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Phone : +91 73059 14348 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



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## TRIALS IN ABSENTIA UNDER BNSS: BALANCING PROSECUTION EFFICIENCY AND THE ACCUSED'S RIGHT TO A FAIR TRIAL

**AUTHORS – HABEETHA SAI.T\* & MS.T. VAISHALI**

\* STUDENT AT SCHOOL OF EXCELLENCE IN EAW, THE TAMILNADU DR. AMBEDKAR LAW UNIVERSITY EMAIL

\*\* ASSISTANT PROFESSOR OF LAW, DEPARTMENT OF CRIMINAL LAW AND CRIMINAL JUSTICE ADMINISTRATION  
THE TAMILNADU DR. AMBEDKAR LAW UNIVERSITY,

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### ABSTRACT

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), has introduced several transformative changes to India's criminal procedure system, including the recognition of trial in absentia for proclaimed offenders. This research critically examines whether the BNSS framework effectively balances the need for swift prosecution with the constitutional guarantee of a fair trial under Article 21 of the Indian Constitution. It explores the safeguards built into the BNSS, compares them with the previous provisions under the CrPC, and assesses their adequacy in protecting the rights of the accused. This paper critically analyzes the legislative framework of BNSS, focusing on Sections 84, 85, 107, and 356, which collectively set out the procedures for proclamation, property attachment, and trials in absentia. Through doctrinal study, judicial precedents, and comparative analysis with foreign jurisdictions, this work evaluates whether BNSS provisions successfully strike a balance between prosecutorial efficiency and the constitutional mandate of fairness in criminal justice.

#### A. Introduction:

The Indian criminal justice system has historically struggled with delays, pendency, and abuse of procedural loopholes. A common tactic employed by accused persons in serious crimes has been to abscond or evade trial, thereby frustrating both the prosecution and victims<sup>1639</sup>. Under the Code of Criminal Procedure, 1973 (CrPC), the law permitted proclamation and attachment of property of absconding accused<sup>1640</sup>, but did not allow full-fledged trials in absentia. As a result, trials often remained pending for years until the accused was apprehended.

The BNSS, 2023, which replaced the CrPC, attempts to address this lacuna. It introduces provisions enabling courts to conduct trials in the absence of proclaimed offenders (Sec. 356 BNSS)<sup>1641</sup>. The rationale is clear: justice should not be indefinitely delayed because of an accused's deliberate absence. However, this efficiency-driven approach raises constitutional and human rights concerns. Can a trial conducted without the accused be truly fair? What safeguards exist to prevent misuse? This research paper explores these questions by examining the statutory framework of BNSS, relevant constitutional protections, judicial precedents, and comparative legal perspectives.

<sup>1639</sup> Law Commission of India, 239th Report on Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities (2012).

<sup>1640</sup> Code of Criminal Procedure, 1973, § 82–83.

<sup>1641</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 356.

**B. Research Objectives:**

1. To analyze the provisions of BNSS relating to proclamation, property consequences, and trials in absentia.
2. To examine the judicial approach to proclaimed offenders and fair trial rights.
3. To evaluate whether BNSS provisions align with constitutional guarantees under Article 21.
4. To compare India's approach with other jurisdictions.
5. To propose recommendations for balancing efficiency and fairness.

**C. Research methodology:**

This study adopts a doctrinal legal research methodology, focusing on analysis of statutes, case law, and academic commentary to understand the scope and implications of trials in absentia under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The doctrinal method is appropriate because the subject matter criminal procedure is primarily rooted in statutory interpretation and judicial application.

**D. Hypothesis:**

1. Does BNSS strike a balance between prosecution efficiency and fair trial rights?
2. What safeguards exist?
3. How do other jurisdictions treat trials in absentia?

**E. Legislative Framework under BNSS**

**1. Proclamation of Absconding Accused [Section 84 BNSS]:**

Section 84 empowers a court to issue a proclamation requiring an absconding accused to appear at a specified place and time, which shall not be less than thirty days from the date of publication<sup>1642</sup>. The proclamation must be publicly read, affixed at the accused's residence, and displayed conspicuously in the court premises. In cases involving grave offences such as murder, dacoity, robbery, and

rape, failure to appear allows the court to declare the accused a proclaimed offender.

This provision mirrors Section 82 of the CrPC, but BNSS strengthens procedural clarity by specifying modes of publication and consequences of non-compliance.

