RAJASTHAN STATE JUDICIAL ACADEMY JODHPUR

REFERENCE MATERIAL on NEW CRIMINAL LAWS, 2023

Two Days Orientation Program on New Criminal Laws - 2023
on 25th & 26th May , 2024 at
All District Headquarters of Rajasthan

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PART -I
GENERAL

INTRODUCTION

On 11th of August 2023, three landmark Bills were tabled in the Lok Sabha. Brought to replace the colonial era Indian Penal Code, 1860 ('IPC'), the Indian Evidence Act, 1872 ('IEA') and the Code of Criminal Procedure, 1973 ('CrPC'), these Bills purport to transform India's criminal justice system, eliminate signs of slavery, and lay the foundation of the criminal justice system in 'justice' and not 'punishment'.

Bharatiya Nyaya Sanhita Bill, 2023

The Bharatiya Nyaya Sanhita Bill, 2023 ('BNS'), tabled to replace the IPC, aims to modernise India's criminal justice system and create a citizen-centric legal structure. It also aims to introduce community service as a form of punishment; make offences gender-neutral; deal with organised crimes and terrorism; and, add new offences relating to secession and armed rebellion.

The BNS incorporates some new offences, such as the offence of Organised Crime (Clause 109-110), Terrorist Acts (Clause 111), Acts endangering sovereignty, unity, and integrity of India (Clause 150); Murder by a group of five or more persons on the ground of race, religion, caste etc. (Clause 101), Making or publishing fake news (Clause 195), Sexual intercourse by employing

deceitful means (Clause 69) etc. It also increases punishments for various offences and adds mandatory minimum punishments for at least four offences.

Bharatiya Nagarik Suraksha Sanhita Bill, 2023

The Bharatiya Nagarik Suraksha Sanhita Bill, 2023 ('BNSS'), tabled to replace the CrPC, aims to establish citizen-centric criminal procedures and address judicial pendency, delays in investigation, low conviction rates, and inadequate use of forensics.

The BNSS adds provisions that restrict the power to arrest in certain cases; provide for use of technology in investigations; introduce mandatory bail provisions; and establish timelines for various processes. It also, however, bolsters the discretion with the police to seek custody of accused persons (Clause 187), allows the use of handcuffs for a wide range of offences (Clause 43) and permits trial in absentia (Clause 356).

Bharatiya Sakshya Bill, 2023

The Bharatiya Sakshya Bill, 2023 ('BSB'), tabled to replace the IEA, aims to update India's law on evidence in recognition of the technological advancements undergone over the past many years.

Among other things, the BSB provides for the admissibility of electronic or digital records as primary evidence (Clause 57 and 61) and expands the scope of secondary evidence to include oral admissions, written admissions and evidence of a person who has examined a document (Clause 58).

Concerns regarding existing Criminal Justice System
• Complex nature of legal proceedings
• Large pendency of cases in courts
• Low conviction rate
• Amount of fine
• Large number of undertrial population
• Lack of use of technology in the legal system
• Delay in investigation, complex investigation and delay in case progression
• Insufficient use of forensic evidence

Overview of Reform

Bharatiya Nyaya Sanhita, 2023	Bharatiya Nagarik Suraksha Sanhita, 2023	Bharatiya Sakshya Adhiniyam, 2023:
• Over 190 minor and major changes have been introduced. • Total 20 new offences have been added. • Total 19 provisions (including 8 offences) have been deleted. • In 41 offences the punishment of imprisonment has been increased. • In 83 offences the punishment of fine has been enhanced. • In 23 offences mandatory minimum punishment has been introduced. • In 6 offences the punishment of 'community service' has been introduced.	• Over 360 major and minor changes have been introduced and 177 provisions have been modified. • Total 9 new sections have been added. • Total 39 new sub– sections/clauses have been added. • Total 49 new provisos and explanations have been added. • In 39 places audio– video electronic means have been introduced. • In 45 places timelines have been introduced. • Total 15 provisions have been deleted.	• Over 45 major and minor changes have been introduced and total 24 provisions have been modified. • Total 2 new sections and 10 new sub–sections have been added. • Total 5 new explanations have been added. • Total 1 new proviso has been added. • Total 11 sections and sub–sections have been deleted. • Total 5 explanations have been deleted. • One illustration has been deleted. • One Schedule has been added.

Chronology of Events:

Total 4 years 3 months 17 days- The process started on 7 th September, 2019 and culminated on 25 th December, 2023.

Suggestions were received from 18 States, 06 UTs, Supreme Court of India, 16 High Courts, National Judicial Academy, 05 State Judicial Academies, 22 NLUs and 42 MPs.

Suggestion

September 2019 to December 2021

Suggestions were sought from Governors/ CMs/MPs/CJI/CJ

Report Submitted

February 2022

2 nd March, 2020- Committee constituted under the Chairpersonship of VC, NLU Delhi. Report submitted in February 2022

Bill Introduced in Loksabha

March 2023

2023, BNSS, 2023 and BSB, 2023 were introduced in Lok Sabha on 11 th August 2023 to replace IPC, CrPC and IEA. Referred to Department-related Parliamentary Standing Committee on Home Affairs- Committee submitted its Report on 10 th November, 2023

Bill Reintroduced

August 2023

NS, 2023, BNSS, 2023 and BSB, 2023 were introduced in Lok Sabha on 11 th August 2023 to replace IPC, CrPC and IEA. Referred to Department-related Parliamentary Standing Committee on Home Affairs- Committee submitted its Report on 10 th November, 2023

Three Acts Notified

December 2023

On 25 th December, 2023 all three bills received Presidential assent and the three Acts have been notified in the Gazette of India on the same day.

Enforcement Date

July 2024

New Criminal Laws, to be implemented from the 1st July 2024

PART -II
BHARATIYA NYAYA SANHITA, 2023 (BNS)

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

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No. 811] NEW DELHI, SATURDAY, FEBRUARY 24, 2024/PHALGUNA 5, 1945

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 23 फरवरी, 2024

का.आ. 850(अ).—केन्द्रीय सरकार, भारतीय न्याय संहिता, 2023 (2023 का 45) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 1 जुलाई, 2024 को उस तारीख के रूप में नियत करती है, जिसको उक्त संहिता के उपबंध, धारा 106 की उपधारा (2) के उपबंधों के सिवाय, प्रवृत होंगे।

[फा. सं. 1/3/2023 न्यायिक प्रकोष्ठ-I]
श्री प्रकाश, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 23rd February, 2024

S.O. 850(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023), the Central Government hereby appoints the 1st day of July, 2024 as the date on which the provisions of the said Sanhita, except the provision of sub-section (2) of section 106, shall come into force.

[F. No. 1/3/2023-Judicial Cell-I]

SHRI PRAKASH, Jt. Secy.

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Repeal and Savings

358. (1) The Indian Penal Code is **hereby repealed.**

(2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect,—

(a) the previous operation of the Code so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or

(c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or

(d) any investigation or remedy in respect of any such penalty, or punishment; or

(e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.

(3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.

(4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act,1897 with regard to the effect of the repeal.

Key Highlights on Bharatiya Nyaya Sanhita, 2023

1. The new Act is called as "Bharatiya Nyaya Sanhita (BNS), 2023" and has replaced the Indian Penal Code, 1860.
2. The Chapters and offences against women and children, murder have been given precedence. Further, the offences against women and children which were scattered throughout in the erstwhile Penal Code, 1860 have been brought together. In Bharatiya Nyaya Sanhita, 2023, offences against women and children have been consolidated under Chapter-V. In the same manner, the offences affecting the human body are also brought up in the order and placed after the Chapter on offences against women and children.
3. BNS has been streamlined and it will now consist of only 358 sections as opposed to 511 sections in IPC, 1860.
4. All three incomplete category offences i.e. Attempt, Abetment and Conspiracy are brought together under one Chapter- IV of the BNS, 2023. Earlier these offences were part of different Chapters.
5. For the first time, 'Community Service' has been introduced as one of the punishments in section 4 of the BNS, 2023. It has been specifically provided for 6 petty offences, like non-appearance in response to a proclamation, attempt to commit suicide to compel or restraint exercise of lawful power of public servant, petty theft on return of theft money, misconduct in public by a drunken person, defamation, etc. It introduces the reformative approach in the punishment scheme which is aimed towards achieving 'nyaya' in the society.

6. Abetment of an offence committed in India by a person outside India has now been made an offence under section 48 of the BNS, 2023. This will criminalised the acts of those persons who sit outside India and conspire to commit an offence in India.
7. A new offence for having sexual intercourse on false promise of marriage, employment, promotion or by suppressing the identity etc. has been created in section 69 of the BNS, 2023. This provision will be a deterrent for the people who employ deceitful means like false promise of marriage, concealment of identity etc. to take consent of the woman and involve in sexual intercourse. It aims to protect the rights of women.
8. Offence of 'snatching' has been introduced in the BNS, 2023. Till now, the offence of snatching was not present in the IPC, 1860 which led to a lot of discretion to police to either treat such cases as 'theft' or 'robbery''. Some States have passed laws to tackle the cases of 'snatching' but there was no law dealing with such criminal act on pan-India basis. Section 304 of BNS 2023 makes the act of snatching an offence in every part of the country which punishes act of forcible seizure or grabbing of movable property. Now a days, when mobile device is used to store all the details of identity, bank accounts, Aadhar etc. of a person, introduction provision on 'snatching' in the BNS, 2023 is a step in right direction.
9. The age-based parameter for differential punishment for gang rape of a minor girl has been removed in the BNS, 2023 and now, section 70(2) prescribes life

imprisonment (till remainder of that person's natural life) or death for gang rape of a woman below the age of 18 years.

10. Instances are on the rise where women are also involved in cases of assault or use of criminal force against another woman to disrobe her or engaging in acts of Voyeurism. These two criminal acts have been made gender neutral under sections 76 and 77 of the BNS, 2023.
11. The act of hiring, employing or engaging a child to commit an offence, is made a punishable offence under section 95 of BNS 2023, which entails punishment of imprisonment of minimum seven years, extendable to ten years. The such provision aims to deter gangs or groups from employing/hiring children for committing offence.
12. A provision has been inserted to address the rising vehicular cases of hit and run, which has been made a punishable offence under section 106(2) of the BNS, 2023. Whoever causes death of any person by doing any rash or negligent act and escapes from the scene of incident without disclosing the incident to a Police officer or Magistrate shall be punished with imprisonment of either description of a term which may extend to ten years and with fine.
13. To tackle 'organized crime' and 'terrorist acts, offence of organized crime and terrorist act have been added in the Sanhita with deterrent punishments. Sections 111 and 113 of the BNS 2023 punish the commission, attempt, abetment, conspiracy of organized crimes and terrorist acts respectively. Both the sections also punish the act of being a member of any organized crime syndicate or terrorist organisation, harboring or concealing any person who

committed any organized crime or terrorist act and the act of possessing any property derived or obtained from the commission of organized crime or terrorist act. It is for the first time that both the offences of organized crime or terrorist act are introduced in the general penal law of the country. Section 111 on organized crime takes care of various state laws enacted in this domain. Section 113 on terrorist act has been drafted on the lines of UAPA. It has also been provided that in case of the offence of terrorist act officer not below the rank of SP will decide whether to register a case under the provisions of BNS, 2023 or UAPA.

14. A new provision 117(3) has been introduced in the BNS, 2023 to provide stringent punishment for such acts of grievous hurt which results in persistent vegetative state or in permanent disability. If grievous hurt resulting in persistent vegetative state or in permanent disability, it will attract higher punishment of rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life (remainder of that person's natural life) as against up to seven years imprisonment only for grievous hurt.

15. The offence relating to importation of a person from foreign country has been made gender neutral to cover both boys and girls in section 141 of the BNS 2023. It will protect the minor boys and girls from being used for the purposes of forced or seduced illicit intercourse.

16. The section relating to sedition was misused and hence has been deleted. The constitutional right of freedom of speech and expression has been upheld and

section 124A of the IPC which puts a restriction on such right has been deleted in the BNS, 2023.

17. A new section on acts of secession, armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity of India has been added and made punishable under section 152 in BNS, 2023. In this section, exciting or attempt to excite any of the acts mentioned hereinabove is made punishable with imprisonment extendable to seven years or imprisonment for life.

18. The offence of 'attempt to commit suicide' has been deleted in the BNS, 2023.This brings the law in line with the Mental Healthcare Act, 2017. A new section 226 has been added in the BNS, 2023 to punish those who attempt to commit suicide with the intent to compel or restrain the exercise of any lawful power by a public servant.

19. The offence of mischief in section 324 of BNS has been expanded and causing loss or damage to any property including the property of Government or Local Authority has been made punishable offence with imprisonment extendable up to one year, or with fine, or with both (as against just 6 months or with fine, or both for offence of mischief). In case of loss or damage is of more than 20,000 rupees but less than one lakh rupees the punishment is extended up to two years, or with fine, or with both. Where loss or damage is above one lakh rupees the punishment would be imprisonment extendable up to five years, or with fine, or with both.

20. A serious category of culpable homicide related to 'lynching' has been introduced in the Bhartiya Nyaya Samhita, 2023. A new provision has been introduced for offences under this category of 'mob lynching' in section 103(2) of the BNS, 2023. Special categories have been created within the offence for murder and grievous hurt by 'group of five or more persons' on the grounds of the victim's social profile, particularly his 'race, caste or community', sex, place of birth, language, personal belief and any other grounds without specifically using the term 'mob lynching', for which a punishment of a minimum seven years of mandatory imprisonment has been provided. In case of causing 'grievous hurt' by group of five or more persons on the ground of race, caste or community etc. the punishment is 7 years and fine.

