

ASNSS's

Mahatma Gandhiji Law College

Sankeshwar

Subject: Bharatiya Nagarika Suraksha Sanhita
(BNSS 2023)

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Bharatiya Nagarik Surksha sanhita 2023

UNIT-I

Introduction

Criminal procedure refers to the rules and processes governing how the state enforces criminal law. It outlines the steps involved in investigating, prosecuting, and adjudicating criminal cases, ensuring fairness and due process for all parties involved. The primary goal is to establish a system for investigating crimes, apprehending offenders, conducting fair trials, and imposing appropriate punishments.

It is a procedural law which states how the police machinery is to function as far as investigation and procedure is to be followed by courts during investigation and trial. The CrPC (BNSS) classifies criminal offences into several categories such as bailable, non-bailable, cognizable and non-cognizable offences. The procedural treatment of different offences is

different. The various steps at the time to filing a complaint such as filing a First Information Report (FIR), gathering evidence and initiating an enquiry are all governed by the CrPC. (BNSS) The CrPC(BNSS) further lays down classes of criminal courts.

The code of criminal procedure (CrPC) written by the **THOMAS BABINGTON MACUALAY**. He also regarded as the father of the CrPC.

Offence is an action which harms others and disturbs the tranquility of a society.

Types of criminal offences

- ✓ Cognizable offence
- ✓ Non cognizable offence
- ✓ Bailable offence
- ✓ Non bailable offence
- ✓ Compoundable offence
- ✓ Non compoundable offence

Functionaries in criminal justice

- ✓ Police
- ✓ State
- ✓ Judges
- ✓ Victim
- ✓ Accused
- ✓ Advocate
- ✓ Witness
- ✓ Society or members of general public

Basic Objects of BNSS

- ✓ Equality before law.
- ✓ Equal protection of laws.
- ✓ Protection of accused against the double jeopardy.
- ✓ Protection against the self incrimination.
- ✓ Protection against the ex-post law.
- ✓ Right to life and personal liberty except the procedure established by the law.
- ✓ Speedy trials.
- ✓ Prohibition of the discrimination.

➤ Importance of Criminal Procedure

- ✓ Safeguarding Rights
- ✓ Protection of the Accused
- ✓ Fair Trial
- ✓ Due Process
- ✓ Maintaining Public Order and Safety
- ✓ Deterrence
- ✓ Punishment of Offenders
- ✓ Crime Prevention
- ✓ Ensuring Justice and Accountability
- ✓ Transparency
- ✓ Impartiality
- ✓ Effective Law Enforcement
- ✓ Balancing Interests

- ✓ Preventing Misuse of Power
- ✓ Individual Rights

Importance of Criminal Procedure

Criminal procedure is crucial for ensuring a fair and just legal system. It provides the framework for how criminal cases are investigated, prosecuted, and adjudicated, protecting both the rights of the accused and the interests of society. By establishing clear procedures, it helps prevent arbitrary actions, ensures consistency, and promotes public trust in the justice system.

✓ Protection of the Accused

The Indian legal system, rooted in the principles of fairness and justice, provides several safeguards for those accused of a crime. These protections are crucial throughout the different stages of the criminal justice system, from arrest to post-trial proceedings. Constitution of India: Particularly Article 21 (Right to life and personal liberty) and Article 22 (Protection against arrest and detention).

✓ Fair Trial

The concept of a fair trial is a cornerstone of any just and democratic society, particularly within the criminal justice system. It is a fundamental human right, enshrined in international treaties like the Universal Declaration of Human Rights and various national constitutions, including India's. A fair trial ensures that individuals accused of a crime are treated

justly, their rights are protected, and the integrity of the legal system is upheld.

✓ **Due Process**

Criminal procedure guarantees that individuals accused of crimes are treated fairly throughout the legal process. This includes the right to a fair trial, legal representation, and protection against self-incrimination.

✓ **Maintaining Public Order and Safety**

- ✓ The criminal justice system, through its procedures, aims to deter criminal activity and maintain public safety.

✓ **Deterrence**

Deterrence is a fundamental concept in criminal justice that seeks to prevent crime by creating a fear of punishment. It operates on the idea that individuals will be discouraged from engaging in criminal behavior if they believe the consequences outweigh the potential benefits of the crime.

✓ **Punishment of Offenders**

The Indian legal system outlines various forms of punishment for individuals convicted of criminal offenses, primarily under the Indian Penal Code (IPC) and the recently enacted Bharatiya Nyaya Sanhita (BNSS).

In G. Vishakan Vs state of Kerala The petitioner was the senior journalist in MANGALAM DAILY, G. Vishakan said that the police officers conducted the search operation in his home without prior information and they asked about shajan skaria who is editor and publisher of the

YouTube channel named Marundan Malayali. After that the officers also cried the cell phone which was the source of his livelihood

The petitioner G. Vishakan also told that the police officers followed the provision under section 156 of CrPC (police officers power to investigate the person for the claim in cognizable offences) and ignored section 41A of CrPC. And the petitioner also claimed that there is no link between him and skaraia's crime. Then the Kerala high court strongly demonstrated that the state police for unlawfully confiscating the journalists phone without following proper protocols.

In State of Kerala Vs Arumugham This case mainly involved five minor girls leaving the care of their respective legal guardians with different men to the different locations. The accused had been charged with the kidnapping and sexual assault by the parents it had five different separate cases with separate set of facts. The accused had been detained under section 361 of IPC and the case come into the sessions court of that territorial jurisdiction.

The court had examined that 361 of CrPC and stated that it safeguards the minors from being kidnapped or seduced for unlawful purposes as well as it privileges and safeguards the rights of the individual. The court stated that in the similar case of state of Haryana Vs Rajaram and this case kidnap is an offence under section 361 of IPC. And awarded the punishment for the offenders of the crime.

Ramesh Kumar Vs state of New Delhi

The FIR was filed for a hearing offence on a alleged breaches of a development agreement and the appellant was one of the accused . The high court granted the bail on the condition that appellant should deposit 22 lakhs in the trail court .however the appellant was unable to fulfill the requirement then the appellant went to the Supreme Court on the alleged amount which was burden on him. The state argued that appellant was offered to pay. Under the reference of the case **Gurbaksha Singh Vs state of Punjab** where the court held that courts should lean against the imposition of unnecessary restrictions on the scope of 438 of CrPC. The court stated that civil disagreement cannot be resolved by the use of criminal justice system . Even if the appellant promised to pay , high court should lean on them the wholesome.

Background of Criminal Procedure

The Code of Criminal Procedure (CrPC) in India has a rich history, evolving from ancient Indian legal traditions and British colonial rule to the current framework established in 1973. Initially, diverse and rudimentary laws existed, but the British consolidated them, culminating in the CrPC of 1861 and subsequent amendments. The 1973 CrPC, shaped by recommendations from the Law Commission, provides a comprehensive framework for investigating, prosecuting, and adjudicating criminal offenses. **In 2023 BNSS has enacted.**

Salient Features of Bharatiya Nagarika Surksha Sanhita

✓ Mandatory Forensic Investigation

- ✓ **Trial in Absentia**
- ✓ **Electronic Trials and Investigations**
- ✓ **Timelines for Judgments and Uploads**
- ✓ **Victim-Centric Approach**
- ✓ **Use of Handcuffs**
- ✓ **Zero FIR**
- ✓ **Audio-Video Recording**
- ✓ **Attachment of Property**
- ✓ **Consolidation and Simplification**

- **Mandatory Forensic Investigation:**

For offenses punishable with seven years or more of imprisonment, forensic experts will be required to visit crime scenes to collect and record evidence. This includes using mobile phones or other electronic devices to document the process.

- **Trial in Absentia:**

The BNSS empowers courts to conduct trials in absentia for proclaimed offenders who are absconding and cannot be immediately arrested. This aims to expedite the judicial process and ensure timely justice.

- **Electronic Trials and Investigations:**

The Sanhita promotes the use of electronic modes for all trials, inquiries, and proceedings. This includes the production of electronic devices likely to contain digital evidence during investigations and trials.

- **Timelines for Judgments and Uploads:**

The BNSS mandates that judgments be pronounced within 30 days of concluding arguments, with a provision for a 45-day extension with reasons recorded. Judgments must also be uploaded on the court's portal within 7 days of pronouncement.

- **Victim-Centric Approach:**

The BNSS includes provisions for victim compensation and aims to ensure greater participation of victims in the criminal justice process.

- **Use of Handcuffs:**

The BNSS outlines specific cases where police officers are authorized to use handcuffs, including cases of organized crime, habitual offenders, and those accused of serious offenses like murder and rape.

- **Zero FIR:**

The BNSS introduces the concept of a Zero FIR, allowing registration of a First Information Report (FIR) at any police station regardless of the crime location.

- **Audio-Video Recording:**

The Sanhita mandates audio-video recording of search and seizure procedures during investigations, promoting transparency and accountability.

- **Attachment of Property:**

Courts are empowered to attach properties that are deemed proceeds of crime during investigations, with provisions for distributing these proceeds to victims.

- **Consolidation and Simplification:**

The BNSS consolidates and simplifies the law by repealing and amending provisions of the CrPC.

BNSS including its Constitutional Dimensions

The Bharatiya Nagarik Suraksha Sanhita (BNSS), which replaces the Criminal Procedure Code (CrPC), aims to modernize and streamline the criminal justice system in India. It incorporates provisions for faster trials, increased use of technology, and better protection of citizens' rights. Key constitutional dimensions include ensuring fundamental rights like the right to life and personal liberty (Article 21) and the right to equality (Articles 14 and 15), which are safeguarded by the BNSS's procedures.

- **Faster Trials:**

BNSS introduces timelines for various stages of the criminal justice process, such as charge framing, judgment pronouncements, and uploading of judgments, aiming to reduce delays. This aligns with the constitutional guarantee of a speedy trial.

- **Use of Technology:**

The BNSS mandates forensic investigations for serious offenses, audio-video recording of searches and seizures, and electronic modes for trials,

promoting transparency and accountability. This aligns with the need for a modern, efficient, and technologically advanced justice system.

- **Trial in Absentia:**

The BNSS empowers courts to conduct trials in absentia for proclaimed offenders who have absconded, expediting justice delivery. However, this provision needs careful consideration to ensure fair trial rights.

- **Bail Provisions:**

BNSS limits the scope for plea bargaining and makes it more difficult for accused individuals to secure bail, potentially impacting the right to liberty. Clarity is needed on the factors courts should consider when granting bail in non-bailable offenses.

- **Fundamental Rights:**

The BNSS emphasizes citizen-centricity and aims to protect citizens' rights, but some provisions, like the use of handcuffs, have raised concerns about potential violations of fundamental rights. The bill needs to ensure that the procedural framework does not infringe upon individual liberties.

- **Preliminary Inquiries:**

The BNSS expands the scope of preliminary inquiries compared to the Lalita Kumari judgment, potentially impacting the registration of FIRs.

Constitutional Principles and BNSS:

The BNSS is expected to operate within the framework of the Indian Constitution, particularly the fundamental rights guaranteed in Part III. The key principles of natural justice, fair trial, and presumption of innocence must be adhered to in the implementation of the BNSS.

Definitions

Section 2(a) “Audio- video electronic means” shall include use of any communication device for the purpose of video conferencing, recording of processes of identification, search and seizure or evidence, transmission of electronic communication and for such other purposes and by such other means at the state government may , by rules provide;

Section 2(b)“Bail” means release of person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution by such person of a bond or bail bond.

Section 2(d) **“Bail Bond”** means an undertaking for release with surety;

Section 2(e) **“Bond”** means a personal bond or an undertaking for release without surety:

Section 2(v) **“Victim”** means a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim.

Section 2(l) **“Investigation”** includes all the proceedings under this Sanhita for the collection of evidence conducted by police officer or by

any person (other than magistrate) who is authorized by the Magistrate in this behalf.

➤ Power of Courts

(Section 21-29)

1. Introduction
2. Hierarchy of courts and their jurisdiction
 - a. High Courts
 - b. Courts of Session
 - c. Judicial Magistrates
 - d. Chief Judicial Magistrates
 - e. Judicial Magistrates of the First Class
 - f. Judicial Magistrates of the Second Class
 - g. Executive Magistrates
3. Trial of offenses
4. Sentencing powers
5. Sentencing powers

1. Introduction

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, replacing the Code of Criminal Procedure, 1973 (CrPC), details the powers and structure of the Indian judicial system. The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 outlines the powers of different courts in India, including High Courts, Sessions Courts, and various classes of

Magistrates. Sections 21 to 29 detail the specific powers of these courts, including their jurisdiction to try offenses, sentencing powers, and procedures for appointing and withdrawing judicial officers.

2. Hierarchy of courts and their jurisdiction

Courts by which Offences are Triable

- The BNSS establishes a tiered system of courts. According to section 21 Any offence under the BNSS 2023 may be tried by –

- i. The High Court ; or

- ii. The Court of Session; or

- iii. Any other court by which such offence is shown in the first schedule to be triable:

provided that any offence under Section 64,65,66,67,68,69,70 or Section 71 of Bharatiya Nyaya Sanhita 2023 shall be tried as far as practicable by court presided over by a woman;

- Any offence under any other law shall, when any court is mentioned in this behalf in such law, be tried by such court and when no court is so mentioned, may be tried by-

- ✓ The High Court ; or

- ✓ Any other court by which such offence is shown in the First Schedule to be triable.

❖ Sentences which High Courts and Sessions Judges May Pass.

According to Section 22 (1) A High Court may pass any sentence authorized by law.

(2) A session judge or additional session judge may pass any sentence authorized by law ; but any sentence of death passed by any such judge shall be subject to confirmation by the high court.

❖ **Sentences which Magistrates may Pass.**

Section 23(1). **A Chief judicial magistrate may pass** any sentences authorized by law except a sentence of death or imprisonment for life or of imprisonment for a term exceeding seven years.

A Magistrate of the First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding fifty thousand rupees, or of both, or of community service. (Section 23(2).

The Court of Magistrate of Second Class may pass a sentence of imprisonment for a term not exceeding one year; or of fine not exceeding ten thousand rupees or of both, or community service. (Section 23(3).

- ❖ **Sentence of Imprisonment in default of fine.** According to Section 24 (1)The court of Magistrate may award such term of imprisonment in default of payment of fine as is authorized by Law. Provided that the term (a) is not in excess of the powers of the magistrate under section 23; (b) shall not , where imprisonment has been awarded as part of the substantive sentence, exceed one- fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of fine.

Prosecution and Police Under BNSS

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, which replaces the Code of Criminal Procedure (CrPC) 1973, introduces several changes to

prosecution procedures. Key aspects include the establishment of a Directorate of Prosecution, provisions for trial in absentia, and the use of electronic means in investigations and trials. Additionally, the BNSS mandates forensic investigation for certain offenses, strengthens witness protection, and allows for attachment and distribution of proceeds of crime

Directorate of Prosecution

- The BNSS establishes a Directorate of Prosecution in each state, with a prescribed hierarchy, to monitor cases and expedite proceedings.
- The Director of Prosecution will oversee cases with potential punishments of 10 years or more, life imprisonment, or death, ensuring timely proceedings and advising on appeals.
- Deputy Directors of Prosecution will scrutinize police reports and monitor cases with punishments of 7 years or more but less than 10 years, aiming for expeditious disposal.

Trial in Absentia

- The BNSS allows for trials to be conducted in the absence of an accused who has absconded to evade trial, provided there is no immediate prospect of arrest.
- A proclaimed offender, who has failed to appear despite a proclamation, can be declared as such by the court after an inquiry.

Electronic Means and Technology:

- The BNSS mandates the use of electronic communication and audio-video electronic means in trials, inquiries, and proceedings.

- This includes the delivery of summons and notices, evidence deposition via audio-video conferencing, and the recording of search and seizure activities.

Other Changes:

- **Forensic Investigation:** The BNSS mandates forensic investigation for offenses punishable with seven years or more of imprisonment.
- **Witness Protection:** The BNSS includes provisions for witness protection schemes.
 - **Attachment of Proceeds of Crime:** The BNSS allows for the attachment and distribution of proceeds of crime.
 - **Victim-Centric Approach:** The BNSS emphasizes a victim-centric approach in criminal proceedings.
 - **Plea Bargaining:** The BNSS limits plea bargaining to sentence bargaining and requires an application within 30 days of charge framing.
 - **Withdrawal of Prosecution:** Section 360 of the BNSS allows for the withdrawal of prosecution by a Public Prosecutor or Assistant Public Prosecutor with court permission, similar to Section 321 of the CrPC.
 - **Arrest:** Section 35 of the BNSS consolidates Sections 41 and 41A of the CrPC, outlining conditions for arrest and requiring a notice to appear for offenses punishable with imprisonment of up to 7 years

First Information Report

Introduction

FIR means "First Information Report". This is meant that any information regarding a crime that is given by an individual and received by the police officials is called an FIR

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), an FIR (First Information Report) can be registered at any police station, regardless of the jurisdiction where the offense occurred, including through electronic means. Section 173 of the BNSS outlines the procedure for registering an FIR, including the concept of Zero FIR and the requirement for recording information received electronically. The FIR is key to India's criminal justice system.