**2. Attachment of Property [Section 85 BNSS]:**

Where an accused has been proclaimed under Section 84, Section 85 allows attachment of his property. The attachment may be movable or immovable, and the court has discretion to appoint a receiver for management of the property. The provision serves a dual purpose: (i) pressuring the accused to surrender, and (ii) preserving assets for potential compensation to victims.

The Supreme Court in *Ashok Kumar v. State of Haryana*<sup>1643</sup> emphasized that attachment proceedings must strictly comply with procedural safeguards, since property rights are constitutionally protected under Article 300A<sup>1644</sup>.

**3. Forfeiture and Restoration [Section 107 BNSS]:**

Section 107 introduces a comprehensive framework for forfeiture of property belonging to proclaimed offenders. If the proclaimed offender continues to evade justice, the attached property may be forfeited to the State. However, the section also provides for restoration where the person later appears and demonstrates sufficient cause for absence.

This balance reflects the legislature's attempt to maintain deterrence while preventing disproportionate deprivation.

**4. Trial in Absentia [Section 356 BNSS]:**

The most pathbreaking reform is Section 356, which explicitly permits trial in absentia of proclaimed offenders. Once a person is declared a proclaimed offender under Section

<sup>1642</sup> Id., s.84.

<sup>1643</sup> (2013) 4 SCC 141.

<sup>1644</sup> "No person shall be deprived of his property save by authority of law." Article 300A, Constitution of India, inserted by the Constitution (Forty-Fourth Amendment) Act, 1978.

84, and his property dealt with under Sections 85/107, the court may proceed with recording evidence, hearing arguments, and delivering judgment even without the accused present<sup>1645</sup>.

Importantly, sub-sections provide limited safeguards, if the offender is later arrested or voluntarily appears, he may seek to contest the conviction, but only by proving sufficient cause for his earlier absence<sup>1646</sup>. This shifts the burden significantly onto the accused.

While the provision undoubtedly ensures that trials are not stalled indefinitely, it risks compromising the fundamental right to a fair hearing. The Supreme Court in *Zahira Sheikh v. State of Gujarat*<sup>1647</sup> has recognized that fair trial is the “heart of criminal jurisprudence,” encompassing rights of both accused and victims.

#### F. Discussion :

1. Does the BNSS balance prosecution efficiency with the accused’s right to a fair trial?

The *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS) introduces Section 356, which permits trial in absentia of proclaimed offenders. The rationale is efficiency: preventing accused persons from deliberately absconding and thereby stalling judicial proceedings. This is particularly significant in cases involving terrorism, economic offences, or fugitives residing abroad.

However, the balance between efficiency and fairness is debatable. While the BNSS seeks to reduce pendency, it risks diluting the principle of *audi alteram partem* (the right to be heard) which is the cornerstone of natural justice. Under the CrPC, 1973, presence of the accused was mandatory under Section 273, unless dispensed with for exceptional reasons under Section 317 CrPC. Courts have historically held that trials in absence of the accused violate the

notion of a “fair trial” under Article 21 of the Constitution<sup>1648</sup>.

For instance, in *State of Maharashtra v. Dr. Praful B. Desai*<sup>1649</sup>, the Supreme Court emphasized that “presence” of the accused includes physical or virtual presence, highlighting its necessity for cross-examination and fairness. Similarly, in *Kartar Singh v. State of Punjab*<sup>1650</sup>, while upholding stringent TADA provisions, the Court reiterated that fair trial cannot be sacrificed even for combating terrorism.

Thus, while BNSS provisions improve prosecution efficiency, the absence of clear retrial rights or mandatory judicial safeguards may tilt the balance against the accused. The judiciary will likely be required to “read down” Section 356 to harmonize it with Article 21.

2. What safeguards exist within the BNSS to protect the rights of the accused during trials in absentia?

The BNSS incorporates certain procedural safeguards:

- Proclamation Process (Sections 84 & 85 BNSS): Before declaring someone a proclaimed offender, the court must issue a proclamation giving at least 30 days to appear. This ensures the accused is given adequate notice.
- Attachment & Forfeiture of Property (Section 107 BNSS): Property of proclaimed offenders may be attached, but restoration is possible if the accused later appears and shows sufficient cause. This links with Article 300A of the Constitution, which prohibits deprivation of property except by law<sup>1651</sup>.
- Representation through Pleader: Section 356 allows the court to appoint a pleader at State expense to represent the accused, ensuring that proceedings are not entirely one-sided.