21. In section 106(1) on 'causing death by rash or negligence act' the punishment has been increased from 2 years to 5 years imprisonment. However, for medical practitioners the punishment will be 2 years.

22. The domain of offence of theft has been expanded to include theft of vehicle, theft from vehicle, theft of government property and theft of idol or icon from any place of worship. In section 305 of the BNS, 2023 such thefts have been made punishable with punishment up to 7 years.

23. Section 303(2) of the BNS, 2023 presents a fine example of deterrence and reformative approach of punishment. On the one hand, for a second conviction of any person for theft, the section prescribes a higher punishment up to 5 years with a mandatory minimum of 1 year, on the other hand where the value of stolen property is less than 5,000 rupees and the first-time offender restores

the stolen property, the punishment of community service has only been prescribed.

24. The definition of 'child' and 'transgender' is included in section 2 of the BNS, 2023. The definition of 'movable property' is revised to include tangible as well as intangible property. 'Electronic and digital records' is included in the definition of document.

25. In section 197(1)(d) of BNS, the act of making or publishing false or misleading information which has tendency to jeopardise the sovereignty, unity and integrity or security of India has been made punishable with imprisonment up to 3 years or fine or both.

26. 'Beggary' has been introduced as a form of exploitation for trafficking and has been punishable in section 143 of the BNS, 2023.

27. In section 116 of the BNS, 2023 the number of days provided for the sufferer in severe bodily pain for the purpose of 'grievous hurt' has been reduced from '20 days' to '15 days'. It is done keeping in view the advancement in the medical treatment which provides quicker recovery.

28. At many places the archaic expressions like 'lunatic', 'insane' and 'idiot' have been done away with. Colonial remnants like 'British calendar', 'Queen', 'British India, 'Justice of the peace' etc. have been deleted.

29. Uniformity has been introduced in the use of expression 'child' throughout the BNS, 2023 which is achieved by replacing the expression 'minor' and 'child under the age of eighteen years' with the word 'child'.

30. Fines in the IPC were very low ranging from Rs.10 to Rs. 1,000. Similarly, the punishments for various offences also needed rationalization. Hence, terms of imprisonment for 33 offences have been suitably enhanced, fines in 83 cases have been increased and mandatory minimum punishment has also been introduced in 23 many offences

Comparative Study: Bharatiya Nyaya Sanhita 2023 (BNS)
&
Indian Penal Code 1860 (IPC)

1. Definitions [Section 2 of BNS/Sections 8 to 52A of IPC]

General

- In IPC, there was no definition clause. All the interpretation clauses were spread over sections 8 to 52A of IPC.
- The definition of 'section' in section 50 of IPC stands omitted by BNS as it is now a word of extensive usage in various legislations and it needs no definition or elucidation.
- Most of these interpretation clauses in sections 8 to 52A of IPC,1860 have been retained in BNS without any change and have been compactly grouped in section 2 of BNS in alphabetical dictionary sequence for ease of reading and reference.

Unless context otherwise requires

- Though most of the interpretation rules in sections 8 to 52A of IPC have been included in section 2 of BNS without any change, it must be noted that the applicability of these interpretation rules in BNS is subject to requirements of the context of a provision as all definitions in BNS in section 2 are subject to the qualificatory phrase "unless the context otherwise requires". The applicability of interpretation clauses in sections 8 to 52A of IPC, except definitions in sections 9, 32 and 46, were not made subject to contextual requirements.

Child

- New definition of 'child' in section 2(3) of BNS

Transgender

- The definition of "gender" in section 8 of IPC recognizes only male and female genders. The new definition of "gender" in section 2(10) of BNS recognizes "transgender" in addition to genders of "male" and "female".

2. Child [Section 2(3) of BNS]

Child

- **Section 2(3) of BNS is a new provision [NEW]**
- Section 2(3) of BNS defines 'child' to means any person below the age of 18 years.

3. Court [Section 2(5) of BNS/Section 20 of IPC]

Omission of illustration

- Illustration below section 20 of IPC referring to "Regulation VII, 1816, of the Madras Code" has been omitted from the definition in section 2(5) of BNS, as the illustration had become redundant long back with the repeal of Regulation VII by the Madras Civil Courts Act, 1873.

4. Document [Section 2(8) of BNS/Section 29 of IPC]

Electronic and digital record

- Section 2(8) of BNS provides that documents includes 'electronics and digital record'.

5. Gender [Section 2(10) of BNS/Section 8 of IPC]

Transgender recognised as gender and defined

- Definition in section 2(10) expressly refers to transgender and defines the term which was not the case in section 8 of IPC.

6. Judge [Section 2(16) of BNS/Section 19 of IPC]

Old Law – Section 19 (IPC, 1860) – "Judge"

- The old law's definition of "Judge" is quite detailed.
- It states that the term "Judge" includes not only individuals officially designated as Judges but also those who have the authority to render definitive judgments in any legal proceeding, whether civil or criminal.
- This definition encompasses individuals who can make judgments that, if not appealed against, would be considered definitive.
- It also includes members of a body of persons authorized by law to render such judgments.
- The illustrations provided clarify this definition further, including examples of Collectors, Magistrates, and members of a panchayat.

New Law – Section 2(16) – "Judge"

- The new law's definition of "Judge" is more concise and follows a similar pattern.
- The new law aligns with the old law's definition but presents the information in a more streamlined manner.

7. Month and Year [Section 2(20) of BNS/Section 49 of IPC]

Reference to British calendar replaced with reference to Gregorian calendar

- Section 49 of IPC required year or month to be reckoned as per British calendar while section 2(20) of BNS requires year or month to be reckoned as per the Gregorian calendar.

8. Movable Property [Section 2(21) of BNS/Section 22 of IPC]

Scope of "Movable property" in section 2(21) not limited to property in corporeal form, unlike the definition in section 22

- Section 2(21) of BNS omits the word "are intended to include corporeal" before the word "property" which was there in the definition of movable property in section 22 of IPC.
- Therefore, movable property includes property of every description other than immovable property whether such property is in corporeal (tangible physical) form or not.
- Definition of movable property under BNS will include intangible assets like patents, copyrights, etc., also as well as actionable claims.

9. Public Servant [Section 2(28) of BNS/Section 21 of IPC]

Juryman

- References to juryman omitted from definition in section 2(28) of BNS

Local authority

- "Local authority" is defined by referring to clause (31) of section 3 of the General Clauses Act, 1897 and section 2(45) of the Companies Act, 2013.

10. Punishments [Section 4 of BNS/Section 53 of IPC]

Community service

- Section 53 of IPC provided for 5 types of punishments viz. (1) Death; (2) Imprisonment for life; (3) Imprisonment which is of two descriptions–rigorous and simple; (4) Forfeiture of property and (5) Fine. Section 4(f) of BNS has introduced a new 6th type of punishment – Community service.
- To reduce the burden on jails, community service has been included in BNS as a punishment for the first time and it is being given legal status. [PIB Press Release, dated 20-12-2023]
- BNS prescribes Community Service as punishment for petty offences like non-appearance in response to a proclamation, attempt to commit suicide, to compel or

restraint exercise of lawful power of public servant, petty theft on return of theft money, misconduct in public by a drunken person, defamation, etc.

- The term "community service" is not defined in BNS. However, it is defined by Explanation to section 23 of BNSS to mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.

Life imprisonment

- The punishment of imprisonment for life has been clearly defined as imprisonment for remainder of a person's natural life.

11. Sentence, Commutation of [Section 5 of BNS/Sections 54 and 55 of IPC]

Changes in commutation provisions: Section 433 of Cr.PC vis-a-vis section 474 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

The comparison between section 433 of Cr.PC and section 474 of BNSS is tabulated below:

Sentence	**What the sentence in Col. (1) may be commuted for by appropriate govt. under section 433 of Cr.PC**	**What the sentence in Col.(1) may be commuted for by appropriate govt. under section 474 of BNSS**
(1)	(2)	(3)
Sentence of death	Appropriate Government may commute a death sentence for any other punishment provided by the Indian Penal Code	Death sentence may be commuted for imprisonment for life
Sentence of imprisonment for life	Sentence may be commuted for imprisonment for a term not exceeding fourteen years or for fine;	Sentence may be commuted for imprisonment for a term not less than 7 years
A sentence for imprisonment for seven years or more	—	Sentence may be commuted for imprisonment for a term not less than 3 years
Sentence of rigorous imprisonment	Sentence may be commuted for simple imprisonment for any term to which that person might have been sentenced, or for fine;	Sentence may be commuted for simple imprisonment for any term to which that person might have been sentenced

Sentence of simple imprisonment	Sentence may be commuted for fine	—
Sentence for imprisonment for less than seven years	—	Sentence may be commuted for fine

12. Punishment, Fractions of Terms of [Section 6 of BNS/Section 57 of IPC]

Unless otherwise provided

- Unlike section 57 of IPC, section 6 applies "unless otherwise provided".
- The words "unless otherwise provided" which were not there in section 57 have been added in section 6 at the end of the provision.

13. Fine, Liability in Default of Payment of Fine, etc. [Section 8 of BNS/Sections 63 to 70 of IPC]

Community service

- IPC only provided for imprisonment in default of fine only. As there was no punishment of community service in IPC, there was also no imprisonment in default of community service in IPC.
- Consequent upon introduction of new punishment of community service [See section 4 of BNS] by the BNS, sub-sections (4) and (5) of section 8 of BNS provide for imposing imprisonment in default of community service.

Fine of community service, default in payment of

- Under old law for default in payment of fine following punishment followed:

    1. Fine not exceeding ` 50 – Imprisonment not exceeding 2 months
    2. Fine not exceeding ` 100 – Imprisonment not exceeding 4 months
    3. In any other case – Imprisonment not exceeding 6 months

- Under BNS for default in payment of fine or default of community service following punishment follows:

    1. Fine not exceeding ` 5000 or community service – Imprisonment not exceeding 2 months
    2. Fine not exceeding ` 10,000 or community service – Imprisonment not exceeding 4 months
    3. In any other case – Imprisonment not exceeding 1 year

14. Private Defence of Property, When Right of, Extends to Causing Death [Section 41 of BNS/Section 103 of IPC]

House breaking

- Old law provided for 'House breaking by night'. Section 41 of BNS provides for 'house breaking after sunset and before sunrise'.
- Section 103 of Cr.PC provided for 'mischief by fire'. Section 41 of BNS provides for 'mischief by fire or any explosive substance'.

15. Private Defence of Property, Commencement and Continuance of Right of [Section 43 of BNS/Section 105 of IPC]

House breaking 'after sunset and before sunrise'

- Section 105 of IPC provided for 'house breaking by night'. Section 43 of BNS provides for 'house breaking after sunset and before sunrise'.

16. Abetment Outside India for Offence in India (New) [Section 48 of BNS]

Abetment outside India

- **Section 48 of BNS is a new provision [NEW]**
- Section 48 of BNS provides that a person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.
- Abetment by a person outside India has been made an offence under section 48 to allow prosecution of person located in foreign country.

17. Abetting Commission of Offence By Public or By More Than Ten Persons [Section 57 of BNS/Section 117 of IPC]

Prescribed punishment

- Section 117 of IPC provided for imprisonment upto 3 years or fine or both. Section 57 of BNS provides for imprisonment of either description for a term which may extend to 7 years and fine.

18. Rape [Section 63 of BNS/Section 375 of IPC]

Age of Consent

- Exception 2 to section 63 of BNS provides that sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years of age, is not rape. Under section 375 of IPC the age limit was 15 years.

19. Rape, Punishment for [Section 64 of BNS/Section 376 of IPC]

Consent

- Clause (i) of section 64(2) of BNS provides for 'commits rape, on a woman incapable of giving consent'. Section 376(2)(i) of IPC provided for 'commits rape on woman when she is under 16 years of age'.

20 Rape, Punishment for, in Certain Cases [Section 65 of BNS/Section 376AB of IPC]

Age categories

- Section 65 of BNS combines both age categories (under 12 and under 16) into a single section, simplifying the legal framework.

21. Sexual Intercourse by Employing Deceitful Means, etc. [Section 69 of BNS]

Sexual intercourse by employing deceitful means

- **Section 69 of BNS is a new provision [NEW]**
- Section 69 of BNS provides that whoever, by deceitful means or making by promise to marry a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.
- "Deceitful means" shall include the false promise of employment or promotion, inducement or marring after suppressing identity.

22. Rape, Gang [Section 70 of BNS/Sections 376D to 376DB of IPC]

Death penalty for gang rape of woman under 18 years of age

- Death sentence was provided under section 376DB of IPC for gang rape of woman under 12 years of age. No death penalty was provided for gang rape of woman aged below 16 but above 12 in section 376DA. Now, section 70(2) of BNS provides death penalty for gangrape of woman under 18 years of age.

23. Woman, Assault or Use of Criminal Force With Intent to Disrobe [Section 76 of BNS/Section 354B of IPC]

Neutral Gender

- Word "whoever" is used in sections 76 and 77 of BNS. Earlier word 'man' was used in section 354B/354C of IPC

24. Voyeurism [Section 77 of BNS/Section 354C of IPC]

Neutral Gender

- Word "whoever" is used in sections 75 and 76 of BNS. Earlier word 'man' was used in section 354B/354C of IPC

25. Woman, Enticing or Taking Away or Detaining With Criminal Intent a Married Woman [Section 84 of BNS/Section 498 of IPC]

Woman under husband care or any other person

- Words 'from that man, or from any person having the care of her on behalf of that man' are omitted from section 498 of IPC
- Thus, unlike section 498 of IPC, offence under section 84 of BNS is committed whether or not a married woman is taken or enticed away from her husband or from any person having care of her on behalf of her husband.
- Section 84 protects a married woman whether or not she is living in the care of her husband or any other person who is taking care of her on behalf of her husband.