Jurisdiction:

An FIR can be registered at any police station, irrespective of the location of the offense.

- **Electronic FIR (e-FIR):**

The BNSS allows for FIRs to be registered through electronic communication. The information received electronically must be signed by the informant within three days and entered into a prescribed book.

- **Oral Information:**

If information is given orally, the police officer must reduce it to writing, read it back to the informant, and have it signed by the informant.

Free Copy:

The informant or victim is entitled to a free copy of the FIR.

Preliminary Enquiry:

The BNSS allows for a preliminary enquiry before registering an FIR in certain cases, particularly those involving speech, writing, or artistic expression.

The BNSS aims to:

- **Make FIR registration more accessible:**

By allowing registration at any police station and through electronic means, it removes jurisdictional barriers.

- **Enhance transparency and accountability:**

The requirement for signing and providing a copy of the FIR ensures transparency and provides the informant with a record of their complaint.

- **Address specific situations:**

The concept of the Zero FIR and the provisions for electronic FIRs address specific scenarios that may arise in the registration of FIRs.

Provisions and changes in BNSS regarding FIR:

- Registration regardless of jurisdiction (Section 173(1) BNSS): An FIR for a cognizable offense can now be registered at any police station, irrespective of where the offense occurred. This facilitates the concept of Zero FIR.
- Electronic Filing (e-FIR) (Section 173(1)(ii) BNSS): The BNSS allows the filing of FIRs through electronic means, like email or official portals. However, the complainant must provide a physical signature within three days of the electronic submission to authenticate the e-FIR.

- Preliminary Enquiry (Section 173(3) BNSS): Unlike the CrPC, where FIR registration was generally mandatory upon disclosure of a cognizable offense, the BNSS introduces an exception. For offenses punishable with imprisonment between 3 to 7 years, a preliminary inquiry can be conducted before registering an FIR to determine if a prima facie case exists. This aims to prevent the registration of frivolous or trivial cases.
- Zero FIRs are Statutorily Recognized: While Zero FIRs existed in practice, the BNSS gives them statutory recognition. These are recorded with a serial number "0" and then transferred to the police station with jurisdiction for investigation.
- Mandatory Copy to Informant (Section 173(2) BNSS): A copy of the recorded FIR must be provided to the informant or victim immediately and free of cost, ensuring transparency and accountability..
- Defined timeframe for investigation: The BNSS mandates specific timelines for completing investigations (e.g., 90 days for offenses punishable with less than seven years and 180 days for serious offenses), aiming to reduce delays and ensure efficiency.

Who can file an FIR?

- Anyone with information about the commission of a cognizable offense can lodge an FIR. This includes victims, witnesses, or even a police officer who becomes aware of the offense.

Process of filing an FIR under BNSS:

1. Reporting the offense: The informant can provide information about the crime orally, in writing, or electronically to the police.
2. Recording the FIR: The police officer records the information, reduces oral information to writing, and reads it back to the informant. If filed electronically, the informant needs to sign it within three days.
3. Signing the FIR: The informant signs the report, or provides a thumb impression if illiterate, confirming the accuracy of the information.
4. Providing a copy: The police officer provides a free copy of the FIR to the informant.

If SHO refuses to register FIR:

1. Send a written complaint to the Superintendent of Police (SP) or Deputy Commissioner of Police (DCP) by post or email (Section 173(4) BNSS).

The BNSS aims to create a more efficient, transparent, and technology-friendly system for FIR registration and criminal investigations in India.

For offenses against women under specific sections (64-71, 74-79, 124 BNS), the statement should be recorded by a woman police officer or a woman officer.

In Lalita Kumari v. Govt. of U.P

This case, though under the CrPC (now superseded by BNSS), clarified that registration of an FIR is mandatory if the information discloses a cognizable offense, according to Live Law. The Supreme Court

emphasized that a preliminary inquiry is only permissible when the information does not disclose a cognizable offense.

Zero FIR

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, Zero FIR allows a person to file a First Information Report (FIR) at any police station, regardless of the location where the crime occurred or the relevant jurisdiction. This means a victim can report a crime to the nearest police station, even if it's not the one with territorial jurisdiction over the incident. The receiving police station registers the complaint and then forwards it to the appropriate police station for investigation.

✓ Jurisdiction-Free Filing:

The core concept of Zero FIR is that it can be filed at any police station, eliminating delays caused by jurisdictional issues.

✓ Reporting Mechanism:

A person can report a cognizable offense orally or in writing, including through electronic communication, at any police station.

✓ Registration Process:

The police station receiving the Zero FIR will register it and then transfer the case to the relevant police station for investigation.

✓ Purpose:

Zero FIR ensures prompt action and prevents victims from facing hurdles due to jurisdictional boundaries.

✓ **BNSS Provision:**

The registration of FIRs, including Zero FIRs, is governed by Section 173 of the BNSS 2023.

✓ **Historical Context:**

The concept was recommended by the Justice Verma Committee post the Nirbhaya case to ensure victims are not denied registration of FIRs due to jurisdictional issues.

A complainant approaches any police station irrespective of territorial jurisdiction (173(1) BNSS) to complain.

- After fulfilling the requirements under section 173 BNSS, the officer registers the Zero FIR. The FIR number is prefixed with "Zero" to indicate it is a Zero FIR. A copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the informant or the victim (173(2) BNSS) After the registration of Zero FIR, if necessary, primary investigation may be done by the Investigation officer of same police station (e.g. Medical Examination of a Rape victim).
- The officer forwards the Zero FIR to the police station having jurisdiction over the place of the incident.
- The concerned police station receives the Zero FIR and reregisters it as a regular FIR in their records
- The SHO assigns the FIR to an investigating officer for further action.

e-FIR REGISTRATION

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, has replaced the Code of Criminal Procedure, 1973, has, among other changes, introduced the provisions of Zero-FIR, e-FIR. The provisions of registration of a cognizable offence have now been provided under section 173 of BNSS instead of 154 of CrPC. The SOP outlines the following procedural steps which may be followed for submission and processing of e-FIRs.

- The complainant logs into the official police e-FIR portal or police website or may send the complaint/information to the concerned police station through any electronic communication.
- As per section 173(1) of The Bharatiya Nagarik Suraksha Sanhita (BNSS), Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed may be given orally or by electronic communication.
- The complainant fills in the required details or submits the following information in his complaint, including personal information, details of the incident, and any supporting documents or evidence. The message so received electronically may be downloaded and kept in a computer in the police station. The electronic information relating to the commission of a cognizable offence may be entered in the e-complaint/eFIR register or as prescribed by the head of the department.
- The submitted e-FIR is forwarded to the investigation officer for initial verification. As per 173(3) of BNSS- “Without prejudice to the provisions contained in section 175, on receipt of information relating to the

commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer-in-charge of the police Station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence – (i) Proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or (ii) proceed with investigation when there exists a prima facie case”

- If the information is sent through electronic communication, the same shall only be taken on record by police official being signed within three days by the person giving it which means after signing the same FIR will be registered.

Investigation Power

The Bharatiya Nagarik ers Suraksha Sanhita (BNSS) 2023, which replaces the Code of Criminal Procedure (CrPC), outlines several key changes and additions to investigation procedures. These include formalizing the "Zero FIR" process, mandating forensic investigations in serious offenses, and incorporating electronic evidence and audio-video recording of statements.

➤ **Forensic Investigation:**

Section 176(3) mandates the involvement of forensic experts in cases with a punishment of seven years or more. Forensic teams will visit crime scenes to collect and record evidence, with mandatory videography. If a state lacks forensic facilities, it must utilize those of another state.

- **Electronic Evidence:**

The BNSS allows for the use of audio-video recordings of statements made during investigations, including those of witnesses, which can serve as safeguards against coercion.

- **Time-Bound Investigations:**

While the BNSS doesn't specify strict time limits for completing investigations, it introduces the concept of time-bound investigations to ensure timely justice and reduce case backlogs.

Complaint

(Section 223 to 226)

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, which replaces the Code of Criminal Procedure (CrPC) 1973, outlines procedures for filing complaints, including provisions for e-FIRs and private complaints. Specifically, Section 173 of BNSS deals with the registration of FIRs, including e-FIRs. Section 223 of BNSS covers the procedure for handling complaints before Magistrates, including the examination of the complainant and witnesses.

Definition

Section 2(h) “ complaint means any allegation made orally or in writing to a magistrate, with view to his taking action under this Sanhita, that some person , whether known or unknown, has committed an offence, but does not includes a police report.

The Hon'ble Supreme Court has held in case **law A R Antulay v. Ram Dass Sri Nivas Nayak, (1984) 2 SCC 500**, that Magistrate's power to take

cognizance without holding inquiry or directing investigation is implicit in section (200 Cr.P.C., 1973.) BNSS Section 223.

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, a complaint to a Magistrate is governed by Sections 223 to 226. These sections outline the procedure for filing a complaint, examining the complainant, and issuing notice to the accused before the Magistrate takes cognizance of the offense

Allegation of an Offense:

The core of the definition is an assertion that a crime has been committed.

Made to a Magistrate:

This means the information must be presented to a Magistrate, a judicial officer with specific powers.

Action under BNSS:

The purpose of the complaint is to trigger the Magistrate to initiate proceedings or take other actions as permitted by the BNSS.

Exclusion of Police Reports:

A police report, which is a formal document detailing an investigation, is specifically excluded from the definition of a complaint.

Explanation:

An important point is that if a police report reveals a non-cognizable offense (an offense where police cannot arrest without a warrant) after an investigation, that report is considered a complaint.

Filing the Complaint:

- ✓ A complaint can be filed either orally or in writing before a Magistrate.
- ✓ It's advisable to file a written complaint for clarity and record-keeping.

- ✓ The complaint should be presented to the Magistrate with jurisdiction.

Examination of the Complainant:

- ✓ The Magistrate is required to examine the complainant on oath.
- ✓ This examination is recorded in writing, and any witnesses present may also be examined.
- ✓ The purpose of this examination is to assess the validity of the allegations before the Magistrate takes cognizance.

Notice to the Accused:

- ✓ A significant change under BNSS 2023 is the requirement to issue a notice to the accused before the Magistrate takes cognizance of the offense.
- ✓ This notice must include a copy of the complaint, the complainant's sworn statement, and any witness statements.
- ✓ The accused is given an opportunity to be heard before the Magistrate decides whether to proceed with the case.

Taking Cognizance:

- ✓ The Magistrate can only take cognizance of the offense after providing the accused with an opportunity to be heard.
- ✓ This ensures a fair and transparent process, as the accused has a chance to present their side of the story before the Magistrate's decision to proceed with the case.
- ✓ The Magistrate's decision to take cognizance regulates the subsequent procedure in the case.
- ✓ **Gireesh vs Rahim (June 8, 2020):**

This case highlights the Magistrate's duty to inquire into or try together a complaint case and a case arising from a police report.

✓ **Kapil Agarwal vs Sanjay Sharma (March 1, 2021):**

This case underscores the Magistrate's discretion in deciding whether to proceed with a complaint case.

Arrest of Persons

(Sections 35 to 62)

Concept of Arrest

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 outlines the procedures for arrest in India, replacing the Cr.PC. It focuses on enhancing transparency, accountability, and safeguarding individual rights during the arrest process. Key changes include provisions for arrests with and without warrants, the use of handcuffs, and the rights of arrested individuals. The BNSS also emphasizes the use of technology in recording arrests and timely communication of an individual's detention to their family.

Every person having their sole Right to get a Dignified Life. Whether it is regarding Normal People or even an Accused .To detain or to made accused feel deterrent by the Police Authorities because of the Commission of the Crimes whether Cognizable or Non-Cognizable Offence committed by them is duly known by the name of '**Arrest**'.

✓ **Arrest by Warrant.**

- ✓ Arrest without Warrant in Cases of Commission of Cognizable Offences by Accused.
- ✓ Arrest by Private Person
- ✓ Arrest by Magistrate
- ❖ **Procedure of Arrest**

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 outlines the procedure for arrest, emphasizing transparency, accountability, and safeguarding individual rights. Key aspects include the manner of arrest, restrictions on arresting women, and the use of handcuffs. The BNSS also details the duties of the arresting officer and the rights of the arrested person.

- **How an arrest is made:**

A police officer must physically touch or confine the person's body during an arrest, unless the person submits to custody (verbal or otherwise).

- **Special provisions for women:**

Women are presumed to have submitted to custody upon an oral intimation of arrest, and unless exceptional circumstances exist, they should only be arrested between sunrise and sunset by a female officer.

- **Use of handcuffs:**

Handcuffs can be used, subject to the nature and gravity of the offense, as per Section 43 (3) of the BNSS.

- **Duties of the arresting officer:**

The officer must inform the arrested person of the grounds for arrest and their right to be informed of the arrest to a relative or friend.

Section 36: Procedure of arrest and duties of police officer making arrest

Section 36 of BNSS outlines the procedure for arrest and the duties of a police officer making an arrest. It mandates that the officer must clearly identify themselves, prepare a memorandum of arrest, and inform the arrested person of their rights, including the right to have someone informed of their arrest

➤ **Identification:**

The police officer must be clearly identifiable through an accurate, visible, and clear identification of their name.

➤ **Memorandum of Arrest:**

A memorandum of arrest must be prepared, attested by at least one witness (a family member or a respectable member of the locality), and countersigned by the person arrested.

➤ **Notification of Rights:**

The arrested person must be informed of their right to have a relative or friend informed of their arrest, unless a family member is already present during the arrest.

➤ **Right to Counsel:**

While not explicitly mentioned in Section 36, the broader legal framework ensures the right to legal counsel, which is often discussed in relation to arrest procedures.

Safeguards

In the Indian Constitution, Article 22 provides protection against arbitrary arrest and detention. It outlines specific rights for individuals who have been arrested or detained, ensuring they are not subjected to unfair or unlawful treatment.

- **Right to be informed of the grounds of arrest**
- **Right to be defended by a lawyer of his own choice**
- **Right to be produced before a Magistrate**
- **No detention beyond 24 hours except by order of the Magistrate**

In the case of *State of Punjab v. Ajaib Singh*, this right was infringed and thus the victim was provided compensation as constitutional remedy. It was held that cases of arrest without warrant require greater protection and production of the accused within 24 hours ensures the legality of the arrest, not complying with which would deem the arrest unlawful.

The Supreme Court of India in the case of *D K Basu v. State of West Bengal*, enumerate 11 guidelines and requirements for arrests and detentions. These guidelines are an addition to constitutional and statutory safeguards which did not contradict any of them.

The guidelines read as follows:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name clear identification and name tags with their designations. The particulars of all such police personnel who handle the interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up shall be entitled to have one friend or relative or other person know to him or have interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee and the police officer effecting the arrest and copy provided to the arrestee.
8. The arrestee should be subjected to a medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, of Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A police control room could be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the

arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

UNIT-II

Pre- Trial Process and Commencement of Proceedings

1. Magisterial Power to Take Cognizance and Timelines to Complete the Proceedings

Under the BNSS 2023, a Magistrate's power to take cognizance of an offense is primarily governed by Section 210. This section allows a Magistrate to take cognizance of an offense based on a complaint, a police report, or information received from any other source, including suo motu action.

- A key change in BNSS is the requirement to provide the accused with an opportunity to be heard before the Magistrate takes cognizance of the offense, as per the proviso to Section 223(1).
- Timelines for various stages of proceedings are also specified, including framing of charges (60 days from the first hearing) and pronouncement of judgment (30 days from completion of arguments, extendable to 45 days).

Magisterial Powers to Take Cognizance

➤ Complaints:

Magistrates can take cognizance based on complaints filed by individuals or authorized persons under special laws.

➤ Police Reports:

Cognizance can also be taken based on police reports submitted in any form, including electronic format.

➤ **Other Sources:**

Information from other sources, including a Magistrate's own knowledge (suo motu), can also trigger cognizance.