<sup>1645</sup> BNSS, section 356(1)

<sup>1646</sup> BNSS, section 356(7)

<sup>1647</sup> (2004) 4 SCC 158.

<sup>1648</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

<sup>1649</sup> (2003) 4 SCC 601

<sup>1650</sup> (1994) 3 SCC 569

<sup>1651</sup> *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1.

Yet, these safeguards remain fragile. Unlike some jurisdictions, the BNSS does not explicitly grant a right to retrial once the accused surrenders or is apprehended. This omission may be unconstitutional. Courts have stressed in cases such as *Rattiram v. State of M.P.*<sup>1652</sup>, that a trial conducted in violation of natural justice is null and void.

Therefore, while procedural safeguards exist on paper, their effectiveness will depend on judicial interpretation and strict compliance.

3. How do other jurisdictions treat trials in absentia, and what lessons can be drawn for India?

Globally, the principle of fair trial requires presence of the accused. However, some systems allow exceptions with strong safeguards:

- United Kingdom: Courts permit trials in absentia only where the accused voluntarily absents himself after commencement. In *R v. Jones*<sup>1653</sup>, the House of Lords held that courts retain discretion, but trials must remain fair.
- United States: The Sixth Amendment guarantees the right to confront witnesses. In *Illinois v. Allen*<sup>1654</sup>, the U.S. Supreme Court allowed removal of a disruptive accused but required counsel representation. Retrial safeguards are common.
- European Court of Human Rights (ECHR): Under Article 6 ECHR, trials in absentia are permissible only if the accused had notice and an opportunity for retrial. In *Colozza v. Italy* (1985), the ECHR condemned Italy for convicting an accused in absentia without retrial rights.

India's BNSS framework is less robust than these jurisdictions. The absence of a statutory retrial provision makes Section 356 vulnerable to

constitutional challenge. To align with international human rights norms, India should ensure that proclaimed offenders, upon return, can demand a retrial to safeguard their Article 21 rights.

Conclusion of Analysis

- The BNSS tilts towards prosecution efficiency, but risks undermining fair trial guarantees.
- Safeguards like proclamation, property restoration, and pleader appointment exist, but lack of retrial rights is a major constitutional gap.
- Comparative jurisdictions show that trials in absentia are permissible only with retrial safeguards, which India must adopt to balance efficiency with fairness.

## G. Constitutional Dimensions and Judicial Precedents

### 1. Article 21 and the Right to a Fair Trial

Article 21 of the Constitution guarantees that "No person shall be deprived of his life or personal liberty except according to procedure established by law."<sup>1655</sup> The Supreme Court has consistently interpreted this to include the right to a fair, just and reasonable trial. In *Maneka Gandhi v. Union of India*<sup>1656</sup>, the Court expanded the scope of Article 21 by holding that any procedure restricting liberty must be "fair, just and not arbitrary."

A trial in absentia, by its very nature, risks undermining this principle. The accused is deprived of the opportunity to defend himself, cross-examine witnesses, and assist his counsel. The Court in *Zahira Sheikh v. State of Gujarat*<sup>1657</sup> emphasized that a fair trial is not only a constitutional mandate but also part of human rights jurisprudence under Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

<sup>1652</sup> (2012) 4 SCC 516

<sup>1653</sup> [2003] 1 AC 1 (HL)

<sup>1654</sup> 397 U.S. 337 (1970)

<sup>1655</sup> Constitution of India, art. 21.

<sup>1656</sup> (1978) 1 SCC 248.

<sup>1657</sup> (2004) 4 SCC 158.

## 2. Right to Legal Representation

Article 22(1) of the Constitution provides that no person shall be denied the right to consult and be defended by a legal practitioner of his choice<sup>1658</sup>. Even when an accused is absent, Section 356 BNSS allows the court to appoint counsel for the proclaimed offender. However, the efficacy of such representation is doubtful, as effective defense often requires the personal participation of the accused.

In *Hussainara Khatoon v. State of Bihar*<sup>1659</sup>, the Court held that legal aid is an essential component of fair trial rights under Article 21. Extending this principle, it may be argued that absentia trials risk reducing legal representation to a mere formality.

