

(JOINT JURIST)

e-ISSN -3139-6186

[NATIONAL-LEVEL | PEER-REVIEWED | OPEN-ACCESS LEGAL JOURNAL]

/ VOLUME 1 | ISSUE 3 | (AUGUST - SEPTEMBER 2026)

ABOUT THE JOURNAL

“Joint Jurist” is an online legal platform and a national publication which is aimed at spreading online legal education, bridging the gap between academic research and litigation expertise among the legal audience. It was introduced in early 2026. It is an independent project, started by its founder and does not receive any funding from any person or organisation or body or government as the case maybe.

It is a '*Dream Project*' of **Mr. Suraj Shandil** (*Advocate*) (*Founder-CEO-Editor-in-Chief & Owner*). We operate on a Double-Blind Peer-Review model, ensuring that every published work meets the highest standards of original scholarship, zero plagiarism, and academic integrity. Our platform is dedicated to providing an open-access environment for legal professionals, scholars, and students to contribute to the evolving legal discourse.

EDITORIAL & ADVISORY BOARD

The Joint Jurist Journal is guided by a distinguished panel of legal luminaries and academicians committed to fostering excellence in legal scholarship.

- **Advocate Suraj Shandil**
- **(Dr.) Seema Gupta**
- **(Dr.) Mohd Rafiq**
- **(Dr.) Harshita Thalwal**
- **Ms. Sabrina Bath**
- **Ms. Soumya Sharma**
- **Mrs. Shivani Kumari**
- **(Dr.) Vanita Sharma**

© 2026 Joint Jurist (All Rights Reserved) e-ISSN -3139-6186

No part of this publication may be reproduced without prior written permission, except for educational purposes.

- **Mr. Vineet Kumar**
- **Ms. Sunayana**

NAME	DESIGNATION	INSTITUTION/AFFILIATION
Advocate Suraj Shandil	Founder, CEO & Editor-in-Chief	High Court of Himachal Pradesh
Prof. (Dr.) Seema Gupta	Editorial Board Member	Associate Professor / Chandigarh University (CU)
Prof. (Dr.) Mohd. Rafiq Dar	Editorial Board Member	Associate Professor/Lovely Professional University (LPU)
(Dr.) Harshita Thalwal	Editorial Board Member	Associate Professor & HOD, Chandigarh University(CU)
Asst. Prof. Ms. Somya Sharma	Editorial Board Member	Professor of law & Ph.D. Scholar/ Shoolini University
Asst. Prof. Ms. Sabrina Bath	Editorial Board Member	Assistant Professor & Ph.D. Scholar/Chandigarh University (CU)
Asst. Prof. Mrs. Shivani Kumari	Editorial Board Member	Assistant Professor & Ph.D. Scholar/ DDM Sai Law College Himachal Pradesh
Prof. (Dr.) Vanita Sharma	Editorial Board Member	Associate Professor / Chandigarh University (CU)

Asst. Prof. Mr. Vineet Kumar	Editorial Board Member	Professor of law / Shoolini University
Asst. Prof. Ms. Sunayana	Editorial Board Member	Assistant Professor & Ph.D. Scholar/ Himachal Pradesh National Law University Shimla



**THE PARALLEL PENAL STATE: A CRITICAL DOCTRINAL INQUIRY INTO THE
"NORMALISATION OF THE EXCEPTION," REVERSE BURDEN OF PROOF, AND
THE EROSION OF THE PRESUMPTION OF INNOCENCE UNDER THE *BHARATIYA*
NYAYA SANHITA (2023) AND SPECIAL CRIMINAL STATUTES IN INDIA**

(RESEARCH PAPER)

AUTHOR:

SAKSHI SHARMA

LL.M RESEARCH SCHOLAR

HIMACHAL PRADESH

NATIONAL LAW UNIVERSITY SHIMLA

Abstract

The edifice of post-colonial constitutional criminal jurisprudence rests upon what Viscount Sankey famously termed the "*golden thread*" of criminal law: the presumption of innocence (*ei incumbit probatio qui dicit, non qui negat*) and the sovereign rule that bail is the norm while pre-trial incarceration is the exception. Over the past three decades, however, Indian criminal law has witnessed a quiet structural inversion through the proliferation of "Special Criminal Statutes" -most notably the *Unlawful Activities (Prevention) Act, 1967* (UAPA), the *Prevention of Money Laundering Act, 2002* (PMLA), and the *Narcotic Drugs and Psychotropic Substances Act, 1985* (NDPS). Historically justified as extraordinary, temporary measures to combat existential threats to national security or economic sovereignty, these regimes introduced two radical departures from classical penal theory: statutory **Reverse Onus Clauses** (presuming culpable mental state until disproved by the accused) and **Twin-Condition Bail Bars** (requiring an accused to establish prima facie innocence at the threshold of bail). With the enactment of the **Bharatiya Nyaya Sanhita (BNS), 2023** and the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, this exceptional jurisprudence has crossed a historic rubicon. By importing the definitions of "Organised Crime" (**Section 111 BNS**) and "Terrorist Act" (**Section 113 BNS**) directly into the general penal code, and authorizing the pre-conviction attachment and forfeiture of property without the stringent procedural safeguards of special tribunals (**Section 107 BNSS**), the legislature has permanently embedded the "state of exception" into ordinary everyday policing. This research paper conducts an original doctrinal critique of this **Parallel Penal State**, analyzing the friction between statutory reverse burdens, the administrative discretion vested in Superintendents of Police under Section 113(7) BNS, and the Supreme Court's evolving Article 21 jurisprudence from *Noor Aga* and *Vijay Madanlal Choudhary* to *KA Najeeb* and *Jalaluddin Khan* (2024).

Keywords: *Special Criminal Jurisprudence, Presumption of Innocence, Reverse Burden of Proof, Section 111 & Section 113 Bharatiya Nyaya Sanhita, Section 107 BNSS Property Attachment, Twin Conditions of Bail, PMLA and UAPA Parallelism, Article 21 Due Process.*

1. Introduction: The "Normalisation of the Exception" in Criminal Law

In classical constitutional theory, a sharp boundary separates the **Ordinary Penal Law** from the **Emergency or Special Penal Law**. Ordinary criminal law-historically governed by the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872 (IEA)-is designed on the premise of radical asymmetry between the all-powerful State and the solitary citizen. Because the State commands the police machinery, the forensic laboratories, and the public treasury, the law places the entire evidentiary burden of proving every ingredient of an offence (*actus reus* and *mens rea*) "**beyond reasonable doubt**" upon the prosecution. Until that burden is discharged at the culmination of a fair trial, the accused remains cloaked in the constitutional presumption of innocence.

Conversely, **Special Criminal Statutes**-such as the *Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA)*, the *Prevention of Terrorism Act, 2002 (POTA)*, the *Maharashtra Control of Organised Crime Act, 1999 (MCOCA)*, the *Unlawful Activities (Prevention) Act, 1967 (UAPA)*, and the *Prevention of Money Laundering Act, 2002 (PMLA)*-were enacted as surgical deviations from this baseline. Legislatures reasoned that transnational narco-terror syndicates and complex money-laundering webs operate through clandestine conspiracies where traditional ocular evidence is impossible to obtain. Consequently, these special statutes diluted procedural protections, elevated police confessions or investigative statements (such as Section 50 PMLA statements) into substantive evidence, inverted the burden of proof onto the defendant, and rendered regular bail virtually unattainable.

What makes the transition to the **Bharatiya Nyaya Sanhita (BNS), 2023**, the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, and the **Bharatiya Sakshya Adhiniyam (BSA), 2023** a watershed moment for advanced criminal law scholarship is what Italian legal philosopher Giorgio Agamben termed the "**Normalisation of the Exception.**" Rather than repealing draconian special laws or ring-fencing them within strict constitutional boundaries, the 2023 criminal law overhaul has **absorbed the conceptual DNA of MCOCA, UAPA, and PMLA directly into the general penal and procedural codes of the Republic**, while leaving the special statutes simultaneously active on the statute book. This paper examines the profound doctrinal anomalies created by this dual-track penal architecture.