➤ **Pre-Cognizance Hearing:**

A crucial aspect is the mandatory hearing for the accused before cognizance is taken, as per Section 223(1). This means the accused is given a chance to present their side of the case before the Magistrate applies their mind to the matter.

Timelines for Proceedings:

➤ **Framing of Charges:**

A Sessions Court must frame charges within 60 days from the first hearing on the charges.

➤ **Judgment:**

A judgment must be pronounced within 30 days of the completion of arguments. This can be extended to 45 days with reasons recorded in writing

2. Dismissal of Complaint

- Under the BNSS 2023, a Magistrate can dismiss a complaint under Section 226 if, after examining the complainant and witnesses, and considering any inquiry or investigation, they find insufficient grounds to proceed with the

case. The Magistrate must briefly record their reasons for dismissal in such cases.

➤ **Evidence Consideration:**

The Magistrate must consider the statements on oath of the complainant and any witnesses, as well as the results of any inquiry or investigation conducted under Section 225 (related to investigation or inquiry before issuing process).

➤ **Sufficient Grounds:**

If, after reviewing the evidence, the Magistrate determines that there are insufficient grounds to proceed with the complaint, they are obligated to dismiss it.

➤ **Briefly Recorded Reasons:**

The Magistrate must provide a brief explanation for their decision to dismiss the complaint, promoting transparency and accountability.

➤ **Safeguard against Frivolous Complaints:**

This provision helps prevent the misuse of the legal system by filtering out complaints that lack merit or sufficient evidence.

➤ **Revision Petition:** The dismissal of a complaint by a Magistrate can be challenged through a revision petition in a higher court.

Reasons for Dismissal:

➤ **Insufficient grounds:**

If the magistrate, after examining the complaint, statements of the complainant and witnesses, and any inquiry or investigation, finds no sufficient basis to continue with the case, the complaint can be dismissed.

➤ **Lack of evidence:**

The magistrate may dismiss the complaint if the evidence presented by the complainant doesn't support the allegations made.

➤ **Malicious or baseless complaints:**

The power to dismiss a complaint serves as a safeguard against malicious or unfounded complaints, preventing unnecessary legal action against individuals.

Procedure for Dismissal:

➤ **Preliminary Inquiry:**

The magistrate conducts an initial inquiry, which may include examining the complainant and witnesses.

➤ **Review of Evidence:**

The magistrate reviews the statements and any investigation report to assess the sufficiency of grounds.

➤ **Decision and Recording Reasons:**

Based on the review, if the magistrate finds insufficient grounds, the complaint is dismissed, and the reasons for the dismissal must be recorded.

➤ **Right of Revision:**

The complainant can file a revision petition to challenge the dismissal.

➤ **Accuser's Right to be Heard:**

If a revision petition is filed against the dismissal, the accused has the right to be heard.

3. Commencement of Proceedings

(Sections 227 to 233)

The Bharatiya Nagarik Suraksha Sanhita (BNSS) outlines the process for initiating criminal proceedings. Key aspects include the issuance of process (summons or warrants), the potential for dispensing with the accused's personal attendance, and specific procedures for petty offenses and cases involving both police investigations and private complaints.

- **Issuance of process (Section 227):**

This section deals with the Magistrate's power to issue summons or warrants to compel the accused's appearance.

- **Dispensing with Personal Attendance (Section 228):**

In certain situations, the Magistrate can allow the accused to be represented by a pleader instead of personally appearing.

- **Petty Offenses (Section 229):**

Special procedures may be followed for minor offenses, potentially involving a simplified summons.

- **Supply of Documents (Sections 230 & 231):**

The BNSS mandates the provision of copies of police reports and other relevant documents to the accused to ensure a fair trial.

- **Commitment to Court of Session (Section 232):**

If the offense is exclusively triable by the Court of Session, the Magistrate must commit the case accordingly.

- **Multiple Proceedings (Section 233):**

The BNSS outlines the procedure when both a police investigation and a private complaint are filed concerning the same offense.

4. Framing of Charge and Joinder of Charge

(Section 234 to 247)

The framing of a charge and the joinder of charges under the Bharatiya Nagarik Suraksha Sanhita (BNSS) are crucial aspects of criminal procedure, outlining how accusations are formally presented to an accused and how multiple charges can be combined for trial. The BNSS, replacing the CrPC, details these processes to ensure a fair and efficient trial.

Definition (Section 2(f))

“Charge” includes any head of charge when the charge contains more heads than one;

The framing of a charge is the process where the court, after reviewing evidence and allegations, determines if there are sufficient grounds to believe the accused committed a specific offense.

Purpose:

It serves as the formal accusation, informing the accused of the specific crime they are being tried for.

- **Specificity:** Charges must clearly state the offense, including its name (if applicable) and the relevant legal provisions.
- **Time, Place, and Person:** Details about the time, place, and person involved in the offense are also included.
- **Language:** The charge is written in the court's language but must be explained to the accused in their language.

➤ **Contents of Charge**

Under Section 234 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), a charge must include the specific offense the accused is charged with, the name of the offense (if any), a description of the offense, the relevant law and section, and details of the offense. It should also be in the language of the court and may include details of any previous convictions.

✓ **Offense:**

The charge must clearly state the specific offense the accused is alleged to have committed.

✓ **Name of Offense:**

If the law creating the offense gives it a specific name, that name should be used in the charge.

✓ **Description of Offense:**

If the law doesn't give the offense a specific name, the charge should provide enough detail from the definition of the offense to give the accused notice of the allegations against them.

✓ **Law and Section:**

The charge should specify the law (e.g., Bharatiya Nyaya Sanhita) and the specific section under which the accused is charged.

✓ **Particulars of the Offense:**

The charge should include details like the time, place, and manner in which the offense is alleged to have been committed, as well as the person against whom it was committed.

✓ **Language of the Court:**

The charge must be written in the language used by the court.

✓ **Previous Convictions:**

If applicable, the charge may also mention any previous convictions of the accused for similar offense.

In Motion v. Shankroo (1982): This case held that merely mentioning the section number of the CrPC without stating the substance of the charge is a serious breach of procedure

Ramayan Bhagat v. The State (1968): This case established that an accused can be charged under multiple sections for the same act.

Alteration of Charge

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), Section 239 empowers courts to alter or add to charges at any point before the judgment is pronounced, provided it doesn't prejudice the accused or the prosecution. This alteration must be read and explained to the accused, and the court can proceed with the trial if it's deemed unlikely to cause prejudice. If prejudice is likely, the court may order a new trial or adjourn the current one.

- ✓ **Timing:** Charges can be altered or added at any time before the judgment is delivered.
- ✓ **Notification:** Any alteration or addition must be read and explained to the accused.
- ✓ **Prejudice:** The court assesses whether the alteration is likely to prejudice the accused or the prosecution. If not, the trial can continue as if the altered charge was the original one.
- ✓ **Remedies for Prejudice:** If prejudice is likely, the court can order a new trial or adjourn the existing one.
- ✓ **No Deletion:** While charges can be altered or added, they cannot be deleted, according to a recent Supreme Court ruling.
- ✓ **Applicability:** This provision applies to both trial and appellate courts.

Joinder of Charge

(Section 241 to 247)

Joinder of charges under the Bharatiya Nagarik Suraksha Sanhita (BNSS) allows multiple charges against an accused to be tried together in a single trial, streamlining the legal process.

This is governed by Sections 241, 242, and 246 of the BNSS, which outline the conditions and procedures for consolidating charges. The primary goal is to efficiently manage cases, prevent redundant evidence, and ensure a cohesive adjudication of related offenses.

JUDICIAL ANALYSIS OF JOINDER OF CHARGES

In the case of **Subrahmania Ayyar v. King Emperor**, it was held that disregard of an express provision of law as to the mode of the trial (Cr.pc under Sections 233 & 243) should not be regarded as a mere irregularity. Still, an illegality and such trial shall be regarded as conducted in a manner prohibited by law.

In Kamalanantha & Ors. V. State of Tamil Nadu, the Court observed, "It is true that Section (218 CrPC)(241 BNSS) prescribes that for every distinct offence, there shall be a separate charge and every charge shall be tried separately...if joinder of charges is in contravention of procedure prescribed under Section 218, it would be misjoinder of charges...To ascertain that, it is the duty of the court to see whether the accused knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."

✓ **Consolidation of charges:**

Sections 241 and 242 of the BNSS deal with the joinder of charges against a single accused.

✓ **Joint trials:**

Section 246 allows for joint trials of multiple accused persons when their offenses are connected.

✓ **Conditions for joinder:**

Charges can be joined when offenses are part of the same transaction, or when they are similar in nature and committed within a specific timeframe.

✓ **Judicial discretion:**

Courts have the discretion to order separate trials if a joint trial are likely to prejudice any of the accused.

✓ **Fairness and efficiency:**

Joinder aims to ensure fairness to the accused while also promoting efficient judicial administration.

✓ **Examples:**

If a person commits three related offenses within a year, they may be tried together, according to legal documents. Similarly, those involved in a theft and those assisting in concealing the stolen property can also be tried together.

✓ **Exceptions:**

While joinder is generally favored for efficiency, there are exceptions where separate trials are necessary, particularly if a joint trial would be prejudicial to the accused.

5. Process to Compel Appearance and Production of Things -Use of Electronic Means, Securing Presence of Successor

➤ Process to Compel Appearance

The Bharatiya Nagarik Suraksha Sanhita (BNSS) outlines the process to compel appearance in court, primarily through

- ✓ **summon**
- ✓ **warrants,**
- ✓ **absconding individuals,**
- ✓ **proclamation and**
- ✓ **attachment of property.**

The process generally involves escalating measures, starting with summons, followed by warrants, and then potentially proclamation and attachment, ensuring a fair opportunity for compliance before resorting to more severe measures.

✓ Summons (Section 63 to 71)

In the Bharatiya Nagarik Suraksha Sanhita (BNSS), a summons is a legal document issued by a court to compel the appearance of a person, either an accused or a witness, before the court. It's a crucial part of the legal process, ensuring individuals are notified of legal action against them or summoned to provide testimony. Sections 63 to 71 of BNSS deal with the issuance and service of summons.

✓ Meaning

Summons means an order to appear before a judge or magistrate or the writ containing such an order.

✓ **Purpose:**

To notify individuals about legal proceedings and provide an opportunity to present their case or testimony.

✓ **Issuance:**

Issued by a court (Magistrate) to compel appearance.

✓ **Service:**

Summons can be served on individuals, corporate bodies, firms, and societies.

✓ **Summons cases:**

Offences punishable with imprisonment of not more than two years are typically handled as summons cases, characterized by a more streamlined and economical procedure.

✓ **Distinction from Warrant:**

While both summons and warrants compel appearance, warrants are issued for more serious offenses or when a person fails to appear after being summoned.

✓ **Service on corporate bodies:**

Can be served on a director, manager, secretary, or other officer, or by registered post.

✓ **Service when a person cannot be found:**

Can be served by leaving a copy with an adult family member, who may be required to sign a receipt.

✓ **Electronic Summons:**

Under the BNSS, summons can also be issued in electronic form, including encrypted messages or other electronic communication, bearing the court's seal or digital signature.

✓ **Warrant of Arrest (Section 72 to 83)**

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, warrants of arrest are governed by Sections 72-83, detailing the procedure for arrest with a warrant. These sections outline the form of the warrant, who it can be directed to, and the process for execution, including the potential for security to be taken in lieu of arrest.

Meaning of Warrant

- ✓ A warrant of arrest is a written authorization issued by a competent Magistrate for the arrest of a specific individual.
- ✓ It empowers a police officer or another designated person to arrest the individual named in the warrant.
- ✓ The warrant is essentially a court order for arrest.

✓ **Features**

✓ **Written Order:**

Warrants must be in writing, signed by the presiding judicial officer, and bear the court's seal.

✓ **Specifics:**

It should clearly mention the name and address of the person to be arrested, along with the specific offense they are charged with.

✓ **Validity:**

The warrant remains in force until it is either executed (the person is arrested) or canceled by the issuing court.

✓ **Purpose:**

The primary purpose of a warrant is to compel the appearance of an accused person in court for trial and to ensure they do not abscond.

✓ **Execution:**

Warrants are typically executed by police officers, but in situations where immediate execution is necessary and no police officer is available, the court may authorize any person to execute the warrant.

✓ **Types of warrants**

✓ **Bailable Warrant:**

This type of warrant includes a direction that if the arrested person executes a bond with sufficient sureties for their court attendance, they may be released from custody.

✓ **Non-Bailable Warrant:**

In this case, the warrant does not have a direction for bail endorsed on it.

➤ **Proclamation and Attachment (84 to 89)**

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), proclamation and attachment are processes used when a person absconds or conceals themselves to avoid legal proceedings. A proclamation is a court order requiring the person to appear before the court by a specific date. If the

person fails to appear, the court may order the attachment (seizure) of their property.

Proclamation (Section 84 of BNSS):

- A court can issue a proclamation if it believes a person against whom a warrant has been issued has absconded or is concealing themselves.
- The proclamation specifies a date by which the person must appear before the court, which must be at least 30 days from the date of the proclamation

The proclamation is published by:

- ✓ Reading it publicly in the person's usual place of residence.
- ✓ Affixing it to the person's house or the courthouse.
- ✓ Publishing it in a local newspaper if the court deems it necessary

Attachment (Section 85 of BNSS):

- ✓ If the person fails to appear after the proclamation, the court can order the attachment of their property.
- ✓ Attachment can be of both movable (e.g., vehicles, jewelry) and immovable (e.g., land, buildings) property.
- ✓ The court can order attachment at the same time as the proclamation if it believes the person is trying to dispose of or remove their property.

Attachment can be done by:

- ✓ Taking physical possession of the property.
- ✓ Appointing a receiver to manage the property.
- ✓ Issuing a written order prohibiting the transfer of the property.

- ✓ If the property is located outside the district where the order is made, it requires endorsement by the District Magistrate of that other district for the attachment to be valid.
- ✓ If the property is perishable, the court may order its immediate sale.

3. Claims and Objections:

- ✓ **Any person claiming ownership of or objecting to the attachment of the property can file a claim or objection within six months of the attachment.**
- ✓ **These claims or objections are to be made in the court that ordered the attachment.**
- ✓ **If no objections are made, the property will be at the disposal of the State Government, but cannot be sold for six months.**
- **When issued:** If a court believes that an individual against whom a warrant has been issued is absconding or hiding to avoid arrest, it can issue a written proclamation.
- **Purpose:** The proclamation serves as a public announcement requiring the person to appear before the court at a specified place and time, which should not be less than thirty days from the date of publication.
- ✓ **Publication:** This proclamation is publicized by being read in a conspicuous place where the person resides, affixed to their house, and displayed at the courthouse. If deemed necessary, it may also be published in a daily newspaper circulating in the area.

- ✓ **Proclaimed Offender:** If the person fails to appear as required by the proclamation, especially in cases of serious offenses, the court can declare them a "proclaimed offender" after an inquiry.
- **Attachment**
- ✓ **When ordered:** If, after a proclamation has been issued, the absconding person still fails to appear, the court can order the attachment (seizure) of their property, both movable and immovable.
- ✓ **Purpose:** The primary goal of attachment is to compel the proclaimed person to comply with court orders by potentially leveraging their property rights.
- ✓ **Simultaneous Attachment:** In cases where there's a belief that the proclaimed person might dispose of or remove their property from the court's jurisdiction, the court can order attachment simultaneously with the proclamation.
- ✓ **Methods of Attachment:** The method of attachment varies depending on the type of property.
- ✓ **Movable property** can be seized, managed by a receiver, or restricted through a written order prohibiting its delivery to the proclaimed person or their representative.
- ✓ **Immovable property** can be attached by taking possession, appointing a receiver, or prohibiting rent payments or delivery of the property to the proclaimed person or their agent.
- ✓ **Perishable** items or livestock may be sold immediately, with the proceeds held by the court.

➤ **Process to Compel The Production of Things(Section 94 to 110)**

The Bharatiya Nagarik Suraksha Sanhita (BNSS), outlines processes to compel the production of documents and other things needed for investigations and legal proceedings. Key sections include Section 94, which allows for summons to produce, and Sections 96 and 97, which address search warrants. These provisions ensure that courts and police officers can obtain necessary evidence while respecting legal procedures and individual rights.

