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# COMPARATIVE ANALYSIS OF THE PRINCIPLE OF PRESUMPTION OF INNOCENCE IN CRIMINAL LAW AND ITS IMPLICATIONS FOR HUMAN RIGHTS AND JUDICIAL ACTIVISM

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## ABSTRACT

The basic rationale behind the presumption of innocence is that no innocent person should be punished unnecessarily. This paper delves into the intricate nexus between justice, human rights, and judicial activism within the framework of the principle of presumption of innocence in Indian criminal law. Through a doctrinal research approach, the study scrutinizes whether the protection of human rights by the presumption of innocence potentially disrupts the seamless application of justice and the proactive role of judicial activism. The research question at the heart of this inquiry is whether the safeguarding of individual rights, enshrined in the presumption of innocence, inadvertently hampers the pursuit of justice and the exercise of judicial activism within the Indian legal system. It critically examines the rationale behind the principle of presumption of innocence which is further substantiated by a comparative analysis between countries following this principle to different extents.

The paper also confronts the potential tensions and challenges that arise in the practical application of the presumption of innocence. Furthermore, it scrutinizes instances where the stringent adherence to this principle may impede the expeditious administration of justice, leading to concerns regarding delays, inefficiencies, and miscarriages of justice.

Drawing upon case studies and legal analysis, this paper navigates through the complex terrain of balancing justice, human rights, and judicial activism within the Indian legal landscape. It sheds light on the intricate dynamics at play and offers insights into potential avenues for reconciling competing interests, enhancing the efficacy of the legal system, and fortifying the symbiotic relationship between justice, human rights, and judicial activism. This paper also delves deep into how the countries that incorporate this principle are different in terms of HR and justice than those that doesn't.

Ultimately, this research contributes to a nuanced understanding of the multifaceted challenges and opportunities inherent in the application of the presumption of innocence in Indian criminal law.

**Keywords:** justice, human rights, judicial activism, innocence, inefficiencies

## **Introduction**

Presumption of innocence in the Indian criminal law is fundamentally derived from the principle of protecting individuals from wrongful convictions. This principle has been reflected and incorporated in various legal systems and international conventions such as the Universal Declaration on Human Rights<sup>1</sup> and European Convention on Human Rights (ECHR) which provides that 'everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law'<sup>2</sup>.

The Indian Constitution implicitly recognizes the presumption of innocence, notably in Article 21<sup>3</sup>, which guarantees the protection of life and personal liberty through the assurance of a fair trial and due process. The prosecution has the burden of proving the accused's guilt, according to Section 101<sup>4</sup> of the CrPC and various other judicial pronouncements further reiterate this principle. This is further supported by India's adherence to international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR). The fact that India ratified these treaties emphasizes its commitment to upholding this principle in accordance with international human rights standards.

The principle of presumption of innocence stands as a beacon of justice within the realm of criminal law, upholding the fundamental human right to a fair trial and protecting individuals from arbitrary deprivation of liberty. However, while the presumption of innocence is integral to the protection of human rights, its strict adherence can sometimes limit the scope for judicial activism. Judicial activism, characterized by proactive judicial interpretation and intervention to address societal injustices, may find itself constrained by the need to respect the rights of the accused and uphold procedural safeguards.

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<sup>1</sup>Universal declaration on human rights § 11(1) (1948).

<sup>2</sup> ECHR § 6(2).

<sup>3</sup> Ind. Const. § 21.

<sup>4</sup> Crpc § 101.

This tension between the preservation of human rights and the exercise of judicial activism underscores the complexities inherent in the criminal justice system. While the presumption of innocence safeguards individual liberties and promotes legal certainty, it also necessitates a delicate balance between the pursuit of justice and the protection of rights. In this context, exploring the interplay between the presumption of innocence, human rights, and judicial activism becomes imperative to understanding the evolving dynamics of the legal landscape.