26. Child, Hiring, Employing or Engaging to Commit an Offence [Section 95 of BNS] [NEW]

Hiring child to commit an offence

- **Section 95 of BNS is a new provision**
- Section 95 of BNS provides that whoever hires, employs or engages any person below the age of eighteen years to commit an offence shall be punished for with imprisonment of either description or fine provided for that offence as if the offence has been committed by such person himself.
- Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.

27. Child, Procuration of [Section 96 of BNS/Section 366A of IPC]

Neutral Gender

- Section 366A of IPC provided for offence of procuration of minor girl (under the age of eighteen years). Section 96 of BNS deals with offence of procuration of any child below the age of eighteen years (irrespective of gender).
- The protection accorded by section 96 of BNS to children is wider than that accorded by section 366A of IPC since protection under section 96 is available to all children irrespective of gender while section 366A protected only minor girls.

28. Child, Selling for Purposes of Prostitution, etc. [Section 98 of BNS/Section 372 of IPC]

Child

- Word "child" is substituted for "any person" in section 372 of IPC

29. Child, Buying for Purposes of Prostitution, etc. [Section 99 of BNS/Section 373 of IPC]

Child

- Word 'child' is substituted for 'person' in section 99 of BNS

Prescribed imprisonment

- Imprisonment prescribed is 'not less than 7 years but which may extend to 14 years'. Earlier prescribed imprisonment was 'ten years'.

30. Mob Lynching [Section 103(1) of BNS/Section 302 of IPC]

- **Section 103(2) of BNS is a new provision [NEW]**
- Section 103(2) of BNS provides that when a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

31. Murder, Punishment for by Life-convict [Section 104 of BNS/Section 303 of IPC]

Prescribed imprisonment

- Unlike IPC, it is not mandatory to award death sentence for murder by a life-convict. BNS given an option to the Judge to sentence the life-convict murderer to death or with imprisonment for life, which shall mean the remainder of that person's natural life.

32. Culpable Homicide not Amounting to Murder, Punishment for [Section 105 of BNS/Section 304 of IPC]

Prescribed punishment

- Section 105 of BNS prescribes imprisonment of 'not less than 5 years which may extend to 10 years' with fine. It was upto 10 years with fine or both under section 304 of IPC

Lesser punishment if accused reports the case to Police and takes the victim to hospital for medical treatment

- As per the Home Minister's statement in Lok Sabha on 20.12.2023-See PIB's Press Release, dated 20.12.2023 in case of culpable homicide, there is a provision for lesser punishment if the accused goes to police to report the case and takes the victim to the hospital for medical treatment. [However, there is no such provision in the text of BNS]

33. Death, Causing by Negligence [Section 106 of BNS/Section 304A of IPC]

Increased punishment

- Section 106(1) of BNS provides that whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years.
- The new law increases the punishment for causing death by negligence from a maximum of two years to a maximum of five years. This change reflects a stricter approach to cases of negligence resulting in death.

Offender escaping or failing to report [NEW]

- Section 106(2) introduces an additional provision in sub-section (2) to section 106 of BNS, which addresses situations where the offender escapes from the scene of the incident without reporting it to a police officer or Magistrate after the incident. In such cases, the punishment is very severe, with a maximum term of imprisonment of ten years with fine. [Section 106(2)]
- As the instances of hit and run cases are on the rise, a new provision under section 106(2) of BNS has been made. Currently hit and run cases resulting in death due to reckless and negligent driving are registered u/s 304A of IPC, with maximum penalty of two years of imprisonment. As per Delhi Road Crash Report of 2021, there were 555 cases (46.01% of total cases) where the registration number of vehicles involved in crime were unknown, signifying hit and run cases. The Supreme Court had in several cases observed on the inadequacy of law in view of increased vehicular accident. To address this issue, the new provision has been introduced under clause 106(2), which was long overdue.

- Section 106(2) has been introduced to cover the hit and run accidents and to ensure reporting of accident immediately. This has been introduced with an aim to save the victim within the critical 'Golden Hour' a term introduced in the Motor Vehicles Act, 1988 in the year 2019.
- Punishment under section 106(2) is not attracted merely by virtue of driver escaping from the scene after the incident to escape the wrath of bystanders who might mob-lynch him. Offence is committed only if escape from scene is coupled with non-reporting by him to Police or Magistrate soon after the incident.

Medical practitioner [NEW]

- In case of registered medical practitioner if negligent act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.
- For the purposes of this sub-section, "registered medical practitioner" means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 (30 of 2019) and whose name has been entered in the National Medical Register or a State Medical Register under that Act.

34. Suicide of Child or Person of Unsound Mind, Abetment of [Section 107 of BNS/Section 305 of IPC]

Unsound mind

- Reference to "insane person"/"any idiot" in section 305 of IPC is replaced with reference to "person of unsound mind" in BNS

35. Murder, Attempt to [Section 109 of BNS/Section 307 of IPC]

Prescribed punishment

- Under IPC, section 307 prescribed only death penalty for attempt to murder by a life-convict. For attempt to murder by life-convict, section 109 of BNS provides for death or with imprisonment for life, which shall mean the remainder of that person's natural life

36. Organised Crime [Section 111 of BNS] [New]

- **Section 111 of BNS is a new provision**
- Section 111 provides as under:

    - Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime

syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute an organised crime.

For the purposes of this sub-section,—

(i) "organised crime syndicate" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;

(ii) "continuing unlawful activity" means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence;

(iii) "economic offence" includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form.

- Whoever commits organised crime shall,—

1. if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees;
2. in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

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- Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.
- Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.
- Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five

lakh rupees. This provision shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

- Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than two lakh rupees.
- If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees.

37. Organised Crime, Petty [Section 112 of BNS] [New]

- **Section 112 of BNS is a new provision**
- Section 112 provides as under :

1. Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers or any other similar criminal act, is said to commit petty organised crime. For the purposes of this sub-section "theft" includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shoplifting and theft of Automated Teller Machine.
2. Whoever commits any petty organised crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

38. Terrorist Act [Section 113 of BNS] [New]

- **Section 113 of BNS is a new provision**

New definition – definition of 'terrorist act'

- Section 113 provides as under:

  - Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substance or inflammable substance or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear

or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause,—

(i) death of, or injury to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage to, the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency, coin or of any other material; or

(v) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatening to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act, commit a terrorist act.

For the purpose of this sub-section,—

(a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) "counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features of Indian currency.

Punishment for commission of 'terrorist act'

- Whoever commits a terrorist act shall,—

1. if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine;
2. in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

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BHARTIYA NYAYA SANHITA, 2023: BACKGROUND, OBJECTIVES AND KEY CHANGES

RELEVANT DETAILS

Act Title (English): Bharatiya Nyaya Sanhita, 2023

Act Title (Hindi): भारतीय न्याय संहिता, 2023

Assent Date: 25th December, 2023

Act Number: 45 of 2023

Act Year: 2023

Preamble: An Act to consolidate and amend the provisions relating to offences and for matters connected therewith or incidental thereto.

Enforcement Date: 1st July 2024

Act Repealed: (from the date of enforcement) The Indian Penal Code, 1860 (45 of 1860

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 23 फरवरी, 2024

का.आ. 850(अ).—केन्द्रीय सरकार, भारतीय न्याय संहिता, 2023 (2023 का 45) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 1 जुलाई, 2024 को उस तारीख के रूप में नियत करती है, जिसको उक्त संहिता के उपबंध, धारा 106 की उपधारा (2) के उपबंधों के सिवाय, प्रवृत्त होंगे।

[फा. सं. 1/3/2023 न्यायिक प्रकोष्ठ-I]
श्री प्रकाश, संयुक्त सचिव

HOW IT STARTED:

7 Sep. 2019

- The process started on 7th September, 2019 and culminated on 25th December, 2023.

2nd March, 2020-

- Committee constituted under the Chairpersonship of VC, NLU Delhi.

February 2022

- Report submitted

2019–31 Dec. 2021

- 7thSeptember, 2019 – 31st December, 2021- Suggestions were sought from Governors/CMs/MPs/CJI/CJ

HOW IT STARTED:

2023

- BNS, 2023, BNSS, 2023 and BSA, 2023 were introduced in Lok Sabha on 11th August 2023 to replace IPC, CrPC and IEA.

10 Nov. 2023

- Referred to Department-related Parliamentary Standing Committee on Home Affairs- Committee submitted its Report on 10th November, 2023

The earlier bills were withdrawn and new bills BNS (second), 2023, BNSS (second), 2023 and BSA (second), 2023 were introduced.

The bills were passed in the Lok Sabha on 20th December, 2023 and in Rajya Sabha on 21st December, 2023

25 Dec. 2023

- On 25th December, 2023 all three bills received Presidential assent and the three Acts have been notified in the Gazette of India on the same day.

FOUNDATION OF REFORM

- Change
  - Reorganised and Systematized
  - Prioritized Focus area
  - Shed colonial era references
  - Citizen centric welfare oriented and security to citizens and nation
  - Modernization to keep pace with new challenges and new technological developments.
- Continuity
  - Adversarial system(both accused and victim will leave for 3rd party to conduct/decide)
  - Appellate Judicial Structure
  - Basic premise- (a) presumption of innocence, (b) standard of proof – beyond reasonable doubt (c) burden of proof
  - Judicial interpretation still hold good for the offences not altered
  - General defences- retained
  - Based on the modern criminal law jurisprudence which is away from the colonial mindset and founded on the democratic values enshrined in the Constitution.

CHANGE IN APPROACH ACCORDING TO THE NEW AGE: REFLECTIONS IN BNS, 2023

Strong State

- Introduction of new offences- Terrorist Act, Organised Crime, Act endangering sovereignty, integrity and unity, Mob lynching, Hit and run.
- General enhancement of punishment- To create more deterrence – Death sentence for rape of a girl child below the age of 18 years.

Humane State

- Introduction of reformative punishment- Community Service.
- First time petty theft offender- community service as punishment.
- Deletion of 'Sedition'- Upholding 'freedom of speech and expression'.
- 'Attempt to suicide' deleted- Mental Healthcare Act, 2017 to take care of such cases.
- 'Adultery' and 'consensual same sex' decriminalised.
- 'Transgender' included in the definition of 'gender'.

MAGNITUDE OF REFORM:

- The nature of reforms is in the form of **addition of new offences**, **deletion of sections and offences**, **enhancement of punishment of imprisonment and fine**, **introduction of new punishment** and **rearrangement of chapters and sections**.
- BNS,2023 has streamlined IPC, 1860 which consists of only **358 sections** as opposed to **511 sections** in IPC, 1860.
- BNS, 2023 has total **20 chapters** as opposed to (23+3) **26 chapters** in IPC, 1860.
- All three incomplete category offences- Attempt, Abetment and Conspiracy are brought together under one **Chapter- IV** of the BNS, 2023.
- A **new Chapter on offences against women and children** is introduced. Further, the offences against women and children which were scattered throughout in the erstwhile IPC, 1860 have been consolidated under **Chapter-V**