## 3. Judicial Approach to Proclaimed Offenders

Indian courts have historically dealt with absconding accused under CrPC Sections 82–83 (now BNSS 84–85). In *Lavesh v. State (NCT of Delhi)*<sup>1660</sup>, the Supreme Court observed that a person declared as proclaimed offender is disentitled from seeking anticipatory bail. The rationale is that one who evades the process of law cannot simultaneously claim its protection.

Similarly, in *State of M.P. v. Pradeep Sharma*<sup>1661</sup>, the Court held that courts must adopt a strict approach in cases of absconding accused, as non-appearance obstructs the course of justice. These cases underscore the judicial recognition of the need to discipline deliberate abscondence.

However, these precedents dealt primarily with proclamation and property attachment, not with full-fledged trials in absentia. The BNSS, therefore, represents a new legal frontier where judicial interpretation will be crucial.

## 4. Balancing Victim's Rights and Accused's Rights

The Supreme Court has increasingly emphasized that the criminal justice system is

not only about protecting the accused but also about ensuring justice to victims. In *State of Rajasthan v. Ani alias Hanif*<sup>1662</sup>, the Court held that undue delay and procedural abuse erode public confidence in the rule of law. Similarly, in *Mallikarjun Kodagali v. State of Karnataka*<sup>1663</sup>, the Court recognized the victim's right to participate and be heard in criminal proceedings.

Against this backdrop, Section 356 BNSS attempts to strike a balance, while the trial proceeds despite the accused's absence, the offender retains a limited right to reopen proceedings upon later appearance. Whether this balance is constitutionally sustainable will likely be tested before the higher judiciary.

## 5. Comparative Note – International Human Rights Standards

Article 14(3)(d) of the ICCPR guarantees the right of an accused "to be tried in his presence."<sup>1664</sup> The UN Human Rights Committee has interpreted this to mean that trials in absentia are permissible only if the accused has been duly informed of proceedings and given the opportunity to be represented.

The European Court of Human Rights in *Colozza v. Italy*<sup>1665</sup> held that absentia trials violate Article 6 of the European Convention unless the accused has waived his right to be present. These standards will be persuasive when Indian courts examine Section 356 BNSS for conformity with Article 21.

## H. Critical Analysis – Pros, Cons & Challenges of Section 356 BNSS

### 1. The Rationale Behind Trials in Absentia

The introduction of Section 356 BNSS is primarily motivated by the need to address delays in criminal justice administration. Absconding accused often exploit procedural loopholes to indefinitely stall trials. The Law Commission of India in its 239th Report had noted that non-

<sup>1658</sup> Constitution of India, art. 22(1).

<sup>1659</sup> (1980) 1 SCC 98.

<sup>1660</sup> (2012) 8 SCC 730.

<sup>1661</sup> (2014) 2 SCC 171.

<sup>1662</sup> (1997) 6 SCC 162.

<sup>1663</sup> (2018) 14 SCC 596

<sup>1664</sup> International Covenant on Civil and Political Rights, art. 14(3)(d), 999 U.N.T.S. 171.

<sup>1665</sup> App. No. 9024/80, Eur. Ct. H.R. (1985).

appearance of accused persons contributes substantially to judicial backlog<sup>1666</sup>. By allowing proceedings to continue, BNSS seeks to enhance efficiency, ensure witness protection, and uphold victims' rights to timely justice.

## 2. Potential Benefits

- **Deterrence Against Abscondence:** Declaring an accused a proclaimed offender and proceeding with trial acts as a deterrent to evasion.
- **Protection of Witnesses:** Long delays often result in witnesses turning hostile or forgetting details. Trials in absentia reduce such risks, as seen in *State of U.P. v. Shambhu Nath Singh*, where the Court stressed the importance of timely prosecution<sup>1667</sup>.
- **Victim-Centric Justice:** Section 356 aligns with the emerging victimological approach recognized in *Mallikarjun Kodagali v. State of Karnataka*, ensuring that victims are not deprived of closure merely because the accused absconds<sup>1668</sup>.

## 3. Concerns and Risks

Despite its efficiency, absentia trials raise profound constitutional and human rights concerns:

- **Violation of Fair Trial Rights:** The accused loses the chance to confront witnesses and effectively participate in their defense. As held in *Colozza v. Italy*, mere appointment of counsel cannot substitute personal presence<sup>1669</sup>.
- **Risk of Wrongful Conviction:** Without the accused, defense counsel may lack crucial instructions, increasing the risk of miscarriage of justice.
- **Presumption of Innocence Undermined:** Article 20(3) of the Constitution protects

against self-incrimination. However, proceeding without the accused risks treating abscondence as implicit guilt.

