

PERFORMING INNOCENCE: THE PSYCHOLOGY OF HOW DEFENDANTS ARE PERCEIVED IN COURTROOMS

by

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“Innocent until proven guilty” is a phrase repeated in courtrooms, OTT series, films and newspaper headlines alike. Deriving its legitimacy from **Section 104 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA)**, and often regarded as the “golden thread” of criminal jurisprudence, it reflects the Indian law’s aim to remain objective and fair. However, when an accused, who is “innocent in the eyes of the law” steps into the courtroom, a contrary reality unfolds. The judgment of guilt or innocence is formed by appearance. The colour of the kurta, the slouched posture, or averted eyes form perceptions before the judge’s formal pronouncement of “Guilty” or “Not Guilty”.

The tension between legal theory and psychological reality lies at the heart of the criminal trial. While every feature of the formal process is designed to insulate fact-finding from prejudice, the courtroom is also an intensely human arena. It is a space shaped by visual first impressions, narrative expectations, and the cognitive shortcuts that operate below the threshold of conscious deliberation. This paper explores that tension, tracing the gap between what the law demands of its participants and what the mind actually does when confronted with an accused person. It draws on legal doctrine, constitutional safeguards, psychological research, and the lived experience of high-profile Indian prosecutions to argue that appearance, demeanour, and presentation are not incidental to the trial; they are, in practice, a parallel form of evidence that operates without the discipline of admissibility rules, cross-examination, or the standard of proof. The implications for fair trial rights, the equality guarantee under Article 14, and the integrity of the adversarial process are both significant and underexamined.

Legal Ideal: Presumption of Innocence

Rooted in the Indian criminal jurisprudence is a fundamental principle: the burden of proving guilt rests with the State, and the accused has no obligation to prove their innocence **1. Section 104 of**

1 Bharatiya Sakshya Adhiniyam 2023 (BSA), s 104.

the **BSA, 2023**, which places the burden of proof on whoever asserts a fact before the court. In criminal proceedings, this provision operationalises the presumption of innocence: the prosecution must discharge that burden by establishing guilt beyond reasonable doubt, so that no individual is convicted on mere suspicion. ² The Supreme Court has repeatedly reaffirmed this view. In ***K.M. Nanavati v. State of Maharashtra* (AIR 1962 SC 605)**, the Supreme Court held that while the general burden of proof rests with the prosecution, the accused bears the burden of proving any exception or special plea raised in defence under what was then Section 105 of the Indian Evidence Act, 1872. ³ This protects the presumption of innocence and guards against wrongful conviction.

This principle is strengthened by **Article 21 of the Constitution**, which guarantees the right to a fair trial, along with procedural safeguards under the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, including **Sections 35 and 187** (which replaced the erstwhile Sections 41 and 167 of the Code of Criminal Procedure, 1973), aimed at preventing arbitrary detention. ⁴ The Court in ***Arnesh Kumar v. State of Bihar* (2014)** stressing the need for limitation in arrests, recognizing that even at the pre-trial stage, the presumption of innocence must not be undermined. ⁵

In theory, therefore, the law demands proof, not perception.

Psychological Reality: Quick Judgments & Biases

Despite the law's careful and constant reinstatement of relying only on evidence, human judgment rarely begins with a slow reasoning. As **Daniel Kahneman** explains, people rely on **“System 1” thinking**, which is a fast, automatic, and intuitive process that generates impressions almost instantly ⁶. In a courtroom, this means that the accused is not first encountered as a legal subject but as a person who is observed and assessed within moments of entering the space.

² T Prashant, 'Presumption of Innocence and Reverse Burden of Proof: Maintaining the Rights of the Accused in the Current Crime Epidemic' (iPleaders, 8 January 2020) <<https://blog.ipleaders.in/presumption-of-innocence-and-reverse-burden-of-proof-maintaing-the-rights-of-the-accused-in-the-current-crime-epidemic/>> accessed 12 June 2026.

³ *KM Nanavati v State of Maharashtra* AIR 1962 SC 605.

⁴ Constitution of India 1950, art 21; Bharatiya Nagarik Suraksha Sanhita 2023, ss 35, 187.

⁵ *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273.

⁶ Daniel Kahneman, *Thinking, Fast and Slow* (Farrar, Straus and Giroux 2011) 20–24.

Although these first impressions are subtle, they are rarely neutral. The “**Halo Effect**”⁷ may lead a well-presented or composed defendant to appear more trustworthy, while the “**Horns Effect**” may cast someone anxious or dishevelled in a more suspicious light. Such responses often function beneath conscious awareness, yet they shape how everything is received by the audience. What appears to be an evaluation of facts is often shaped by that first feeling.