Bharatiya Nyaya Sanhita, 2023

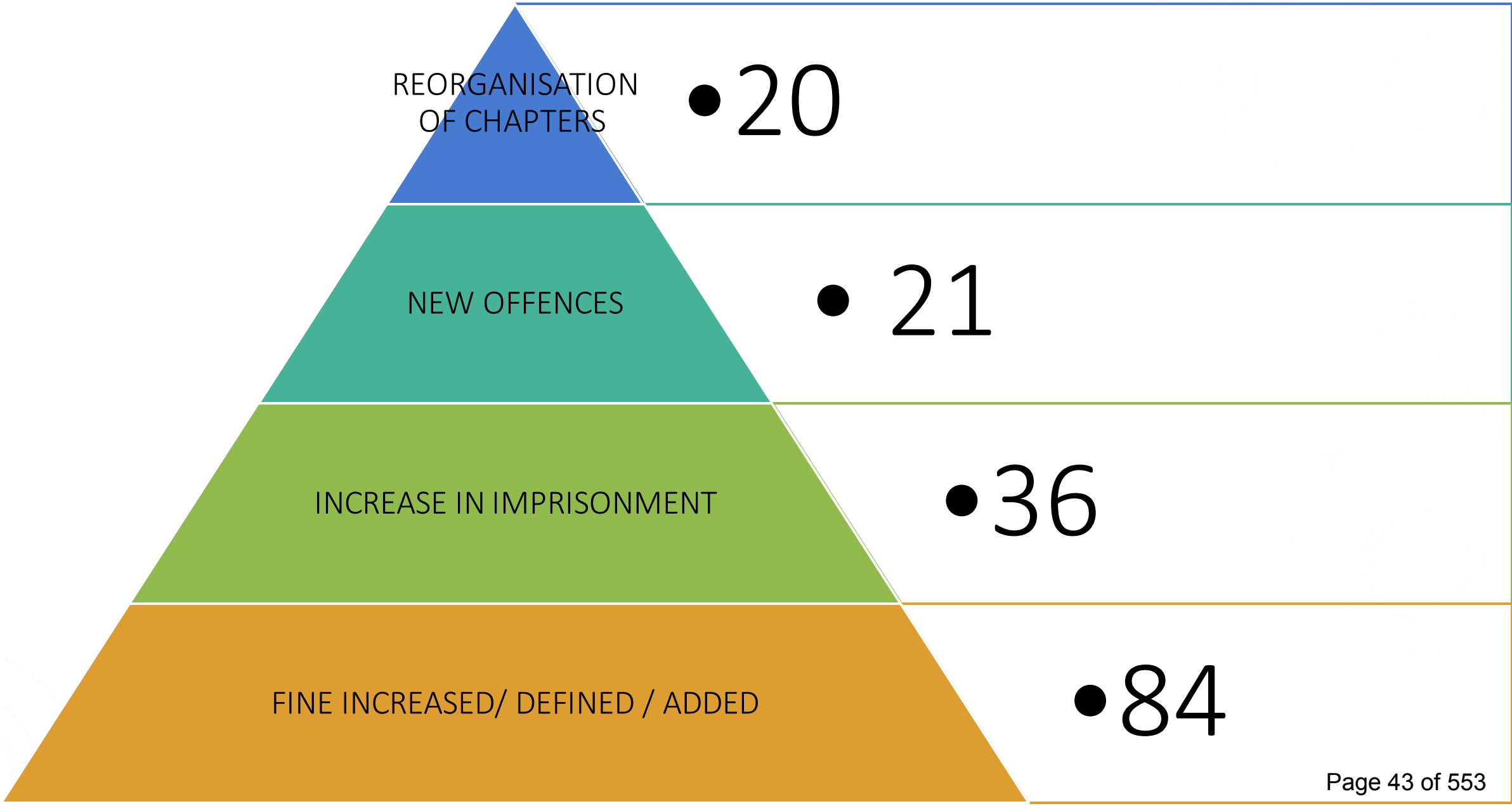
Scheme of chapters

Chapter no.	Title of chapter	Sections
1	Preliminary (Title, application, definitions, explanations)	1-3
2	Punishments	4-13
3	General Exceptions	14-44
4	Abetment, Criminal Conspiracy and Attempt	45-62
5	Offences against Woman and Child (Sexual offences, offences against marriage, causing miscarriage etc)	63-99
6	Offences affecting the Human Body (affecting life, hurt, criminal force and assault, kidnapping, abduction, slavery and forced labour)	100-146
7	Offences against the State	147-158
8	Offences relating to Army, Navy and Air Force	159-168
9	Offences relating to elections	169-177
10	Offences relating to coin, currency- notes, bank notes and Government Stamps	178-188
11	Offences against Public Tranquility	189-197
12	Offences by or relating to Public Servants	198-205
13	Contempt of Lawful authority of Public Servants	206-226
14	False evidence and offences against Public Justice	227-269
15	Offences affecting Public health, Safety, Convenience, Decency and Morals	270-297
16	Offences relating to Religion	298-302
17	Offences against Property	303-334
18	Offences relating to Documents and Property Marks	335-350
19	Criminal Intimidation, Insult, Annoyance, Defamation etc.	351-357
20	Repeal and Savings	358

BNS, 2023	IPC Corresponding sections
• Short title, commencement and Application- S. 1	S. 1-5
• Definitions- S. 2	S. 6-52A
• General explanations- S. 3	S. 6-52A
• Punishments- S. 4-13	S. 53-75
• Abetment, criminal conspiracy and attempt- Chapter IV, S-45-62	Chapters 5, 5A and 23
Offences against woman and Child- Chapter 5 (S. 63-99)	S. 312-318, 354, 366, 369, 372, 373, 375, 376 in chapter16, Chapters 20, 20A and Section 509

S. No.	BASIS OF COMPARISION	BNS	IPC
1	SECTIONS	358	511
2	CHAPTERS	20	23
3	OFFENCE	465	481
4	COGNIZABLE	294	311
5	NON COGNIZABLE	145	147
6	BAILABLE	253	253
7	NON BAILABLE	213	196
8	COMPOUNDABLE	42	43
9	COPOUNDABLE	13	13
10	NON COMPOUNDABLE	410	425
11	SESSION TRAIBLE	118	106
12	JMFC	145	155
13	ANY MAGISTRATE	163	180
14	LESS THEN SEVEN OR UP TO SEVEN YEARS	144	170
15	SEVEN YEARS OR MORE THAM SEVEN	190	192
16	UP TO 10 YEARS OR MORE	117	118
17	L.I. AND DEATH	77	72

RE-ORGANISATION



DELETIONS:

Section	Offence/ other
Section 2(18)	Definition of India omitted
Section 14	Servant of Govt.
Section 18	India
Section 29 A	Electronic Record
Section 50	'Section'
Section 124A.	Sedition.
Section 153AA.	Punishment for knowingly carrying arms in any procession or organizing, or holding or taking part in any mass drill or mass training with arms.
Section 236.	Abetting in India the counterfeiting out of India of coin.
Sections 264-267	CHAPTER XIII: OF OFFENCES RELATING TO WEIGHTS AND MEASURES
Section 309.	Attempt to commit suicide. thrreatning
Section 310, 311	Thug.
Section 376 DA and DB	Gang rape on woman under the age of 16 and 12 respectively
Section 377.	Unnatural Offences.
Section 444 and 446	Lurking House tresspass and house breaking by night
Section 497.	Adultery.

NEW OFFENCES ADDED IN THE BNS

S.No.	New offences added in the BNS
1	S. 48- Abetment outside India for offence in India.
2	S. 69- Sexual intercourse by employing deceitful means, etc.
3	S. 95- Hiring, employing or engaging a child to commit an offence.
4	S. 103(2)- Murder by group of five or more persons
5	S. 106(1) [later clause] – relating to registered medical practitioner
6	S. 106(2)- Causing death by rash and negligent driving of vehicle and escaping without reporting it to Police or Magistrate (hit and run)
7	S. 111- Organised crime
8	S. 112- Petty organised crime
9	S. 113- Terrorist act
10	S. 117(3)- Voluntarily causing grievous hurt resulting in permanent vegetative state
11	S. 117(4)- Voluntarily causing grievous hurt by five or more persons
12	S. 152. Acts endangering sovereignty unity and integrity of India.
13	S. 197(1)(d)- Publishing false or misleading information jeopardising the sovereignty, unity and integrity or security of India
14	S. 226- Attempt to commit suicide to compel or restraint exercise of lawful power
15	S. 304- Snatching
16	S. 305. (b) Theft of any means of transport used for the transport of goods or passengers
17	S. 305(c)- Theft of any article or goods from any means of transport used for the transport of goods or passengers
18	S. 305(d)- Theft of idol or icon in any place of worship
19	S. 305(e)- Theft of any property of the Government or of a local authority
20	S. 341(3)- Possession of counterfeit seal, plate or other instrument knowing the same to be counterfeit
21	S. 341(4)- Fraudulent or dishonest using as genuine any seal, plate or other instrument knowing or having reason to believe the same to be counterfeit

Changes introduced

- Definition of child S. 2(3)
- S. 48: Abetment outside India for offence in India
- S. 69: Sexual intercourse by employing deceitful means etc.
- S. 86: Definition of cruelty
- S. 95: Hiring, employing or engaging a child to commit an offence
- S. 103(2): punishment for murder (mob lynching, honour killing, hate crime)
- S. 106 (2): Causing death by negligence
- S. 111: Organised Crime
- S. 112: Petty organized crime
- S. 113: Terrorist Act

Changes....contd

- S. 117(3) (4): voluntarily causing grievous hurt
- S. 152: Act endangering sovereignty, unity and integrity of India(Replaced Sedition)
- S. 195(2) Assaulting or obstructing public servant when suppressing riot, etc.
- S. 226: Attempt to commit suicide to compel or restrain exercise of lawful power. (S. 309 attempt to commit suicide replaced)
- S. 304: Snatching
- S. 324(3): Mischief
- In property offences (dishonest misappropriation of property 314; criminal breach of trust 316; and cheating)punishment has been increased.
- S. 341(3)(4): Making or possessing counterfeit seal etc. with intent to commit forgery punishable under section 338
- S. 356: Defamation- community service may be imposed as punishment
- S. 358: Repeal and Savings

Changes in Terminology

- Minor replaced with child
- Gender- includes transgender
- Movable property- includes property of every description (corporeal and incorporeal)

Concern: phrase retained- outrage modesty of woman- justice Verma had recommended non penetrative sexual assault to replace this old terminology.

Night : after sunset and before sunrise – section 41 , 43 etc.

REPEAL AND SAVINGS

- S. 356. (1) The Indian Penal Code is hereby repealed.
- (2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect,—

(a) the previous operation of the Code so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or

(c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or

(d) any investigation or remedy in respect of any such penalty, or punishment; or (e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.

REPEAL AND SAVINGS

- S. 356. (3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.

- (4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act,1897 with regard to the effect of the repeal

DEFINITION – S. 2:

- **2(3)- "child" means any person below the age of eighteen years.**
- **2(8) "document"** means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, **and includes electronic and digital records**, intended to be used, or which may be used, as evidence of that matter.
- **2(10) "gender".—** The pronoun "he" and its derivatives are used of any person, whether male, female **or transgender.**

Explanation.—– "transgender" shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019;

- **2(21) "movable property"** includes (corporeal) property **of every description**, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

DEFINITION - SECTION 2:

- (39) words and expressions used but not defined in this Sanhita but defined in the Information Technology Act, 2000 and the Bhartiya Nagarik Suraksha Sanhita, 2023 and shall have the meanings respectively assigned to them in that Act Sanhita.

- General exceptions: S. 22 unsoundness of mind changed to mental illness

Jurisdiction [S. 1(3)(4)(5)]

Territorial	Extra-Territorial	Admiralty	Personal

- **Terretorial : S**. 1 (3) Every person shall be liable to punishment under this Sanhita and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India

- S.1 (4) (4) Any person liable, by any law for the time being in force in India, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Sanhita for any act committed beyond India in the same manner as if such act had been committed within India.

- Extra Terretorial: S.. 1 (5) The provisions of this Sanhita shall also apply to any offence committed by- (a) any citizen of India in any place without and beyond India; (b) any person on any ship or aircraft registered in India wherever it may be; (c) any person in any place without and beyond India committing offence targeting a computer resource located in India. Explanation.--In this section, the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Sanhita. Illustration A, who is a citizen of India, commits a murder in any place without and beyond India. He can be tried and convicted of murder in any place in India in which he may be found.
- S. 1 (6) Nothing in this Sanhita shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

Exceptions to applicability of BNS

- Jurisdiction of the BNS does not extend to

1. Punishing mutiny and desertion of officers, soldiers, sailors or airmen employed in the service of the Indian Government as they are dealt in accordance with the provisions of the Army Act, 1950; the Navy Act, 1957 and the Indian Air force Act, 1950;

2. Special laws i.e. laws dealing with a special subject; and

3. Local laws i.e. laws which apply only in a particular part of the country.

Section 4: Punishments

The punishments to which offenders are liable under the provisions of this Sanhita are

(a) Death;

(b) Imprisonment for life;

(c) Imprisonment, which is of two descriptions, namely:-

(1)Rigorous, that is with hard labour;

(2)Simple;

(d) Forfeiture of property;

(e) Fine;

(f) Community Service

PUNISHMENT RELATED REFORMS:

- In **33** offences the punishment of imprisonment is **increased.**
- In **83** offences the punishment of fine is **enhanced.**
- In **23** offences the **mandatory minimum punishment** has been introduced.
- **Community Service is introduced as a form of punishment in section 4.** In **6 offences** the punishment of **'community service'** has been introduced:
  - **Section 202. Public servant unlawfully engaging in trade.**
  - **S. 209. Non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023.**
  - **S. 226. Attempt to commit suicide to compel or restraint exercise of lawful power.**
  - **S. 303(2). Theft where the value of the property is less than 5,000 rupees. (only new type.. Others were but CS was not punishment)**
  - **S. 355. Misconduct in public by a drunken person.**
  - **S. 356(2). Defamation**

Offences for which death penalty may be awarded under the BNS, 2023

(1)Punishment for rape that causes death or results in persistent vegetative state of victim (S.66)

(2) Gang rape S. 70(2)

(3) Punishment for repeat offenders guilty of rape (S.71)

(4) Murder (S. 103)

(5) Punishment for murder by life convict (S. 104).

Mandatory death penalty was struck down by the Supreme Court in the case of Mithu v. State of Punjab (AIR 1983 SC 473) as being unconstitutional and void.

(6) Abetment of suicide of a minor, insane; or intoxicated person. (S. 107)

(7) Attempt to murder by a person under sentence of imprisonment for life if hurt is caused. (S. 109(2))

(8) Terrorist Act S. 113(2)

(9) Kidnapping or abducting in order to murder or for ransom etc. (S. 140(2))

(10)Waging, or attempting to wage war, or abetting waging of war against the Government of India. (S. 147)

(11) Abetting mutiny actually committed (S. 160)

(12) Giving or fabricating false evidence upon which an innocent person suffers death. (S. 230(2))

(13) Dacoity accompanied with murder. (S. 310(3))

Imprisonment for life, which shall mean the remainder of that person's natural life

- 64(2) Rape by person in authority
- 65(1) Rape on a woman under sixteen years of age
- 65(2) Rape on woman under twelve years of age
- 66 Inflicting injury leading to death or persistent vegetative state due to offence of rape
- 70 Gang rape
- 71 Repeat sex offenders
- 104 Murder by life convict
- 109(2) Attempt to murder by life convict if hurt is caused
- 139(2) Maiming a child for purpose of begging
- 143 (6) Person convicted of trafficking a child on more than one occasion
- 143(7)Public servant involved in trafficking of person

INTRODUCTION TO NEWLY CONSTITUTED OFFENCES

- CHAPTER IV: OF ABETMENT, CRIMINAL CONSPIRACY AND ATTEMPT:
  - **S.48. Abetment outside India for offence in India.(Earlier other way)**
  - 48. A person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India. Abetment in India of offences outside India. Abetment outside India for offence in India. 5 10 15 20 25 30 35 40 45 19 Illustration. A, in country X, instigates B, to commit a murder in India, A is guilty of abetting murder
- CHAPTER V: OF OFFENCES AGAINST WOMAN AND CHILD:
  - **S. 69. Sexual intercourse by employing deceitful means, etc.(marriage, emp. promotion)**
  - **S. 95. Hiring, employing or engaging a child to commit an offence.**

Additions/ Changes

Section 48 : Abetment outside India for offence in India

A person abets an offence within the meaning of this Sanhita who, without and bey
India, abets the commission of any act in India which would constitute an offence if
committed in India.