Summons to Produce (Section 94):

- Courts or police officers can issue written orders, either physical or electronic, to compel individuals to produce documents or other things considered necessary for investigations, inquiries, or trials.
- The order specifies the time and place for production, and the individual can comply by either attending personally or arranging for the item's delivery.
- Exceptions exist for documents protected under other laws (like the Bankers' Books Evidence Act, and for items in postal custody).

Search Warrants (Sections 96 & 97):

- If a summons is unlikely to be effective or if the location of the document or thing is unknown, a search warrant may be issued.
- Section 96 outlines when a search warrant can be issued, while Section 97 deals with searches for specific items like stolen property or forged documents.

- Search warrants authorize entry into specific premises to search for and seize the designated items.

Other Related Processes:

- **Search for Abducted Persons- (Section 100):**

Allows for searches to locate and rescue individuals wrongfully confined.

- **Seizure (Section 106):**

Empowers police officers to seize certain types of property, such as stolen goods or items that create suspicion of an offense.

- **Attachment, Forfeiture, or Restoration of Property (Section 107):**

Provides mechanisms for the court to deal with property connected to a case, including attachment, forfeiture, or restoration to the rightful owner.

- **Recording of Search and Seizure (Section 105):**

Requires that search and seizure operations be recorded through audio-visual electronic means, promoting transparency and accountability.

Use of Electronic Means

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 allows for the use of electronic means in various stages of trials, inquiries, and proceedings, including examination of witnesses, evidence recording, and appellate proceedings. Section 530 of the BNSS specifically permits the use of electronic communication and audio-video electronic means. This includes the use of electronic devices for communication, video conferencing, and

recording of evidence. However, the BNSS does not allow for electronic service of all notices, such as those under Section 35, which require physical service.

➤ **Permitted Uses of Electronic Means:**

- **Trials, Inquiries, and Proceedings:**

Section 530 of the BNSS explicitly allows for trials, inquiries, and proceedings to be conducted using electronic means, such as video conferencing and electronic communication.

- **Evidence Recording:**

Audio-video electronic means can be used for recording statements, identification processes, searches, seizures, and other evidence collection.

- **Communication:**

Electronic communication devices can be used for transmitting information, including written, verbal, and video content, between individuals, devices, or a combination of both.

- **Service of Documents:**

While physical service is mandated for certain notices (e.g., under Section 35), the BNSS allows for electronic service in other situations where specifically permitted.

- **Forensic Investigations:**

The BNSS mandates forensic investigations for serious offenses (punishable with seven years or more imprisonment), and forensic

experts may utilize electronic devices and means to collect and record evidence.

- **Absent Accused:**

If a proclaimed offender absconds, the trial can proceed in their absence, and judgment can be pronounced.

Limitations:

- **Specific Notices:**

The BNSS does not allow for electronic service of all notices. For example, notices under Section 35 require physical service.

- **Infrastructure:**

The State and Union Governments have the responsibility to provide necessary infrastructure for the effective implementation of electronic means in legal proceedings.

➤ **Securing Presence of Successor**

Under Section 336 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, if the presence of a public servant, expert, or police officer who created a document or report used as evidence is difficult to secure, the court can secure the presence of their successor officer to give a deposition on the document or report. This is particularly relevant when securing the original officer's presence is likely to cause delay in the inquiry, trial, or other proceedings. The successor's deposition can even be allowed through audio-video electronic means.

When is this relevant?

Section 336 applies when a public servant, expert, or police officer who created a document or report is:

- ✓ No longer available (e.g., transferred, retired, or deceased).
- ✓ Cannot be found.
- ✓ Is unable to give a deposition.
- ✓ Securing their presence would cause delay in the legal proceedings.
- ✓ **What is the process**

The court will secure the presence of the successor officer of the original officer who created the document.

- ✓ **What can the successor do?**

The successor officer can provide a deposition on the document or report.

- ✓ **What if the document is disputed?**

If any party disputes the document or report, the successor officer will be called to testify.

- ✓ **Can it be done electronically?**

The deposition of the successor officer can be done through audio-video electronic means to prevent delays.

6. Preliminary Pleas Under Sanhita – Plea of Guilty, Limitation for Taking Cognizance of Offence:

- **Preliminary Pleas Under Sanhita**

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, includes provisions for preliminary inquiries, particularly for offenses punishable with imprisonment of 3 years or more but less than 7 years. These inquiries are conducted to determine if a prima facie case exists before proceeding with a full investigation. The BNSS expands upon the guidelines set by **the Lalita Kumari judgment** regarding preliminary inquiries.

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 , the accused has the right to be heard before a magistrate takes cognizance of an offense, particularly in cases originating from private complaints or police First Information Reports (FIRs). This right is established under Section 223(1) of the BNSS, The BNSS also allows for preliminary inquiries before FIR registration in specific situations, primarily to assess the need for a full investigation.

Pre-Cognizance Hearing-

- The BNSS mandates that a magistrate must provide the accused an opportunity to be heard before taking cognizance of an offense on a complaint filed on or after July 1, 2024.
- This hearing is crucial for the accused to potentially present their case and influence the magistrate's decision on whether to proceed with the case.
- This is a significant departure from the previous Code of Criminal Procedure (CrPC), which did not explicitly provide for this pre-cognizance hearing.

Preliminary Inquiries:

- The BNSS introduces the concept of preliminary inquiries, which can be conducted before registering an FIR.
- These inquiries are primarily for assessing whether a prima facie case exists for offenses punishable with imprisonment of three years or more but less than seven years.
- The Supreme Court has clarified that if a preliminary inquiry is conducted under the BNSS and the investigating officer believes a prima facie case exists, an FIR should be registered and the investigation should proceed.
- If the officer believes no prima facie case exists, they should inform the informant, who can then pursue other legal remedies

Examples of Preliminary Pleas:

- At the pre-cognizance stage, the accused can argue that the complaint is frivolous, lacks sufficient evidence, or that the court lacks jurisdiction.
- They can also raise issues related to the validity of the complaint or the procedure followed in filing it.
- During a preliminary inquiry, the accused might present evidence to demonstrate that the alleged offense is not made out or that there are mitigating circumstances.

➤ Plea of Guilty

A plea of guilty is a formal declaration in court where an accused person admits responsibility for a crime. It is a crucial step in the legal process,

often leading to a conviction without a full trial. This admission can influence the judge's sentencing, and the victim may be given an opportunity to provide a statement about the impact of the crime.

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), an accused can plead guilty, and the Magistrate has the discretion to convict them based on that plea. The Magistrate is required to record the plea "as nearly as possible in the words used by the accused". This provision, found in Section 275 of the BNSS, allows for a streamlined process where a conviction can be reached without a full trial.

According section 275 “ If the accused pleads guilty, the magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon”.

Aspects of pleading guilty under BNSS:

- **Recording the Plea:**

The Magistrate must accurately document the accused's statement, using the accused's own words.

- **Magistrate's Discretion:**

The Magistrate is not obligated to convict based solely on a guilty plea. They have the power to consider the circumstances and evidence before deciding whether to convict.

- **Conviction in Absence:**

In petty cases, an accused can even plead guilty by sending a letter to the Magistrate and paying the specified fine, allowing for a conviction in their absence.

- **Plea by Authorized Pleader:**

If the accused is represented by a pleader, the pleader can also enter a guilty plea on their behalf.

Plea Bargaining:

The BNSS also includes provisions for plea bargaining, which allows an accused to plead guilty to a lesser offense or receive a reduced sentence in exchange for cooperation with the legal process.

- **Time Limit:**

An application for plea bargaining must be made within 30 days from the date of framing of the charge.

- **Types of Plea Bargaining:**

This can involve charge bargaining (pleading guilty to a lesser charge), sentence bargaining (pleading guilty to the charged offense in exchange for a lighter sentence), or fact bargaining (agreeing to certain facts in exchange for not having to admit others).

Important Considerations:

- **Victim's Role:** While the BNSS emphasizes victim compensation, there can be ambiguity regarding victim involvement in plea bargaining negotiations.
- **Exemptions:** Plea bargaining under BNSS does not apply to juveniles.

- **Safeguards:** The BNSS retains many safeguards from the previous CrPC regime, ensuring the plea is voluntary and that victim's rights are considered, though there may be some areas of ambiguity.

- **Limitation For Taking Cognizance of Offence**

(Section 513 to 519)

Section 514 of BNSS for taking cognizance of an offence prescribes a graded period of limitation ranging from 6 months to 3 years for offences ranging from punishments of fine up to punishment for a period not exceeding 3 years.

Purpose of the Limitation:

- Interest republicae ut sit finis litium – In the interest of society as a whole, there should be an end to litigation.
- Vigilantibus non dormientibus jura subveniunt – Law will assist those who are vigilant with their rights and not those who sleep there upon. In simpler words, the law will not help those who sleep on their rights.

A Constitution Bench of the Hon-ble Supreme Court in Asstt. Collector of Customs v. L.R. Melwani, reported in AIR 1970 SC 962, had observed as follows:

“The question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint. Hence we see no substance in the contention that the prosecution should be quashed on the ground that there was delay in instituting the complaint.”

Sec.514 (2) BNSS: Bars taking of cognizance after lapse of the period of limitation.

Limitation period	Offence punishable with
6 Months	Fine Only
1 year	Less than 1 year
3 Years	1 to 3years
No Limitation	More than 3 years

Bharath Damodar Kale.v. State of A.P reported in (2003) 8 SCC 559. While dealing with a case under the Drugs and Cosmetics Act 1940 where a prosecution is commenced upon a complaint under Section 32 of the said Act, the Hon'ble Apex Court held that: "All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made in fructuous by an act of court."

7. Provision as to Bail and Bond.

(Section 478 to 496)

Introduction

Law Lexicon defines bail as the “security for the appearance of the accused person on giving which he is released pending trial or investigation.”

Black’s Law Dictionary defines bail as ‘the procurement of the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court.’

Section 2 (b) “Bail” means release of person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution by such person of a bond or a bail bond..

Grant of Bail

- **Nature and gravity of the offence**

- Likelihood of the accused committing the offence
- The position and status of the accused
- Likelihood of accused fleeing from justice
- Likelihood of accused influencing witnesses or tampering

with evidence

. Hon’ble Supreme Court again in the recent case of **Guddan @ Roop Narayan v. State of Rajasthan, (2023) SC**, set aside the order of Rajasthan

High Court imposing strict fine of Rs. 1,00,000 along with surety of Rs.1,00,000 and two bail bonds of Rs. 50,000 each. Supreme Court observed while setting aside these conditions that excessive condition acted as refusal to grant bail.

Bail under BNSS distinguishes between bailable and non-bailable offenses, with the former entitling the accused to bail and the latter requiring judicial discretion. The BNSS also introduces specific provisions for mandatory bail for undertrials who have served a certain portion of their potential sentence.

Aspects of Bail under BNSS:

- **Bailable Offenses:**

For offenses categorized as bailable under the BNSS, the accused has a right to be released on bail, and the police or court must grant bail upon execution of a bail bond.

- **Non-Bailable Offenses:**

For non-bailable offenses, the court has discretion in granting bail. Factors such as the severity of the offense, the evidence, and public interest are considered.

- **Mandatory Bail for Undertrials:**

The BNSS retains the provision from the CrPC that under trials who have served half the maximum sentence for an offense (excluding death penalty cases) are eligible for bail. It also adds that first-time offenders are

eligible for bail after serving one-third of the maximum sentence. However, this mandatory bail provision does not apply to offenses punishable by life imprisonment or when multiple offenses or cases are pending.

- **Anticipatory Bail:**

The BNSS allows for anticipatory bail, which is sought before arrest, with jurisdiction in the High Court or Sessions Court.

- **Powers of High Court and Sessions Court:**

Sections 480 and 483 of the BNSS outline the powers of the High Court and Sessions Court regarding bail, allowing them to grant bail under specific conditions.

- **Notice to Public Prosecutor:**

In certain cases, such as those involving offenses triable exclusively by the Court of Session or those punishable with life imprisonment, the High Court or Court of Session must provide notice to the Public Prosecutor before granting bail.

- **Breach of Bail Conditions:**

Section 492 of the BNSS allows for cancellation of bail if the accused violates the imposed conditions.

- ✓ **When Bail may be taken in case of Non-bailable offences(Section 480)**

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS) bail can be granted in non-bailable offenses, but the accused doesn't have an inherent right to

it. Courts have discretionary power to grant bail in such cases, particularly when there are no reasonable grounds to believe the accused is guilty of an offense punishable with death or life imprisonment. Additionally, specific circumstances like being a minor or having undergone a significant portion of the potential sentence can also influence the court's decision.

When Bail Can Be Granted:

- **Discretion of the Court:**

The court has the power to grant bail in non-bailable offenses, even if the accused is not entitled to it by right.

- **Absence of Strong Evidence:**

If there are no reasonable grounds to believe the accused is guilty of an offense punishable by death or life imprisonment, bail may be considered.

- **Special Circumstances:**

Factors like the accused's age (e.g., being a minor) or the length of time they have already spent in custody (potentially exceeding one-third of the maximum sentence) can influence the court's decision.

- **Medical Grounds:**

The court may also consider bail if the accused is suffering from a serious illness, especially if they are in need of medical attention.

- **Anticipatory Bail**

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), anticipatory bail is governed by Section 482. It allows a person who reasonably believes they may be arrested for a non-bailable offense to apply for bail in anticipation of such arrest. The court, after considering the circumstances, may direct their release on bail if arrested.

Anticipatory bail Means

Anticipatory bail is a legal provision that allows a person to seek bail in anticipation of arrest for a non-bailable offense. It's a pre-arrest remedy designed to protect individuals from unwarranted detention based on a reasonable fear of arrest.

Aspects of anticipatory bail under BNSS:

✓ Section 482 of BNSS:

This section governs anticipatory bail, allowing individuals to approach the High Court or Sessions Court for a direction that they be released on bail if arrested.

✓ Pre-arrest application:

The application for anticipatory bail must be made before the actual arrest.

✓ Court's discretion:

The court has the discretion to grant or refuse anticipatory bail, considering factors like the nature of the accusation, the severity of the offense, and the likelihood of the accused absconding or tampering with evidence.

✓ **Conditions:**

The court may impose conditions on the grant of anticipatory bail, such as requiring the accused to cooperate with the investigation, appear before the investigating officer, and not interfere with the evidence.

✓ **Restrictions:**

Section 482(4) of BNSS specifies that anticipatory bail is not available for individuals accused of gang rape of a woman under eighteen years of age.

Changes under BNSS:

- ✓ While Section 438 of the CrPC dealt with anticipatory bail, BNSS introduces Section 482 as the relevant provision.
- ✓ BNSS includes provisions for early release for first-time offenders who have served one-third of their sentence as undertrial prisoners.
- ✓ It also mandates forensic investigation for offenses punishable with seven years or more imprisonment.

Important points to remember:

- ✓ Anticipatory bail is not a guarantee of bail, but rather a direction that the person be released on bail if arrested.

- ✓ The court's decision to grant or deny anticipatory bail is based on the specific facts and circumstances of each case.
- ✓ BNSS aims to simplify and expedite the bail process, but it also includes provisions for ensuring justice in serious offenses.

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UNIT_III

TRIAL PROCESS

1. Trial Before A Court Of Sessions (Section 248 to 260)

Introduction

In the Bharatiya Nagarik Suraksha Sanhita, (BNSS), trials before a Court of Session are governed by Sections 248 to 260. These sections detail the procedure for conducting trials in cases of serious offenses that are typically tried in a Sessions Court. The prosecution is conducted by a Public Prosecutor, and the trial involves opening the case, framing charges, recording evidence, and delivering a judgment.

✓ **Public Prosecutor:**

Section 248 of BNSS mandates that the prosecution in a Sessions trial be conducted by a Public Prosecutor.

✓ **Opening the Case:**

The prosecutor presents the case by outlining the charges and explaining the evidence to be presented.

✓ Discharge

Section 250 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, deals with the discharge of an accused person in a criminal case. It outlines the process for an accused to apply for discharge and the conditions under which a judge can grant it. Specifically, it allows an accused to apply for discharge within 60 days of the case being committed to the Court of Session.

✓ Framing of Charge

Section 251 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) deals with the framing of charges in criminal cases. It outlines the procedure for a judge to determine if there is sufficient ground to presume that the accused has committed an offense and to frame a formal charge accordingly.

✓ Conviction on Plea of Guilty

Section 252 of the BNSS 2023, deals with the procedure for convicting an accused person who pleads guilty to the charges against them. If an accused admits guilt, the Judge must record their plea and has the discretion to convict them based on that plea alone, without further trial.