2. The Architecture of Reverse Onus: Eroding the "Golden Thread"

2.1 The General Baseline under Section 104 of the Bharatiya Sakshya Adhiniyam, 2023

In *Woolmington v. Director of Public Prosecutions* ([1935] AC 462), the House of Lords articulated the foundational principle of common-law criminal justice:

"Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt... No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

In India, this rule is statutorily anchored in **Section 104 of the Bharatiya Sakshya Adhiniyam, 2023** (formerly Section 101 of the IEA), which mandates that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Even where **Section 108 of the BSA** (formerly Section 105 IEA) places the burden of proving a General Exception (such as private defence or mental illness) or a special proviso upon the accused, the Supreme Court in *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat* (AIR 1964 SC 1563) held that the accused need only discharge this burden on a **preponderance of probabilities**, whereas the prosecution's primary burden of proving guilt beyond reasonable doubt never shifts.

2.2 Statutory Inversion of *Mens Rea* in Special Laws

In stark contrast to Section 104 of the BSA, India's special criminal statutes deploy sweeping **Reverse Onus Clauses** that command the court to *presume both the actus reus and the culpable mental state* of the accused:

- **Sections 35 and 54 of the NDPS Act, 1985:** Section 35 mandates that in any prosecution for an offence under the Act which requires a culpable mental state (*mens rea*) of the accused, "the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution." Even more severely, Section 54(d) provides that once the accused establishes a defence, a fact is said to be proved "only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability." Thus, the NDPS Act reverses the standard of proof itself: the accused must prove innocence *beyond reasonable doubt*.
- **Section 24 of the PMLA, 2002 (as amended in 2013):** In any proceeding relating to proceeds of crime under the PMLA, unless the contrary is proved, the Authority or the Special Court "shall presume that such proceeds of crime are involved in money-laundering" in the case of a person charged with the offence of money-laundering under Section 3.
- **Section 43E of the UAPA, 1967 and Section 114 of the BSA, 2023 (formerly Section 111A IEA):** Where an accused is prosecuted for a terrorist offence under Section 15 UAPA (or waging war in a disturbed area under Section 114 BSA) and it is shown that arms, explosives, or fingerprints were recovered from the site or the accused's possession, the Court shall presume, unless the contrary is shown, that the accused has committed such offence.
- **Sections 29 and 30 of the POCSO Act, 2012:** Once a person is prosecuted for penetrative sexual assault against a child, the Special Court *shall presume* both the commission of the offence (Section 29) and the existence of the culpable mental state (Section 30).

2.3 The Constitutional Tension: *Noor Aga vs. Vijay Madanlal Choudhary*

Although the Supreme Court of India in *Noor Aga v. State of Punjab* (2008 16 SCC 417) recognized that the presumption of innocence is a human right protected under Article 21 and Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), the Court

salvaged the constitutionality of reverse onus clauses by introducing the **Doctrine of Foundational Facts**. Under *Noor Aga*, a statutory presumption of guilt does not fire automatically upon the filing of a charge-sheet; the prosecution must first prove the "**foundational facts**" (such as conscious physical possession and an unbroken chain of forensic custody) beyond reasonable doubt before the burden shifts to the accused.

However, in *Vijay Madanlal Choudhary & Ors. v. Union of India* (2022 SCC OnLine SC 929), a three-judge bench upheld the sweeping reverse burden under Section 24 of the PMLA, holding that the prosecution need only establish *prima facie* foundational facts indicating the existence of a scheduled offence and proceeds of crime to shift the entire legal burden onto the citizen to prove the untainted origin of their assets. In practice, requiring an incarcerated undertrial to prove a negative fact (the absence of knowledge or taint) creates a devastating structural tilt in favour of conviction-or worse, perpetual pre-trial detention.

3. Pre-Trial Punishment: The "Twin Conditions" of Bail and the Ghost of *ADM Jabalpur*

If reverse onus clauses erode the presumption of innocence *during the trial*, the statutory **Twin Conditions of Bail** found in Section 37 of the NDPS Act, Section 45 of the PMLA, Section 21(4) of the MCOCA, and Section 43D(5) of the UAPA obliterate the presumption of innocence *before the trial even begins*.

3.1 The Mechanics of Impossible Bail

Under ordinary criminal procedure (**Sections 480 and 483 of the BNSS, 2023**, formerly Sections 437 and 439 CrPC), a court deciding a bail application looks at the **Triple Test**: (1) Flight risk, (2) Likelihood of tampering with evidence, and (3) Likelihood of influencing witnesses, alongside the gravity of the offence (*Sanjay Chandra v. CBI*, 2012 1 SCC 40).

