



## Human rights and international laws on presumption of guilt

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### Abstract

The presumption of innocence is based on the fundamental idea that no innocent person should be subjected to needless punishment. This essay explores the complex relationship between justice, human rights, and judicial activism in the context of Indian criminal law's presumption of innocence principle. The study examines whether the presumption of innocence's protection of human rights could interfere with the smooth administration of justice and the proactive function of judicial activism using a doctrinal research approach. The central research question of this investigation is whether the Indian legal system's pursuit of justice and judicial activism are unintentionally hampered by the protection of individual rights, which are embodied in the presumption of innocence. It critically analyses the justification for the presumption of innocence principle, which is further supported by a comparison of nations that adhere to it to varying degrees.

This paper traverses the intricate terrain of striking a balance between justice, human rights, and judicial activism within the Indian legal system by drawing on case studies and legal analysis. It clarifies the complex relationships at work and provides information about possible paths to balancing conflicting interests, improving the effectiveness of the legal system, and strengthening the mutually beneficial relationship between justice, human rights, and judicial activism. This essay also explores the ways in which nations that apply this principle differ from those that do not in terms of justice and human rights.

**Keywords:** Presumptions, guilt, burden of proof, justice, human rights, judicial activism, innocence, inefficiencies

### Introduction

In Indian criminal law, the presumption of innocence is essentially based on the idea that people should not be wrongfully convicted. A number of legal frameworks and international agreements, including the European Convention on Human Rights (ECHR) and the Universal Declaration of Human Rights, have incorporated this idea, which states that "everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law."

The presumption of innocence is implicitly recognised by the Indian Constitution, particularly in Article 21, which ensures the protection of life and individual liberty by guaranteeing due process and a fair trial. Section 101 of the CrPC states that it is the prosecution's responsibility to establish the accused's guilt, and numerous other court rulings support this idea. India's compliance with international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), lends additional credence to this. India's ratification of these treaties demonstrates its dedication to respecting this principle in line with global human rights norms.

In criminal law, the presumption of innocence principle is a guiding light of justice, defending the basic human right to a fair trial and shielding people from unjustified deprivation of their freedom. Even though the presumption of innocence is essential to safeguarding human rights, judicial activism may occasionally be constrained by its rigorous observance. The need to preserve procedural safeguards and respect the rights of the accused may place restrictions on judicial activism, which is defined by proactive judicial interpretation and intervention to address societal injustices. The conflict between upholding human rights and engaging in judicial activism highlights the intricacies of the criminal justice system. The presumption of innocence requires a

careful balance between the pursuit of justice and the defence of rights, even though it protects individual liberties and advances legal certainty. Examining how the presumption of innocence, human rights, and judicial activism interact in this situation is crucial to comprehending how the legal system is changing.

### Rationale Behind Presumption of Innocence

As a fundamental component of the criminal justice system, the presumption of innocence is justified by the need to protect citizens' rights and guarantee that court cases are handled in a fair, reasonable, and non-arbitrary manner. This idea marks a break from antiquated procedures like trial by ordeal, in which guilt or innocence was established by unfair or superstitious methods. Rather, in order to foster confidence in the justice system's fairness and integrity, the presumption of innocence requires that people be presumed innocent until proven guilty beyond a reasonable doubt.

The idea of trust between the state and its people is fundamental to this argument. The state exhibits its dedication to upholding individual rights and guaranteeing the impartial administration of justice by enacting laws like the presumption of innocence. Because it motivates people to follow the law and take an active role in the legal system, this trust is crucial for preserving social order and cohesiveness.

The main concept behind punishment is deterrence, although some have even gone so far as to say that the scope of punishment cannot be restricted, even permitting the intentional punishment of innocent people. On the other hand, this might have the opposite effect and encourage criminal activity rather than deterring it.

According to Cesare Beccaria, a trailblazing criminologist, the consistency and proportionality of punishment are essential to its legitimacy. In addition to failing to deter crime, arbitrary or harsh punishment can encourage criminal

activity as a form of rebellion or retaliation against perceived injustice. In a similar vein, the loss of the presumption of innocence damages public confidence in the legal system, which in turn causes disenchantment and disdain for the law, both of which contribute to legal violations. Witnesses may be reluctant to come forward, fewer crimes may be reported to the police, and calls for changes to the criminal justice system may arise from a drop in public confidence in criminal proceedings.

