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# TRIAL IN ABSENTIA OF PROCLAIMED OFFENDERS IN INDIA

**Abstract**

Section 356 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) permits an inquiry or trial, and the pronouncement of judgment, against a proclaimed offender who has absconded to evade trial where there is no immediate prospect of arrest. The provision addresses a genuine institutional problem: criminal proceedings may otherwise remain stalled because an accused person deliberately avoids the court. Yet a trial conducted without the accused also places pressure on familiar safeguards, including the opportunity to participate in the defence, effective legal representation, the assessment of evidence, and access to appellate review. This paper evaluates whether the statutory framework adequately balances the State's interest in preventing deliberate obstruction with the constitutional guarantee of a fair trial under Article 21. Using doctrinal legal research, it examines the transition from the limited evidence-preservation mechanism under Section 299 of the Code of Criminal Procedure, 1973, to the broader power under Section 356 BNSS; analyses the provisions governing proclamation, notice, counsel, evidence and appeals; and considers relevant constitutional decisions and emerging judicial guidance. The paper argues that trial in absentia is not inherently incompatible with fair-trial

principles, but its legitimacy depends on rigorous compliance with statutory preconditions and practical safeguards that go beyond formal appointment of counsel. Particular concern arises from the deemed waiver of personal participation and the requirement that an appellant present himself before the appellate court, coupled with the three-year limit on appeals against conviction. The paper recommends reasoned, case-specific findings on deliberate evasion, stronger notification records, minimum standards for defence preparation, preservation of audiovisual evidence, and a narrowly tailored mechanism for reviewing convictions where serious procedural unfairness is demonstrated.

***Keywords: Trial in absentia; proclaimed offender; BNSS; Article 21; fair trial; appellate remedies.***

## 1. Introduction

A criminal court ordinarily determines guilt through a process in which the accused is present, understands the case, communicates with counsel and has an opportunity to challenge the prosecution evidence. Physical presence is not an empty formality: it helps the accused follow the proceedings and assist in decisions that may affect liberty. At the same time, the criminal process cannot be allowed to remain indefinitely at a standstill where an accused deliberately absconds to frustrate adjudication. Victims, witnesses and the public also have a legitimate interest in the timely resolution of criminal cases.

Section 356 of the Bharatiya Nagarik Suraksha Sanhita, 2023 introduced an express mechanism for inquiry, trial or judgment in absentia of a proclaimed offender [1]. It marks a departure from the former Code of Criminal Procedure, 1973, which permitted evidence to be recorded in an absconder's absence in limited circumstances but did not provide a general mechanism to complete the trial and pronounce judgment in absentia. The new provision is therefore more than a procedural amendment: it changes the consequences that may follow from continued evasion.

The central issue is not whether the law should tolerate deliberate absconding. It should not. The harder question is how a court can distinguish a deliberate and sustained decision to evade trial from an absence that does not justify treating the accused as having relinquished the opportunity

to participate. Even where the absence is deliberate, the court must still determine guilt on evidence and preserve a meaningful defence to the extent possible.

This paper examines Section 356 through the constitutional guarantee of a fair trial, focusing on the statutory conditions for commencing proceedings, the deemed waiver of presence, State-funded representation, use of evidence recorded in absence and restrictions on appeal. Its central argument is that the provision can serve a legitimate purpose, but the safeguards must be treated as substantive protections rather than administrative steps. The analysis does not assume that Section 356 has been declared unconstitutional; it evaluates the risks and identifies safeguards that may strengthen its application.

## 2. Research Methodology

The paper adopts doctrinal legal research. It analyses the Constitution of India, the BNSS, the former Code of Criminal Procedure, Supreme Court decisions on fair-trial guarantees and legal representation, and judicial guidance concerning the operation of Section 356. It also uses selected comparative standards to illuminate questions of waiver and effective participation. The study is analytical rather than empirical: it does not claim to measure how frequently trial in absentia is used or to quantify its outcomes. Because Section 356 is relatively recent, the paper distinguishes decisions directly applying the provision from earlier authorities that establish general constitutional principles.

## 3. From Evidence Preservation To Trial In Absentia

Under the Code of Criminal Procedure, 1973, Sections 82 and 83 enabled courts to issue proclamations and attach property in appropriate cases involving absconding persons. Section 299 permitted evidence to be recorded in the accused's absence where the statutory conditions were met, including proof of absconding and the absence of an immediate prospect of arrest. Its function was principally preservative: depositions could be retained for possible use later [2]. It did not establish a general power to complete the entire trial and determine guilt while the accused remained absent.