✓ **Date for Prosecution Evidence**

Under section 253 of the BNSS, the date for prosecution evidence is set when the accused either refuses to plead, fails to plead, claims to be tried,

or is not convicted under section 252. In such cases, the judge is required to fix a date for the examination of prosecution witnesses.

✓ **Evidence for Prosecution**

- ✓ Under Section 254 of the BNSS 2023, the prosecution must present all evidence supporting their case on the date fixed for the trial. This evidence can be presented through audio-video electronic means for witnesses, including public servants. The judge also has the discretion to manage the order of witness examination and cross-examination.

✓ **Acquittal**

Section 255 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) deals with the acquittal of an accused in a summons case tried by a Magistrate. If, after considering the evidence, examining the accused, and hearing arguments, the Magistrate finds the accused not guilty, they must record an order of acquittal.

✓ **Entering Upon Defence**

Section 256 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, deals with the accused entering upon their defense after the prosecution has presented its evidence and the accused has not been acquitted. If the accused is not acquitted under the preceding section (255), they must present their defense, including any evidence they wish to offer. The section also outlines the process for handling the accused's written statements and applications for witnesses or documents.

✓ **Arguments**

Section 257 of the (BNSS) deals with the arguments in a trial. Specifically, it outlines the procedure after the examination of defense witnesses (if any), where the prosecutor sums up their case, and the accused or their advocate has the right to reply. If a point of law is raised by the defense, the prosecution can, with the court's permission, address that specific point.

✓ **Judgment of Acquittal or Conviction**

Section 258 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, deals with the judgment of acquittal or conviction in a criminal case. It mandates that a judge must deliver a judgment as soon as possible, within 30 days of completing the arguments, which can be extended to 45 days with written reasons. If the accused is convicted, the judge will then hear the accused on the question of sentence and pass the appropriate sentence according to the law.

✓ **Previous Conviction**

Section 259 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), deals with the procedure for handling cases where a previous conviction is alleged against an accused person. Specifically, it outlines how a judge should proceed when an accused person denies a previous conviction that is being used to enhance their sentence.

✓ **Procedure in cases Instituted Under Sub-section (2) of Section 222.**

Section 260 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, outlines the procedure for cases instituted under sub-section (2) of Section

222. Essentially, it dictates that a Court of Session, when taking cognizance of an offense under this provision, will follow the procedure for warrant cases instituted otherwise than on a police report. This means the trial will be conducted similarly to how a Magistrate would handle such cases, with the complainant or the person against whom the offense is alleged being examined as a witness for the prosecution unless the court directs otherwise.

2. Trial of Warrant and Summons Cases by Magistrate

✓ Trial of warrant - Cases by Magistrates(Section 261 to 273)

The Bharatiya Nagarik Suraksha Sanhita (BNSS) outlines the procedure for the trial of warrant cases by magistrates. These trials, concerning offenses punishable by death, imprisonment for life, or imprisonment exceeding two years, follow a more formal and detailed process than summons cases. The BNSS ensures a fair and thorough trial, protecting the accused's rights while addressing the gravity of the offense.

✓ A- Cases Instituted on a Police report

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS) cases instituted on a police report follow a specific procedure, particularly regarding the furnishing of documents to the accused and the trial process. Section 230 BNSS mandates that the Magistrate must provide the accused (and the victim, if represented by a lawyer) with copies of relevant documents free of cost, without delay and within fourteen days of the

accused's appearance or production. This section ensures the accused is aware of the evidence against them from the outset.

✓ **When accused shall be discharged**

Section 262 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, outlines the conditions under which an accused person shall be discharged from a case. Specifically, it states that if, after reviewing the police report and accompanying documents, and potentially examining the accused, the Magistrate finds the charge against the accused to be groundless, the accused must be discharged.

✓ **Framing of Charge**

Section 263 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, deals with the framing of charges against an accused person. It mandates that a Magistrate, after considering the evidence and hearing arguments, must frame a charge in writing if they believe there's sufficient ground to presume the accused committed a trialable offense. The charge must be read and explained to the accused, who is then asked to plead guilty or claim **trial**.

✓ **Conviction on Plea of Guilty**

Section 264 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), deals with the conviction of an accused person based on their plea of guilty. If an accused admits guilt to a Magistrate, the Magistrate is required to record

the plea and may, at their discretion, convict the accused based on that admission.

✓ **Evidence for Prosecution**

Section 265 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), outlines the procedure for the prosecution to present evidence after the accused has entered a plea or the Magistrate has decided not to convict under Section 264. It mandates providing the accused with police statements of witnesses in advance and allows for flexible witness examination, including potential deferment or recall. The section also provides for the possibility of conducting witness examination via audio-video electronic means.

✓ **Evidence For Defense**

Section 266 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, deals with Evidence for Defence. It outlines the procedure for the accused to present their defense and evidence after the prosecution has presented its case. Specifically, it mandates that the accused be called upon to present their defense and produce evidence. If the accused submits a written statement, the Magistrate is required to file it with the record. Furthermore, the section addresses the issuance of process for compelling the attendance of witnesses or production of documents, allowing the Magistrate to refuse such requests only if they are deemed vexatious, delaying, or intended to defeat the ends of justice, with the reasons for refusal being recorded in writing.

✓ **Cases Instituted Otherwise than on Police Report**

In Bharatiya Nagarik Suraksha Sanhita, (BNSS), cases instituted otherwise than on a police report, specifically warrant cases, are addressed in Sections 267-270. These sections outline the procedure for handling such cases where the accused appears or is brought before a Magistrate, requiring the Magistrate to hear the prosecution and record all evidence presented in support of the case.

✓ **Evidence for Prosecution**

Section 267 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, outlines the procedure for the prosecution to present its evidence in a warrant case, instituted otherwise than on a police report. It essentially details how the prosecution presents its case and how the magistrate facilitates the process

✓ **When Accused Shall be Discharged**

Section 268 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), (equivalent to Section 239 of the CrPC,) deals with the discharge of an accused person. It specifies the circumstances under which a Magistrate can discharge an accused person before trial if the Magistrate finds no sufficient grounds to proceed against them.

✓ **Procedure Where Accused is not Discharged**

Section 269 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, outlines the procedure when an accused person is not discharged. It essentially details how a magistrate proceeds when, after examining

evidence, they believe there's sufficient ground to presume the accused committed an offense. This leads to the framing of charges, followed by the accused being asked to plead guilty or offer a defense.

✓ **Evidence For Defence**

Section 270 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), outlines the process for the accused to present their defense and evidence. After the prosecution has presented its case, the accused is called upon to present their defense and produce their evidence, with Section 266 of the BNSS also applying to this process.

✓ **Conclusion of Trail**

The Bharatiya Nagarik Suraksha Sanhita concludes trials with either acquittal or conviction of the accused, and in some cases, compensation to the accused for false accusations. If the accused is acquitted, the Magistrate records the order, while a conviction leads to sentencing after the accused is heard. The BNSS also includes provisions for trials in absentia, where the absence of the accused after the trial commences doesn't prevent the pronouncement of judgment.

✓ **Acquittal or Conviction**

Section 271 of the Bharatiya Nagarik Suraksha Sanhita deals with the procedure for acquittal or conviction in cases tried under Chapter XXI (which includes Section 271). Essentially, it outlines the steps a Magistrate

must take when determining whether an accused person is guilty or not guilty.

✓ **Absence of Complainant**

Section 272 of the Bharatiya Nagarik Suraksha Sanhita 2023, deals with the absence of a complainant in cases instituted upon a complaint. Specifically, it addresses situations where the complainant is absent on a day fixed for the hearing, and the offense is either compoundable or not a cognizable offense. In such cases, the Magistrate can, after giving the complainant 30 days to appear, discharge the accused at any time before the charge is framed

✓ **Compensation For Accusation without Reasonable Cause**

Under Section 273 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), if a Magistrate discharges or acquits an accused and finds no reasonable grounds for the accusation, they can order the complainant to pay compensation to the accused. This provision aims to deter false accusations and provide some recourse for those wrongly accused.

✓ **Trail of Summons- Cases By Magistrate (Section 274 to 282)**

The Bharatiya Nagarik Suraksha Sanhita specifically Chapter XXI, denotes the procedure for the trial of summons-cases by Magistrates, from sections 274 to 282. These sections detail the steps involved when an accused appears or is brought before a Magistrate in a summons case, including stating the particulars of the offense, recording pleas of guilty, and

handling situations where the accused is not convicted or where the complainant is absent. The chapter also covers the power of the court to convert a summons-case into a warrant-case under certain circumstances.

✓ **Substance of Accusation to be Stated**

Section 274 of the Bharatiya Nagarik Suraksha Sanhita, 2023, mandates that in a summons case, when an accused appears or is brought before a Magistrate, the Magistrate must inform the accused of the particulars of the offence they are accused of. The accused will then be asked if they plead guilty or have any defense to offer. This section streamlines the process by requiring a statement of the accusation and a plea, but it does not necessitate the formal framing of a charge.

✓ **Conviction on Plea of Guilty**

Section 275 of the Bharatiya Nagarik Suraksha Sanhita, 2023, deals with the conviction of an accused person based on their plea of guilty. If an accused admits guilt, the Magistrate is required to record their plea "as nearly as possible in the words used by the accused". The Magistrate then has the discretion to convict the accused based on this plea. This provision streamlines the legal process in cases where the accused readily admits their wrongdoing.

✓ **Conviction on Plea of Guilty in Absence of Accused in Petty Cases**

Section 276 of the Bharatiya Nagarik Suraksha Sanhita, 2023, allows for a magistrate to convict an accused in their absence if the accused pleads

guilty to a petty offense, typically involving a fine, and sends a plea of guilty along with the specified fine amount.

✓ **Procedure When not Convicted**

Section 277 of the Bharatiya Nagarik Suraksha Sanhita denotes the procedure to be followed when an accused is not convicted under sections 275 or 276. If the Magistrate doesn't find the accused guilty, they must proceed to hear the prosecution's evidence and the accused's defense, taking all relevant evidence into account. The Magistrate can also issue summons for witnesses or documents at the request of either party.

✓ **Acquittal or Conviction**

Section 278 of the Bharatiya Nagarik Suraksha Sanhita deals with the procedure for acquittal or conviction of an accused in a summons case. Specifically, it outlines the Magistrate's actions after taking evidence under Section 277, including recording an order of acquittal if the accused is found not guilty, or passing a sentence if the accused is found guilty.

✓ **Non Appearance or Death of Complainant**

Section 279 of the Bharatiya Nagarik Suraksha Sanhita deals with the non-appearance or death of the complainant in a case initiated by a complaint. It essentially provides a framework for how a magistrate should proceed when the complainant is absent on the day of hearing or any subsequent adjournment.

✓ **Withdrawal of Complaint**

If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the complaint.

- ✓ **Power to Stop Proceedings & Power of Court to Convert summons Case into Warrant case.**

3. Summary Trials – Significance (Section 283 to 288)

Summary trials under the Bharatiya Nagarik Suraksha Sanhita 2023, governed by Sections 283-288, provide a swift and simplified procedure for certain offenses, aiming for efficiency and reduced court backlogs. These trials are designed for cases where the maximum punishment is up to three years of imprisonment or those deemed of a summary nature. The key significance lies in expediting justice delivery, especially for minor offenses, without compromising fair trial principles.

Summary trials under the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 are a simplified and expedited process for handling minor offenses, aiming for quicker disposal of cases compared to regular trials. These trials are characterized by reduced procedural formalities and a focus on swift justice for less serious offenses.

✓ **Power to Summarily**

Section 283 of the Bharatiya Nagarik Suraksha Sanhita deals with the power to try certain offences summarily. This section empowers specific magistrates to conduct trials in a streamlined manner for specific offenses, aiming for quicker disposal of cases.

✓ **Summary Trial by Magistrate of Second Class**

Section 284 of the Bharatiya Nagarik Suraksha Sanhita empowers the High Court to grant a Second Class Magistrate the authority to conduct summary trials for certain offenses. Specifically, these are offenses punishable only by a fine, or with imprisonment not exceeding six months (with or without a fine), as well as attempts to commit or abetment of such offenses.

✓ **Procedure for Summary Trials**

Section 285 of the Bharatiya Nagarik Suraksha Sanhita outlines the procedure for summary trials. It mandates that the procedure for summons-cases, as defined in the BNSS, should be followed in summary trials, with certain exceptions mentioned within the

Sanhita. Furthermore, a conviction in a summary trial cannot result in a sentence exceeding three months of imprisonment.

✓ **Record in Summary Trials**

Section 286 of the Bharatiya Nagarik Suraksha Sanhita 2023, outlines the specific record that a Magistrate must maintain in summary trials. This section details the particulars to be recorded, ensuring a clear and comprehensive account of the proceedings.

✓ **Judgment in Cases Tried Summarily**

Section 287 of the Bharatiya Nagarik Suraksha Sanhita 2023, outlines the procedure for judgments in cases tried summarily. It mandates that in every summary trial where the accused doesn't plead guilty, the Magistrate must record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

✓ **Language of Records and Judgment**

Section 288 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) deals with the language of records and judgments. It mandates that all records and judgments must be written in the language of the court. Additionally, it allows the High Court to authorize a Magistrate empowered to conduct summary trials to have these documents prepared by an officer appointed by the Chief Judicial Magistrate.

4. Evidence and General Provisions as to Inquiries and Trials (Section 337 to 366)

- **Definition of Evidence:**

BNSS broadens the definition of evidence to include statements made electronically and digital records.

- **Admissibility of Electronic Records:**

The BNSS clarifies that electronic records are admissible as primary evidence when produced from proper custody, unless disputed.

- **Forensic Investigation Mandate:**

Forensic investigation is now mandatory for offenses punishable with seven or more years of imprisonment. Forensic experts are required to visit crime scenes and record the evidence collection process using electronic means like mobile phones.

- **Statements Recorded Electronically:**

Statements made during investigations can be recorded using audio or video electronic means. This includes recording the statements of female victims of sexual offenses by a woman police officer or any woman officer.

- **Successor Officers Depositing for Unavailable Officers:**

In the event of an officer's unavailability due to reasons such as death, transfer, or retirement, the Court may allow their successor to depose about the document or report they prepared for an inquiry or trial. However, this provision raises concerns about violating the normal rules of evidence that allow the author of the document to be cross-examined.

- **Collection of Biometric Data:**

BNSS expands the power of Magistrates to order the collection of signatures, handwriting, finger impressions, and voice samples, even from individuals who have not been arrested, for investigation or proceedings.

- **Mandatory Timelines:**

The BNSS introduces specific timelines for various stages of the criminal procedure, including investigation, inquiries, and trials.

- ✓ Filing FIR for electronic complaints: Within 3 days.
- ✓ Submission of medical examination report for rape victims: Within 7 days.
- ✓ Framing of charges by Sessions Court: Within 60 days from the first hearing.
- ✓ Issuing judgment: Within 30 days (extendable to 60 days) of the completion of arguments.
- ✓ Uploading judgment: Within seven days of pronouncement.
- ✓ Electronic Proceedings and Evidence: All trials, inquiries, and proceedings can be conducted in electronic mode using electronic communication or audio-video electronic means.
- ✓ Trial in Absentia: BNSS allows for the conduct of trials and the pronouncement of judgment in the absence of a proclaimed offender who has absconded to evade trial.
- ✓ Protection of Victims and Victim Rights: The Sanhita focuses on victim protection by including provisions for compensation, medical care, and witness protection programs.
- ✓ Limitations on Mandatory Bail: The BNSS limits the scope of mandatory bail for under trials accused of offenses punishable by death or life imprisonment, or those facing multiple charges or cases.
- **Evidence and General Provisions as to Inquiries and Trials (Section 337 to 366)**
- ✓ Person once convicted or Acquittal not to be tried for same offence.
- ✓ Appearance by Public Prosecutor
- ✓ Permission to Conduct Prosecution
- ✓ Right of Person Against whom Proceedings are instituted to be defended.

- ✓ Legal aid Accused at state expense in certain Cases.
- ✓ Procedure When Corporation or Registered society is an accused.
- ✓ Tender of Pardon to Accomplice
- ✓ Power to direct tender of pardon
- ✓ Trial of Person not Complying with conditions of Pardon
- ✓ Withdrawal from Prosecution

5. Compounding of Offences and Plea Bargaining

The Bharatiya Nagarik Suraksha Sanhita introduces provisions for both compounding of offences and plea bargaining, aiming to streamline the criminal justice process. Compounding allows for the settlement of certain offenses through agreement between parties, while plea bargaining enables accused individuals to plead guilty to a lesser charge or sentence in exchange for a reduced penalty.