Special statutes replace this judicial discretion with a statutory straightjacket:

1. **Under Section 45(1)(ii) PMLA/ Section 37(1)(b)(ii) NDPS / Section 21(4)(b) MCOCA:** Where the Public Prosecutor opposes the bail application, the Court **cannot release the accused on bail unless** the Court is satisfied that "**there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.**"
 - **The Logical Catch-22:** At the pre-trial bail stage-before prosecution witnesses have been cross-examined and before the defence has been permitted to lead any exculpatory evidence-how can a judge record a positive judicial satisfaction that the accused is "*not guilty*"? Furthermore, how can any human judge prophesy that a person "*is not likely to commit any offence in the future*"? And if the judge actually records a finding that the accused looks "not guilty" based on the prosecution's own documents, the prosecution's case is effectively prejudiced before the trial starts; conversely, if the judge refuses bail, the judge essentially pronounces a pre-trial presumption of guilt.
2. **Under Section 43D(5) of the UAPA (The *Watali* Standard):** Even more restrictively, the proviso to Section 43D(5) of the UAPA bars bail if the Court, upon a perusal of the case diary or the charge-sheet, is of the opinion that there are reasonable grounds for believing that the accusation against such person is ***prima facie* true**. In *National Investigation*

Agency v. Zahoor Ahmad Shah Watali (2019 5 SCC 1), the Supreme Court interpreted this to mean that at the bail stage, the court **cannot weigh the admissibility, credibility, or sufficiency of the prosecution's evidence**, nor look at any defence explanation; the court must accept the prosecution's untested assertions in the charge-sheet at face value as gospel truth.

3.2 The Constitutional Rescue Mission: *K.A. Najeeb* (2021) to *Jalaluddin Khan* (2024)

Realizing that the *Watali* doctrine had turned **the process itself into the punishment**-allowing investigating agencies to keep citizens incarcerated for five to eight years without framing charges or examining witnesses-the Supreme Court engineered a vital constitutional escape valve in *Union of India v. K.A. Najeeb* (2021 3 SCC 713).

A three-judge bench headed by Justice N.V. Ramana held that statutory restrictions like Section 43D(5) of the UAPA **do not oust the jurisdiction of Constitutional Courts** to grant bail on the ground of violation of **Part III of the Constitution (Article 21 - Right to a Speedy Trial)**. Where an undertrial has suffered prolonged incarceration and there is no realistic likelihood of the trial concluding in the near future, the statutory embargo of Section 43D(5) must yield to Article 21.

Crucially, in 2024, the Supreme Court expanded this libertarian jurisprudence through a landmark trilogy of judgments:

- *Javed Gulam Nabi Shaikh v. State of Maharashtra* (2024 SCC OnLine SC 1693): Holding that if the State and the Courts lack the institutional machinery to protect an accused's fundamental right to a speedy trial under Article 21, the State cannot oppose bail merely on the ground that the crime alleged under UAPA is heinous.
- *Sheikh Javed Iqbal @ Ashfaq Ansari v. State of Uttar Pradesh* (2024 SCC OnLine SC 1755): Clarifying that *K.A. Najeeb* is not an exception to *Watali*, but a higher constitutional command that overrides statutory bail bars whenever incarceration becomes punitive.
- *Jalaluddin Khan v. Union of India* (2024 SCC OnLine SC 1945) & *Manish Sisodia v. Directorate of Enforcement* (2024 SCC OnLine SC 1920): Categorically declaring that **"Bail is the Rule and Jail is the Exception"** applies with full constitutional force even to special statutes like the UAPA and the PMLA.

4. The New Statutory Loophole: Parallelism Between the BNS/BNSS (2023) and Special Laws

While the Supreme Court was actively reigning in the excesses of special statutes through Article 21 jurisprudence, the legislature introduced the **Bharatiya Nyaya Sanhita (BNS), 2023** and the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**. A close doctrinal examination reveals three profound structural loopholes introduced by the 2023 codes that have barely been examined in contemporary legal scholarship.

4.1 The Arbitrary Forum-Shopping Loophole: Section 113(7) BNS vs. UAPA, 1967

For the first time in Indian legal history, **Section 113 of the BNS** imports the verbatim definition of a **"Terrorist Act"** from Section 15 of the UAPA directly into the ordinary penal code. Sub-sections (1) to (6) of Section 113 BNS penalize committing, conspiring, attempting, advocating,

harbouring, or holding proceeds of a terrorist act with identical punishments (death or life imprisonment).