Section 356 BNSS goes further. It permits the court, after satisfying statutory conditions and recording reasons, to proceed with the trial in the same manner and with like effect as if the proclaimed offender were present, and to pronounce judgment. The change reflects the legislature's concern that prolonged evasion should not give an accused an effective veto over the criminal process. Yet the consequences are correspondingly more serious. Preserving a witness's testimony is different from deciding guilt and imposing punishment without the accused's personal participation. [12].

The distinction should guide interpretation. The fact that the legislature has authorised proceedings in absentia does not make ordinary evidentiary standards less demanding. Nor does absconding establish guilt. It may justify the procedural decision to proceed, but the prosecution must still prove the charge according to law.

**Section 356 Bnss: Conditions And Safeguards**

**4.1. Provision is triggered**

Section 356(1) applies if a person has been declared a proclaimed offender, they have 'absconded' (by avoiding court) and if it is unlikely that they will be arrested in the near future. The court should provide reasons in writing and do justice. The trial cannot be held until ninety days passed from the date of framing of the charge. They are cumulative in purpose – the court's reasons for not doing so are not sufficient.

The need of distinguishing between the failure to attend court due to law and the status accorded by Section 84. This term refers to some of the serious offences listed in Section 84(4) which have been declared as a proclaimed offender, and to some of those offences listed in Section 84(1) for which an appearance is required. Section 356(8) enables the State to extend Section 356 to an absconder referred to in Section 84(1) by notification. Therefore, the court shall strive to establish the exact provisions of the law within the scope of which the person in question is situated and approve the notification made after the execution of the same. While a proclamation may be viewed as meeting all of the requirements in Section 356, that does not necessarily happen.

**4.2. Reminds and tries to get students to attend.**

Before it may proceed under 356(1), the court must make sure that it is complying with 356(2). The provision stipulates that two warrants of arrest must be issued within 30 days, publication must be done in a national or local newspaper where the person last lived with 30 days to appear, information is to be provided to a member of their family or friend (if they have any), and the information is to be posted at the person's usual residence and at the police station. There are various methods in which these measures can alert the accused that the trial is to be held.

Multiple ways to notify is a good thing, but they need to be well done and well documented. The requested form can be accomplished but not actual awareness, in newspaper publications. The statute, however, does not contain this separate universal condition. The judge's role is to confirm strict compliance, evaluate the nature of the steps undertaken and determine if the environment of the surrounding actions and events is conducive to an inference of deliberate evasion. It is crucial to remember that the ninety days and notice period are not synonymous, and should not be used as a substitute for each other. [11].

**4.3. All the legal representation and evidence: All legal representation and evidence.**

As per Section 356 (3) if there is no advocate for the proclaimed offender, the defence will represent the proclaimed offender on behalf of the State. This will prevent case from being tried without the presence of an attorney. But representation alone isn't an effective form of representation. Counsel will not be given instructions on matters involving facts in dispute, witnesses, or documents or explanations which are only known to the accused. If so, the court should ensure that prosecution has furnished counsel with a record of the prosecution in a timely manner, provide counsel with a reasonable preparation time and an adequate opportunity to test the admissibility, reliability and sufficiency of evidence.

Section 356(4) allows the use of the deposition of a prosecutor's witness recorded by the competent court. If the proclaimed offender be taken before the court for examination, produced before the court or shall appear before the court before the time of the trial, the court may for the purposes of justice, allow for examination of evidence which was taken before the proclaimed offender's appearance. It is at the discretion and not the right of the kind to call witnesses repeatedly. For the accused it will be necessary to produce a reasoned decision if the presence of

a material issue that could not reasonably have been litigated before the time of the charge is shown.

The recording of witness depositions and examinations by audiovisual electronic evidence is expressly permitted by Section 356(5) subject to the most reasonable rules of the court. (5) This provision of the rules expressly permits the use of audiovisual electronic evidence to record testimony, preferably on the use of a mobile phone, but not otherwise unless it is practical as prescribed by the court. Effective defence does not involve recording; but it is a way of contributing to transparency and of maintaining a complete record of testimony. The importance of the quality, completeness, security and accessibility of the recording remains.

### 4.4. Continuation restrictions and Appellate restrictions

If the accused is arrested and sent for or appears at the end of the trial the continuance of the trial and the pronouncement of judgment are not prevented by his voluntary absence during the commencement of the trial under subsection (1) if the continuance is not withdrawn by the court. Meant to not cut across the strategy. The use thereof, however, should be interpreted with regard to subsection (4) which stipulates that "evidence may be examined in absence," if justice requires.