Illustration.

- A, in country X, instigates B, to commit a murder in India, A is guilty of abetting m

Section 63 Rape

Exception 2.-Sexual intercourse or sexual acts by a man with his own wife, the wife
being under eighteen years of age, is not rape.

Section 69 : Sexual intercourse by employing deceitful means, etc

Whoever, by deceitful means or by making promise to marry to a woman without a
intention of fulfilling the same, has sexual intercourse with her, such sexual interco
amounting to the offence of rape, shall be punished with imprisonment of either
description for a term which may extend to ten years and shall also be liable to fine

Explanation.-"deceitful means" shall include inducement for, or false promise of
employment or promotion, or marrying by suppressing identity.

FURTHER CHANGES:

Chapter IV of Abetment, Criminal Conspiracy and Attempt

- **61. Criminal Conspiracy-** (1) When two or more persons agree **with the common object** to do, or cause to be done–
- 62. Attempt

Chapter V of offences against Woman and Child:

- **63. exception 2.—** Sexual intercourse or sexual acts by a man with his own wife, the wife not being **under eighteen years of age**, is not rape.(15 years Rape Now….)
  - **The earlier age of 15 years has been increased to 18 years.**
    - **Age-based parameter for differential punishment for gang rape of a minor girl has been removed in the BNS, 2023.** Section 70(2)- Gang rape of minor girl below 18 years is punishable with death.

New provision

Section 95 : Hiring, employing or engaging a child to commit an offence

Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.

Explanation.- Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.

INTRODUCTION TO NEWLY CONSTITUTED OFFENCES

CHAPTER VI: OF OFFENCES AFFECTING THE HUMAN BODY

- **S. 103(2). Mob lynching.(Social Profile)**
- **S. 106(2). Hit and run. (leave but report the case)**
- **S. 111. Organised crime. (defined)**
- **S. 112. Petty organised crime.**
- **S. 113. Terrorist act.**
- **S. 117(3). Voluntarily causing grievous hurt resulting in permanent disability or in persistent vegetative state(Immovable)**
- **S. 117(4). Voluntarily causing grievous hurt by a group of five or more persons on the ground of race, caste or community, etc. (How separate Mob lynch)**

INTRODUCTION TO NEWLY CONSTITUTED OFFENCES

CHAPTER VI: OF OFFENCES AFFECTING THE HUMAN BODY

- **S. 103(2). Mob lynching.(Social Profile)**

- **Mob lynching**: The BNS adds murder or grievous hurt by five or more people on specified grounds, as an offence. These grounds include race, caste, sex, language, or personal belief. The punishment for such murder is a minimum of seven years imprisonment to life imprisonment or death.

- **S. 117(4). Voluntarily causing grievous hurt by a group of five or more persons on the ground of race, caste or community, etc. (How separate Mob lynch)**

Punishment for Murder S. 103

- 103(2) When a **group** of **five or more persons** **acting in concert** commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

S. 106- Causing Death by Negligence

- 106. (1) Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.
- Explanation.- For the purposes of this sub-section, "registered medical practitioner" means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 and whose name has been entered in the National Medical Register or a State Medical Register under that Act.
- (2) Whoever causes death of any person by rash and negligent driving of vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.

- **S. 111**of the BNS in relation to '**organised crime**' borrows heavily from the MCOCA, Maharashtra control of organized crime act which has been extended to New Delhi,(in 2002) and the GujCOCA.
- Andhra Pradesh in 2001,
- Arunachal Pradesh in 2002,
- Karnataka in 2000,
- Telangana in 2001, and
- Uttar Pradesh in 2017 have enacted acts which are identical to MCOCA and GujCOCA.
- Haryana in 2020 and Rajasthan in 2023 have introduced similar bills on organised crimes. Important phrases:

Continuing unlawful activity

Organised Crime Syndicate

Definition of organized crime. S. 111(1)

- Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organised crime.
- "**organised crime syndicate**" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;
- "**continuing unlawful activity**" means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence.

Petty Organised Crime, S. 112

- Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers or any other similar criminal act, is said to commit petty organised crime.
- Explanation.- For the purposes of this sub-section "theft" includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shoplifting and theft of Automated Teller Machine.

S. 113 Terrorist act

- The UAPA (and the erstwhile TADA and POTA) is a special legislation. Special legislations work in conditions that are different from ordinary and therefore special laws are created with the objective of addressing special situations. For this a new legal structure is established. Special laws define new offences and also provide special investigative and adjudicatory procedures to be followed in the prosecution of those offences. Therefore provisions of the CrPC, to the extent they are inconsistent with the special provisions of the UAPA, are inapplicable to prosecutions under the statute.
- However explanation clause appended to S. 113 clarifies, "For the removal of doubts, it is hereby declared that the officer not below the rank of Superintendent of Police shall decide whether to register the case under this section or under the Unlawful Activities (Prevention) Act, 1967".

S. 117(3) (4): voluntarily causing grievous hurt

(3) Whoever commits an offence under sub-section (1) and in the course of such commission causes any hurt to a person which causes that person to be in permanent disability or in persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

(4) When a group of five or more persons acting in concert, causes grievous hurt to a person on the ground of his race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each member of such group shall be guilty of the offence of causing grievous hurt, and shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454

70. The distinguishing characteristic of PVS is that the brainstem remains alive and functioning while the cortex has lost its function and activity. Thus the PVS patient continues to breathe unaided and his digestion continues to function. But although his eyes are open, he cannot see. He cannot hear. Although capable of reflex movement, particularly in response to painful stimuli, the patient is incapable of voluntary movement and can feel no pain. He cannot taste or smell. He cannot speak or communicate in any way. He has no cognitive function and thus can feel no emotion, whether pleasure or distress. The absence of cerebral function is not a matter of surmise; it can be scientifically demonstrated. The space which the brain should occupy is full of watery fluid.

Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454

107. A person's most important organ is his/her brain. This organ cannot be replaced. Other body parts can be replaced e.g. if a person's hand or leg is amputated, he can get an artificial limb. Similarly, we can transplant a kidney, a heart or a liver when the original one has failed. However, we cannot transplant a brain. If someone else's brain is transplanted into one's body, then in fact, it will be that other person living in one's body. The entire mind, including one's personality, cognition, memory, capacity of receiving signals from the five senses and capacity of giving commands to the other parts of the body, etc. are the functions of the brain. Hence one is one's brain. It follows that one is dead when one's brain is dead.

108. As is well known, the brain cells normally do not multiply after the early years of childhood (except in the region called hippocampus), unlike other cells like skin cells, which are regularly dying and being replaced by new cells produced by multiplying of the old cells. This is probably because brain cells are too highly specialised to multiply. Hence if the brain cells die, they usually cannot be replaced (though sometimes one part of the brain can take over the function of another part in certain situations where the other part has been irreversibly damaged). Brain cells require regular supply of oxygen which comes through the red cells in the blood. If oxygen supply is cut off for more than six minutes, the brain cells die and this condition is known as anoxia. Hence, if the brain is dead a person is said to be dead.

Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454

Brain death

109. The term "brain death" has developed various meanings. While initially, "death" could be defined as a cessation of breathing, or, more scientifically, a cessation of heartbeat, recent medical advances have made such definitions obsolete. In order to understand the nature and scope of brain death, it is worthwhile to look at how death was understood. Historically, as the oftquoted definition in *Black's Law Dictionary* suggests, "death" was:

"The cessation of life; the ceasing to exist; defined by physicians as a total stoppage of the circulation of the blood, and a cessation of the animal and vital functions consequent thereon, such as respiration, pulsation, etc." [*Black's Law Dictionary*, 488 (4th Edn., Revised 1968).]

This definition saw its echo in numerous other texts and legal case law. This includes many American precedents, such as *Schmidt* v. *Pierce* [344 SW 2d 120 (Mo 1961)] , SW 2d at p. 133 ("*Black's Law Dictionary*, 4th Edn., defines death as 'the cessation of life; the ceasing to exist….' "); and *Sanger* v. *Butler* [101 SW 459 (Tex Civ App 1907)] , SW at p. 462 ("*The Encyclopaedic Dictionary*, among others, gives the following definitions of [death]: 'The state of being dead; the act or state of dying; the state or condition of the dead.' *The Century Dictionary* defines death as 'cessation of life; that state of a being, animal or vegetable, in which there is a total and permanent cessation of all the vital functions'."). [Goldsmith, Jason, "Wanted! Dead and/or Alive: Choosing Amongst the Many Not-so-Uniform Definitions of Death", 61 U Miami L Rev 871 (2007).]

INTRODUCTION TO NEWLY CONSTITUTED OFFENCES

- CHAPTER VII: OF OFFENCES AGAINST THE STATE
  - **S. 152. Acts endangering sovereignty, unity and integrity of India.**
- CHAPTER XI: OF OFFENCES AGAINST PUBLIC TRANQUILLITY
  - **S. 197. Imputations, assertions prejudicial to national integration.** (1) Whoever, by words either spoken or written or by signs or by visible representations or through electronic communication or otherwise **(d):** ***makes or publishes false or misleading information, jeopardising the sovereignty, unity and integrity or security of India***
- CHAPTER XIII: OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS
  - **S. 226. Attempt to commit suicide to compel or restraint exercise of lawful power.**

Section 152 : Act endangering sovereignty, unity and integrity of India

152. Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial means, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Explanation.- Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section. (The explanation retained in view of Kedar Nath Singh v. Bihar, 1962)

S. 152
SUBVERSIVE ACTIVITIES OR SECESSION : AN ACT OF BECOMING INDEPENDENT

Assaulting or obstructing public servant when suppressing riot, etc
Section 195 (152 IPC)

- 195. (1) Whoever assaults or obstructs any public servant or uses criminal force on any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which shall not be less than twenty-five thousand rupees, or with both.
- (2) Whoever threatens to assault or attempts to obstruct any public servant or threatens or attempts to use criminal force to any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 226 : Attempt to commit suicide to compel or restrain exercise of lawful power

226. Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both, or with community service.

- S. 309 IPC repealed
- Mental Health care Act, 2017

Mental Health Care Act, 2017

115. (1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

INTRODUCTION TO NEWLY CONSTITUTED OFFENCES

- CHAPTER XVII: OF OFFENCES AGAINST PROPERTY
  - **S. 304. Snatching.**
  - **S. 305. Theft in a dwelling house, or means of transportation or place of worship, etc.- Whoever commits theft—**
    - (b) of any means of transport used for the transport of goods or passengers; or
    - (c) of any article or goods from any means of transport used for the transport of goods or passengers; or
    - (d) of idol or icon in any place of worship; or
    - (e) of any property of the Government or of a local authority
  - **S. 324 (3) Mischief causing loss to Government or Local Authority**
  - **S. 324(5) Mischief causing loss of one lakh or more**

Section 304: Snatching

304. (1) Theft is snatching if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property.

(2) Whoever commits snatching, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Additional clauses inserted in Sections 324 and 341; New form of punishment provided for Defamation

Mischief. Section 324

324(3) Whoever commits mischief and thereby causes loss or damage to any property including the property of Government or Local Authority shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 341: Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

341(3) Whoever possesses any seal, plate or other instrument knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

341(4) Whoever fraudulently or dishonestly uses as genuine any seal, plate or other instrument knowing or having reason to believe the same to be counterfeit, shall be punished in the same manner as if he had made or counterfeited such seal, plate or other instrument. Section.

356 Defamation

(2) Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, or with community service.

FURTHER CHANGES

- Chapter IV of Abetment, Criminal Conspiracy and Attempt: two significant changes

- Of criminal force and assault against woman:

▶The offence of ‘disrobing’ and ‘Voyeurism’ are made gender neutral as far as ‘accused’ is concerned. (victim only can be female)

▶Of offences relating to marriage:

- 84. Enticing or taking away or detaining with criminal intent a married woman.— Reference to ‘from that man, or from any person having the care of her on behalf of that man’ deleted.

UNIFORMITY IN AGE AND GENDER NEUTRALITY

- **Of offences against child:**
  - **S. 137(1)(b) (361 IPC)- Kidnapping from lawful guardianship**
    - The earlier distinction in age for a girl (18 years) and boy (16 years) has been replaced with the **uniform age of 18 years** by using the expression 'child' in the section.
  - **S. 139 (363A IPC)- Kidnapping or maiming a child for purposes of begging**
    - Earlier different age was prescribed for girl (18 years) and boy (16 years). Now **uniform age of 18 years** is prescribed.
  - **S. 96 (366A IPC) – 'Procuration' is made gender neutral- *'minor girl'* is replaced with *'child'***
  - **S. 141 (366B IPC) Importation from foreign country-** Earlier only girl under the age of 21 years was prescribed. Now the **boy under the age of 18 years is also included**.
  - **New Offence- S. 95. Hiring, employing or engaging a child to commit an offence(earlier**

SECTIONS RELATED WITH VICARIOUS LIABILITY

S. NO.	TYPE OF VICARIOUS LIABILITY	IPC	BNS	CHARGE
1.	COMMON INTENTION	34	3 (5)	
2.	ABETMENT	109 (109 TO 117)	49 (49 TO 57)	
3.	CONSPIRACY	120 B	61 (2)	
4.	COMMON OBJECT	149	190	

Changes brought by BNS in certain offences which will have major impact

1. Right of Private defense of property u/s. 41 of BNS has been elaborated by including mischief by fire, or any explosive substance.