- **Disproportionate Punishment:** The property forfeiture provisions under Section 107 BNSS may disproportionately affect dependents of the accused, raising questions under Article 300A (right to property).

## 4. Safeguards in BNSS

To mitigate risks, Section 356 BNSS incorporates certain safeguards:

- **Prior Proclamation under Section 84–85** (requiring due notice).
- **Representation by Counsel** (appointed if necessary).
- **Opportunity to Reopen Trial :** If the proclaimed offender later appears and provides valid justification, the court may set aside conviction and reopen proceedings.

However, these safeguards may be seen as inadequate. Judicial interpretation will likely determine whether these provisions meet the *Maneka Gandhi* test of fairness under Article 21<sup>1670</sup>.

## 5. Practical Challenges

- **Implementation at Ground Level:** Police often fail to execute warrants effectively, raising doubts about how efficiently proclamation orders will be enforced.
- **Possibility of Abuse :** The prosecution may misuse absentia provisions to secure quick convictions against political dissidents or marginalized groups. In *Kartar Singh v. State of Punjab*, the Supreme Court had warned against excessive State powers under special criminal laws<sup>1671</sup>. Similar caution applies here.

<sup>1666</sup> Law Commission of India, 239th Report on “Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities” (2012).

<sup>1667</sup> (2001) 4 SCC 667.

<sup>1668</sup> (2018) 14 SCC 596.

<sup>1669</sup> App. No. 9024/80, Eur. Ct. H.R. (1985)

<sup>1670</sup> (1978) 1 SCC 248.

<sup>1671</sup> (1994) 3 SCC 569.

- Backlog Reduction: While intended to reduce pendency, absentia trials may lead to a flood of appeals and challenges, potentially burdening higher courts.

## 6. Towards a Balanced Approach

The key lies in striking a balance between efficiency and fairness:

- Courts must strictly scrutinize whether abscondence was voluntary and deliberate, before invoking Section 356.
- Legal aid should be strengthened to ensure effective defense, not a token representation.
- Judicial oversight mechanisms should be evolved, perhaps requiring periodic High Court review of absentia convictions.
- Comparative models (like the EU requirement of explicit waiver of presence) could serve as guidance for Indian courts in interpreting BNSS.

### I. Comparative Study: CrPC, 1973 vs BNSS, 2023 on Trials in Absentia

#### 1. Presence of the Accused

- **CrPC** – Section 273 mandated that evidence in the trial shall be taken in the presence of the accused, subject to exceptions (like Section 317 CrPC allowing the court to dispense with personal attendance).
- **BNSS** – While Section 273's principle is retained in Section 336 BNSS, a major shift occurs under Section 356 BNSS, which expressly permits trials in absentia against proclaimed offenders.

#### 2. Proclaimed Offenders

- **CrPC** – Sections 82–83 dealt with proclamation and attachment of property. The focus was on compelling the appearance of the accused. If he did not appear, his property could be

attached, but trial could not usually proceed in his absence.

- **BNSS** – Sections 84–85 continue proclamation and attachment procedures, while **Section 107 BNSS** provides for attachment, forfeiture, or restoration of property. Importantly, this is now linked directly with **Section 356 BNSS**, paving the way for absentia trials if the accused still evades appearance.

### 3. Safeguards for the Accused

- **CrPC** – Accused could seek exemption from personal appearance (Section 205, 317). But if tried in absence, judgments were open to being set aside if absence was justified. The system leaned heavily on **Article 21 safeguards**.
- **BNSS** – Section 356 requires appointment of a **pleader at State expense** for the absent accused, ensuring representation. However, the provision does not explicitly guarantee a *retrial de novo* if the accused later surrenders.

### 4. Judicial Trends

- **Under CrPC** – Courts like in State of M.P. v. Bhooraji (2001) were reluctant to permit trials without the accused, treating presence as central to natural justice.
- **Under BNSS** – Future litigation is expected to test the constitutional validity of Section 356, since Indian courts may have to reconcile it with Maneka Gandhi v. Union of India (1978), which insists on fairness as an essential element of procedure.