Compounding of Offences

✓ **Definition:**

Compounding of offences involves the victim and the accused reaching a mutual agreement to settle the matter, effectively ending the criminal proceedings.

✓ **Conditions:**

The BNSS states specific conditions under which compounding can be allowed, including the nature of the offense and the stage of the legal process.

✓ **Limitations:**

Certain offenses, particularly those involving severe punishments like death penalty or life imprisonment, are not eligible for compounding.

✓ **Effect of Compounding:**

When an offense is compounded, it has the effect of an acquittal of the accused, meaning they are no longer liable for the compounded offense.

✓ **Court Approval:**

In some cases, compounding requires the approval of the relevant court, especially when an accused has been committed for trial or an appeal is pending.

Plea Bargaining: (Section 289 to 300)

Plea bargaining is a process in which a defendant(accused) in a criminal case agrees to plead guilty to a lesser charge or to a reduced sentence in exchange for some concession from the prosecutor or the court. For example, if Mr. X was accused of an offence for which the minimum punishment was say 6 years so in such cases the court can reduce the offence to 3 years i.e.: half of such minimum punishment. The notion of plea bargaining was first introduced in India in 2006.

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

In section 290 of BNSS, plea bargaining has been made time bound and application for plea bargaining can be made within 30 days from date of

framing of charge. In a plea bargaining case, in working out a mutually satisfactory disposition of case under section 293 of BNS, where the accused is first-time offender and has not been convicted of any offence in the past, the Court may sentence such accused person to one-fourth/one-sixth of punishment prescribed for such offence.

✓ **Definition:**

Plea bargaining is an agreement where the accused pleads guilty to a lesser charge or a reduced sentence in exchange for a lighter penalty.

✓ **Time Limit:**

Under BNSS, plea bargaining applications must be filed within 30 days from the date of framing of the charge.

✓ **Eligibility:**

Plea bargaining is typically not allowed for offenses punishable with death penalty, life imprisonment, or imprisonment exceeding seven years.

✓ **Types of Plea Bargaining:**

BNSS allows for "sentence bargaining" (reduced sentence) and "charge bargaining" (pleading guilty to a lesser charge).

✓ **First-Time Offenders:**

If the accused is a first-time offender and has not been previously convicted, the court may impose a reduced sentence, potentially one-fourth or one-sixth of the prescribed punishment.

✓ **Under trial Prisoners:**

The BNSS also addresses the detention of undertrial prisoners, stating that a first-time offender can be released on bail if they have served one-third of the maximum possible imprisonment.

6. Concurrent and Consecutive Running of Sentences

Under the Bharatiya Nagarik Suraksha Sanhita 2023, when a person is convicted of multiple offenses in a single trial, the court can order sentences to run either concurrently or consecutively. Concurrent sentences mean the punishments are served simultaneously, while consecutive sentences mean they are served one after the other. The court's decision depends on the severity of the offenses.

✓ **Concurrent Sentences**

When sentences are concurrent, the offender serves the total time for all offenses at the same time. For example, if someone is convicted of two offenses, one with a 3-year sentence and another with a 5-year sentence, and the sentences are concurrent, the offender will serve a total of 5 years.

✓ **Consecutive Sentences**

When sentences are consecutive, the offender serves the sentence for one offense, and then, after completing that, begins serving the sentence for the next offense. For example, if someone is convicted of two offenses

with a 3-year and 5-year sentence, and the sentences are consecutive, the offender will serve a total of 8 years.

- **Court's Discretion:**

The court has the discretion to decide whether to impose concurrent or consecutive sentences, considering the gravity of the offenses.

- **Limitations:**

The BNSS places certain limitations on consecutive sentences. The total sentence cannot exceed 20 years, and the aggregate punishment cannot exceed twice the punishment for a single offense the court is competent to inflict.

- **Impact on Appeals:**

For the purpose of appeals, the aggregate of consecutive sentences is treated as a single sentence.

Section 25 of BNSS is an improved version of Section 31 of CrPC because it directs the court to mandatorily consider the gravity of offences while ordering the punishments to run concurrently or consecutively. However, in section 31, the multiple sentences were assumed to run consecutively unless explicitly stated by the court to run concurrently, and no grounds were specified

going a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment *Section 468 (1) of Bharatiya Nagarik Suraksha Sanhita, 2023* states that when a person is already under or imprisonment for life, then

these subsequent sentences will begin after the expiration of imprisonment which has been previously sentenced unless the court directs that these subsequent sentences shall run concurrently with the previous sentences. *Section 468 (2)* states that when the person is already undergoing the sentence of imprisonment of life is sentenced on subsequent conviction for imprisonment of life or imprisonment for a term then the subsequent sentence shall run concurrently with the previous sentence.

7. Appeal, Revision, Reference

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 states procedures for appeals, revisions, and references in criminal cases, analogous to the CrPC. Appeals allow parties to challenge lower court decisions in higher courts, while revisions empower High Courts and Sessions Judges to examine records for errors and potentially order further inquiry or correction. References allow lower courts to refer specific legal questions to the High Court for guidance.

➤ Appeal (Section 413 to 435)

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 outlines the framework for appeals in criminal cases. Generally, appeals are permitted as provided by the BNSS or other relevant laws. The BNSS details the procedure for filing an appeal, the powers of the appellate court, and the circumstances under which an appeal may be abated.

✓ Right to Appeal:

Section 413 of the BNSS establishes that appeals are allowed as per the provisions of the Sanhita or other laws. It also clarifies that no appeal lies from any judgment or order of a criminal court except as provided for.

✓ **Restrictions on Appeals:**

Section 417 of the BNSS specifies limitations on the right to appeal, indicating cases where no appeal is permissible.

✓ **Appellate Jurisdiction:**

Sections 415 and 416 define the appellate jurisdiction of the Supreme Court and High Courts, respectively, specifying the types of cases they can hear.

✓ **Filing an Appeal:**

Section 423 outlines the procedure for filing an appeal, including the necessary documents and timelines.

✓ **Suspension of Sentence and Bail:**

Section 430 provides provisions for the suspension of a sentence and granting bail pending the appeal.

✓ **Finality of Judgments:**

Section 434 emphasizes the finality of appellate judgments, meaning that decisions made by the appellate court are binding.

✓ **Abatement of Appeals:**

Section 435 deals with the abatement of appeals, particularly when the appellant dies during the appeal process.

✓ **Powers of the Appellate Court:**

Section 427 details the powers of the appellate court, which can include reversing the decision, changing the sentence, or ordering a retrial.

Examples of Appeals:

- ✓ **Appeal against Conviction:** An accused person convicted of an offense can appeal to a higher court.
- ✓ **Appeal against Acquittal:** In some cases, the complainant or the state can appeal an order of acquittal.
- ✓ **Appeal against Sentence:** An accused person may appeal against the severity of the sentence.

Important Considerations:

✓ **Victims' Rights:**

The BNSS recognizes the rights of victims and allows them to appeal in certain situations.

✓ **Legal Errors:**

Appeals are generally based on legal errors made by the lower court or on unfair judgments.

✓ **Substantial Grounds:**

Appeals should be based on substantial grounds, and appeals for minor issues or after a guilty plea are often restricted.

✓ **Time Limits:**

There are time limits for filing appeals, and failure to meet these deadlines can result in the appeal being dismissed.

➤ **Reference And Revision (Section 436 to 445)**

The BNSS 2023, outlines provisions for reference and revision in criminal cases. These provisions allow lower courts to refer legal questions to the High Court and empower Sessions Judges to examine records and potentially order inquiries. The BNSS also addresses multiple convictions and the procedural steps following a revision application.

Reference:

Lower courts can refer legal questions or points of law to the High Court for clarification, ensuring consistency in legal interpretation.

Revision:

The BNSS empowers High Courts and Sessions Judges to review decisions of lower courts.

✓ **High Court's Role:**

The High Court can handle revision applications, has the discretion to allow parties to be heard during revision proceedings, and can certify decisions post-revision.

✓ **Sessions Judge's Role:**

Sessions Judges can exercise revision powers, and their decisions can be final for the individual involved, preventing further revision at the High Court or other courts.

✓ **Transfer of Revision Cases:**

The High Court can transfer revision cases between itself and the Sessions Judge based on the convenience of parties and the importance of the legal issues.

✓ **Multiple Convictions:**

The BNSS also addresses situations where multiple individuals convicted in the same trial apply for revision to different courts (High Court and Sessions Judge).

8. Security for Keeping Peace and Good Behavior(Section 125 to 143)

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, includes provisions for maintaining public peace and good behavior, building upon and replacing the relevant sections of the previous Criminal Procedure Code (CrPC). These provisions aim to implement preventative justice measures to ensure societal order and prevent future disturbances or criminal acts. The BNSS primarily deals with security for these purposes under Chapter IX.

1. Security for keeping peace

- On conviction (Section 125 BNSS): A court can order a convicted person to execute a bond for keeping the peace for up to three years. This applies to specific courts, and the bond is void if the conviction is overturned.
- In other cases (Section 126 BNSS): An Executive Magistrate can require a bond for keeping the peace for up to one year from someone likely to disturb public tranquility.

2. Security for good behavior

This is required from individuals who may pose a threat to public safety.

- From persons disseminating certain matters (Section 127 BNSS): An Executive Magistrate can require a bond for good behavior up to one year from someone disseminating certain materials punishable under the Bharatiya Nyaya Sanhita.
- From suspected persons (Section 128 BNSS): A bond for good behavior up to one year can be demanded from someone concealing their presence with intent to commit a cognizable offense.
- From habitual offenders (Section 129 BNSS): A bond with sureties for good behavior up to three years can be required from habitual offenders or those considered dangerous.

3. General procedure

The procedure involves steps such as issuing a written order, handling cases of absence, conducting an inquiry within six months, ordering the execution of a bond if necessary, determining the commencement of the security period, and addressing imprisonment in default. Magistrates have the power to release imprisoned individuals under certain conditions. The BNSS utilizes a preventative approach to maintain order, balancing public needs with individual rights.

9. Maintenance- Alteration and Enforcement(144 o 147)

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, specifically Sections 144-147, outlines the procedures for maintenance, its alteration, and enforcement for wives, children, and parents. These sections detail the process of obtaining maintenance orders, handling non-compliance, and making alterations based on changed circumstances or court decisions.

✓ **Order for Maintenance (Section 144):**

A magistrate can order a person to pay a monthly allowance to their wife, children, or parents if they are unable to support themselves.

✓ **Procedure for Maintenance (Section 145):**

This section outlines the process for initiating and conducting maintenance proceedings.

✓ **Alteration of Allowance (Section 146):**

If there is a change in circumstances, a magistrate can alter or cancel a maintenance order. This includes changes in the financial situation of either party or a divorced woman remarrying or receiving a lump sum settlement.

✓ **Enforcement of Orders (Section 147):**

The BNSS provides mechanisms for enforcing maintenance orders, including attachment of property, imprisonment for non-compliance, and other civil court procedures.

Specifics of Alteration and Enforcement:

✓ **Alteration:**

A magistrate can modify the amount of maintenance if there's a proven change in the financial situation of either the person receiving or paying the allowance.

✓ **Cancellation:**

A maintenance order can be canceled if a competent civil court makes a decision that warrants it, or in the case of a divorced woman, upon remarriage or receiving a lump sum settlement.

✓ **Enforcement:**

The BNSS allows for various methods to ensure compliance with maintenance orders, including fines, attachment of property or salary, and even imprisonment for willful non-compliance.

2. **Damanreet Kaur Vs. Indermet Juneja & Anr. 2012 [4] JCC 2375.**

In this case it was held that if the wife was working in past and resigned from the employment, she is not entitled for maintenance under Domestic Violence act. The question whether the wife was forced to resign or she has resigned herself is a question to be considered by the court during trial and also the question whether the reason given by her for resigning were satisfactory or not. These are the question to be gone in to during evidence by the Id. Trial Court.

3. **Vijay Kumar Vs. Harsh Lata Aggarwal decided on 10.09.2008 in CM (M) ENo.539/2008 by Hon'ble High Court of Delhi .**

In this case the Hon'ble High Court of Delhi has held that when Income of both husband and wife are almost similar and both almost equally qualified, there is no justification to grant interim maintenance to the wife.

4. Bhushan Kumar Meen Vs. Mansi Meen SLP (Crl) 7924 of 2008 Supreme Court .

In this case while reducing the maintenance amount from Rs.10000/- to Rs.5000/- granted by the lower court to the wife, the Supreme Court observed that " we can not also shut our eyes to the fact that at present the respondent wife is not employed or at least there is nothing on record to indicate that she is employed in any gainful work. However having regard to the qualifications that she possesses, there is no reason why she ought not to be in a position to also maintain herself in the future.

5. Omar Abdullah Vs. Payal Abdullah & Ors. 2018 (1) JCC 632.

In this case the Delhi High Court has directed the trial court to decide first the maintainability of the petition filed by the wife under section 125 Cr.P.C. The Court held that Maintainability of the petition under section 125 Cr.P.C and question of award of interim maintenance are inseparable. In Order to award interim maintenance ,the court concerned shall first arrive at a finding that whether the the husband neglected or refused to give maintenance to his wife and whether the wife was unable to maintain herself ,then proceed with the case further.

6. Suman Bhasin Vs.Neeraj Bhasin CC No.316/3/2007 Dated 27.05.2015 MM , Saket District Court"

Court came heavily and imposed cost of Rs. One lac for filing false Domestic Violence case against Husband and in-laws. Court in its judgment has observed that Domestic Violence law has been misused.

7. Tanushree Dahiya Vs. Sachin Dahiya ADJ Saket District Court N.Delhi

Court should not be allowed to be used to extort money, junks woman's maintenance plea and imposed a cost of Rs. One lac on the woman ,saying the proceeding u/s 125 Cr.P.C has filed only to blackmail the Husband..

UNIT-IV: Miscellaneous Procedure

1. The Judgment ((Section 392 to 406)

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, which replaces the CrPC, outlines the judgment procedure in Section 392, requiring judgments to be pronounced in open court either immediately after trial completion or within 45 days with prior notice. Section 393 details the components of a valid judgment, including points for determination, the decision, reasons, and specifics of the offense, section, and punishment.

✓ **Pronouncement:**

Judgments must be delivered in open court, either immediately after the trial or within a 45-day window with prior notice to parties.

✓ **Content:**

Judgments must be written in the court's language and include the points for determination, the decision, the reasons for the decision, and the details of the offense, section, and punishment.

✓ **Accessibility:**

A copy of the judgment should be provided to the parties free of cost, according to Legal Onus.

✓ **Accused in Custody:**

If the accused is in custody, they must be brought to court to hear the judgment, or it can be delivered via audio-video means.

✓ **Accused not in Custody:**

If the accused is not in custody, they are generally required to be present, unless special permission is granted, such as for a fine-only sentence.

✓ **Opportunity to be Heard:**

Section 223 of the BNSS mandates that the accused be given an opportunity to be heard before a Magistrate takes cognizance of an offense.

✓ **Compensation:**

In cases of theft, misuse of property, breach of trust, cheating, or handling stolen property, the fine can be used to compensate a genuine buyer if the property is returned to its rightful owner.

Judgment Pronouncement and Documentation:

- Sections 392-406 of the BNSS detail the process of judgment pronouncements, emphasizing transparency and clarity in the delivery of judgments.
- The BNSS mandates that judgments be documented, ensuring a record of the court's reasoning and findings.
- It also outlines procedures for victim compensation as part of the judgment process.

2. Trial in Absentia:

- The BNSS allows for trials to be held in the absence of the accused under certain circumstances.
- If the judge or magistrate is satisfied that the accused's presence is not necessary in the interest of justice, or that the accused is persistently disturbing the proceedings, the court can proceed with the trial in the accused's absence if they are represented by a lawyer.
- If the accused is not represented, the court may adjourn the trial or order a separate trial for that accused.

3. Abatement of Appeals

Section 435 of the BNSS addresses the abatement of appeals.

- If an accused dies while their appeal is pending, the appeal will abate, meaning it will be concluded and not heard further.
- The BNSS mandates forensic investigation for offenses punishable with at least seven years of imprisonment.
- It expands the scope of evidence collection to include finger impressions and voice samples, in addition to signatures and handwriting.

- The BNSS also includes provisions for maintenance of wives, children, and parents.