2. Abetment of an offence committed in India by a person outside India has now been made an offence u/s. 48 of the BNS. This section expands the jurisdiction of the Act in respect of abetment of offences committed by persons who are outside of India and found linked to the commission of offence within India.

3. BNS has increased the age from 15 years to 18 years in the exception number 2 of Section 63 of BNS, whereby in unequivocal terms sexual intercourse or sexual acts by a man with his own wife, not under 18 years of age, will not be considered as rape.

Changes brought by BNS in certain offences which will have major impact

4. Section 117(3) introduce new category of punishment for grievous hurt.

5. A new offence for having sexual intercourse on false promise of marriage, employment, promotion or by suppressing the identity etc. has been introduced in Section 69 of the BNS.

6. Introducing life imprisonment (till remainder of that person's natural life) or death for gang rape of a woman below the age of 18 years u/s. 70(2) of BNS. As such changing the age from 16 years to 18 years expands the scope of this provision to prosecute and punish offenders committing gang rape on women between 16 to 18 years of age. Thus, the age-based parameter for differential punishment for gang rape of a minor girl has been removed in the BNS.

Changes brought by BNS in certain offences which will have major impact

7. The word ‘man’ was used in Section 354 B & 354 C of IPC, which are replaced by the word ‘whoever’ u/s. 76 and 77 of the BNS. Thereby, assault or use of criminal force to woman with intent to disrobe her and Voyeurism are made gender neutral.

8. The act of hiring, employing, or engaging a child to commit an offence, is made a punishable offence u/s. 95 of BNS

9. 'lynching' has been introduced in the BNS u/s. 103(2) addressing issues of 'mob lynching'. Special categories have been created within the offence for murder and grievous hurt by 'group of five or more persons' on the grounds of the victim's social profile, particularly his 'race, caste or community', sex, place of birth, language, personal belief and any other grounds without specifically using the term 'mob lynching'.

Changes brought by BNS in certain offences which will have major impact

10. BNS provides punishment for murder by a life convict u/s. 104 with a modification, which corresponds to S.303 of IPC which was struck down by the Hon'ble Apex Court in the case of *Mithu v. State of Punjab*, AIR 1983 SC 473.

11. Offence of 'causing death by rash or negligence act', prescribed u/s. 304A of IPC, has been retained u/s. 106(1) of BNS with enhanced punishment i.e., from 2 years to 5 years imprisonment. However, for medical practitioners the punishment will still remain to be 2 years.

12. Offence of organized crime and terrorist act have been added in BNS with deterrent punishments u/s. 111 and 113 of BNS to tackle 'organized crime' and 'terrorist acts' by punishing the commission, attempt, abetment, conspiracy of organized crimes Facilitates, Preparator and terrorist acts respectively.

Note:- Person in possession of Proceeds of crime also included

Changes brought by BNS in certain offences which will have major impact

13. BNS has removed the distinction of age for boys and girls in offence of kidnapping u/s.137 of BNS by using the word 'child', thereby making kidnapping of boys between 16 to 18 years of age from lawful guardianship an offence.

14. The offence relating to importation of a person from foreign country has been made gender neutral to cover both boys and girls in Section 141 of the BNS. It will protect the minor boys and girls from being used for the purposes of forced or seduced illicit intercourse. (*Use of Mutual legal Assistance treaty MLAT*)

15. 'Beggary' has been introduced as a form of exploitation for the offence of 'trafficking' and has been made punishable in section 143 of the BNS.

Changes brought by BNS in certain offences which will have major impact

16. In Section 197(l)(d) of BNS, the act of making or publishing false or misleading information (Electronic means also) which has tendency to jeopardies the sovereignty, unity and integrity or security of India has been made punishable.

17. Change in theft regarding punishment and kind (Intangible also).

18. Offence of 'snatching' has been introduced in the Section 304 BNS.

19. The offence of mischief in Section 324 of BNS has been expanded in accordance to the damage or loss caused to any property including the property of Government or Local Authority.

Changes brought by BNS in certain offences which will have major impact

20. Section of offences like Extortion and Dacoity changes
21. Offence of cheating include in definition of Stolen Property under section 317 of BNS
22. Word British calendar is replaced by Gregorian calendar in definition under section 2(20) BNS.
23. Word Juryman is deleted and local authority defination added in public servant in section 2(28)
24. Default of payment of fine and default in community services provide in section 8 of BNS.

Changes brought by BNS in certain offences which will have major impact

25. In section 116 of the BNS, 2023 the number of days provided for the sufferer in severe bodily pain for the purpose of 'grievous hurt' has been reduced from '20 days' to '15 days'. It is done keeping in view the advancement in the medical treatment which provides quicker recovery.

26. At many places the archaic expressions like 'lunatic', 'insane' and 'idiot' have been done away with. Colonial remnants like 'British calendar', 'Queen', 'British India, 'Justice of the peace' etc. have been deleted.

BNS	IPC	IMPLICATIONS OF REVISION
Clause 2 (1): "act" as well a series of acts as a single act;	Section 33: The word "act" denotes as well as series of acts as a single act [...]	The definition in section 33 explained that the term "act" also denoted a series of acts. The definition in clause 2(1) of the BNS does not convey the same meaning, and may lead to confusion as to whether an "act" signifies a series of acts. In its current form, the definition has no meaning.
Clause 2(4): "Court" means a Judge who is empowered by law to act judicially alone, or a body of Judges, which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially;	Section 20: The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.	It is not clear why this change was necessitated. Further, due to the change in the definition of "judge" in the BNS, some institutions presided over by quasi-judicial authorities may no longer be considered "courts of justice".
Clause 2 (9): "gender" — the pronoun "he" and its derivatives are used of any person, whether male, female or transgender. Explanation.–– "transgender" shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019;	Section 8: The pronoun "he" and its derivatives are used of any person, whether male or female.	While the definition is now more inclusive, it will have no practical implication unless specific offences applicable to transgender persons are defined/created. For instance, the Justice Verma Committee had recommended that victims in sexual offences be gender-neutral, with the objective that trans persons be covered within the definition of rape. That change was neither made in 2013 when the rape laws were amended, nor has it been made in the BNS. Further, there are no offences relating to specific targeting of trans persons due to their gender identity. This is further exacerbated by the fact that they have historically been one of the most persecuted and criminalised communities in India.

BNS	IPC	IMPLICATIONS OF REVISION
Clause 2(15): "Judge" means a person who is officially designated as a Judge and includes a person,––(i) who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or (ii) who is one of a body or persons, which body of persons is empowered by law to give such a judgment. Illustration: A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge;	Section 19: The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body or persons, which body of persons is empowered by law to give such a judgment. Illustrations: (a) A Collector exercising jurisdiction in a suit under Act 10 of 1859 is a Judge. (b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appear, is a Judge. (c) A member of a panchayat which has power, under 4Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge. (d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.	The change proposed by the definition in the BNS appears to exclude quasi-judicial authorities. This may make the defence under section 15, BNS unavailable to quasi-judicial authorities. Under the IPC, the defence under section 77 was available to quasi-judicial authorities. These provisions save a Judge from criminal liability when acting judicially in exercise of their powers.
Clause 2(19): "mental illness" shall have the meaning assigned to it in clause (a) of section 2 of the Mental Healthcare Act, 2017;	No equivalent provision in the IPC.	This is an error since clause (a) of Section 2 of the Mental Healthcare Act, 2017 does not define "mental illness". The reference ought to be to clause (s) of Section 2, which reads: '"mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence'.

BNS	IPC	IMPLICATIONS OF REVISION
Clause 2(21): "movable property" includes property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth;	Section 22: The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.	The definition of movable property is now no longer confined to corporeal property. It remains unclear as to whether incorporeal property of every kind is included with the definition of movable property.
Clause 2(23): "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court or not;	Section 51: The word "oath" includes a solemn affirmation substituted by law for an oath, and anydeclaration required or authorised by law to be made before a public servant or to be used for the purposeof proof, whether in a Court of Justice or not.	The implication of this change is similar to what is discussed in Clause 2(4) of the BNS. Oaths taken before quasi-judicial authorities may no longer be covered under this provision.
Clause 2(28)(k) Explanation (c): 'election means an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of election to which is by, or under any law for the time being in force	Section 21: Explanation 3 — The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.	The Explanation appears incomplete.
Clause 4: The punishments of which offenders are liable under the provisions of this Sanhita are:...(f) Community Service	No equivalent provision in the IPC.	"Community Service" has been added as a possible form of punishment under the BNS. It remains unclear precisely what this form of punishment would entail and how it would be administered.
Clause 6: In calculating fractions of terms of punishment, imprisonment for life shall be recokned as equivalent to imprisonment for twenty years unless otherwise provided.	Section 57: In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.	Previously, where punishments had to be calculated through fractions of a life imprisonment term, such a term would be considered equal to twenty years. The addition of "unless otherwise provided" empowers the Legislature to specify that life imprisonment terms can be considered equivalent to more or less than twenty years of imprisonment in certain cases.

BNS	IPC	IMPLICATIONS OF REVISION
Clause 22: Nothing is an offence which is done by a person who, at the time of doing it, by reason of mental illness, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law	Section 84: Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.	The definition of mental illness in Section 2(s) of the Mental Healthcare Act, 2017 is both broad, and restrictive. For instance, it excludes "mental retardation", which is defined as a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence. Such a person may not have the capacity to form knowledge, and hence get excluded from the benefit of clause 22 of the BNS. On the other hand, the breadth of the definition may also make it overinclusive, i.e. include individuals who would earlier not have got the benefit of section 84, IPC. However, since the test under the new provision remains unchanged, the standards used for its invocation would still apply. Therefore, the stereotypes associated with Sec. 84 of the IPC would continue.
Clause 23: Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; unless that the thing which intoxicated him was administered to him without his knowledge or against his will.	Section 85: Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.	Replacing "provided that" with "unless that" completely changes the meaning of the intoxication defence. It makes voluntary intoxication a defence.

BNS	IPC	IMPLICATIONS OF REVISION
Clause 27: Nothing which is done in good faith for the benefit of a person under twelve years of age, or of person with mental illness, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: Provided that this exception shall not extend to-- (a) the intentional causing of death, or to the attempting to cause death; (b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity; (c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity; (d) the abetment of any offence, to the committing of which offence it would not extend.	Section 89: Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: Provided— Provisos. First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death; Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity; Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt; or the curing of any grievous disease or infirmity; Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.	As discussed in the context of clause 22, the definition of "mental illness" being broad, the agency of persons with mental illness may be impacted in this case. The Mental Healthcare Act, 2017 has a particular mechanism for appointment of nominated representatives, which puts the agency/capacity of the person with mental illness at the forefront.

BNS	IPC	IMPLICATIONS OF REVISION
Clause 41: The right of private defence of property extends, under the restrictions specified in section 37, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—(a) robbery;(b) house-breaking after sun set and before sun rise;(c) mischief by fire or any explosive substance committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;(d) theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.	Section 103: The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntarycausing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or theattempting to commit which, occasions the exercise of the right, be an offence of any of the descriptionshereinafter enumerated, namely:—First.—Robbery;Secondly.—House-breaking by night;Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property;Fourthly.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.	The change from "housebreaking by night" to "housebreaking after sunset and before sunrise" appears unnecessary. Without reasons being provided for the change being made, it is not clear as to why this change is required. Mischief by fire has been expanded to additionally include mischief caused by explosive substances.
Clause 48: A person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India. Illustration. A, in country X, instigates B, to commit a murder in India, A is guilty of abetting murder.	No equivalent provision in the IPC.	This section expands the jurisdiction of the Act in respect of abetment of offences to include people who are outside of India, but can be linked to the commission of an offence within India. Such persons can now be proceeded against under the Act.

BNS	IPC	IMPLICATIONS OF REVISION
Clause 69: Whoever, by deceitful means or making by promise to marry to a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Explanation.––– "deceitful means" shall include the false promise of employment or promotion, inducement or marring after suppressing identity.	No equivalent provision in the IPC.	This brings in a new offence of deceitful sexual intercourse. The terminology used—"not amounting to rape"—creates confusion. This term is used earlier in Section 376C of the IPC (now clause 68, BNS) and covers situations where there was consent at the time of sexual intercourse, which was not vitiated. Section 376C and 68, BNS are meant to prohibit sexual relations between people of particular relationships. However, in this clause, deceit conceptually vitiates consent; so does breach of promise which involves the accused not having any intention of going through with the promise. Hence, the meaning of "not amounting to rape" is not clear. It could possibly mean that the offence is not rape, or that if a person is acquitted of rape, they can still be prosecuted and punished under this section. Further, all others sections in this chapter that use the term "sexual intercourse" (such as Clause 67 and 68) define it to mean sexual acts beyond penile-vaginal penetration. Using the term "sexual intercourse" without defining it means that it covers only penile-vaginal penetration. Furthermore, unlike other sections in this chapter, there is no minimum punishment under this section, and the maximum punishment prescribed is 10 years.
Clause 70(2): Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:Provided that such fine shall be just and reasonable to meet the medical	Section 376DA: Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any	Changing the age from 16 years to 18 years expands the scope of the provision to include those offenders who commit gangrape on women between 16 to 18 years of age. Additionally, this offence is now punishable with the death penalty. This also explains why Section 376 DB (which prescribed the punishment for gangrape of a woman under twelve years of age) has now been deleted, as the offences under that provision are now included within the scope of Clause 70(2).