By assuming innocence, police are encouraged to look for exonerating evidence instead of just incriminating evidence. Treatment of suspects as 'probably guilty', on the other hand, raises the possibility of false confessions by providing an excuse for abusive or threatening behaviour. These risks are lessened by requiring police to treat suspects as innocent, which lowers the possibility of misconduct and false admissions.

Upholding the rule of law and making sure that punishment is only meted out to those whose guilt is amply demonstrated and proven beyond a reasonable doubt are two more important justifications for this presumption.

This principle, however, may occasionally be disregarded in favour of other factors like national security, public safety, or averting further harm. In these situations, proportionality and necessity serve as justifications for deviations from the presumption of innocence.

In order to address urgent societal issues, these exceptions are frequently codified in particular statutes or created through judicial interpretation. For instance, the public interest in preserving security may take precedence over individual rights in situations involving serious crimes like organised crime or terrorism, which could result in a more stringent application of the presumption of innocence. In a similar vein, laws pertaining to preventive detention may allow the detention of people on suspicion in order to avert possible future harm, provided that measures are taken to guard against abuse of authority.

These exceptions are justified by the need to preserve the rule of law and safeguard the greater good, even though they may appear to depart from the fundamental ideas of justice and fairness. In certain situations, a small number of innocent people's suffering might be justified in order to stop a greater harm to society. The preservation of public safety, social order, and the rule of law are the reasons behind this trade-off. To avoid abuse of authority and safeguard the rights of the accused, any deviation from the presumption of innocence must be supported by strong arguments and legal requirements.

Essentially, even though the presumption of innocence is still a cornerstone of justice, there are times when it is thought that exceptions are required to protect the rule of law and further the interests of the general public.

The seriousness and seriousness of the offence at hand are frequently taken into consideration when evaluating the presumption of innocence principle. Strict adherence to this principle is necessary to protect individual rights and the rule of law for offences carrying severe penalties. Ignoring fundamental rights and justice principles would be the result of not doing this.

On the other hand, this rule might be somewhat loosened for crimes carrying less severe punishments. This idea, however, is contradicted by the fact that crimes that are thought to cause more social harm are frequently punished with harsher penalties. In these situations, the need to

uphold social order and safeguard the public interest clashes with the case for easing the presumption of innocence.

This comparison highlights how difficult it is to strike a balance between people's rights and larger social issues. The application of the presumption of innocence must be carefully calibrated to reflect the seriousness of the offence and the overall objectives of the criminal justice system, even though it is a fundamental safeguard against arbitrary detention and wrongful convictions.

### **Using the Presumption of Innocence to Uphold Human Rights**

Every person accused of a crime must be presumed innocent until and unless proven guilty by a court of law, as stated in Article 11 of the Universal Declaration of Human Rights (UDHR). One of the most important protections for people's human rights in the criminal justice system is the presumption of innocence. This presumption serves as a safeguard against erroneous convictions by establishing the idea that people are presumed innocent until proven guilty beyond a reasonable doubt.

First of all, the prosecution bears the burden of proof because of the presumption of innocence, which means they must provide strong evidence to prove guilt. This protects people's right to a fair trial and due process by ensuring they are not the target of baseless or arbitrary accusations. Furthermore, the presumption of innocence shields people from the serious repercussions of being wrongfully imprisoned or punished for crimes they did not commit by requiring a high standard of proof, which helps prevent wrongful convictions. In addition to preventing police brutality, this component of the presumption of innocence is crucial for protecting the right to liberty and freedom from arbitrary detention.

Regardless of their circumstances or background, the presumption of innocence also lessens the negative effects of societal biases and prejudices on the criminal justice system. This prevents discrimination and guarantees the impartial administration of justice.

Different phases of the criminal justice process are reevaluated in light of the presumption of innocence's broader, normative approach. This method encourages jurors to view the evidence critically, especially when it comes to types of potentially problematic evidence linked to wrongful convictions. The presumption of innocence has historically only applied during the trial stage, making both those who are accused and those who are found not guilty susceptible to different treatment than other citizens. Adopting the presumption of innocence as a pragmatic stance, however, highlights the fact that people who are accused or suspected of committing crimes should not be compared to those whose guilt has been officially proven.