### **Research Methodology**

This study explores the balance between human rights and judicial activism while incorporating the principle of presumption of innocence. For this purpose, doctrinal research was used. Doctrinal research, as a methodology, offers a systematic approach to analyzing legal principles, statutes, and case law to understand and interpret legal issues. When applied to examining the impact of this principle, it provides a structured framework for assessing the implications of such principles within the legal framework.

Doctrinal research, as a methodological approach, provides a robust framework for assessing the delicate equilibrium between safeguarding human rights and tempering judicial activism within the principle of presumption of innocence. By scrutinizing legal texts, statutes, case law, and scholarly commentary, doctrinal research elucidates the intricate interplay of legal principles and doctrines. This method enables a comprehensive examination of legal precedents, enabling insights into the practical implications of the presumption of innocence on human rights protection and judicial intervention. Moreover, doctrinal research facilitates the identification of gaps, inconsistencies, or conflicts within legal frameworks, thereby informing potential reforms or refinements to optimize the balance between rights and activism.

### **Objectives**

The presumption of innocence, a cornerstone of the criminal justice system, embodies the fundamental principle that individuals are considered innocent until proven guilty beyond a reasonable doubt. However, this principle is not absolute, as certain exceptions exist, justified by considerations of proportionality and necessity. The first objective is to explore the rationale behind this principle and these exceptions while analyzing how the presumption of innocence serves to protect human rights and prevent wrongful convictions.

By placing the burden of proof on the prosecution and requiring proof beyond a reasonable doubt, this principle minimizes the risk of wrongful convictions and miscarriages of justice. Moreover, procedural safeguards such as the right to legal representation and the right to a fair trial bolster the protection of human rights within the legal framework. The second objective is to analyse how this principle incorporates the protection of human rights and the prevention of wrongful convictions

Judicial activism, characterized by proactive judicial intervention to address societal injustices, may be constrained by the need to uphold the rights of the accused and maintain procedural fairness. In cases where the presumption of innocence leads to delays or procedural hurdles, the attainment of justice may be compromised. The next objective concentrated in this paper is to investigate into how this principle negatively impacts the concept of judicial activism and underscores the attainment of justice in a huge number of instances.

A comparative analysis between countries that incorporate the presumption of innocence and those that do not reveals nuanced differences in the protection of human rights and the administration of justice. Countries that adhere to this principle tend to prioritize individual rights protection and procedural fairness, thereby reducing the risk of wrongful convictions. However, the impact on judicial activism and the efficiency of the justice system may vary depending on contextual factors and legal traditions. The final objective of the paper is to provide a comparative analysis between countries that incorporated this principle and the countries that didn't on the basis of both protection of individual human rights as well as on the basis of upholding justice.

## **Research Analysis**

### **A. Rationale behind presumption of innocence**

The rationale behind the presumption of innocence as a cornerstone of the criminal justice system lies in the imperative to safeguard the rights of citizens and ensure that legal proceedings are conducted in a manner that is reasonable, fair, and devoid of arbitrariness. This principle represents a departure from archaic practices such as trial by ordeal, where guilt or innocence was determined through superstitious or unjust means. Instead, the presumption of innocence necessitates that individuals are treated as innocent until proven guilty beyond a reasonable doubt, thereby instilling trust in the fairness and integrity of the legal system.

Central to this rationale is the concept of trust between the state and its citizens. By adopting measures such as the presumption of innocence, the state demonstrates its commitment to protecting the rights of individuals and ensuring that justice is administered impartially. This trust is essential for maintaining social order and cohesion, as it encourages citizens to abide by the law and participate actively in the legal process.

The major notion behind punishment is deterrence whereas some had gone to the level of stating that no limitations can be placed on the ambit of punishment, even allowing the deliberate punishment of the innocent<sup>5</sup>. But this in the contrary may have the opposite effect and instead of deterrence, may induce the individual to commit crimes.