BNS	IPC	IMPLICATIONS OF REVISION
expenses and rehabilitation of the victim:Provided further that any fine imposed under this sub-section shall be paid to the victim.	fine imposed under this section shall be paid to the victimSection 376DB: Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation ofthe victim: Provided further that any fine imposed under this section shall be paid to the victim.	
No equivalent provision in the BNS.	377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.	The BNS repeals section 377 of the Indian Penal Code. Section 377, to the extent that it covered consensual sexual acts was held to be unconstitutional by the Supreme Court in *Navtej Johar v. Union of India*. However, section 377 also covered cases of forced sexual acts against men, trans persons, and animals. By removing section 377 altogether, the BNS no longer provides legal remedy for non-consensual sexual acts against men, trans persons, and animals. A separate section needed to be introduced to cover such cases.
Clause 75: Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.	Section 354B: Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.	This makes the offence gender neutral qua the offender.
Clause 76: Whoever watches, or captures the image of a	Section 354C: Any man who watches, or captures the image of	This makes the offence of voyeurism gender neutral qua the offender.

BNS	IPC	IMPLICATIONS OF REVISION
woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.Explanation 1.—For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.	a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine. Explanation 1.—For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public. Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.	
Clause 78: Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture,	Section 509: Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits	The insertion of the phrase "in any form" expands the scope of the object indicated. However, without any explanation, it

BNS	IPC	IMPLICATIONS OF REVISION
or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.	any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.	remains unclear as to why such expansion was necessary.
Clause 83: Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.	Section 498: Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.	The deletion of the phrase "from that man, or from any person having the care of her on behalf of that man" broadens the scope of the section inasmuch as where, or from whom, the woman is enticed becomes irrelevant to the offence. Further, while the exclusion serves to remove some patriarchal notions from the code, the section in its entirety still continues to be patriarchal since it takes away the agency of the woman in question.
Clause 93: Whoever hires, employs or engages any person below the age of eighteen years to commit an offence shall be punished with imprisonment of either description or fine provided for that offence as if the offence has been committed by such person himself. Explanation.—Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.	No equivalent section in the IPC.	This is a new provision which criminalises hiring/employing/engaging a minor to commit an offence. However, the explanation to the section is unclear since in a case of "hiring, employing, engaging or using a child for sexual exploitation or pornography" the child will be a victim, whereas the clause suggests that the child is committing an offence on the instructions of the primary offender.
Clause 94: Whoever, by any means whatsoever, induces any child below the age of eighteen years to go from any place or to do any act with intent that such child below the age of eighteen years may	Section 366A: Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be,	This provision has been made gender neutral.

BNS	IPC	IMPLICATIONS OF REVISION
be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.	forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.	
Clause 101(2): When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other ground each member of such group shall be punished with death or with imprisonment for life or imprisonment for a term which shall not be less than seven years, and shall also be liable to fine.	No equivalent section in the IPC.	This section appears to introduce an aggravated form of murder committed by a group of 5 or more persons acting in concert, and with a specific intent in mind. It provides for a minimum punishment of 7 years, and a maximum of death. At the outset, the meaning of the term "acting in concert" is undefined. Furthermore, a lesser minimum punishment for an aggravated offence does not adhere to established penological policy.
Clause 102: Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life.	Section 303: Whoever, being under sentence of imprisonment for life, commits murder shall be punished with death.	Section 303 was struck down by the Supreme Court in *Mithu v. State of Punjab*. It has been reintroduced in the form of Clause 102, with a modification that allows for a mandatory minimum sentence of life imprisonment with no possibility of remission.
Clause 103: Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years and with fine, if the act is done with the knowledge that it is	Section 304: Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to	This provision introduces a mandatory minimum sentence of five years for the offence of culpable homicide not amounting to murder if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. Additionally, for culpable homicide not amounting to murder where the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death, fine has been made mandatory.

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likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.	cause such bodily injury as is likely to cause death.	
Clause 104(1): Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.	Section 304A: Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.	This increases the punishment for rash/negligent homicide from 2 years to 7 years. In the past, there has been a debate on whether 2 years maximum imprisonment for Section 304A is too little. This amendment accordingly increases the punishment, which remains lesser than the maximum punishment for culpable homicide not amounting to murder, which is conceptually fine.
Clause 104(2): Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide and escapes from the scene of incident or fails to report the incident to a Police officer or Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.	No equivalent section in the IPC.	This section introduces an offence of escaping from the scene of a rash/negligent homicide committed by the offender. It also criminalises failure to report the crime after committing it. It is an aggravated form of the offence punished under section 104(1), since it provides a maximum punishment of 10 years. This appears to cover cases of "hit and run" in cases of vehicular homicides. It also covers all rash/negligent homicides where the offender escapes from the scene of crime or does not report the crime to the police/Magistrate.
Clause 105: If any person under eighteen years of age, any person with mental illness, any delirious person or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.	Section 305: If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.	Replacing the words "any insane person" and "any idiot", with "any person with mental illness" expands the scope of the section and would cover a larger number of people within the aggravated offence as opposed to the offence under Section 306/Clause 106. Under the IPC, most cases of abetment of suicide are adjudicated under Section 306. However, inclusion of a broad term like mental illness in this context would mean that this provision is invoked more frequently.
Clause 107(2): When any person offending under sub-section (1) is under sentence of imprisonment 45 for life, he may, if hurt is caused, be punished with death or with	Section 307 (paragraph 2): When any person offending under this section is under sentence of imprisonment for life, he may, if	In addition to the death penalty, the new provision has an alternative punishment of life imprisonment which extends to the whole of natural life of the convict without the possibility of remission.

BNS	IPC	IMPLICATIONS OF REVISION
imprisonment for life, which shall mean the remainder of that person's natural life.	hurt is caused, be punished with death.	
No equivalent section in the BNS.	Section 309: Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.	This provision was, in effect, repealed by way of Section 115 of the Mental Healthcare Act, 2017. It has been removed from the text of the BNS.
No equivalent section in the BNS.	Section 310: Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.	This is a positive change. This provision previously criminalised people based on their caste and status, such as nomads, etc.
No equivalent section in the BNS.	Section 311: Whoever is a thug, shall be punished with imprisonment for life, and shall also be liable to fine.	This is a positive change. People were defined as "thugs" and criminalised based on belonging to the community.
Clause 109(1): Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, cyber-crimes having severe consequences, trafficking in people, drugs, illicit goods or services and weapons, human trafficking racket for prostitution or ransom by the effort of groups of individuals acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, corruption or related activities or other unlawful means to obtain direct or indirect, material benefit including a financial benefit, shall constitute organised crime.	No equivalent section in the IPC.	This section introduces a new offence of "organised crime" in the IPC. However, given the manner in which it is worded, without appropriate punctuation marks or sub-sections, it creates confusion on which offences are covered within the ambit of organised crime. For instance, there is a reference to "human trafficking racket for prostitution or ransom". What "human trafficking for ransom" implies is unclear. It also states: "by the effort of groups or individuals acting in concert, singly or jointly." It is not clear what is implied by individuals acting in concert, but singly. Further, the phrase "cyber crimes having severe consequences" has not been defined.

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Clause 109(1) Explanation: For the purposes of this subsection...: (ii) "organised crime syndicate" means a criminal organisation or group of three or more persons who, acting either singly or collectively in concert, as a syndicate, gang, mafia, or crime ring indulging in commission of one or more serious offences orinvolved in gang criminality, racketeering, and syndicated organised crime;	No equivalent section in the IPC.	Some elements of this definition seem to have been borrowed from the Maharashtra Control of Organised Crime Act, 1999 and other similar organised crime statutes in other states. However, it also introduces certain new elements in the provision, which render the provision vague and unclear.
Clause 109(1) Explanation: For the purposes of this subsection...: (iii) "continuing unlawful activity" means an activity prohibited by law, which is a cognizable offence undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence.	No equivalent section in the IPC.	This definition has been borrowed from the Maharashtra Control of Organised Crime Act, 1999 and other similar organised crime statutes in other states.
Clause 109(2): Whoever, attempts to commit or commits an offence of organised crime shall,—(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine which shall not be less than rupees ten lakhs;(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine	No equivalent section in the IPC.	The punishment for attempt to commit the offence and the punishment for actual commission of the offence under this provision is the same. The distinction is instead drawn on the basis of whether a death is caused or not. In the former case, the offence is punishable with imprisonment for life or death. Otherwise, there is a mandatory minimum sentence of five years, extendable to life imprisonment.

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which shall not be less than rupees five lakhs.		
Clause 109(3): Whoever, conspires or organises the commission of an organised crime, or assists, facilitates or otherwise engages in any act preparatory to an organised crime, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs.	No equivalent section in the IPC.	This clause deals with conspiracies, organising the commission of an organised crime, assisting and facilitating organised crime or engaging in preparatory acts. The terms used are wide and vague. For instance, the ambit of preparatory acts may be very wide, thus bringing within the section people who may not even have the relevant intention or knowledge that they are engaging in an act preparatory to an organised crime. From a penological perspective, the clause provides the same punishment for conspiracy and abetment, as it does for membership, thus equating these offences.
Clause 109(4): Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs.	No equivalent section in the IPC.	This section is taken from the MCOCA. The punishment is also the same. Jurisprudence from MCOCA will apply.

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Clause 109(5): Whoever, intentionally harbours or conceals or attempts to harbour or conceal any person who has committed the offence of an organised crime or any member of an organised crime syndicate or believes that his act will encourage or assist the doing of such crime shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs: Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.	No equivalent section in the IPC.	This section is taken from MCOCA. The proviso is from UAPA. The jurisprudence from these legislations will apply.
Clause 109(6): Whoever, holds any property derived, or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees two lakhs.	No equivalent section in the IPC.	This section is taken from MCOCA, save for the term "proceeds of any organised crime", which has been defined in the explanation. The proviso is from UAPA. The jurisprudence from these legislations will apply.
Clause 109(7): If any person on behalf of a member of an organised crime syndicate is, or at anytime has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten	No equivalent section in the IPC.	This section is taken from MCOCA. The proviso is from UAPA. The jurisprudence from these legislations will apply.

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years and shall also be liable to fine which shall not be less than rupees one lakh and such property shall also be liable for attachment and forfeiture.		
Clause 109: Explanation.–– For the purposes of this section, "proceeds of any organised crime" means all kind of properties which have been derived or obtained from commission of any organised crime or have acquired through funds traceable to any organised crime and shall include cash, irrespective of person in whose name such proceeds are standing or in whose possession they are found.	No equivalent section in the IPC.	This provides a broad definition to the term "proceeds of an organized crime", and can thus be overinclusive. Currently, there is debate and criticism of similar provisions in the Prevention of Money Laundering Act, which have not been taken into consideration while drafting this clause of the BNS.
Clause 110. (1) Any crime that causes general feelings of insecurity among citizens relating to theft of vehicle or theft from vehicle, domestic and business theft, trick theft, cargo crime, theft (attempt to theft, theft of personal property), organised pick pocketing, snatching, theft through shoplifting or card skimming and Automated Teller Machine thefts or procuring money in unlawful manner in public transport system or illegal selling of tickets and selling of public examination question papers and such other common forms of organised crime committed by organised criminal groups or gangs, shall constitute petty organised crimes and shall include the said crimes when	No equivalent section in the IPC.	This provision has vague and broad terms such as "general feelings of insecurity among citizens". It also consists of terms such as "mobile organised crime groups". This may lead to criminalisation of individuals/groups who are nomadic, which is was the rationale behind the repealed "Criminal Tribes Act".

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committed by mobile organised crime groups or gangs that create network of contacts, anchor points, and logistical support among themselves to carry out number of offences in region over a period before moving on.		
(2) Whoever commits or attempts to commit any petty organised crime, under sub-section (1) shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.	No equivalent section in the IPC.	This is the penal section for Clause 110(1). Like in Clause 109(2) the punishment for attempting the crime, and for committing the crime, is identical.
Clause 111(1): A person is said to have committed a terrorist act if he commits any act in India or in any foreign country with the intention to threaten the unity, integrity and security of India, to intimidate the general public or a segment thereof, or to disturb public order by doing an act,––	No equivalent section in the IPC.	A large part of Clause 111(1) is taken from Section 15 of the Unlawful Activities (Prevention) Act, 1967. The jurisprudence that has emerged in the context of Section 15 of the UAPA will apply.
(i) using bombs, dynamite or any other explosive substance or inflammable material or firearms or other lethal weapons or poison or noxious gases or other chemicals or any other substance (whether biological or otherwise) hazardous in nature in such a manner so as to create an		Same as above.

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atmosphere or spread a message of fear, to cause death or serious bodily harm to any person, or endangers a person's life;		
(ii) to cause damage or loss due to damage or destruction of property or disruption of any supplies or services essential to the life of the community, destruction of a Government or public facility, public place or private property;		Same as above.
(iii) to cause extensive interference with, damage or destruction to critical infrastructure;		Same as above.
(iv) to provoke or influence by intimidation the Government or its organisation, in such a manner so as to cause or likely to cause death or injury to any public functionary or any person or an act of detaining any person and threatening to kill or injure such person in order to compel the Government to do or abstain from doing any act, or destabilise or destroy the political, economic, or social structures of the country, or create a public emergency or undermine public safety;		Same as above.
(v) included within the scope of any of the Treaties listed in the Second Schedule to the Unlawful Activities (Prevention) Act, 1967.		Same as above.