To guarantee that people are not unduly prejudiced prior to the start of formal proceedings, this broader perspective calls for reforms in pre-trial criminal procedures. Jurors are urged to carefully consider the evidence during trials, understanding that some forms of evidence are inherently flawed and could result in erroneous convictions.

The media, which is usually sensationalistic and biased, shapes the story around the case. The presumption of innocence and the accused's right to a fair trial may be in danger because of this. The accused may be prematurely stigmatised by media trials, which would make it more difficult for them to receive an objective verdict based on

the evidence presented in a court of law. The way acquitted people are treated after a trial should also reflect their innocence, protecting their rights and dignity in spite of the original charge. All things considered, adopting the presumption of innocence as a pragmatic stance upholds the core idea of justice in the criminal justice system, defending the rights of every person irrespective of their legal situation.

### **International Human Rights and Presumption of Innocence**

Numerous international legal documents, such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, uphold the presumption of innocence, which is widely acknowledged as a basic component of the right to a fair trial. As a result, the presumption of innocence is upheld in some capacity by the legal systems of almost every nation. The degree to which this principle is applied and maintained, however, can differ greatly.

The presumption of innocence is rarely explicitly rejected by a nation, but there are some situations in which legal systems may not fully implement its tenets. Some nations have come under fire for having legal systems that either lack strong protections for the rights of defendants or have lax procedural safeguards, which could compromise the presumption of innocence.

The presumption of innocence is recognised by the Indian criminal code. Consequently, the number of acquittals in criminal prosecutions has increased. It is clear that under most criminal law statutes, the burden of proof rests with the prosecution. This exemplifies the fundamental concept. In the UK, where it is necessary to prove guilt beyond a reasonable doubt and refute all defences, this concept is also mirrored. Each of these countries follows the same principles because of their common law systems. Australia also uses this concept.

This is contrary to the guiding philosophy of the United States. Although the presumption of innocence is acknowledged, it is not as strictly enforced in India as it is in the US, which adheres to the preponderance of evidence policy, which places the burden of proof on the prosecution as opposed to the accused in the case of affirmative defences. Article 48 of the Constitution of the People's Republic of China embodies the presumption of innocence, which is a legally recognised concept in China. However, the extent to which this concept is actually followed may differ. China's legal system has been criticised for a number of reasons, including its lack of openness, difficulty in obtaining legal representation, and political interference in court proceedings. Similarly, although Canada does follow the presumption of innocence, it does so to a lesser extent. In the *R v. Oakes* case, the court observed that this principle was hollowed out.

This can be further supported by statistics on the number of convictions and acquittals in different countries. In 2021, 57% of convictions for IPC offences in India took place. The defendants in the UK were found guilty of 11,71,640 in total, and 10,04,688 people were found guilty in addition to those given suspended sentences. This indicates that the conviction rate was 85.7% in 2023. In Australia, 4,66,453 of the 5,33,971 finalised defendants were found guilty, yielding an 87.3% conviction rate.

In 2020, two out of every three defendants were found guilty in US district federal courts, with a conviction rate of 92.6%. 2014 saw 99.93% of convictions in China. The Supreme Procuratorate (SPP) reported at the annual National People's Congress in March 2023 that, over the past five years, there has been a 7.1% decrease in arrests but a 12% increase in prosecutions. This illustrates the high conviction rates in China. Despite Canada's 47% conviction rate in 2021–2022, which was mostly due to cases being withdrawn or stayed, only 1,965 out of 2,15,113 cases had an acquittal rate of 0.009%.

This suggests that conviction and acquittal rates are kept at acceptable levels in countries like India, the UK, and Australia, where the presumption of innocence is respected, in my opinion. The conviction rate maintains the integrity of justice and the practice of judicial activism while guaranteeing that a large number of guilty people are duly convicted. This framework respects human rights norms and safeguards individual rights at the same time.

On the other hand, the low and apparently random acquittal rates in nations like the US, China, and Canada, where conviction rates soar above 90%, blatantly disregard individual human rights. In the end, this overemphasis on conviction denies everyone fair access to justice by undermining the rule of law and sustaining structural injustice.

