).
[40] *Kali Ram*, *supra* note 5, ¶ 25.

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suspicion, however grave, cannot take the place of proof.[41] Thus, the presumption of innocence is an essential safeguard against wrongful conviction. It ensures that an accused person is not deprived of liberty or subjected to punishment merely because an allegation has been made, and it strengthens the requirement that guilt must be established through reliable evidence and according to law.

V. Interrelationship between the three pillars

Legal aid, fair trial and presumption of innocence cannot be viewed independently. They complement one another in the administration of criminal justice. Legal aid gives the accused the necessary legal assistance to understand and exercise his or her rights, and so secures the ability to defend. Fair trial ensures that the proceedings are conducted through a proper, impartial and reasonable procedure. Presumption of innocence ensures that the accused is treated as innocent unless the prosecution establishes guilt according to law, and so protects against wrongful conviction.

Together, these principles help ensure that criminal justice does not become merely a mechanism for punishment but remains a system based on fairness, equality and justice.

VI. Role of the BNSS in strengthening criminal justice

The BNSS seeks to modernise criminal procedure and improve the efficiency of the criminal justice system. However, procedural efficiency must operate within constitutional limitations.

On legal aid, Section 341(1) of the BNSS re-enacts Section 304(1) of the Code of Criminal Procedure, 1973, but where the earlier provision spoke of a trial before the Court of Session, the new one speaks of a trial or appeal before a court.[42] Section 38 re-enacts Section 41D of the Code without change.[43]

On fair trial, Section 230 retains the duty under Section 207 of the Code to supply the police report and documents free of cost, and adds the outer limit of fourteen days and a copy for the victim, if represented by an advocate.[44] Section 346 retains the rule of day-to-day proceedings in Section 309 of the Code and adds that, where the circumstances are beyond the control of a party, not more than two adjournments may be granted.[45] Section 479 retains the one-half rule

[41] *Narendra Singh*, *supra* note 26, ¶¶ 30–31.
[42] Code of Criminal Procedure, No. 2 of 1974, India Code (1974), § 304(1), (3); Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 341(1), (3) (sub-section (3), on extension by notification to trials before other courts, is retained).
[43] Code of Criminal Procedure, *supra* note 42, § 41D; Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 38.
[44] Code of Criminal Procedure, *supra* note 42, § 207; Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 230.
[45] Code of Criminal Procedure, *supra* note 42, § 309; Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 346(1)–(2), fourth proviso, cl. (b).

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of Section 436A of the Code and adds the one-third rule for first-time offenders; it also excludes offences for which life imprisonment is one of the specified punishments, and persons against whom proceedings in more than one offence or in multiple cases are pending.[46] Section 335(1) retains the power under Section 299(1) of the Code to record evidence in the absence of an absconding accused; Section 356 adds provision for the trial of an absconding proclaimed offender to proceed to judgment in absence.[47]

The burden of proof is governed by the BSA: Sections 104 and 108 re-enact Sections 101 and 105 of the Indian Evidence Act, 1872, the latter now referring to the Bharatiya Nyaya Sanhita, 2023 in place of the Indian Penal Code.[48]

The effectiveness of the BNSS should therefore be evaluated not only by the speed with which cases are disposed of but also by whether accused persons receive meaningful legal representation, whether trials remain fair and whether the presumption of innocence is respected.

The three pillars provide a rights-based framework through which the functioning of the BNSS can be assessed. A faster criminal justice system cannot be considered successful if it compromises the rights of the accused or results in wrongful convictions.

VII. CONCLUSION

Legal aid, fair trial and presumption of innocence represent three essential pillars of a just criminal justice system. The BNSS provides the procedural framework for criminal administration, but its implementation must remain consistent with the constitutional guarantees of equality, liberty and access to justice.

Legal aid ensures that poverty does not become a barrier to effective defence. Fair trial ensures that criminal proceedings are conducted through an impartial and reasonable procedure. Presumption of innocence protects an accused person from being treated as guilty before the prosecution establishes guilt according to law.

The Supreme Court, through decisions such as *Maneka Gandhi*, *Hussainara Khatoon*, *Khatri (II)*, *Suk Das*, *Zahira Habibulla H. Sheikh* and *Kali Ram*, has strengthened these principles.

[46] Code of Criminal Procedure, *supra* note 42, § 436A; Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, § 479(1)–(2).
[47] Code of Criminal Procedure, *supra* note 42, § 299(1); Bharatiya Nagarik Suraksha Sanhita, *supra* note 1, §§ 335(1), 356(1).
[48] Indian Evidence Act, No. 1 of 1872, INDIA CODE (1872), §§ 101, 105; Bharatiya Sakshya Adhiniyam, *supra* note 34, §§ 104, 108.

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They demonstrate that criminal justice must maintain a balance between the interests of the State, victims, accused persons and society.

Ultimately, the success of the BNSS cannot be measured merely by speedy investigation or disposal of cases. Its real success lies in creating a criminal justice system that is efficient without being arbitrary, strict without being unjust, and speedy without compromising fairness. Legal aid, fair trial and presumption of innocence must therefore remain at the centre of the implementation of the BNSS to ensure that justice is not only delivered but is also fairly and constitutionally administered.

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