### 5. Objective

- **CrPC** – Centered around **accused-centric rights**; delays were tolerated in the name of fairness.
- **BNSS** – Seeks **victim-centric, efficiency-driven justice**, addressing

the problem of absconding accused stalling cases indefinitely.

**J. Comparative table:**

Aspect	Crpc.1973	BNSS,2023
Trial in absence	Not permitted (except limited exceptions under S.317)	Explicitly allowed under S.356 for proclaimed offenders
Proclamation	S.82-83, coercive tool	S.84-85, linked to absentia trial
Property attachment	S.83	S.107, integrated with absentia
Safeguards	Exemption under S.205/317; retrial possible	Counsel at state expense, but no express retrial provision.
Orientation	Accused-centric (fair trial focus)	Efficiency/victim-centric (expeditious disposal)

**K. Suggestion:**

a) In light of the above findings, the following recommendations are proposed: Statutory Right to Retrial:

The legislature should expressly provide that an accused convicted in absentia under Section 356 BNSS shall have the right to demand a retrial upon appearing before the court. This aligns with the principle of *Colozza v. Italy*<sup>3</sup>, where the ECHR insisted on retrial rights for absent accused.

b) Judicial Discretion & Mandatory Safeguards:

Section 356 should be amended to require the court to record reasons in writing before proceeding in absentia, ensuring that trials are not conducted mechanically. Courts must

consider factors such as whether the absence was voluntary or unavoidable.

c) Strengthening Legal Representation:

The provision for appointment of a pleader for the absent accused must be strengthened by mandating that experienced legal aid counsel be provided, ensuring meaningful defence rather than a token presence.

d) Enhanced Notice & Publication Mechanisms:

Proclamation under Sections 84-85 BNSS should include modern means of communication (email, SMS, online publication) to ensure maximum reach and compliance with natural justice principles.

e) Safeguards for Property Rights:

Section 107 BNSS should expressly incorporate the principle under Article 300A that no person shall be deprived of property save by authority of law. Restoration of property upon appearance of the accused should be made mandatory, subject only to reasonable costs incurred by the State.

f) Comparative Harmonization with International Standards:

India should take guidance from the European Convention on Human Rights and UN Human Rights Committee standards, which allow in absentia trials only with safeguards like notice, effective legal representation, and retrial rights. Harmonizing BNSS with these standards will reduce the risk of India being seen as falling short of international human rights obligations.

g) Judicial Guidelines until Legislative Amendment:

Pending legislative changes, the Supreme Court and High Courts should issue judicial guidelines to ensure that Section 356 is applied sparingly and in conformity with constitutional guarantees. This is consistent with the Court's proactive role in reading down vague provisions in cases like *Kartar Singh v. State of Punjab*.

Final Remarks:

The criminal justice system must achieve a delicate balance between efficiency and

fairness. While absconding accused cannot be permitted to make a mockery of justice, the constitutional guarantee of a fair trial must remain inviolable. The BNSS, in its present form, tilts towards expediency at the cost of fairness. A recalibration, through legislative amendments and judicial safeguards, is necessary to ensure that justice is not only done but is manifestly seen to be done.

#### L. Conclusion:

The introduction of trials in absentia under Section 356 BNSS, 2023, marks a significant change from the previous framework of the CrPC, 1973. While it aims to prevent fugitives and proclaimed offenders from evading justice, this provision raises important questions about fair trial rights under Article 21 of the Constitution. Traditionally, Indian criminal procedure has emphasized the accused's physical presence as vital for a fair trial. Judicial decisions like *Maneka Gandhi v. Union of India* and *Rattiram v. State of M.P.* have reaffirmed that a trial lacking proper due process is not truly a trial. Allowing conviction in absentia without a clear process for retrial upon the accused's return could weaken these fundamental protections. Safeguards such as issuing proclamations (Sections 84–85 BNSS), attaching and restoring property (Section 107 BNSS), and allowing legal representation under Section 356 provide some checks but are insufficient for substantive justice. Unlike the UK or the European Convention on Human Rights, BNSS does not ensure an automatic right to retrial, which is a notable gap. Comparative analysis indicates that trials in absentia are not inherently unconstitutional but must include strong safeguards to protect the accused's right to defend themselves when they reappear. Lacking such protections, Section 356 risks being invalidated or narrowly interpreted by courts. Overall, while BNSS attempts to balance interests, it currently favors prosecution efficiency over fair trial rights, leading to a constitutional imbalance that needs correction.

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