2. Transfer of Criminal Cases

(Section 446 to 452)

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 states the provisions for the transfer of criminal cases, primarily under Sections 446 and 447. The Supreme Court and High Courts have the power to transfer cases for the ends of justice, while Sessions Judges can transfer cases within their jurisdiction.

✓ Supreme Court (Section 446):

The Supreme Court can transfer cases or appeals between High Courts or criminal courts under different High Courts when it deems it necessary for the ends of justice. This is typically done upon application by the Attorney-General of India or a party interested.

✓ High Courts (Section 447):

High Courts have the power to transfer cases and appeals between subordinate criminal courts within their jurisdiction. They can act on the report of a lower court, the application of a party, or on their own initiative.

✓ Sessions Judges (Section 448):

Sessions Judges can transfer cases and appeals within their sessions division. They can also withdraw cases assigned to subordinate courts before trial starts and try them themselves or assign them to another court.

✓ **Magistrates (Sections 451 & 452):**

Judicial Magistrates and Executive Magistrates (like District Magistrates and Sub-Divisional Magistrates) also have powers to withdraw and transfer cases under their jurisdiction.

✓ **Reasons for Transfer:**

Sessions Judges, Chief Judicial Magistrates, and other Magistrates are required to record reasons for any transfer orders they make. While the Supreme Court and High Courts are not explicitly required to record reasons, the BNSS emphasizes the importance of transparency and fairness in the process.

✓ **Checks and Balances:**

The BNSS includes provisions to prevent misuse of transfer powers. For instance, an application to the High Court for transferring a case within the same sessions division must first be made to the Sessions Judge.

✓ **Fair Trial:**

The primary purpose of these transfer provisions is to ensure a fair trial for all parties involved.

✓ **Exceptional Jurisdiction:**

The power to transfer cases is considered exceptional and is not to be used lightly.

✓ **Burden of Proof:**

The party seeking a transfer bears the burden of demonstrating that a transfer is necessary to ensure a fair trial.

✓ **Transparency and Accountability:**

The requirement to record reasons for transfer, along with the hierarchy of courts involved, promotes transparency and accountability in the process.

The BNSS 2023 aims to strengthen the judiciary's ability to safeguard the rights of all parties in criminal proceedings and to enhance public trust in the justice system, according to legal commentators.

3. Execution, suspension, Remission, and Commutation of Sentences and Mercy petitions: (Section 453 to 477)

These provisions, found in Chapter XXXIV of the BNSS, offer mechanisms to modify or adjust the enforcement of punishments based on specific circumstances and the discretion of the "appropriate Government".

✓ **Execution of Sentences:**

The BNSS details the procedures for carrying out various sentences, including imprisonment and fines.

✓ **Suspension of Sentences:**

Section 473 of the BNSS allows the appropriate Government to suspend the execution of a sentence, either with or without conditions. This means the convict may not have to serve the full sentence immediately, or at all, under specific terms set by the government.

✓ **Remission of Sentences:**

Remission, also under Section 473, involves reducing the length of a sentence without changing its nature (e.g., converting a 10-year sentence to 8 years). The appropriate Government can grant remission with or without conditions.

✓ **Commutation of Sentences:**

Section 474 of the BNSS addresses the commutation of sentences. This involves changing the type of punishment to a less severe one (e.g., converting a death sentence to life imprisonment). A significant change in the BNSS is the restriction on the commutation of a death sentence, limiting it to life imprisonment.

Changes under BNSS:

✓ **Restrictions on Death Sentence Commutation:**

The BNSS limits the commutation of a death sentence to life imprisonment only, unlike the previous CrPC which allowed for commutation to any other punishment.

✓ **Conditional Remission:**

The BNSS clarifies the conditions under which remission can be granted and the consequences of non-compliance, including the possibility of re-arrest to serve the remaining sentence.

✓ **Government's Role:**

The BNSS emphasizes the role of the "appropriate Government" (Central or State) in exercising these powers, with provisions for seeking the trial judge's opinion when considering applications for suspension or remission.

4. Disposal of Property- Photography, Videography and Time Bound Release

Under Bharatiya Nagarik Suraksha Sanhita disposal of property seized in criminal cases involves mandatory photography and videography, along with a time-bound process. The court or magistrate must prepare a detailed list of the property, photograph it, and potentially videograph it, using electronic means. This documentation serves as evidence in the case. The court then has 30 days to decide on the property's disposal

✓ **Disposal of Property(497 to 505)**

Under the Bharatiya Nagarik Suraksha Sanhita, the disposal of property involved in criminal cases is governed by Sections 497 and 498. Section 497 outlines the procedure for the custody and disposal of property during investigation, inquiry, or trial. Section 498 details the disposal of property after the conclusion of a trial.

The Bharatiya Nagarik Suraksha Sanhita (2023) outlines the procedure for the custody and disposal of property during and after a trial

in Sections 497 to 505. These sections cover the handling of property produced before a court, including perishable items, and address situations where no claimant appears for seized property.

- **Section 497** Deals with the custody of property during the investigation, inquiry, or trial. The court can order the property's custody and, if necessary, order its sale or disposal if it's perishable or expedient.
- **Section 498** Covers the disposal of property at the conclusion of the trial.
- ✓ **Section 499** Addresses the payment to an innocent purchaser of money found on the accused.
- ✓ **Section 500** Provides for an appeal against orders issued under Section 498 or 499.
- ✓ **Section 501** Deals with the destruction of libelous or other offensive material.
- ✓ **Section 502** Grants the power to restore possession of immovable property.
- ✓ **Section 503** Specifies the procedure for police when seizing property.
- ✓ **Section 504** Outlines the procedure when no claimant appears for seized property within six months.
- ✓ **Section 505** Grants the power to sell perishable property.

1. Property Disposal:

- **General Provisions:**

The BNSS empowers courts to make orders for the disposal of property related to a criminal case, including its destruction, confiscation, or return to the rightful owner.

- **List and Evidence:**

When property is produced before a court or comes into its custody, a detailed list, along with photographs and videos (using mobile phones or other electronic devices), must be prepared.

- **Evidence Use:**

This list, photographs, and videos are considered as evidence in investigations, trials, and other legal proceedings.

- **Disposal Orders:**

Within a specified timeframe (30 days after the list and media are prepared), the court must decide on the property's disposal.

- **Delivery to Claimants:**

Courts may order the return of property to individuals claiming ownership, potentially with conditions like executing a bond.

2. Photography and Videography:

- **Mandatory for Seized Property:**

The BNSS mandates that seized property must be photographed and, if necessary, videographed.

- **Evidence Preservation:**

These visual records are crucial for preserving evidence and ensuring transparency in the legal process.

- **Post-Recording Procedures:**

Guidelines exist for reviewing, securing, and labeling these recordings to maintain their authenticity and accuracy.

3. Specific Sections Related to Property:

- **Section 497:**

Deals with the custody and disposal of property during investigations, inquiries, and trials.

- **Section 503:**

Addresses the destruction of property related to specific offenses like obscenity (as defined in sections 292, 293, and 354 of the Bharatiya Nyaya Sanhita) and adulteration of food, drinks, drugs, or medical preparations (sections 272, 273, 274, and 275 of the Bharatiya Nyaya Sanhita)

5. Preventive Action of Police(Section 168 to 172)

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 deals with several preventive actions the police can take under Chapter XII including preventing cognizable offenses, acting on information about planned offenses, and arresting individuals to avert crime. Additionally, the BNSS mandates that citizens conform to lawful police directions during these actions.

- **Preventing Cognizable Offenses:**

Police officers are empowered to intervene and prevent the commission of any cognizable offense to the best of their ability.

- **Acting on Information:**

Police officers who receive information about a design to commit a cognizable offense must promptly communicate this information to their superiors and other relevant officers.

- **Arrests to Prevent Offenses:**

If a police officer has knowledge of a design to commit a cognizable offense and believes the offense can only be prevented by an arrest, they can arrest the individual without a warrant.

- **Time Limit for Detention:**

If arrested under the above provision, the individual cannot be detained for more than 24 hours unless further detention is authorized by law.

- **Prevention of Injury to Public Property:**

Police officers are authorized to take steps to prevent injury to public property.

- **Duty to Conform to Lawful Directions:**

A significant addition in BNSS is the provision that requires individuals to comply with the lawful directions of a police officer in the execution of their duties related to preventive action.

- **Consequences of Non-compliance:**

If an individual resists, refuses, or ignores lawful directions, the police officer can detain or remove them. The individual can be presented before a magistrate or released with a personal recognizance bond within 24 hours, especially in petty cases.

6. Irregular Proceedings (Section 506 to 512)

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 addresses irregularities in legal proceedings, specifically outlining when such irregularities do not invalidate a trial and when they do. Sections 506 and 507 of BNSS detail these provisions. Section 506 covers irregularities that do not vitiate proceedings if done in good faith, while Section 507 deals with irregularities that are serious enough to invalidate the proceedings.

In the context of the Bharatiya Nagarik Suraksha Sanhita (BNSS), irregular proceedings refer to actions taken during a legal process that deviate from the established procedures and rules, but may or may not invalidate the entire proceeding depending on the nature of the irregularity and its impact on justice. Essentially, it's a procedural error that doesn't necessarily mean the entire case is flawed.

Good Faith Errors:

If a magistrate, acting in good faith, performs an act they are not authorized to do (like issuing a search warrant, ordering an investigation, or taking cognizance of an offense), the proceedings will not be invalidated solely on the basis of the lack of authority.

- **Example:**

If a magistrate not authorized to order an inquest into a suspicious death does so, the inquest and its findings will still be valid as long as the magistrate acted in good faith.

- **Example:**

A magistrate issuing a process to apprehend someone outside their jurisdiction is not fatal to the proceedings if done in good faith.

Irregularities that Vitiates Proceedings (BNSS Section 507):

- **Lack of Jurisdiction:**

If a magistrate tries an offense they are not empowered to try, or issues a maintenance order they are not authorized to make, the proceedings are considered void.

- **Example:**

A magistrate not authorized to try robbery cases proceeds to do so, the trial is void.

- **Serious Lapses:**

Section 507 highlights errors that are considered so severe they cannot be cured by good faith alone.

Key Points:

- The BNSS aims to strike a balance between procedural flexibility and judicial accountability.
- While good faith errors can be overlooked, serious lapses in jurisdiction or procedure can invalidate proceedings.

- Chapter 37 of BNSS (Sections 506-512) specifically deals with the concept of irregular proceedings.
- The provisions of BNSS aim to ensure that justice is not denied due to minor technical errors, but also that fundamental principles of law are upheld.

7. Protection of Victims- Compensation and Treatment

“**Victim**’ as under criminal law “means a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim” as defined as under section 2(y) of Bharatiya Nagarik Suraksha Sanhitha.

VICTIMS AND THEIR RIGHTS UNDER CRIMINAL LAWS:

Several rights and safeguards have been provided to victims under criminal laws such as Bharatiya Nagarik Suraksha Sanhitha, 2023, Bharatiya Sakshya Adhiniyam, 2023, including special enactments.

1. Victim Rights Under Bharatiya Nagarik Suraksha Sanhitha, 2023:

- A victim is permitted under section 18(8) of BNSS to engage an advocate of his/her choice to assist the prosecution. However, the Advocate’s power is limited, and he may only present written arguments after the evidence has been recorded unless the court grants permission.
- A Victim at the stage of filing the First Information Report as under section 173 of BNSS is entitled to get the copy of the information as recorded to be given forthwith, free of cost.

- In cases of offences under section 64 to 71 and 74 to 79 and 124 of Bharatiya Nyaya Sanhitha, 2023 the victim's statement has to be recorded by a woman police officer.
- In case the victim is mentally or physically disabled temporarily or permanently, such information has to be recorded at the residence of victim or at a convenient place of victim's choice and in the presence of an interpreter or special educator.
- As under section 173 of BNSS, the victim can also give the information by electronic communication and it shall be taken on record by the officer in charge of a police station on being signed by the informant within three days of giving it.
- If the officer in charge refuses to record such information given by the victim, the same can be sent to the Superintendent of police concerned and in case if the information is still not recorded, the victim can make an application to the Magistrate.
- In case the officer in charge of a police station chooses to file a final report closing a case, a notice has to be issued to the victim/informant informing about the closure.
- As under section 339 of BNSS the court can permit an advocate on behalf of the victim to conduct the prosecution.

Hon'ble Supreme Court held that the above directions are in addition to those given in **State of Punjab v. Gurmit Singh**. Wherein the Hon'ble Supreme Court held that: i) When trials are held in camera, it would not be lawful for any person to print or publish any matter in

relation to the proceedings in the case, except with the previous permission of the Court as envisaged by Section 327 (3) Cr. P.C. (BNSS 366). This would save any further embarrassment being caused to the victim of sex crime.

This would save any further emba Victim Rights Under Bharatiya Sakshya Adhiniyam, 2023: • Under Section 154 and 155 of BSA (section 151 and 152 of Indian Evidence Act), the Court has the power to forbid questions which it 6 1996 SCC (2) 384 Topic: Victimology And Compensation Page 8 Of 20 regards as indecent or scandalous and intended to insult or annoy to be put to victims and other witnesses.

➤ **Compensation**

The court may when passing judgment, order the whole or part of any part of the fine recovered to be applied for payment of compensation to the victim, when such compensation is recoverable by such person in a civil court, or for payment of compensation to victim entitled under The Fatal Accidents Act, 1855, who is entitled to recover damages from the persons sentenced. And for compensation to the bona fide purchaser of stolen property, where such property is restored to the possession of persons entitled thereto. When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused to pay, by way of compensation, such amount as may be specified in the order to the victim. (Section 395 of BNSS)

VICTIM COMPENSATION SCHEME:

Victim Compensation scheme under Section 396 of BNSS: The State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim who have suffered loss or injury and who require rehabilitation. When the Court recommends for compensation to victim, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation. And when the trial court considers that the compensation awarded under section 395 is not adequate for rehabilitation of victim, or in case of acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

NALSA'S COMPENSATION SCHEME FOR WOMEN VICTIMS/SURVIVORS OF SEXUAL ASSAULT/OTHER CRIMES -

2018 The Hon'ble Supreme Court of India in Nipun Saxena And Another Vs. Union of India and others¹³ vide order dated 12.10.2017 directed NALSA to set up a committee and to prepare a model victim compensation scheme for survivors of sexual offences and Acid attacks. And accordingly the above scheme was prepared. The Hon'ble Supreme Court observed that, while nothing should be taken away from the scheme, but it does not preclude the state Governments and Union Territories administrations from adding to the scheme.

UNIT-V Juvenile Justice and Probation of Offenders

- **Salient features of Juvenile Justice (care and Protection of Children) Act 2015**

The Juvenile Justice (Care and Protection of Children) Act, 2015, redefines a juvenile as a person below 18 years of age, aligning with the UN Convention on the Rights of the Child. It focuses on rehabilitation and reintegration of both offenders and victims through individual care, aiming for correction rather than punishment. The Act establishes Juvenile Justice Boards and Child Welfare Committees to handle cases and ensure children's well-being.

Definition of a Juvenile:

The Act defines a "child" as a person who has not completed eighteen years of age, in line with the UN Convention on the Rights of the Child.

This is a shift from the previous definition, which considered a juvenile as someone below 16 years of age.

2. Focus on Rehabilitation:

The Act prioritizes the rehabilitation and social reintegration of juveniles, both those in conflict with the law and those in need of care and protection.

It emphasizes individual care plans and aims to correct juvenile offenders rather than simply punish them.

3. Establishment of Key Institutions:

- **Juvenile Justice Boards (JJBs):**

These boards are responsible for handling cases of children in conflict with the law, ensuring a child-friendly approach to justice.

Child Welfare Committees (CWCs):

These committees handle cases of children in need of care and protection, ensuring their well-being and safety.

4. Special Provisions for Children in Conflict with the Law:

The Act provides for the establishment of Special Homes for the rehabilitation of juvenile offenders between 16-18 years of age.

It also includes provisions for fast-track courts to expedite cases related to children, including those involving missing children and child victims of abuse.

5. Adoption and Related Matters:

The Act regulates inter-country adoptions and includes provisions for adoption, both in and out of marriage.

It also provides for a Central Adoption Resource Authority.

6. Stricter Punishment for Offences Against Children:

The Act includes provisions for stricter punishments for offences committed against children, including assault, causing mental or physical suffering, and employment of a child.

7. Addressing "Heinous Crimes":

For children aged 16-18 who allegedly commit "heinous crimes," the JJB can conduct a preliminary assessment to determine their mental and physical capacity to understand the consequences of their actions.

This assessment helps the JJB decide whether to try the child as an adult.