### **Fundamental right**

In contemporary democracies, constitutional monarchies, and republics, this right is deemed significant enough that numerous legal codes and constitutions expressly mention it:

According to Article 11 of the Universal Declaration of Human Rights, "Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

According to Article 14, Paragraph 2 of the International Covenant on Civil and Political Rights, "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." Additionally, Article 66 of the Rome Statute of the International Criminal Court explicitly regulates the presumption of innocence, stating that "Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law."

According to Article 6.2 of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, "Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law." All members of the Council of Europe are bound by this convention, which was adopted by treaty. This naturally refers to EU members, as all member states of the EU are also members of the Council of Europe at the moment (and in any future expansion of the EU). However, Article 48 of the European Union's Charter of Fundamental Rights reiterates this claim exactly.

Section 6 of the Human Rights Act 1998, which attempts to incorporate the rights found in the previously mentioned European Convention on Human Rights, provides for the presumption of innocence in the United Kingdom.

The Inter-American Court emphasises that "the presumption of innocence is a guiding principle in criminal trials and a foundational standard for the assessment of the evidence" in

light of Articles 8 (1) and 8 (2) (right to a fair trial) and Article 1 (1) (obligation to respect and ensure rights without discrimination) of the American Convention on Human Rights. To disprove the presumption of innocence and produce certainty regarding criminal responsibility, such an evaluation needs to be logical, impartial, and objective. The Court reaffirmed that the burden of proof rests with the State in criminal proceedings. The accused is not required to present evidence that exonerates him or to affirmatively prove his innocence. The defence has the right to present counterevidence or exculpatory evidence to refute the accusations, which the accusing party is then responsible for proving.

According to Brazil's Constitution, "no one will be considered guilty until the final criminal sentence is reached" (article 5th, item LVII).

"Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal," according to section 11(d) of the Canadian Charter of Rights and Freedoms.

Title II, Chapter 1, Article 29 of the Colombian constitution declares that "Every person is presumed innocent until proven guilty according to the law."

In France, "Any man being presumed innocent until he has been declared guilty..." is the opening line of Article 9 of the Declaration of the Rights of Man and of the Citizen of 1789, which is enforceable as constitutional law. The jurors' oath reiterates the preliminary article of the Code of Criminal Procedure, which states that "any person suspected or prosecuted is presumed innocent for as long as their guilt has not been established" (article 304; take note that only the most serious crimes are tried by jury in France). It's a common misperception that the accused is presumed guilty until proven innocent under French law.

"Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court," according to Article 37 of the Islamic Republic of Iran's Constitution.

Article 27 of the Italian Constitution's second paragraph declares that "A defendant shall be considered not guilty until a final sentence has been passed."

According to Romania's Constitution, "any person shall be presumed innocent until found guilty by a final decision of the court" (article 23).

"Everyone charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the federal law and has been established by the valid sentence of a court of law," according to article 49 of the Russian Constitution. It further states that "The defendant shall not be obliged to prove his or her innocence" as "Any reasonable doubt shall be interpreted in favour of the defendant"

Section 35(3)(h) of the Bill of Rights in the South African Constitution declares: "Every accused person has a right to a fair trial, which includes the right to be presumed innocent, to remain silent, and not to testify during the proceedings." It is commonly believed that the Fifth, Sixth, and Fourteenth Amendments establish the presumption of innocence, even though the US Constitution does not state this explicitly. The presumption of innocence for those accused of crimes was established in the 1895 case of *Coffin v. United States*. Refer to *in re Winship* as well.

New Zealand's New Zealand Bill of Rights 1990 states in section 25(c) that "Everyone who is charged with an offence has the following minimum rights in relation to the determination of the charge: (c) the legal right to presume innocence until proven guilty."

Directive (EU) 2016/343 of the European Parliament and of the Council of the 9th March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (Directive) provides additional protection for the presumption of innocence in the European Union beyond the Charter of Fundamental Rights. According to Article 3, Member States are required to guarantee that suspects and accused individuals are presumed innocent until proven guilty by law. Article 1 of the directive outlines its purpose. The goal is to establish common minimum standards pertaining to: (a) specific elements of the presumption of innocence in criminal proceedings; and (b) the right to attend the criminal trial.