As articulated by Cesare Beccaria, a pioneering figure in the field of criminology, the legitimacy of punishment is contingent upon its proportionality and consistency. Arbitrary or excessive punishment not only fails to deter crime but may also incentivize individuals to engage in criminal behaviour as a means of defiance or retaliation against perceived injustice. Similarly, the absence of the presumption of innocence erodes trust in the legal system, leading to disillusionment and disrespect for the law which further leads to the breaking of law. A decline in public trust in criminal proceedings may result in fewer crimes being reported to the police, witnesses being reluctant to come forward, and requests for the criminal justice system to be changed<sup>6</sup>.

Presuming innocence encourages police to seek exonerating evidence rather than solely focusing on incriminating evidence. Conversely, treating suspects as 'probably guilty' increases the risk of justifying threatening or abusive behaviour, heightening the likelihood of false confessions.<sup>7</sup> Requiring police to treat suspects as innocent mitigates these risks, reducing the likelihood of misconduct and false admissions.

Another major rationale behind this presumption is to uphold the rule of law and to ensure that punishment is only reserved for those whose guilt is clearly established and proved beyond

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<sup>5</sup> Andrew Stumer, *The Presumption of Innocence: Evidential and Human Rights Perspectives*, Hart Publishing 30 (2010).

<sup>6</sup> R Ricciardelli, *Student Attitudes Toward Wrongful Conviction*, 51 *Canadian Journal of Criminology and Criminal Justice* 411, 413 (2009).

<sup>7</sup> See A. Leo et al, *Bringing Reliability Back In: False Confessions and Legal Safeguards in the 21st Century*, 2 *Wisconsin Law Review* 479 (2006).

reasonable doubt.

However, there are instances where this principle may be set aside in favor of other considerations such as public safety, national security, or the prevention of future harm. In such cases, exceptions to the presumption of innocence are justified on the basis of proportionality and necessity.

These exceptions are often enshrined in specific statutes or established through judicial interpretation to address pressing societal concerns. For example, in cases involving serious offenses like terrorism or organized crime, the public interest in maintaining security may outweigh individual rights, leading to a stricter approach to the presumption of innocence. Similarly, preventive detention laws may permit the detention of individuals based on suspicion to prevent potential future harm, albeit with safeguards to prevent abuse of power.

While these exceptions may seem to deviate from the core principles of justice and fairness, they are justified by the need to uphold the rule of law and protect the greater good. In some cases, it may be deemed acceptable for a few innocents to suffer in order to prevent a larger societal harm. This trade-off is made in the interest of maintaining social order, preserving public safety, and upholding the supremacy of law. Any departure from the presumption of innocence must be justified by compelling reasons and legal provisions to prevent abuse of power and protect the rights of the accused.

In essence, while the presumption of innocence remains a fundamental principle of justice, there are occasions where exceptions are deemed necessary to uphold the rule of law and serve the greater public interest.

The principle of presumption of innocence is often viewed through the lens of the gravity and severity of the offense at hand. For offenses carrying stringent punishments, strict adherence to this principle is imperative to uphold individual rights and the rule of law. Failure to do so would amount to a disregard for fundamental rights and the principles of justice<sup>8</sup>.

Conversely, for offenses with less severe penalties, there may be room for some relaxation of this principle. However, this notion presents a paradox when considering that offenses deemed to have greater social harm often carry more severe punishments. In such cases, the argument

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<sup>8</sup> Stumer, *supra* note 3, at 153, 154.

for relaxing the presumption of innocence conflicts with the imperative to protect public interest and maintain societal order.

This juxtaposition underscores the complexity inherent in balancing individual rights with broader societal concerns. While the presumption of innocence serves as a fundamental safeguard against arbitrary detention and wrongful convictions, its application must be carefully calibrated to reflect the gravity of the offense and the overarching goals of the criminal justice system.

### **B. Upholding human rights through the presumption of innocence**

According to Article 11 of the Universal Declaration of Human Rights (UDHR)<sup>9</sup>, everyone who is charged with a crime must be presumed innocent until and unless proven guilty by a court of law. The presumption of innocence serves as a fundamental safeguard for the human rights of individuals within the criminal justice system. By establishing the principle that individuals are considered innocent until proven guilty beyond a reasonable doubt, this presumption acts as a shield against wrongful convictions.

