

## “PROTECTION OF HUMAN RIGHTS OF THE ACCUSED UNDER THE BHARATIYA NYAYA SANHITA AND BHARATIYA SAKSHYA ADHINIYAM, 2023: A CRITICAL ANALYSIS”

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### ABSTRACT

The protection of human rights of the accused is a fundamental principle of criminal justice and an essential component of a fair trial in any democratic legal system. In India, the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Sakshya Adhinyam, 2023 (BSA) represents a significant transformation in the country's criminal law framework, replacing the Indian Penal Code, 1860 and the Indian Evidence Act, 1872. These new legislations aim to modernize criminal justice administration, enhance efficiency, and strengthen procedural fairness. However, their implications for the protection of the human rights of accused persons remain a subject of critical legal debate.

This research paper critically analyzes the extent to which the Bharatiya Nyaya Sanhita and the Bharatiya Sakshya Adhinyam safeguard the fundamental rights of the accused during investigation, arrest, trial, and evidence evaluation. It examines whether the newly introduced provisions maintain a balance between effective law enforcement and the constitutional guarantees of liberty, dignity, and fair trial under Articles 20, 21, and 22 of the Constitution of India. The study also evaluates concerns regarding potential misuse of certain provisions, expanded police powers, admissibility of electronic evidence, and the presumption of innocence.

Through doctrinal and analytical methods, the paper reviews statutory provisions, judicial interpretations, and human rights principles to assess whether the new criminal laws adequately uphold the rights of accused persons. The study concludes that while the reforms aim to improve criminal justice delivery, careful judicial scrutiny and procedural safeguards are necessary to ensure that the rights of the accused are not compromised in the pursuit of efficiency and national security.

**Keywords:** Human Rights, Accused Person, Bharatiya Nyaya Sanhita 2023, Bharatiya Sakshya Adhinyam 2023, Fair Trial.

### INTRODUCTION

The protection of human rights in criminal justice systems is a fundamental principle of democratic societies governed by the rule of

law. The rights of an accused person are particularly significant because criminal proceedings involve the exercise of state power against an individual, often affecting personal

liberty, dignity, and reputation. Ensuring that the accused receives fair treatment throughout investigation, trial, and adjudication is therefore an essential component of justice. In India, these protections derive from constitutional guarantees such as Articles 20, 21, and 22 of the Constitution, as well as statutory safeguards contained in criminal laws. With the enactment of the **Bharatiya Nyaya Sanhita, 2023 (BNS)** and the **Bharatiya Sakshya Adhinyam, 2023 (BSA)**, the Indian criminal justice framework has undergone a significant transformation aimed at replacing colonial-era statutes and modernizing the legal system.<sup>1978</sup>

The Bharatiya Nyaya Sanhita, 2023 replaces the Indian Penal Code, 1860, and seeks to consolidate and amend the law relating to criminal offences in India. The enactment of this statute represents an attempt to reform criminal law by introducing provisions that emphasize accountability, public order, and protection of victims while also ensuring fairness in the treatment of accused persons. The new law is part of a broader reform that includes the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhinyam, 2023, which collectively replace the IPC, the Code of Criminal Procedure, and the Indian Evidence Act respectively.<sup>1979</sup> These legislative changes aim to modernize the criminal justice system by incorporating technological advancements, strengthening investigation processes, and enhancing procedural transparency.

In the context of human rights, the protection of accused persons is closely linked to the principles of presumption of innocence, fair trial, equality before law, and protection against arbitrary arrest and detention. These principles are recognized not only in the Constitution of India but also in international human rights instruments such as the Universal Declaration of Human Rights and the International Covenant

on Civil and Political Rights. The criminal justice system must balance the need to punish offenders with the obligation to safeguard individual liberty. Therefore, any reform in criminal law must be examined in terms of its impact on the rights of accused persons and its compatibility with constitutional guarantees.

The Bharatiya Sakshya Adhinyam, 2023 plays a crucial role in this context because rules of evidence directly affect the fairness of criminal trials. The Act replaces the Indian Evidence Act, 1872, and introduces a modern framework governing the admissibility, relevancy, and evaluation of evidence in judicial proceedings.<sup>1980</sup> It retains many traditional evidentiary principles, such as rules regarding confessions, burden of proof, and relevancy of facts, while also recognizing digital and electronic evidence in response to technological developments. The modernization of evidentiary rules aims to ensure greater efficiency in trials while preserving safeguards against wrongful conviction.