This can especially be studied through Media Trials where a certain set perception often overrides final verdict. Take for example, the Rhea Chakraborty case. The accused was subjected to intense social media backlash, public scrutiny, and mental harassment from various sources. Her appearance, behaviour, and even her silence was examined and interpreted across platforms. Narratives of guilt were amplified by television news anchors and social media platforms well before any judicial determination was made. She was eventually arrested by the Narcotics Control Bureau in September 2020 and was subsequently granted bail by the Bombay High Court, having never been convicted. 8 Throughout this period, it was her appearance during agency interrogations and her public demeanour, rather than any established evidence, that dominated the media coverage and shaped public perception.

Once such impressions are formed, they persist. This is where the “**Confirmation Bias**” comes into play. This refers to the tendency to prefer information that aligns with existing beliefs⁹. First impressions don't just fade; they shape how we understand later information, often becoming stronger over time. A similar interaction of perception and credibility can be observed in the **Aryan Khan case**, where public opinion was influenced by factors like class, celebrity status, and the media presentation of him as a “Superstar’s spoiled son caught on a cruise for drugs”. In such moments, credibility is not judged on its own, it is seen through the layers of personal perception and bias.

The susceptibility of legal decision-makers to such cognitive shortcuts is not merely theoretical. Empirical research has documented these effects across multiple judicial contexts. A 2020 study by Olaborede and Meintjes-van der Walt examining cognitive bias in legal proceedings found that

7 EL Thorndike, ‘A Constant Error in Psychological Ratings’ (1920) 4(1) *Journal of Applied Psychology* 25.

8 Rhea Chakraborty was granted bail by the Bombay High Court in October 2020 and was never convicted. See contemporaneous reporting.

9 RS Nickerson, ‘Confirmation Bias: A Ubiquitous Phenomenon in Many Guises’ (1998) 2(2) *Review of General Psychology* 175.

judges and magistrates, despite their professional training, are subject to the same heuristic shortcuts as ordinary individuals, including confirmation bias, anchoring, and representativeness. ¹⁰ Of particular relevance to the Indian context is a large-scale empirical study published by the Economic Development and Institutions research programme, which analysed over five million criminal cases from Indian district courts and found evidence of in-group identity effects in judicial decision-making, suggesting that factors extrinsic to the evidence on record can influence case outcomes. ¹¹ These findings collectively point to a structural tension within adversarial criminal justice systems: while the legal framework demands that guilt be assessed solely on evidence, the cognitive architecture of human decision-makers is not a neutral instrument through which that assessment passes undistorted.

What emerges is a quiet but significant tension. While the law aspires to neutrality and demands proof, **the human mind searches for consistent patterns and cues.** In doing so, it often begins to decide long before the formal process concludes.

Building the Persona: Clothes, Behaviour, and Coaching

In the courtroom, the accused aren't just defended; they are 'presented.' Why? Alongside legal arguments, a less noisy process occurs: "**A persona**," carefully created to convey credibility, restraint, and innocence.

Clothing plays a delicate yet an influential part in shaping our perceptions. Choices are rarely incidental. **Lighter shades, like white, suggest simplicity and purity, whereas darker tones, such as navy, suggest composure and reliability,** associations supported by research in **colour psychology** ¹². Due to their linkage to aggression, brighter colours, such as red, are often not preferred. In this sense, appearance becomes a form of silent communication that moulds perception before any words are spoken.

¹⁰ A Olaborede and L Meintjes-van der Walt, 'Cognitive Bias Affecting Decision-Making in the Legal Process' (2020) 41(4) *Obiter* <https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532020000400007> accessed 12 June 2026.

¹¹ AA Mailanchi and SV Kumar, 'Cognitive Bias in Judicial Decision Making' (Institute of Company Secretaries of India) <<https://www.icsi.edu/media/webmodules/CSJ/October/18.pdf>> accessed 12 June 2026.

¹² AJ Elliot and MA Maier, 'Color Psychology: Effects of Perceiving Color on Psychological Functioning in Humans' (2014) 65 *Annual Review of Psychology* 95; I Soroka, N Balode and M Kutas, 'Colours in Clothes and Psychological Functioning: The Impact on Emotions and Self-Esteem' (2024) 5(4) *Sapienza: International Journal of Interdisciplinary Studies*.