Firstly, the presumption of innocence places the burden of proof squarely on the prosecution, requiring them to present compelling evidence to establish guilt. This ensures that individuals are not subjected to arbitrary or unfounded accusations, safeguarding their right to a fair trial and due process. Moreover, by requiring a high standard of proof, the presumption of innocence helps prevent wrongful convictions, protecting individuals from the grave consequences of being unjustly imprisoned or punished for crimes they did not commit. This aspect of the presumption of innocence is essential for upholding the right to liberty and freedom from arbitrary detention and also prevents police brutality.

Additionally, the presumption of innocence helps mitigate the impact of societal prejudices and biases on the criminal justice process, regardless of their background or circumstances. This guards against discrimination and ensures that justice is administered impartially.

The broader, normative approach to the presumption of innocence prompts a reevaluation of various stages of the criminal justice process. This approach encourages jurors to adopt a critical stance towards the evidence presented, particularly regarding forms of potentially

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<sup>9</sup> Universal Declaration of Human Rights (UDHR), Article 11

problematic evidence associated with wrongful convictions. Traditionally, the presumption of innocence has been confined to the trial phase, leaving accused individuals and those acquitted vulnerable to differential treatment compared to other citizens. However, adopting the presumption of innocence as a practical attitude emphasizes that those accused or suspected of criminality should not be equated with individuals whose guilt has been formally established<sup>10</sup>.

This broader perspective necessitates reforms in pre-trial criminal procedures to ensure that individuals are not unduly prejudiced before the commencement of formal proceedings. During trials, jurors are encouraged to scrutinize evidence rigorously, acknowledging the inherent fallibility of certain types of evidence that may lead to wrongful convictions.

The narrative surrounding the case is influenced by the media, which is frequently biased and sensationalistic. This could jeopardize the accused's right to a fair trial and the assumption of innocence. Media trials have the potential to prematurely stigmatize the accused, making it more difficult for them to get an unbiased verdict based on the evidence given in a court of law<sup>11</sup>. Additionally, post-trial treatment of acquitted individuals should reflect their innocence, safeguarding their rights and dignity despite the initial accusation. Overall, embracing the presumption of innocence as a practical attitude underscores the fundamental principle of fairness in the criminal justice system, protecting the rights of all individuals regardless of their legal status.

### **C. Negative impact on Judicial Activism and justice**

The presumption of innocence, while a fundamental principle of justice, can indeed have negative implications for judicial activism and the administration of justice. One significant drawback is the potential for a higher number of criminals to be acquitted due to the burden of proof resting solely on the prosecution. This can occur even in cases where guilt is apparent, leading to concerns about public safety and the risk posed by repeat offenders.

Furthermore, the disproportionate impact of acquitting many criminals compared to the relatively few innocent individuals not wrongfully convicted presents a significant societal risk.

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<sup>10</sup> Pamela R Ferguson, *The Presumption of Innocence and its Role in the Criminal Process*, Criminal Law Forum  
<http://27.10.1007/s10609-016-9281-8>.

<sup>11</sup> Jaimini Kumar Sahu, *Media Trials and the Erosion of Presumption of Innocence: A Critical Examination of the Indian Criminal Justice System*, 2 IJHRLR (2023).



The emphasis on protecting the rights of the accused, while essential, can sometimes overshadow the broader interests of public safety and the prevention of crime. As a result, the presumption of innocence may inadvertently contribute to an increase in criminal activity and pose challenges for maintaining law and order within society.

The presumption of innocence can impede the concept of judicial activism by placing constraints on the judiciary. When the accused is considered innocent from the outset, judges may feel restricted in their ability to intervene decisively in cases where justice demands proactive measures. This can lead to a perceived lack of judicial assertiveness and responsiveness to pressing social issues, hindering efforts to address systemic injustices and promote meaningful legal reforms.