### Canada

The presumption of innocence has occasionally been strengthened under Canadian law. Previously, the Criminal Code had a number of provisions that required the accused to prove the facts of their defence to a balance of probabilities, rather than the Crown having to prove the defence beyond a reasonable doubt, in order to establish a defence against a particular offence. This implied that even in cases where there was a reasonable doubt about an accused person's guilt, they could still be found guilty. The Canadian Charter of Rights and Freedoms' presumption of innocence clause has been found to be violated in a number of cases by different reverse onus clauses. In their place were processes where the accused only needed to show that the proposed defence had "air of reality" before the onus shifted to the Crown to refute the defence.

In December 2018, Bill C-51, An Act to amend the Department of Justice Act and the Criminal Code and to make consequential amendments to another Act, was granted royal assent. In order to prevent more Charter challenges, it, among other things, removed a number of reverse onus clauses from the Criminal Code, some of which had already been ruled unconstitutional and others preemptively.

### Conclusion

The necessity of upholding the presumption of innocence is emphasised throughout the entire paper. It explains the reasoning behind this principle in a convincing manner, highlighting how it protects against erroneous and arbitrary convictions while advancing the protection of human rights. There are some exceptions to this rule, but they are few and supported by the need to avoid more serious harm.

The presumption of innocence's potential to limit the judiciary's role and impede judicial activism and justice is also critically examined in this paper. Nonetheless, it is clear from a comparative study of countries with differing levels of adherence to this principle that maintaining justice and defending individual rights and liberties depend on the presumption of innocence.

On the other hand, it is believed that nations that depart from this principle fail to provide justice, as demonstrated by their arbitrary acquittal rates and disproportionately high conviction rates. In order to maintain just and equitable

legal systems and prevent the degradation of fundamental rights and the rule of law, the paper emphasises the importance of the presumption of innocence.

## References

1. Kirschenbaum A. Double Jeopardy and Entrapment in Jewish Imam Nawawi. An-Nawawi's Forty Hadith (Second Edition English Translation by Ezzedin Ibrahim). Damascus: Holy Koran Pub. House, Hadith, 1977, 33.
2. Stumer A. The Presumption of Innocence: Evidential and Human Rights Perspectives. Hart Publishing, 2010, 30.
3. Gray A. Presumption of Innocence in Peril: A Comparative Critical Perspective. Lexington Books, 2017, 75.
4. Constitution of Romania, Article 23. Available from: [http://www.cdep.ro/pls/dic/site.page?den=act2\\_1&par1=2#t2c2s0a23](http://www.cdep.ro/pls/dic/site.page?den=act2_1&par1=2#t2c2s0a23)
5. Pennington K. Innocent Until Proven Guilty: The Origins of a Legal Maxim. In: Cortese E. (3 Volumes). Roma: Il Cigno Galileo Galilei Edizioni, 2001.
6. Sahu JK. Media Trials and the Erosion of Presumption of Innocence: A Critical Examination of the Indian Criminal Justice System. IJHRLR, 2023, 2.
7. Moore C. The Law Society of Upper Canada and Ontario's lawyers, 1797–1997. Toronto: University of Toronto Press, 1997. ISBN: 0-8020-4127-2.
8. Mueller CB, Kirkpatrick LC. Evidence; 4th ed. Aspen (Wolters Kluwer), 2009. ISBN: 978-0-7355-7968-2, 133–34.
9. European Union Agency for Fundamental Rights. National Constitutional Law Related to Article 48 – Presumption of Innocence and Right to Defence. Available from: [https://archive.today/20120711025000/http://infoportal.fra.europa.eu/InfoPortal/infobaseShowContent.do?btnCat\\_320&btnCountryBread\\_189](https://archive.today/20120711025000/http://infoportal.fra.europa.eu/InfoPortal/infobaseShowContent.do?btnCat_320&btnCountryBread_189)
10. Ferguson PR. The Presumption of Innocence and its Role in the Criminal Process. Criminal Law Forum. Available from: <http://27.10.1007/s10609-016-9281-8>
11. Ricciardelli R. Student Attitudes Toward Wrongful Conviction. Can J Criminol Crim Justice, 2009;51:411–3.
12. Universal Declaration of Human Rights (UDHR), Article 11.