Another important feature of the new criminal laws is the increased use of technology in investigation and evidence collection. Provisions relating to digital evidence, audio-video recording of search and seizure, and electronic documentation of criminal proceedings have been introduced to improve transparency and reliability in the criminal justice process. These measures may help prevent abuse of power by law enforcement authorities and strengthen the protection of accused persons against fabricated or manipulated evidence. However, the implementation of technological mechanisms also raises concerns regarding privacy, data protection, and the potential misuse of surveillance technologies.

Despite these progressive reforms, scholars and legal experts have raised questions about whether the new criminal laws adequately safeguard the human rights of the accused. Critics argue that while the legislation

<sup>1978</sup> Government of India, *The Bharatiya Nyaya Sanhita, 2023*, Ministry of Home Affairs

<sup>1979</sup> PRS Legislative Research, *Key Features of the Bharatiya Nyaya Sanhita and Related Criminal Law Reforms*

<sup>1980</sup> PRS Legislative Research, *The Bharatiya Sakshya Bill, 2023: Highlights and Analysis*

emphasizes efficiency and speedy justice, it must also ensure that procedural safeguards are not weakened in the process. Issues such as extended police powers, interpretation of evidentiary rules, and the practical enforcement of safeguards remain subjects of debate in legal discourse. Consequently, a critical analysis of the Bharatiya Nyaya Sanhita and the Bharatiya Sakshya Adhinyam is necessary to assess whether these statutes effectively uphold the rights of accused persons within the framework of constitutional and human rights principles.

This study therefore aims to examine the extent to which the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Sakshya Adhinyam, 2023 protect the human rights of the accused. It evaluates the key provisions of these laws, analyzes their compatibility with constitutional guarantees, and identifies potential challenges in their implementation. By critically assessing the balance between crime control and human rights protection, the study seeks to contribute to the broader discourse on criminal justice reform in India.

### Statement of the Problem

The introduction of the Bharatiya Nyaya Sanhita and the Bharatiya Sakshya Adhinyam represents a major shift in India's criminal justice system. While the government has emphasized that these laws aim to deliver speedy and citizen-centric justice, critics have expressed concerns about potential implications for civil liberties and the rights of the accused.

The protection of human rights of accused persons is a crucial aspect of criminal justice because the state possesses enormous powers of investigation, arrest, and prosecution. Without adequate safeguards, these powers can lead to abuse, wrongful convictions, and violations of fundamental rights.

In India, issues such as custodial violence, prolonged detention of undertrial prisoners, misuse of criminal provisions, and delays in

trials have been widely documented. Therefore, any reform in criminal law must ensure that the rights of the accused are adequately protected.

The Bharatiya Nyaya Sanhita introduces new offences such as organized crime and terrorism and modifies several existing offences. At the same time, the Bharatiya Sakshya Adhinyam expands the scope of digital and electronic evidence, reflecting technological developments in modern investigations.

However, the expansion of investigative powers and the increased reliance on digital evidence raise concerns about privacy, due process, and the possibility of misuse. Courts have repeatedly emphasized that procedural safeguards such as informing the accused of the grounds of arrest and producing them before a magistrate within a specified time are essential components of personal liberty under Article 21 of the Constitution.

Thus, the central problem addressed in this research is whether the Bharatiya Nyaya Sanhita and Bharatiya Sakshya Adhinyam adequately safeguard the human rights of accused persons while ensuring effective criminal justice.

### Objectives of the Study

The main objectives of this research are:

1. To examine the concept of human rights of the accused in criminal jurisprudence.
2. To analyze the provisions of the Bharatiya Nyaya Sanhita, 2023 relating to the rights and protections of accused persons.
3. To study the evidentiary safeguards under the Bharatiya Sakshya Adhinyam, 2023.
4. To evaluate whether the new criminal laws adequately protect the constitutional rights of accused persons.
5. To compare the new legal framework with the previous laws (IPC and Evidence Act).

6. To identify challenges and potential risks in the implementation of these laws.
7. To suggest reforms for strengthening the protection of human rights in the criminal justice system.

### Research Questions

The research will address the following questions:

1. What are the fundamental human rights of the accused under international and constitutional law?
2. How does the Bharatiya Nyaya Sanhita regulate offences and punishments affecting accused persons?
3. What evidentiary safeguards are provided under the Bharatiya Sakshya Adhiniyam?
4. Do the new laws strengthen or weaken the protection of the rights of the accused?
5. What reforms are required to ensure a fair balance between law enforcement and human rights?