Because the UAPA, 1967 was **not repealed** when the BNS was enacted, India now possesses **two parallel, identically worded statutes criminalizing the exact same conduct**. However, the procedural consequences of being booked under the BNS versus the UAPA are night and day:

- **If registered under Section 113 BNS (governed by the BNSS, 2023):** The maximum pre-charge detention period is **90 days** (Section 187 BNSS); there is **no Section 43D(5) *prima facie* true bail bar** (regular bail is governed by Section 480/483 BNSS); there is **no Section 43E statutory presumption of guilt**; and no central executive sanction under Section 45 UAPA is required for cognizance.
- **If registered under Section 15 UAPA:** The maximum pre-charge detention period extends to **180 days** (Section 43D(2) UAPA); the draconian **Section 43D(5) bail embargo** applies; and the **Section 43E reverse onus presumption** applies.

How does the law decide which of these two radically different procedural universes an accused citizen will be thrown into? The sole answer lies buried in the **Explanation to Section 113(7) of the BNS**:

"For the removal of doubts, it is hereby declared that the officer not below the rank of Superintendent of Police shall decide whether to register the case under this section or under the Unlawful Activities (Prevention) Act, 1967."

The Constitutional Loophole (Violation of Article 14): Section 113(7) BNS provides **zero statutory guidelines, objective criteria, or judicial oversight** to govern the Superintendent of Police's choice between the BNS and the UAPA. Two identically situated individuals accused of the exact same act can be subjected to wildly divergent bail and detention standards based purely on the uncanalized, subjective discretion of an executive police officer. Under the venerable Constitution Bench precedent of *State of West Bengal v. Anwar Ali Sarkar* (AIR 1952 SC 75) and the modern doctrine of **Manifest Arbitrariness** (*Shayara Bano v. Union of India*, 2017 9 SCC 1), vesting unguided administrative discretion in the executive to pick and choose between an ordinary procedural regime and a draconian special regime for the exact same offence is patently unconstitutional under Article 14 of the Constitution.

4.2 The "PMLA-Lite" Loophole: Section 107 of the BNSS, 2023

A second, equally far-reaching structural shift lies in **Section 107 of the Bharatiya Nagarik Suraksha Sanhita, 2023**-a brand-new provision that had no equivalent in the repealed CrPC, 1973.

Under the PMLA, 2002 (Section 5 and Section 8), the power to provisionally attach and confiscate "proceeds of crime" was restricted to specific "scheduled offences," executed by specialized officers of the Directorate of Enforcement (ED), and subjected to confirmation by an independent multi-member Adjudicating Authority and an Appellate Tribunal.

Section 107 of the BNSS bypasses the entire PMLA architecture and hands the power of pre-trial property attachment and distribution to every local police station and Judicial Magistrate for *any* criminal offence in India:

1. Under **Section 107(1) BNSS**, where a police officer investigating *any* offence has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity (or from the commission of any offence), the police officer may-with the approval of the Superintendent or Commissioner of Police-make an application to the Court or Judicial Magistrate exercising jurisdiction to take cognizance of the offence for the **attachment of such property**.
2. Under **Section 107(2)(4) BNSS**, the Magistrate issues a 14-day show-cause notice to the person, and after considering the explanation (or **ex parte** if the person does not appear), may direct the attachment of the property.
3. Most remarkably, under **Section 107(6) and (7) BNSS**, the District Magistrate is directed to **rateably distribute such proceeds of crime to the persons who are affected by such crime within 60 days**-meaning that a citizen's bank accounts, ancestral home, or business assets can be attached and **liquidated/distributed before the criminal trial has even commenced or resulted in a conviction!** Furthermore, unlike the PMLA, the BNSS contains **no explicit statutory restitution or interest-compensation clause** if the accused is subsequently acquitted at the conclusion of the trial years later.

4.3 The Overbreadth of "Organised Crime" (Sec. 111 BNS) and "Petty Organised Crime" (Sec. 112 BNS)

Historically, state-level organised crime laws like MCOCA required strict threshold preconditions before they could be invoked: specifically, the filing of **more than one charge-sheet** before a competent court within the preceding ten years, coupled with prior sanction from a senior police officer (DIG/ADGP rank).