Additionally, the burden placed on the prosecution to prove guilt beyond a reasonable doubt can be unduly onerous, resulting in delays, inefficiencies, and excessive utilization of resources within the criminal justice system. Prosecutors may face challenges in gathering sufficient evidence to meet the high evidentiary threshold required for conviction, leading to prolonged legal proceedings and mounting costs for both the state and the accused.

The rigorous evidentiary standards required to secure a conviction often result in prolonged legal proceedings, as prosecutors strive to gather sufficient evidence to meet the burden of proof. This can lead to case backlogs, court congestion, and a strain on judicial resources, ultimately impeding the timely administration of justice.

Moreover, the presumption of innocence can create challenges for victims of crime, particularly in cases where the accused is acquitted despite compelling evidence of guilt. Victims may feel a sense of injustice and frustration if they perceive that the legal system prioritizes the rights of the accused over their own rights to justice and closure. This can erode trust in the legal system and deter individuals from coming forward to report crimes or participate in legal proceedings.

The allegorical depiction of justice, often symbolized by a woman holding balanced scales, reflects the principle of neutrality in the criminal justice system. According to this principle, at the commencement of a trial, fact-finders are expected to approach the prosecution and defense positions with impartiality, treating them as evenly balanced scales. The standard of proof,

"beyond a reasonable doubt," dictates that conviction can only occur when the evidence overwhelmingly favors the prosecution, leaving no reasonable doubt of the accused's guilt<sup>12</sup>.

However, an alternative perspective suggests that the presumption of innocence requires a departure from this notion of neutrality. Instead, the starting point of the trial should tip the scales in favor of the accused. This means that jurors begin with the presumption that the accused is not guilty and it is the prosecution's burden to overcome this presumption with compelling evidence<sup>13</sup>.

#### **D. Comparative Analysis**

The principle of presumption of innocence is widely recognized as a fundamental aspect of fair trial rights and is enshrined in various international legal instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. As such, nearly all countries adhere to some form of the presumption of innocence within their legal systems. However, the extent to which this principle is implemented and upheld can vary significantly.

While it's rare for a country to explicitly reject the principle of presumption of innocence, there are instances where legal systems may not fully adhere to its principles in practice. Some countries have been criticized for having legal frameworks that fail to provide robust protections for defendants' rights or where procedural safeguards are weaker, potentially undermining the presumption of innocence.

India's criminal code acknowledges the presumption of innocence. As a result, there are more acquittals in terms of criminal prosecution. It is evident that the prosecution has the burden of proof under the majority of criminal law laws. This illustrates the underlying idea. This idea is likewise reflected in the UK, where it is required to disprove all defenses and establish guilt beyond a reasonable doubt<sup>14</sup>. Due to their common law systems, each of these nations adhere to the same principles. This idea is also applied in Australia.

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<sup>12</sup> Ferguson, *supra* note 9.

<sup>13</sup> *Id.*

<sup>14</sup> Anthony Gray, *Presumption of Innocence in Peril: A Comparative Critical Perspective*, Lexington Books 75 (2017).

This is in opposition to the US's guiding philosophy. While the US follows the preponderance of evidence policy, which places the burden of persuasion of affirmative defenses on the accused<sup>15</sup>, India places the burden of proof on the prosecution, meaning that even though the presumption of innocence is recognized, it is not followed to the same extent. The presumption of innocence is a concept that is formally recognized laws in China and is embodied in Article 48 of the People's Republic of China Constitution. The degree to which this idea is adhered to in reality, nevertheless, may vary. A number of issues with China's legal system have been brought up for criticism, such as its lack of transparency, accessibility to legal counsel, and political meddling in court cases. Likewise, while Canada does adhere to the presumption of innocent premise, it does so to a lesser degree. the court in the case of *R V Oakes*<sup>16</sup> noted this principle as a hollowed principle.