Behaviour is equally calibrated. Defendants are guided on their **posture, eye contact, and expression**. Sitting upright may indicate confidence, measured eye contact may suggest honesty, and controlled reactions may convey seriousness, for example. However, these signals operate within a narrow range. Excess composure may seem cold, while visible anxiety may invite suspicion. There is no perfect way to appear, only cautious management of perception.

This process is apparent in high-profile Indian cases. In the Jessica Lal murder case, the public image of the accused, Manu Sharma, appeared to shift from that of a "spoiled rich kid" to "remorseful man" with suits and nods. Similarly, in the Aarushi Talwar case, the parents' simple attire and composed demeanour projected normalcy amid intense scrutiny.

The courtroom is not only a site of legal determination but also of careful signalling, where innocence is not just argued through evidence but communicated through appearance and behaviour.

Trial Fairness and Cost of Perception

The influence of appearance and perception shaped by it raises a deeper fear: the integrity of a fair trial itself. **Article 21 of the Constitution guarantees** that “no person shall be deprived of his life or personal liberty except according to procedure established by law.”¹³ The Supreme Court in *Maneka Gandhi v Union of India* (AIR 1978 SC 597) has since held that the “procedure established by law” must itself be just, fair, and reasonable, effectively reading a due-process dimension into the guarantee.¹⁴ **Yet, when perception begins to shape judgment, this guarantee risks being quietly compromised.**

Take for example, the **Right to Remain Silent** is a constitutional provision. Under **Article 20(3)**, an accused cannot be forced to give a testimony against themselves.¹⁵ This principle is acknowledged in *Nandini Satpathy v. P. L. Dani* (1978)¹⁶ However, in practice, silence rarely remains unbiased. Through the lens of “**Anchoring Bias**”, **early impressions tend to persist**

¹³ Constitution of India 1950, art 21.

¹⁴ *Maneka Gandhi v Union of India* AIR 1978 SC 597.

¹⁵ Constitution of India 1950, art 20(3).

¹⁶ *Nandini Satpathy v PL Dani* (1978) 2 SCC 424.

17. Therefore, a defendant's unwillingness to speak may be his constitutional right but can be unconsciously read as guilty. This initial impression further impacts how subsequent behaviour is interpreted.

This adversity extends outside the courtroom into the public domain. For example, the **Nirbhaya case**, media portrayal and candlelight march towards India Gate quickly shaped a narrative of guilt. This led to little space for neutral or other differing viewpoints. Even though the seriousness of the crime isn't at all in question, the speedy judgments with the sheer rigidity with which a belief system were made show how initial perceptions influence formal procedures.

The Indian judiciary has, on multiple occasions, expressed concern about precisely this dynamic. In *State of Maharashtra v Rajendra Jwanmal Gandhi* (1997) 8 SCC 386, the Supreme Court observed that a trial by print or electronic media, or by public agitation, is the antithesis of the rule of law and can lead to a miscarriage of justice. ¹⁸ Subsequently, in *Sahara India Real Estate Corporation Ltd v SEBI* (2012) 10 SCC 603, the Supreme Court affirmed the power of courts to issue postponement orders to restrict prejudicial reporting, holding that such restrictions constitute reasonable limitations under Article 19(2) of the Constitution when necessary to protect the right to a fair trial under Article 21. ¹⁹ What these judicial observations acknowledge is a structural reality: the formation of public opinion through media coverage does not merely influence spectators; it creates an ambient climate of presumed guilt that can seep into the very proceedings the law intends to insulate. The problem, as scholars have noted, is that India has no single, clear legislative framework to regulate media conduct during ongoing criminal trials, leaving the judiciary to manage this tension through its inherent powers and contempt jurisdiction on a case-by-case basis.

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Socio-economic factors are another realm which complicates the situation further. Though there is no right or wrong dress code for persons who are accused, but their appearance still marks great significance. **A defendant who is well-groomed might be seen as more calm or trustworthy, whereas those who cannot present themselves in the same way may encounter a subtle**

17 A Tversky and D Kahneman, 'Judgment Under Uncertainty: Heuristics and Biases' (1974) 185(4157) Science 1124.

18 *State of Maharashtra v Rajendra Jwanmal Gandhi* (1997) 8 SCC 386.

19 *Sahara India Real Estate Corporation Ltd v SEBI* (2012) 10 SCC 603.