Section 111 of the BNS imports the harsh penalties of MCOCA (minimum five years to life imprisonment or death) into national law, defining an "*organised crime syndicate*" as a group of two or more persons who, acting either singly or jointly as a syndicate or gang, indulge in any "*continuing unlawful activity*." However, **Section 112 of the BNS ("Petty Organised Crime")** goes a step further by discarding the requirement of prior charge-sheets altogether:

"Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers or any other similar criminal act, is said to commit petty organised crime."

By defining a "group or gang" without requiring a history of prior charge-sheets or high-level statutory sanction, any ordinary offence of cheating or theft committed by two or more individuals with common intention (Section 3(5) BNS) can effortlessly be escalated by a local Investigating Officer into "Organised Crime" or "Petty Organised Crime," triggering mandatory minimum sentences and prolonged fragmented police custody under **Section 187(2) of the BNSS**.

5. A Blueprint for Constitutional Harmonization: Four Doctrinal Reforms

To prevent India's reformed criminal justice architecture from degenerating into an executive-dominated regime of pre-trial punishment and arbitrary forum-shopping, four concrete statutory and judicial reforms are essential:

5.1 Striking Down or Reading Down Section 113(7) BNS under Article 14

The Supreme Court must subject the **Explanation to Section 113(7) of the BNS** to strict scrutiny under Article 14 of the Constitution. If the legislature intends to retain both Section 113 BNS and the UAPA, 1967, Parliament must enact objective, non-arbitrary statutory criteria demarcating their spheres (for instance, restricting the UAPA exclusively to transnational terrorism or scheduled terrorist organizations notified under the First Schedule of the UAPA, while governing domestic individual acts under the BNS), subject to mandatory judicial review by the Sessions Judge at the time of first remand.

5.2 Reading Down Reverse Onus Clauses to an "Evidentiary Burden" (The *Lambert* Principle)

In comparative Commonwealth jurisprudence-most notably the UK House of Lords decision in *R v. Lambert* ([2001] UKHL 37) interpreting the Human Rights Act, 1998, and the South African Constitutional Court decision in *S v. Bhulwana* (1996 1 SA 388)-courts have held that statutory reverse onus clauses violate the presumption of innocence if read as imposing a *legal/persuasive burden* on the accused. Instead, Indian courts should uniformly read down reverse onus clauses across the NDPS Act, PMLA, and UAPA to impose only an **"Evidentiary Burden"** (the burden of raising a reasonable doubt based on the material on record), leaving the ultimate persuasive burden of proving guilt beyond reasonable doubt on the State.

5.3 Amending Section 107(6) BNSS: Freezing Pre-Trial, Forfeiture Only Post-Conviction

While freezing suspected proceeds of crime during an investigation is a legitimate measure to prevent asset dissipation, **distributing or liquidating an accused citizen's property under Section 107(6)(7) of the BNSS prior to a judicial conviction** violates the core of Article 21 and Article 300A (Right to Property). Section 107 of the BNSS must be amended to stipulate that attached properties shall remain held in an interest-bearing custodia legis escrow account until the conclusion of the trial, and shall only be forfeited or distributed upon a final judgment of conviction (mirrors the safeguard in Section 8(5) of the PMLA).

5.4 Statutory Codification of the *K.A. Najeeb* Rule in Section 479 of the BNSS

Currently, **Section 479(1) of the BNSS** (Liberalized Undertrial Bail after serving one-third or one-half of the maximum sentence) contains a restrictive sub-clause-**Section 479(2)**-which denies statutory bail relief to any person against whom an investigation, inquiry, or trial in *"more than one offence or in multiple cases"* is pending. Because police routinely register multiple FIRs or attach multiple sections to a single transaction, Section 479(2) effectively nullifies undertrial relief for the vast majority of prisoners. Parliament should replace Section 479(2) with a statutory codification of *Union of India v. K.A. Najeeb*: whenever an undertrial (whether booked under the BNS or any Special Statute) has remained in custody for more than two years without the completion of prosecution evidence for reasons not attributable to the accused, the court shall mandatorily release the accused on bail on stringent conditions.