The data on the number of convictions and acquittals in various nations can be used to support this further. In India, 57% of convictions for offenses under the IPC occurred in 2021<sup>17</sup>. In the UK, the defendants were found guilty of a total of 11,71,640, and the person found guilty—apart from those sentenced to a suspended sentence—was 10,04,688. This means that, in 2023, the conviction rate was 85.7%<sup>18</sup>. In Australia, there were 5,33,971 finalized defendants, of whom 4,66,453 were found guilty, making the conviction rate stand at 87.3%<sup>19</sup>.

In US district federal courts, the conviction rate in 2020 was 92.6%, meaning that two out of every three charged were found guilty<sup>20</sup>. In China, 99.93% of convictions occurred in 2014<sup>21</sup>. According to the report presented by the Supreme Procuratorate (SPP) during the yearly National People's Congress in March 2023, there has been a 12% rise in prosecutions but a 7.1% decline in arrests over the previous five years<sup>22</sup>. This demonstrates China's high conviction rates. In Canada, only 1,965 out of 2,15,113 cases resulted in an acquittal rate of

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<sup>15</sup> *Id.*

<sup>16</sup> *R v. Oakes*, [1986] 1 SCR 103 (Supreme Ct. Canada 1986).

<sup>17</sup> National Crime Records Bureau <http://ncrb.gov.in>.

<sup>18</sup> *Justice Data*, Criminal justice system statistics (May 1, 2024), <https://data.justice.gov.uk/cjs-statistics>.

<sup>19</sup> *Criminal Courts, Australia, 2022-23 financial year*, Australian Bureau of Statistics (Mar. 15, 2024), <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/latest-release>.

<sup>20</sup> *Bureau of Justice Statistics*, Federal Justice Statistics (May 24, 2024), <https://bjs.ojp.gov/library/publications/federal-justice-statistics-2020>.

<sup>21</sup> *China scored 99.9 percent conviction rate last year*, The Washington Post.

<sup>22</sup> *Work Report of the Supreme People's Procuratorate (First Session of the 14th National People's Congress Zhang Jun*, The Supreme People's Procuratorate of the People's Republic of China (Mar. 7, 2023), <https://en.spp.gov.cn/workreport.html>.

0.009%, despite the country's 47% conviction rate in 2021–2022, which was largely attributable to cases being withdrawn or stayed<sup>23</sup>.

This indicates that in nations like India, the UK, and Australia, where the principle of presumption of innocence is upheld, according to my own opinion, both conviction and acquittal rates are maintained at reasonable levels. The conviction rate strikes a balance, ensuring that many guilty individuals are rightfully convicted without compromising the integrity of justice or the exercise of judicial activism. Simultaneously, this framework protects individual rights and upholds human rights standards.

In contrast, in countries such as the US, China, and Canada, where conviction rates soar above 90%, the corresponding low and seemingly arbitrary acquittal rates flagrantly disregard individual human rights. This excessive emphasis on conviction undermines the rule of law and perpetuates systemic injustice, ultimately denying equitable access to justice for all.

## **Conclusion**

The overall paper underscores the imperative of adhering to the principle of presumption of innocence. It convincingly establishes the rationale behind this principle, emphasizing its role in safeguarding against arbitrary and wrongful convictions while promoting the preservation of human rights. Although exceptions to this principle exist, they are limited and justified by the necessity of preventing greater harm.

The paper also critically examines whether the presumption of innocence may hinder judicial activism and justice by constraining the judiciary's role. However, through a comparative analysis across nations with varying degrees of adherence to this principle, it becomes evident that the presumption of innocence is essential for upholding justice and safeguarding individual rights and liberties.

In contrast, it is opined that the countries that deviate from this principle are shown to fall short in delivering justice, as evidenced by disproportionately high conviction rates and arbitrary acquittal rates. Thus, the paper highlights the indispensable nature of the presumption of

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<sup>23</sup> *Adult criminal courts, number of cases and charges by type of decision*, Statistics Canada (Sept. 27, 2023), <https://en.spp.gov.cn/workreport.html>.

innocence in ensuring fair and equitable legal systems while averting the erosion of fundamental rights and the rule of law.