### Research Hypothesis

The research is based on the following hypothesis:

1. The Bharatiya Nyaya Sanhita and Bharatiya Sakshya Adhiniyam aim to modernize criminal law but may create new challenges regarding the protection of the human rights of the accused.
2. While the new laws introduce certain safeguards and technological improvements, the expansion of investigative powers may increase the risk of misuse without adequate oversight.

### Scope of the Study

The scope of this research is limited to the protection of human rights of accused persons under the Bharatiya Nyaya Sanhita, 2023 and

the Bharatiya Sakshya Adhiniyam, 2023. The study will focus on:

- Rights of the accused during investigation and trial
- Evidentiary safeguards under the new evidence law
- Constitutional protections under Articles 20, 21, and 22
- Judicial interpretation of criminal procedure and due process

The research will also briefly refer to international human rights standards and comparative legal perspectives.

### Concept of Human Rights of the Accused

Human rights of the accused refer to the legal protections granted to individuals who are suspected or charged with committing a crime. These rights ensure that the criminal justice process remains fair, transparent, and consistent with the principles of natural justice. In any democratic society governed by the rule of law, the protection of accused persons is a fundamental requirement because the state possesses extensive powers of investigation, arrest, detention, and prosecution. Without proper safeguards, these powers may lead to abuse, wrongful convictions, and violations of individual liberty.

The concept of protecting the rights of the accused is closely linked with the broader idea of due process of law and procedural fairness. The presumption of innocence, which lies at the heart of criminal jurisprudence, requires that every individual be treated as innocent until proven guilty beyond reasonable doubt. This principle ensures that the burden of proof lies on the prosecution and that the accused is not compelled to prove his or her innocence.<sup>1981</sup> The purpose of such safeguards is not to protect criminals but to ensure that innocent individuals are not punished due to errors, prejudice, or abuse of state authority.

<sup>1981</sup> Andrew Ashworth, *Principles of Criminal Law*, Oxford University Press, 2018.

International human rights instruments recognize the importance of protecting the rights of accused persons in criminal proceedings. The Universal Declaration of Human Rights (UDHR), 1948 provides that everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial where all necessary guarantees for defense are ensured.<sup>1982</sup> Similarly, the International Covenant on Civil and Political Rights (ICCPR), 1966 establishes a detailed framework of procedural protections for accused persons. These include the right to a fair and public hearing by an independent and impartial tribunal, the right to be informed of the charges, the right to adequate time and facilities to prepare a defense, the right to legal assistance, and protection against self-incrimination.

Another important human rights principle recognized internationally is the prohibition of torture and cruel, inhuman, or degrading treatment. Accused persons must be protected from coercive interrogation methods, custodial violence, and forced confessions. International law emphasizes that any confession obtained through torture or coercion is inadmissible as evidence in a criminal trial. These safeguards are essential to ensure the reliability of evidence and the integrity of the criminal justice system.

In India, the rights of accused persons are reinforced by the Constitution of India, which provides several fundamental rights designed to protect individuals from arbitrary state action. Article 21 guarantees the right to life and personal liberty and provides that no person shall be deprived of these rights except according to the procedure established by law. The Supreme Court has interpreted Article 21 broadly to include the right to a fair trial, the right against custodial torture, and the right to legal aid.<sup>1983</sup>

Article 20 of the Constitution provides additional safeguards for accused persons. Article 20(1)

protects individuals against ex post facto laws, ensuring that no person can be punished for an act that was not an offence at the time it was committed. Article 20(2) incorporates the doctrine of double jeopardy, preventing a person from being tried or punished twice for the same offence. Article 20(3) protects individuals against self-incrimination, stating that no person accused of an offence shall be compelled to be a witness against himself.

Furthermore, Article 22 provides procedural safeguards during arrest and detention. It guarantees that an arrested person must be informed of the grounds of arrest and must be produced before a magistrate within twenty-four hours. It also provides the right to consult and be defended by a legal practitioner of one's choice. These safeguards are essential to prevent arbitrary arrest and unlawful detention.

The protection of the accused is not intended to shield criminals but to ensure fairness in the administration of justice. A fair criminal justice system must balance the interests of the victim, society, and the accused. If the rights of the accused are ignored, the legitimacy of the justice system itself may be undermined.

### Overview of Bharatiya Nyaya Sanhita, 2023

The **Bharatiya Nyaya Sanhita (BNS), 2023** represents a major reform in India's criminal law framework. It replaces the **Indian Penal Code (IPC), 1860**, which had governed criminal offences in India for more than 160 years. The BNS aims to modernize the criminal justice system by removing outdated colonial provisions and introducing new offences that reflect contemporary challenges.<sup>1984</sup>

The Sanhita contains 20 chapters and 358 sections, covering a wide range of offences including crimes against the state, offences against the human body, property offences, and offences relating to public order. The legislation introduces several new offences such as organized crime, terrorism, and mob

<sup>1982</sup> Universal Declaration of Human Rights, 1948, Article 11.