6. Conclusion

The true measure of a civilization's commitment to *Nyaya* is not how swiftly it punishes the guilty, but how scrupulously it protects the innocent from the coercive errors of the State. When special laws designed for rare national emergencies become the template for ordinary criminal codes, the

exception devours the rule. By importing terrorism and syndicate offences into the *Bharatiya Nyaya Sanhita* alongside unguided police discretion under Section 113(7), and empowering pre-conviction property distribution under Section 107 of the *Bharatiya Nagarik Suraksha Sanhita*, the 2023 statutory reforms have vastly expanded the reach of the Parallel Penal State. Yet, as the Supreme Court's courageous 2024 jurisprudence in *Jalaluddin Khan*, *Javed Gulam Nabi Shaikh*, and *Manish Sisodia* reminds us, no statutory text—whether colonial or indigenous, general or special—stands above Part III of the Constitution of India. Reclaiming the presumption of innocence from the grip of reverse burdens and impossible bail conditions remains the highest constitutional duty of the Indian Bar and Bench.

References & Authorities

1. Primary Indian Statutes:

- *The Bharatiya Nyaya Sanhita, 2023* (Act 45 of 2023), §§ 3(5), 111, 112, 113, 113(7).
- *The Bharatiya Nagarik Suraksha Sanhita, 2023* (Act 46 of 2023), §§ 107, 187(2), 479, 480, 483.
- *The Bharatiya Sakshya Adhiniyam, 2023* (Act 47 of 2023), §§ 104, 108, 114.
- *The Unlawful Activities (Prevention) Act, 1967* (Act 37 of 1967), §§ 15, 43D(2), 43D(5), 43E, 45.
- *The Prevention of Money Laundering Act, 2002* (Act 15 of 2003), §§ 3, 5, 8, 24, 45, 50.
- *The Narcotic Drugs and Psychotropic Substances Act, 1985* (Act 61 of 1985), §§ 35, 37, 54.

2. Landmark Judicial Precedents:

- *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 SC 1563 (Standard of proof for general exceptions vs. prosecution's primary burden).
- *Jalaluddin Khan v. Union of India*, 2024 SCC OnLine SC 1945 (Reaffirming "Bail is the rule, jail is the exception" even in UAPA prosecutions).
- *Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr.*, 2024 SCC OnLine SC 1693 (Right to speedy trial under Article 21 overriding statutory bail restrictions).
- *Manish Sisodia v. Directorate of Enforcement*, 2024 SCC OnLine SC 1920 (Prolonged pre-trial incarceration under PMLA and corruption laws as a violation of Article 21).
- *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 (Interpretation of the *prima facie* true threshold under Section 43D(5) of the UAPA).
- *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1 (Striking down the unamended twin conditions of bail under Section 45 of the PMLA as manifestly arbitrary).

- *Noor Aga v. State of Punjab & Anr.*, (2008) 16 SCC 417 (Constitutional validity of reverse onus clauses under Sections 35 and 54 of the NDPS Act conditioned upon proof of foundational facts).
- *R v. Lambert*, [2001] UKHL 37 : [2002] 2 AC 545 (Reading down statutory reverse burdens to evidentiary burdens to preserve the presumption of innocence).
- *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75 (Unconstitutionality of unguided executive discretion to refer cases to special procedural regimes under Article 14).
- *Union of India v. K.A. Najeed*, (2021) 3 SCC 713 (Power of Constitutional Courts to grant bail for Article 21 violations notwithstanding Section 43D(5) of the UAPA).
- *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.*, 2022 SCC OnLine SC 929 : (2023) 12 SCC 1 (Upholding the constitutional validity of Sections 3, 5, 24, 45, and 50 of the PMLA).
- *Woolmington v. Director of Public Prosecutions*, [1935] AC 462 (HL) (The "golden thread" of the presumption of innocence in criminal jurisprudence).

3. Foundational Doctrinal Scholarship:

- Agamben, G. (2005). *State of Exception* (K. Attell, Trans.). University of Chicago Press.
- Ashworth, A. (2006). Four Threats to the Presumption of Innocence. *The International Journal of Evidence & Proof*, 10(4), 241-279.
- Sekhri, A. (2020). The Presumption of Innocence in India: A Fading Constitutional Promise. *National Law School of India Review*, 32(1), 74-102.
- Singh, U. K. (2007). *The State, Democracy and Anti-Terror Laws in India*. SAGE Publications.