Under section 356(7) an appeal against a judgment under section 356 may not be taken after three years and no appeal against conviction shall be allowed unless the proclaimed offender appears before the appellate court. Such limitations may lead to more compliance and finality of a judge's decision but it also poses the important question: How can a person get a second bite at the apple of a possibly biased or wrong ruling that is hard to monitor or a serious error in procedure that is only discovered after the fact? The imposition of a time limit is not necessarily a violation of the Constitution; it must be looked at in relation to what type of right is being denied, and what other legal remedies are available.

## 5. Constitutional Fair-Trial Concerns

### 5.1. Article 21 and substantive fairness

Article 21 protects life and personal liberty except according to procedure established by law. In Maneka Gandhi v. Union of India, the Supreme Court held that the procedure depriving a person

of liberty must be fair, just and reasonable rather than arbitrary or oppressive [3]. A criminal process capable of ending in imprisonment must therefore be assessed not only by asking whether statutory steps were followed, but also whether the procedure preserves the essential requirements of fairness.

Zahira Habibulla H. Sheikh v. State of Gujarat explains that a fair trial serves the interests of the accused, the victim and society and must be more than a formal exercise [4]. The case did not concern Section 356, but its principle is relevant: a trial must remain a reliable process for testing allegations. The constitutional question is not answered by the accused's absence alone. It depends on the justification for proceeding, the functioning of the defence and the court's independent evaluation of evidence.

### 5.2. Waiver: deliberate evasion is not the same as guilt

Section 356 treats the specified circumstances of absconding as a waiver of the right to be present and tried in person. This is a statutory attribution, not necessarily an express statement by the accused. Such a rule may be justified where conduct clearly demonstrates an effort to defeat the court's authority. Requiring an express declaration from a person who is deliberately hiding could make the provision ineffective.

The concern is not that waiver must always be written or personally confirmed. It is that the inference must rest on the statutory conditions and reliable circumstances. A proclamation, repeated warrants and prescribed notices may support a finding of evasion, but the court should not collapse the separate questions of status, deliberate avoidance and the fairness of proceeding. Written reasons should explain the evidence of evasion and why further efforts to secure attendance are unlikely to succeed.

Most importantly, waiver of presence cannot be treated as waiver of the prosecution's burden of proof or of every procedural protection. An accused who evades trial may lose the opportunity to participate personally, but the court remains obliged to assess the evidence impartially. Absconding may explain why the trial proceeds; it cannot prove the charge.

### 5.3. Presumption of innocence and judicial responsibility

The presumption of innocence requires the prosecution to establish guilt according to the applicable standard. The accused's absence must not become a substitute for proof or automatically invite an adverse conclusion on the merits. The court must scrutinise contradictions, admissibility and the reliability of witnesses even where defence counsel has limited instructions.

Zahira also underlines the responsibility of the presiding judge to ensure that a trial is fair and that material evidence is properly examined. In a trial in absentia, this responsibility becomes especially important because the court cannot assume that the defence will identify every weakness in the prosecution case. Judicial vigilance does not mean that the judge should act as defence counsel; it means that the court must independently apply the law and require the prosecution to prove its case.

### 5.4. Effective legal representation

Articles 21 and 39A support access to legal assistance where necessary to make the justice system effective, while Article 22(1) recognises the right of an arrested person to consult and be defended by a legal practitioner of choice. Hussainara Khatoon (IV) v. Home Secretary, State of Bihar recognised the importance of free legal services as an element of a fair and reasonable procedure [5].

Sovaran Singh Prajapati v. State of Uttar Pradesh, 2025 INSC 225, is relevant for its treatment of effective representation and the practical conditions required for a fair defence [6]. It did not interpret Section 356, and should not be cited as if it had decided the validity of trials in absentia. Its broader lesson is that representation must function in substance. For Section 356, this requires adequate time, access to records, independent examination of prosecution evidence and judicial attention to whether the defence has had a realistic opportunity to perform its role.

## 6. Emerging Judicial Guidance And Comparative Perspective

In Ravi alias Ravindra Singh v. State of Uttar Pradesh, decided by the Allahabad High Court in May 2026, the Court addressed the operation of Section 356 and emphasised the need to follow the statutory procedure before proceeding against an absconding accused [7]. The decision is

important because it demonstrates that Section 356 must be implemented through a structured sequence rather than invoked as a shortcut whenever an accused is unavailable. The precise directions and their application should be checked against the official or authenticated judgment before final submission.