<sup>1983</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>1984</sup> Government of India, *Bharatiya Nyaya Sanhita, 2023*.

lynching, which were not explicitly defined under the earlier penal code.

One of the key objectives of the BNS is to make criminal law more responsive to the needs of modern society. The legislation emphasizes victim-centric justice while also seeking to ensure efficiency and effectiveness in the criminal justice system. In addition, certain obsolete provisions inherited from colonial rule have been removed or replaced.

Another notable feature of the Bharatiya Nyaya Sanhita is the introduction of community service as a form of punishment for minor offences. This reflects a shift towards a reformatory approach to criminal justice rather than a purely punitive one. Community service allows offenders to contribute to society while avoiding unnecessary incarceration, thereby reducing the burden on prisons and promoting rehabilitation.<sup>1985</sup>

Although the BNS primarily defines offences and punishments, its provisions indirectly affect the rights of accused persons because they determine the scope of criminal liability and the nature of penalties imposed upon conviction.

## Human Rights Safeguards under Bharatiya Nyaya Sanhita

### Principle of Fair Punishment

The Bharatiya Nyaya Sanhita incorporates the **principle of proportionality in punishment**, which requires that the severity of punishment correspond to the seriousness of the offence committed. The principle of proportionality is a key element of modern criminal jurisprudence and ensures that punishments are not excessive or arbitrary.<sup>1986</sup>

The introduction of community service as a punishment for minor offences illustrates the reformatory orientation of the new penal code. Instead of imposing imprisonment for minor violations, the law provides alternative

sanctions that allow offenders to reform while maintaining their dignity and social ties. This approach reflects the growing emphasis on restorative justice and human rights in criminal law.<sup>7</sup>

### Removal of Colonial Provisions

Another significant feature of the Bharatiya Nyaya Sanhita is the removal of certain controversial colonial-era provisions. One of the most debated provisions under the IPC was **Section 124A**, which dealt with the offence of sedition. The BNS has replaced this provision with new offences relating to acts that endanger the sovereignty, unity, and integrity of India.

The removal of sedition has been widely interpreted as an attempt to modernize criminal law while addressing concerns about misuse of colonial provisions to suppress dissent. At the same time, the new provisions aim to safeguard national security and public order.<sup>1987</sup>

### Protection Against False Evidence

The Bharatiya Nyaya Sanhita also includes provisions that punish individuals who fabricate false evidence or give false testimony in judicial proceedings. Such acts may lead to the wrongful conviction of innocent persons and undermine the administration of justice.

By criminalizing the fabrication of evidence and perjury, the BNS seeks to protect innocent individuals from being wrongfully prosecuted or convicted. These provisions reinforce the principle that the criminal justice system must prioritize truth and fairness.

### Human Rights Safeguards under Bharatiya Sakshya Adhinyam

#### Protection Against Self-Incrimination

The **Bharatiya Sakshya Adhinyam (BSA), 2023**, which replaces the **Indian Evidence Act of 1872**, continues the fundamental principle that an accused person cannot be compelled to incriminate himself. This rule is closely linked

<sup>1985</sup> Aparna Chandra, *Reforming Criminal Justice in India*, Oxford University Press, 2022.

<sup>1986</sup> Andrew Ashworth, *Principles of Criminal Law*, Oxford University Press, 2018.

<sup>1987</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution*, Oxford University Press, 2016.

with **Article 20(3) of the Constitution of India** and is an essential safeguard against coercive interrogation practices.<sup>1988</sup>

Under this principle, any confession obtained through force, coercion, or undue influence is inadmissible as evidence. The rule ensures that investigative authorities rely on credible and voluntary evidence rather than forced confessions.

### Admissibility of Electronic Evidence

One of the most important innovations of the Bharatiya Sakshya Adhinyam is the recognition of **electronic and digital evidence**. In the modern era, many crimes involve digital communication, electronic transactions, and online activities. Recognizing electronic records as admissible evidence allows courts to consider technological evidence such as emails, digital documents, CCTV footage, and forensic data.