8. Child-Friendly Approach:

The Act emphasizes a child-friendly approach in all matters related to children, ensuring their rights and best interests are prioritized.

9. Mandatory Registration of Children's Homes:

The Act makes the registration of all children's homes mandatory, promoting transparency and accountability in the system.

➤ Juvenile Justice Board- Composition

A Juvenile Justice Board (JJB) is composed of a Principal Magistrate and two social workers, with at least one being a woman. The Principal Magistrate is typically a Metropolitan Magistrate or Judicial Magistrate of First Class with at least three years of experience. The social workers should have experience in child-related fields like health, education, or welfare for at least seven years, or be qualified professionals in child psychology, psychiatry, sociology, or law, according to some legal sources.

- **Principal Magistrate:**

A judicial officer (Metropolitan Magistrate or Judicial Magistrate of First Class) with a minimum of three years of experience.

- **Social Workers:**

Two social workers are required, with at least one being a woman.

- They should have at least seven years of experience in child-related fields like health, education, or welfare.
- Alternatively, they can be qualified professionals with degrees in child psychology, psychiatry, sociology, or law.

➤ Number of JJBs:

Each district or group of districts is required to have one or more JJBs, according to the Juvenile Justice Act, 2015.

➤ **Function:**

The JJB handles cases of children in conflict with the law and acts as a separate court for them, ensuring a child-friendly environment.

The Juvenile Justice Board (JJB) is a pivotal institution within India's juvenile justice system, established under Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Its primary purpose is to address cases involving "children in conflict with law" (CCL), as defined under Section 2(13) of the Act. The JJB operates independently from regular criminal courts and aims for a reformatory and rehabilitative approach rather than punishment.

Constitution and Composition

The State Government is responsible for establishing one or more Juvenile Justice Boards in each district. Each JJB consists of a Principal Magistrate with at least three years of experience and two social workers, one of whom must be a woman. Eligible social workers must have substantial experience in child welfare or related fields, or possess a relevant degree. The Board functions as a bench, combining judicial authority with social welfare expertise.

Powers and functions

The JJB has exclusive jurisdiction over CCL cases in its area. Its functions include conducting preliminary assessments for heinous offenses involving

children aged 16-18, holding inquiries, and issuing orders such as counseling, community service, or placement in a special home. The Board ensures guardian participation and protects the child's rights throughout the process, providing legal aid and interpreter services when needed. JJBs also direct social investigations to inform rehabilitation plans and regularly inspect institutions housing children. They can also direct police action against those who commit offenses against children and ensure no child is improperly held in adult jails.

Child-friendly approach

The JJ Act mandates a child-friendly environment for Board proceedings, involving face-to-face interaction, no raised platforms or physical barriers, and simple procedures focused on engaging with the child and their guardians.

Challenges

Despite the framework, challenges persist, including inadequate infrastructure and trained personnel, case delays, inconsistent preliminary assessments for heinous offenses, and skepticism regarding the effectiveness of rehabilitation programs.

The JJB is crucial for protecting the rights and well-being of children in conflict with the law, but addressing implementation challenges is vital for its effectiveness.

➤ Procedure Relating to Children in conflict with law

Section 2(13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

A child in conflict with the law is a person under the age of 18 who is accused of, or found to have committed, a crime. This term is used within the Juvenile Justice (Care and Protection of Children) Act to differentiate these individuals from adult offenders. The Act aims to provide a more child-friendly approach to justice, focusing on rehabilitation and care rather than solely punishment.

Procedure relating to children in conflict with law under the Juvenile Justice Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015, outlines a specific procedure for handling cases involving children in conflict with the law (CCL), prioritizing their rehabilitation and social integration over traditional punitive measures.

The process for handling children in conflict with the law under the Juvenile Justice Act, 2015, involves several key stages:

- **Apprehension:**

A child is apprehended and placed under the charge of a Special Juvenile Police Unit (SJPU) or Child Welfare Police Officer (CWPO). The child's parents or guardians and a Probation Officer or Child Welfare Officer must be informed.

- **Production before the JJB**

The child must appear before the Juvenile Justice Board (JJB) within 24 hours of apprehension. Bail may be granted, or the child may be sent to an observation home or place of safety if bail is denied.

- **Inquiry by the JJB:** The JJB conducts an inquiry into the offense. For heinous offenses by children aged 16-18, a preliminary assessment may lead to the case being transferred to a Children's Court.
- **Orders:** If the child is found to have committed the offense, the JJB or Children's Court can issue various orders focused on rehabilitation and reintegration, such as counseling, community service, fines, probation, or placement in a special home. An individual care plan is required.
- **Rehabilitation:** The focus remains on rehabilitation and social reintegration.
- **Appeals:** Appeals against JJB orders can be made to the Children's Court or Court of Session.

➤ **Children in need of care and Protection**

The Juvenile Justice (Care and Protection of Children) Act, 2015, aims to provide a framework for the care, protection, treatment, development, and rehabilitation of children in need of care and protection. It also addresses children in conflict with the law, ensuring a child-friendly approach in legal proceedings. The Act defines a child as anyone under 18 years of age and outlines provisions for identifying and assisting children who are without a home, are exploited, neglected, or are at risk of harm.

Defining Children in Need of Care and Protection: The JJ Act, 2015, clarifies who is considered a child in need of care and protection, including those who are:

- ✓ **Homeless:** Without a settled place of abode and means of subsistence.
- ✓ **Exploited:** Working in violation of labor laws, begging, or living on the streets.
- ✓ **Neglected or Abused:** Residing with a person who has injured, exploited, abused, or neglected them.
- ✓ **At Risk:** Those facing potential harm due to various factors, including involvement in armed conflict, natural disasters, or child marriage.

2. Key Provisions and Objectives:

- ✓ **Consolidation of Law:**

The Act consolidates and amends previous laws related to children in need of care and protection, and those in conflict with the law.

- ✓ **Child-Friendly Approach:**

It emphasizes a child-friendly approach in handling legal matters related to children.

- ✓ **Rehabilitation and Social Reintegration:**

The Act focuses on rehabilitating and reintegrating children into society through various mechanisms and institutions.

- ✓ **Specialized Institutions:**

It establishes specialized institutions and mechanisms, such as Child Welfare Committees (CWCs) and Juvenile Justice Boards (JJBs), to provide care, protection, and rehabilitation.

✓ **General Principles:**

The Act is guided by general principles of care and protection for children, as detailed in Chapter II.

3. Child Welfare Committees (CWCs):

✓ **Formation and Composition:**

CWCs are formed with five members, including a chairperson and at least one woman, with specific qualifications in areas like child psychology, law, or social work.

✓ **Powers and Functions:**

CWCs have the power to function as a bench of magistrates, ensuring child protection and welfare.

✓ **Responsibilities:**

CWCs investigate cases of children in need of care and protection, order investigations, and make decisions regarding placement in foster care or institutions.

✓ **Coordination:**

They coordinate with various departments like education, labor, and police to ensure comprehensive support for children.

Aspects of the JJ Act, 2015:

✓ **Adoption:**

The Act streamlines the process for legal adoption of orphaned, abandoned, and surrendered children.

✓ **Aftercare Support:**

It provides for aftercare support for individuals leaving institutional care, helping them transition into mainstream society.

✓ **Mandatory Reporting:**

The Act mandates reporting of children found abandoned, orphaned, or separated from their families to designated authorities.

✓ **Punishment for Non-Reporting:**

Failure to report such cases can lead to penalties.

The JJ Act, 2015, represents a significant step in ensuring the rights and well-being of vulnerable children in India, providing a comprehensive framework for their care, protection, and rehabilitation.

➤ **Child Welfare Committee**

- The Child Welfare Committee (CWC) is a cornerstone of India's child protection framework under the Juvenile Justice (Care and Protection of Children) Act, 2015. It is a statutory body established at the district level to specifically address the needs of children in need of care and protection (CNCP).
- Here's a breakdown of the CWC's role under the JJ Act, 2015:

- Under the JJ Act, each CWC is composed of a Chairperson and four other members appointed by the State Government, with specific requirements for representation and expertise.
- The CWC acts as a quasi-judicial body with authority over matters concerning children in need of care and protection. Its functions include receiving children, conducting inquiries, directing placements, ensuring rehabilitation, and facilitating restoration.
- The JJ Act defines categories of children considered in need of care and protection, such as those who are orphaned, abandoned, or at risk.

Rehabilitation

The Juvenile Justice (Care and Protection of Children) Act, 2015 emphasizes rehabilitation and social reintegration of children in conflict with the law and those in need of care and protection. The Act aims for a child-friendly approach to justice, focusing on correction and recovery rather than punishment.

Aspects of Rehabilitation under the JJ Act:

- **Individual Care Plans:**

The Act mandates the creation of individual care plans for each child, outlining specific needs and goals for their rehabilitation.

- **Family-Based Care:**

Prioritizing family-based care, the Act encourages restoration to family or guardians, with or without supervision, and promotes adoption and foster care.

- **Institutional and Non-Institutional Care:**

For children not placed in families, the Act provides for institutional care in registered children's homes or placement with fit persons or facilities.

- **Observation Homes and Special Homes:**

Children in conflict with the law may be placed in observation homes for social study and assessment, and later in special homes for rehabilitation, if needed.

- **Aftercare Organizations:**

The Act also provides for support through aftercare organizations for children leaving institutional care.

- **Adoption:**

Adoption is a key component of the Act, especially for children who are orphaned, abandoned, neglected, or abused.

- **Foster Care:**

Foster care provides a family environment and parental care for children who may not be suitable for adoption.

- **Sponsorship:**

Sponsorship programs can provide financial and other support to children, aiding their rehabilitation and social reintegration.

- **Fit Person/Facility:**

Children can be placed with fit persons or facilities, ensuring their safety and well-being during the rehabilitation process.

- **Fast-Track Courts:**

The Act also provides for fast-track courts for expeditious disposal of cases related to children, including those involving missing children and child victims of abuse.

- **Central Adoption Resource Authority (CARA):**

CARA plays a crucial role in regulating inter-country adoptions and ensuring the well-being of children through adoption.

- **Restorative Justice:**

The JJ Act promotes a child-friendly approach that focuses on restorative justice, aiming to repair harm and reintegrate children into society.

- **Salient Features of Probation Offenders Act 1958**

The Probation of Offenders Act, 1958, aims to reform offenders, particularly first-time offenders, by providing them with an opportunity to rehabilitate within society instead of being imprisoned. The Act allows courts to release offenders on probation of good conduct, subject to certain conditions, for offenses not punishable with death or life imprisonment. It also emphasizes the role of probation officers in supervising offenders and assisting their rehabilitation.

- **Reformation over Punishment:**

The Act prioritizes the reformation and social reintegration of offenders, especially juveniles and first-time offenders, by providing them with a chance to rehabilitate rather than imposing a prison sentence.

- **Probation as an Alternative to Imprisonment:**

It allows courts to release offenders on probation, rather than sentencing them to prison, for offenses where imprisonment is not mandatory.

- **Conditions of Probation:**

Offenders released on probation are typically required to enter into a bond with or without sureties and adhere to specific conditions set by the court, such as residence, abstaining from alcohol, and reporting to a probation officer.

- **Role of Probation Officers:**

The Act establishes the role of probation officers who are responsible for supervising offenders, preparing pre-sentence reports, and assisting them in their rehabilitation.

- **Discretionary Power of Courts:**

The Act grants courts the discretion to decide whether an offender is suitable for probation based on the nature of the offense, the offender's character, and other relevant factors.

- **Reduction of Prison Overcrowding:**

By providing probation as an alternative to imprisonment, the Act helps in reducing overcrowding in prisons.

- **Cost-Effectiveness:**

Probation is generally a more cost-effective approach compared to imprisonment, benefiting the economy by allowing offenders to continue working and contributing to society.

- **Community Integration:**

The Act promotes community integration by allowing offenders to remain within their communities and maintain their social ties, facilitating their successful reintegration into society.

- **Scope of Application:**

The Act applies to the whole of India, excluding Jammu and Kashmir. However, it does not apply to serious offenses like murder or kidnapping.

➤ **Power of Court to release Certain Offenders on Probation/ Good Conduct**

The Probation of Offenders Act, 1958 in India, empowers courts to release certain offenders on probation of good conduct instead of sentencing them to immediate punishment. This Act allows courts to consider releasing offenders, except those convicted of offenses punishable by death or life imprisonment, on probation if it's deemed expedient based on the offense and the offender's character. This approach emphasizes reformation and rehabilitation over mere punishment.

Provisions:

- **Section 4 of the Act:**

This section specifically addresses the release of offenders on probation of good conduct.

- **Offenses Covered:**

The Act applies to offenses not punishable with death or life imprisonment.

- **Court's Discretion:**

The court, after considering the circumstances of the case, the nature of the offense, and the offender's character, can decide to release the offender on probation.

- **Conditions of Release:**

Offenders released on probation are required to enter into a bond, with or without sureties, to appear and receive sentence when called upon, and to keep the peace and be of good behavior during the probation period, which can be up to three years.

- **Probation Officer's Role:**

The court may consider the report of a probation officer before making a release order.

- **Supervision:**

Offenders on probation are usually placed under the supervision of a probation officer, who helps them reform and become productive members of society.

- **Benefits of Probation:**

Probation aims to rehabilitate offenders by allowing them to remain in the community, under supervision, and encourages them to become law-abiding citizens.

In essence, the Probation of Offenders Act, 1958, provides a framework for courts to use probation as a tool for rehabilitation, particularly for first-time offenders and those who have committed less serious offenses, rather than resorting to immediate imprisonment.

- **Power of Court Require Released offenders to pay compensation and Cost.**

Under Section 5 of the Probation of Offenders Act, 1958 courts can order offenders released under probation to pay compensation for loss or injury caused by the offense and reasonable costs of the proceedings. This order can be made alongside the probation order, and the amounts can be recovered as a fine. The amount paid is also considered by civil courts when awarding damages in related suits.

- **Court's Power:**

Section 5 of the Act specifically grants courts the power to require released offenders to pay compensation and costs.

- **When it applies:**

This power is exercised when a court releases an offender under Section 3 (admonition) or Section 4 (probation) of the Act.

- **What it includes:**

The order can include:

- **Compensation:** Reasonable compensation for any loss or injury caused to a person by the offender's actions.
- **Costs:** Reasonable costs associated with the legal proceedings.

Recovery as a fine:

The amounts ordered to be paid can be recovered as a fine, in accordance with sections 386 and 387 (BNSS Section 427 and 428) of the Code of Criminal Procedure.

Consideration in Civil Suits:

Any compensation paid or recovered under this section is taken into account by civil courts when awarding damages in related civil suits.

➤ **Appeal And Revision**

The Probation of Offenders Act, 1958 , allows for appeals and revisions of probation orders. Specifically, Section 11 of the Act deals with the appeal process for orders made under Sections 3 and 4, while also providing for the revision of probation orders by higher courts.

- **Right to Appeal:**

An appeal against an order made under Section 3 or Section 4 (which deal with probation for offenders) lies to the court to which appeals ordinarily lie from the sentences of the court that passed the order.

- **Appeals for Young Offenders:**

If a court declines to apply Sections 3 or 4 to an offender under 21 and instead sentences them to imprisonment, an appeal can be made to the higher court.

- **Revisional Powers:**

The Act also empowers High Courts and other appellate courts to call for and examine the record of a case and pass appropriate orders, either on their own motion or upon application by the convicted person or a probation officer, when a court declines to apply Sections 3 or 4.

- **Scope of Revisional Powers:**

The higher court can cancel an order made under Section 3 or 4 and pass any other order it deems fit, including sentencing the offender according to the law, but cannot impose a sentence harsher than the original court could have.

Revisions:

- **Revision by Higher Courts:**

The Act provides for revisions of probation orders by higher courts (usually the High Court or the court to which appeals ordinarily lie).

- **Motions for Revision:**

Revisions can be initiated by the court itself (suo moto) or upon application from the convicted person or the probation officer.

- **Scope of Revision:**

The higher court can examine the record of the case and make any order it deems appropriate, including altering the terms of probation or

sentencing the offender, provided it doesn't impose a more severe sentence than the original court could have.

Key Points:

- The Act's provisions on appeals and revisions are intended to ensure fairness and allow for corrective action when a court's decision on probation is deemed inappropriate.
 - The revisional powers of higher courts are broad, allowing them to rectify errors or misapplications of the Act.
 - The Act prioritizes the reformation and rehabilitation of offenders, especially young offenders, through its probation provisions.
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