20 The Law Institute, 'The Presumption of Innocence: Cornerstone of Criminal Justice' (14 January 2026) <<https://thelaw.institute/criminal-justice-system/presumption-innocence-criminal-justice-cornerstone/>> accessed 12 June 2026.

disadvantage. Empirical studies in mock-trial settings have suggested that defendants who appear well-groomed are more likely to achieve positive verdicts, underscoring the impact of visual signals on judicial decisions ²¹. In a system that claims to be neutral, such disparities raise unsettling questions regarding equal treatment under the law.

Critical Reflection: Acting For Justice?

These realities raise a difficult question: Is the courtroom only a space of evidence and reasoning, or is it also a space where credibility is quietly shaped and performed? The presentation of an accused, including appearance and behaviour, is part of a legal strategy and narrative building. Then does advocacy easily influence perception?

This not only contradicts with **Article 14**, which promises equality before the law, but raises another question. If appearance, grooming, or access to better legal coaching affects how innocence is perceived, has equality risks become formal rather than real? The right to legal aid guaranteed under Article 39A of the Constitution and given legislative form through the Legal Services Authorities Act, 1987 was intended to address precisely this structural imbalance: the accused who cannot afford skilled legal representation stands at a measurable disadvantage not only in the presentation of legal arguments but also in the management of the non-verbal signals that, as this paper documents, shape perception from the moment of entry into the courtroom. ²² In practice, however, studies of the legal aid system in India have consistently found that quality representation remains unequal, and that the accused who relies on state-appointed counsel is unlikely to receive the same degree of strategic preparation and persona-management as one represented by privately retained lawyers. ²³ The consequence is a layered inequality: those with the means to retain skilled counsel can, in effect, purchase a more credible performance of innocence, while those without such means are judged on a raw presentation that may operate against them. This is not an indictment of individual advocates; it is a structural critique of a system in which perception has been allowed to function as a proxy for proof.

One response to this critique is to argue that professional judges, unlike lay juries, are trained to resist extra-legal influences and to confine their reasoning to the evidence. This argument has a degree of validity: the professional judge operates within a framework of legal norms, institutional

²¹ Elliot and Maier (n 12); Soroka, Balode and Kutas (n 12).

²² Constitution of India 1950, art 39A; Legal Services Authorities Act 1987.

²³ *ibid.*

accountability, and reasoned written judgments that constrain arbitrary decision-making in ways that lay decision-making does not. However, the argument proves too much if it is taken to mean that judicial professionalism eliminates, rather than merely constrains, the influence of perception. The empirical evidence, surveyed earlier in this paper, suggests that even trained legal professionals remain susceptible to cognitive bias. Moreover, the written judgment, which records the legal reasoning for a decision, cannot capture the full account of how that decision was formed. The impression formed at the moment the accused entered the courtroom, the discomfort or comfort produced by their demeanour, the subtle sympathy or suspicion generated by their appearance: these are not recorded anywhere, and they do not have to be justified in writing. The law demands a reasoned account of how guilt was established from the evidence; it does not demand an account of how the decision-maker's perception of the accused shaped the frame through which the evidence was received. This is a gap in the architecture of criminal procedure that the formal safeguards of the adversarial process have not closed.

Addressing this gap requires both systemic and institutional responses. At the systemic level, there is a case for introducing structured bias-awareness training into judicial education at every tier of the Indian court system, including at the National Judicial Academy. Several jurisdictions, including certain states in the United States and courts in the United Kingdom, have experimented with implicit bias training for judges and jurors, with evidence suggesting that awareness interventions, while not eliminating bias, can reduce its influence on decision-making when combined with structured deliberation protocols.²⁴ At the institutional level, there is a case for developing procedural mechanisms that reduce the scope for extra-legal visual impressions to dominate early proceedings: measures such as standardised courtroom dress protocols for accused persons who cannot afford professional attire, clearer guidelines on the conduct of cameras and media in and around courtrooms, and stronger enforcement of the sub-judice rule in pre-trial media coverage. None of these measures would resolve the fundamental tension this paper has identified, which is ultimately a tension between the cognitive limitations of human decision-makers and the aspirational standards of criminal justice. But they would represent a meaningful acknowledgment that the legal ideal of proof-based judgment requires active institutional support, not merely formal statement.

Reducing this gap requires greater awareness of bias and prejudice in legal training and a stronger focus on evidence over impression-based judgments.

²⁴ See generally Olaborede and Meintjes-van der Walt (n 10); on implicit bias training see also the overview cited therein.

Ultimately, criminal justice sits at a fragile intersection. The law speaks in evidence, but it is filtered through perception. **Justice, then, isn't only what is proven, but also what is believed.**

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