Comparative law also offers a useful, though non-binding, perspective. Article 14(3)(d) of the International Covenant on Civil and Political Rights recognises the right of an accused to be tried in their presence, subject to the wider framework of fair-trial guarantees [8]. European human-rights jurisprudence, including Colozza v. Italy and Sejdovic v. Italy, has examined whether an accused knowingly waived the right to appear and whether an effective opportunity to obtain a fresh determination was available [9, 10]. These authorities arise from a different legal system and cannot be applied mechanically to India. Their analytical value lies in the insistence that absence, waiver and remedial access should be examined together. Such a rule could reward deliberate evasion and impose substantial burdens on victims and witnesses. Rather, where a person later establishes that they did not knowingly evade the proceedings or that a serious failure deprived them of a fair opportunity to defend, the law should provide a meaningful route for judicial examination of that claim. The balance lies between preventing abuse and avoiding an irreversible miscarriage of justice.

## 7. Critical Findings And Recommendations

The analysis yields four principal findings. First, Section 356 addresses a legitimate problem, but the declaration of proclaimed-offender status should not be treated as a complete answer to every question about waiver. Second, the statutory notification requirements are essential only if their completion is documented and judicially verified. Third, State-funded representation is a necessary safeguard but may be inadequate where counsel has insufficient time, records or opportunity to test the evidence. Fourth, the appellate restrictions create a substantial policy question because the ability to challenge a conviction is linked to physical presentation and a three-year limit.

The following safeguards would strengthen the provision without defeating its purpose. A standard checklist should record each warrant, publication, communication, affixation and display required by Section 356(2).

State-funded counsel should receive the complete prosecution record sufficiently in advance, reasonable preparation time and access to necessary facilities. Courts should record the appointment and ensure representation. Where the accused appears during the trial, the decision whether to permit further examination of evidence should address the specific prejudice alleged and give reasons.

Audiovisual recordings should be preserved securely and linked to the case record, with practical access for the defence and appellate court subject to lawful restrictions. Finally, the legislature should consider whether Section 356(7) should expressly preserve a narrow remedy where the convicted person demonstrates a substantial denial of fair process, while maintaining consequences for deliberate evasion. Any reform should clarify how such a remedy interacts with ordinary appeal procedures and the three-year limit rather than leave the question uncertain.

**8. Conclusion**

Section 356 of the BNSS changes Indian criminal procedure by allowing a court, in prescribed circumstances, to complete a trial and pronounce judgment against a proclaimed offender who has absconded to evade trial. The provision responds to a real concern: the criminal process should not be defeated by deliberate and sustained avoidance. Its statutory safeguards—warrants, publication, communication, waiting periods, legal representation and preservation of evidence—provide a framework for exercising this power.

Yet the fairness of a trial in absentia cannot be measured solely by whether each procedural step appears on paper. Article 21 requires a fair and reasonable process; the presumption of innocence requires proof independent of the accused's conduct; and legal representation must be effective in practice. The appellate restrictions under Section 356(7) further demonstrate that the consequences of absence extend beyond the trial itself to the possibility of correcting error.

The appropriate conclusion is neither that trial in absentia is inherently unconstitutional nor that statutory authorisation resolves every fairness concern. Its legitimacy depends on disciplined judicial application, a reasoned finding of deliberate evasion, genuine defence arrangements and an adequate mechanism for addressing serious procedural injustice. A system that prevents an accused from frustrating justice must also ensure that the process used to reach a conviction remains worthy of public confidence.

**References**

[1] Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023, §§ 84, 356.

[2] Code of Criminal Procedure, 1973, §§ 82, 83, 299.

[3] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

[4] Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158.

[5] Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, (1980) 1 SCC 98.

[6] Sovaran Singh Prajapati v. State of Uttar Pradesh, 2025 INSC 225 (Supreme Court of India, 2025).

[7] Ravi alias Ravindra Singh v. State of Uttar Pradesh, Allahabad High Court, decision dated 5 May 2026 (verify final reported citation and judgment text before submission).

[8] International Covenant on Civil and Political Rights, 1966, art. 14(3)(d).

[9] Colozza v. Italy, App. No. 9024/80, European Court of Human Rights, judgment of 12 February 1985.

[10] Sejdovic v. Italy [GC], App. No. 56581/00, European Court of Human Rights, judgment of 1 March 2006.

[11] National Investigation Agency, Guidelines for Invoking Section 356 of the BNSS, 2023 (Circular, 19 August 2025), available at the official NIA website.

[12] Ministry of Home Affairs, Government of India, Rajya Sabha Unstarred Question No. 415, Trials in Absentia in BNSS (3 December 2025).