However, the use of digital evidence also raises concerns regarding authenticity, privacy, and the possibility of manipulation. Therefore, strict procedural safeguards must be maintained to ensure the integrity and reliability of electronic evidence.<sup>1989</sup>

### Reliability and Relevance of Evidence

The Bharatiya Sakshya Adhinyam maintains the fundamental principles governing the admissibility of evidence, including **relevance, reliability, and legality**. Courts must ensure that only credible evidence that is legally obtained and relevant to the case is considered during trial.

These evidentiary principles play a crucial role in preventing wrongful convictions and protecting the rights of accused persons.

### Procedural Safeguards for the Accused

Although procedural protections are primarily governed by the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, several safeguards are

closely connected with the rights of the accused under the BNS and BSA.<sup>1990</sup>

### Right to Be Heard

The right to be heard is an essential component of natural justice. In certain situations, courts must provide the accused with an opportunity to present their defense before taking cognizance of an offence. This principle ensures that individuals are not subjected to criminal proceedings without being given a fair chance to explain their position.

### Right to Know the Grounds of Arrest

An arrested person must be informed of the reasons for arrest at the earliest possible opportunity. This safeguard enables the accused to challenge the legality of the arrest and to seek legal remedies such as bail or **habeas corpus**.

### Right to Legal Representation

The right to legal representation is another essential safeguard in criminal proceedings. An accused person has the right to consult and be defended by a lawyer of their choice during interrogation and trial. Legal assistance helps ensure that the accused understands the charges and is able to present an effective defense.<sup>1991</sup>

### Critical Analysis of the New Criminal Laws

Despite the progressive features of the Bharatiya Nyaya Sanhita and Bharatiya Sakshya Adhinyam, several concerns have been raised regarding their potential impact on the human rights of accused persons.<sup>1992</sup>

One concern relates to the expansion of state powers in criminal investigations. Broader definitions of certain offences may increase the risk of arbitrary arrests or prosecutions if not carefully interpreted.<sup>23</sup> Another concern involves the use of digital evidence and surveillance technologies. While such tools can improve investigative efficiency, they also raise privacy

<sup>1988</sup> Constitution of India, Article 20(3).

<sup>1989</sup> Avtar Singh, *Principles of the Law of Evidence*, Central Law Publications, 2022.

<sup>1990</sup> Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>1991</sup> Constitution of India, Article 22

<sup>1992</sup> Law Commission of India, Criminal Justice Reform Reports.

concerns. Without adequate safeguards, digital surveillance may violate the fundamental right to privacy recognized by the Supreme Court. Additionally, India continues to face challenges such as prison overcrowding and prolonged detention of undertrial prisoners. Delays in bail hearings and trial proceedings often result in accused persons remaining in custody for extended periods without conviction.<sup>1993</sup>

### Role of Judiciary in Protecting the Rights of the Accused

The judiciary plays a crucial role in safeguarding the human rights of accused persons. Indian courts have consistently emphasized the importance of procedural fairness and constitutional safeguards in criminal proceedings.<sup>26</sup>

Judicial doctrines such as presumption of innocence, fair trial, and due process guide the interpretation of criminal laws. Courts also ensure that investigative authorities comply with statutory safeguards during arrests, interrogations, and trials.

The Supreme Court has repeatedly held that personal liberty is one of the most valuable rights guaranteed by the Constitution and that any restriction on liberty must strictly comply with legal procedures. Judicial oversight therefore serves as an important safeguard against misuse of state power.

### Conclusion and Suggestion

The enactment of the *Bharatiya Nyaya Sanhita, 2023* and the *Bharatiya Sakshya Adhinyam, 2023* represents a significant shift in India's criminal justice framework by replacing colonial-era statutes such as the *Indian Penal Code, 1860* and the *Indian Evidence Act, 1872*. These new laws aim to modernize criminal law while ensuring a better balance between effective law enforcement and the protection of the fundamental rights of accused persons. The provisions relating to fair investigation, admissibility of electronic evidence, procedural

safeguards, and the presumption of innocence are intended to strengthen transparency and accountability within the justice system.

However, a critical analysis indicates that while the new legal framework introduces several progressive elements, challenges remain in its practical implementation. The protection of human rights of the accused depends not only on statutory provisions but also on the manner in which investigative agencies, prosecutors, and courts interpret and apply these laws. Safeguards such as protection against arbitrary arrest, the right to a fair trial, and the right against self-incrimination must continue to be strictly upheld in line with constitutional guarantees under the *Constitution of India*.

In conclusion, the effectiveness of these reforms will ultimately depend on consistent judicial oversight, proper training of law-enforcement authorities, and a continued commitment to human rights principles within the evolving criminal justice system.

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<sup>1993</sup> National Crime Records Bureau, *Prison Statistics India, 2022*.

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