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Clause 111(2): Whoever, attempts to commit or commits an offence of terrorist act shall,––(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life without the benefit of parole, and shall also be liable to fine which shall not be less than rupees ten lakhs;(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than rupees five lakhs.	No corresponding provision in the IPC.	A large part of Clause 111(2) is taken from Section 16 of the Unlawful Activities (Prevention) Act, 1967. However, in 111 (2) (i), life imprisonment has been specifically enhanced to exclude parole. Additionally fine amounts have been mentioned in the section which is absent in the UAPA. The punishment under this provision is more stringent than corresponding provisions of the UAPA.
Clause 111 (3): Whoever, conspires, organises or causes to be organised any organisation, association or a group of persons for terrorist acts, or assists, facilitates or otherwise conspires to engage in any act preparatory to any terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than rupees five lakhs.	No corresponding provision in the IPC.	Clause 111(3) is taken from Section 18 of the Unlawful Activities (Prevention) Act, 1967. However, punishment under this provision specifically mentions a fine amount which is absent in the UAPA.
Clause 111(4): Any person, who is a member of terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than rupees five lakhs.	No corresponding provision in the IPC	Clause 111(4) is taken from Section 20 of the Unlawful Activities (Prevention) Act, 1967. However, punishment under this provision specifically mentions a fine amount which is absent in the UAPA.

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Clause 111 (5) Whoever, intentionally harbours or conceals or attempts to harbour or conceal any person who has committed an offence of any terrorist act shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than rupees five lakh: Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.	No corresponding provision in the IPC.	Clause 111(5) is largely taken from Section 19 of the Unlawful Activities (Prevention) Act, 1967. However, punishment under this provision specifically mentions a fine amount which is absent in the UAPA. This section brings in an element of "intention" in the context of harbouring/concealing a person who has committed a terrorist act. This is different from the UAPA which requires knowledge that the person being harboured is a terrorist. Doing away with this requirement may have the impact of broadening the section as compared to section 19 of the UAPA.
Clause 111 (6): Whoever, holds any property directly or indirectly, derived or obtained from commission of terrorist act or proceeds of terrorism, or acquired through the terrorist fund, or possesses, provides, collects or uses property or funds or makes available property, funds or financial service or other related services, by any means, to be used, in full or in part to carry out or facilitate the commission of any terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs and such property shall also be liable for attachment and forfeiture.	No corresponding provision in the IPC.	The first part of Clause 111 (6) is borrowed from Sec. 21 of the Unlawful Activities (Prevention) Act, 1967. This provision broadens the scope for criminalisation of acts beyond those of Sec. 21 of the UAPA.
Explanation.— For the purposes of this section,––(a) "terrorist" refers to any person who—(i) develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives,	No corresponding provision in the IPC. Explanation a-(i) has been taken from Sec. 4 of the Philippines Anti-Terrorism Act, 2020.	This is an extremely vague and over-broad definition, particularly as there is no jurisprudence around this that can be used by courts.

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or releases nuclear, radiological or other dangerous substance, or cause fire, floods or explosions; (ii) commits, or attempts, or conspires to commit terrorist acts by any means, directly or indirectly; (iii) participates, as a principal or as an accomplice, in terrorist acts;		
(b) the expression "proceeds of terrorism" shall have the same meaning as assigned to it in clause (g) of section 2 of the Unlawful Activities (Prevention) Act, 1967;	No corresponding provision in the IPC.	
(c) "terrorist organisation, association or a group of persons" refers to any entity owned or controlled by any terrorist or group of terrorists that— (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly;— (ii) participates in acts of terrorism;—(iii) prepares for terrorism;—(iv) promotes terrorism;—(v) organises or directs others to commit terrorism;—(vi) contributes to the commission of terrorist acts by a group of persons acting with common purpose of furthering the terrorist act where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act; or (vii) is otherwise involved in terrorism; or (viii) any organisation listed in the First Schedule to the Unlawful Activities(Prevention) Act, 1967 or an organisation operating under the same name as an organisation so listed.		

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Clause 114: The following kinds of hurt only are designated as "grievous", namely:--(a) Emasculation.(b) Permanent privation of the sight of either eye.(c) Permanent privation of the hearing of either ear.(d) Privation of any member or joint.(e) Destruction or permanent impairing of the powers of any member or joint.(f) Permanent disfiguration of the head or face.(g) Fracture or dislocation of a bone or tooth.(h) Any hurt which endangers life or which causes the sufferer to be during the space of fifteen days in severe bodily pain, or unable to follow his ordinary pursuits.	The following kinds of hurt only are designated as "grievous":— First.—Emasculation. Secondly.—Permanent privation of the sight of either eye. Thirdly.—Permanent privation of the hearing of either ear Fourthly.—Privation of any member or joint. Fifthly.—Destruction or permanent impairing of the powers of any member or joint. Sixthly.—Permanent disfiguration of the head or face. Seventhly.—Fracture or dislocation of a bone or tooth. Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.	Section 320 rightly provided that a hurt would be considered grievous if the victim were unable to follow their pursuits or in severe bodily pain for twenty days. Twenty days (two thirds of a month) has been changed to fifteen days in the BNS. The logic for reduction from twenty days to fifteen days is not clear.
Clause 115 (3) Whoever commits an offence under sub-section (1) and in the course of such commission causes any hurt to a person which causes that person to be in permanent disability or in persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.	No corresponding provision in the IPC	This provision introduces an aggravated form of the offence of grievous hurt, with an increased mandatory minimum sentence of ten years. This would have been punishable previously with a maximum sentence of seven years.
Clause115 (4) When grievous hurt of a person is caused by a group of five or more persons on the ground of his, race, caste, sex, place of birth, language, personal belief or any other ground, each member of such group shall be guilty of the offence of causing grievous hurt, and shall be punished with imprisonment	No corresponding provision in the IPC	This clause appears to criminalise participation in the offence wherein grievous hurt is caused by a group on the grounds of race, caste, sex, etc. It is not clear whether there is a requirement of common intention, or the group needs to share a common object. This vagueness may cause confusion.

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of either description for a term which may extend to seven years, and shall also be liable to fine.		
Clause 122(1): Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt or causes a person to be in a permanent vegetative state shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:Explanation 2: For the purposes of this section, permanent or partial damage or deformity or permanent vegetative state, shall not be required to be irreversible.	Section 326A: Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine: Section 326B - Explanation 2: For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.	In Explanation 2, the inclusion of permanent vegetative state absurd because the condition is permanent by definition and therefore, irreversible.
Clause 135: 1) Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship–– (b) whoever takes or entices any child below the age of eighteen years or any person with mental illness, out of the keeping of the lawful guardian of such child or person with mental illness, without the consent of such guardian, is said to kidnap such child or person from lawful guardianship.	Section 361: Whoever takes or entices any minor under 2 [sixteen] years of age if a male, or under 3 [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.	The difference in age between boys and girls has been now removed. Thus, kidnapping of boys between 16 to 18 years of age from lawful guardianship is now criminalised under this provision.

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Clause 137(1): Whoever kidnaps any child below the age of eighteen years or, not being the lawful guardian of such child, obtains the custody of the child, in order that such child may be employed or used for the purposes of begging shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.	Section 363A(1): Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.	The term "minor" used in the section has been replaced with "child below the age of 18 years" and "child". The terms of punishment have been significantly increased, with the introduction of mandatory minimum sentences.
Clause 137(2): Whoever maims any child below the age of eighteen years in order that such child may be employed or used for the purposes of begging shall be punishable with imprisonment which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.	Section 363A(2): Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.	Same as above.
Clause 137(3): Where any person, not being the lawful guardian of a child below the age of eighteen years employs or uses such child for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of such child in order that such child might be employed or used for the purposes of begging.	Section 363A(3): Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.	Same as above.

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Clause 137(4): In this section "begging" means—(i) soliciting or receiving alms in a public place, whether under the pretence ofsinging, dancing, fortune-telling, performing tricks or selling articles or otherwise;(ii) entering on any private premises for the purpose of soliciting or receiving alms;(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;(iv) using such child as an exhibit for the purpose of soliciting or receiving alms.	Section 363A(4): In this section,— (a) "begging" means— (i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortunetelling, performing tricks or selling articles or otherwise; (ii) entering on any private premises for the purpose of soliciting or receiving alms; (iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal; (iv) using a minor as an exhibit for the purpose of soliciting or receiving alms; (b) "minor" means— (i) in the case of a male, a person under sixteen years of age; and (ii) in the case of a female, a person under eighteen years of age.]	Same as above.
Clause 146: Whoever within or without and beyond India conspires to commit any of the offences punishable by section 145, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.	Whoever within or without [India] conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, [the Central Government or any [State] Government], shall be punished with [imprisonment for life], or with imprisonment of either description which may extend to ten years, [and shall also be liable to fine].	Section 121A of the IPC used the phrase "within or without India". This covered acts committed in India and outside India. The word "beyond" has now been added. It does not appear to make any difference and is hence, superfluous.

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Clause 150: Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine.Explanation -- Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section.	Section 124A: Whoever by words, either spoken or written, signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.	Although the word "sedition" has been removed, the new clause has wider connotations regarding acts which can now be criminalised under this provision. The use of vague phrases such as "exciting secessionist activities and feelings" could potentially criminalise activities which do not have any overt act. Further, the use of the word "purposely" introduces an ambiguous standard of mental state. The jurisprudence on sedition had limited the extent of the provision to words which lead to immediate violence. This leads to further expansion of the scope of the provision. Moreover, the explanation appears to be incomplete. However, if read as it is, it can further broaden the ambit of the section.
Clause 157: Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force subject to the Acts referred to in section 165 of the Government of India or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which	Section 131: Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—In this section the	The addition made to this section reads "subject to Acts referred to in section 165 of the Government of India." This is evidently erroneous, and possibly refers to Clause 165 of the BNS, and not to the Government of India.

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may extend to ten years, and shall also be liable to fine.	words "officer", "soldier", "sailor"and "airman" include any person subject to the Army Act, the Army Act, 1950 (46 of 1950)], [the Naval Discipline Act, the Indian Navy (Discipline) Act,1934 (34 of 1934)] [the Air Force Act or [the Air Force Act, 1950 (45 of 1950)]], as the case may be].]	
Clause 195. (1) Whoever, by words either spoken or written or by signs or by visible representations or through electronic communication or otherwise,— ...(d) makes or publishes false or misleading information jeopardising the sovereignty unity and integrity or security of India,	No corresponding provision in the IPC	The provision is overbroad in content and implication. It is not only criminalising publishing false/misleading information, but also making the same, which means that even speaking of certain words could be criminalised.
Clause 224: Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both or with community service.	No corresponding provision in the IPC	Section 115 of the Mental Healthcare Act, 2017 stated that any person attempting to die by suicide will be presumed to be suffering from extreme stress. They will not be prosecuted and punished under section 309 of the IPC. With section 309 no longer included in the BNS, Clause 224 draws out an exception wherein a person who attempts to die by suicide with the intent to compel or restraining a public servant from discharging their official duty shall be punished. This could include hunger strikes and other protests where death is a possible consequence.
Clause 302. (1) Theft is "snatching" if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any moveable property. (2) Whoever commits snatching, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.	No corresponding provision in the IPC. The same text has been used in the Haryana State Amendment (2015) to section 379 and Punjab State Amendment (2014) to section 379.	It remains unclear as to what distinguishes this offence from theft simpliciter, especially since the punishment is the same. Particularly, the phrase "takes away" makes it very similar to the offence of theft as defined in the previous provision.

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Clause 303: Whoever commits theft— (a) in any building, tent or vessel used as a human dwelling or used for the custody of property; or (b) of any means of transport used for the transport of goods or passengers; or (c) of any article or goods from any means of transport used for the transport of goods or passengers; or (d) of idol or icon in any place of worship; or (e) of any property of the Government or of a local authority,	Section 380: Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.	This clause provides for enhanced punishment for offences of theft committed in vehicles, from vehicles, theft of idols or icons from places of worship, or any property of the government or a local authority.
Clause 311: Whoever belongs to any gang of persons associated in habitually committing theft or robbery, and not being a gang of dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.	Section 401: Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.	The removal of the word "wandering" from this provision is a positive change, as it no longer implicates persons belonging to nomadic castes and communities who would otherwise be targeted and criminalised thereunder.
Clause 315(1): Property, the possession whereof has been transferred by theft or extortion or robbery or cheating, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India, but, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.		The new section adds the offence of cheating to the definition of "stolen property". This is a positive change since property transferred through cheating was not considered stolen property in the original section.

BNS	IPC	IMPLICATIONS OF REVISION
Clause 322 (3) Whoever commits mischief and thereby causes loss or damage to any property including the property of Government or Local Authority shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.	No equivalent section.	The offence of mischief under the IPC had graded punishments depending on the value of the property damaged/destroyed, as well as the nature of the property damaged/destroyed. This new section specifically adds property belonging to the Government or Local Authority, and punishes the act with a maximum of one year.
Clause 322 (4) Whoever commits mischief and thereby causes loss or damage to the amount of twenty thousand rupees and more but less than one lakh rupees shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.	Sec. 427 IPC-Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.	Continuing with the gradation of punishment depending on the value of damage, the BNS increases the value from Rs. 50 in the IPC to a minimum of Rs. 20,000, and up to Rs. 100,000 and provides a maximum sentence of two years.
Clause 322 (5) Whoever commits mischief and thereby causes loss or damage to the amount of one lakh rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.	No equivalent section.	Continuing with the gradation of punishment depending on the value of damage, this newly introduced clause provides a maximum sentence of imprisonment of five years for damaging property worth over Rs. 1 lakh.
Clause 323: Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.	Sec. 428 IPC- Mischief by killing or maiming animal of the value of ten rupees.—Whoever commitsmischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of the tenrupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. 429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fiftyrupees.—Whoever commits mischief by killing, poisoning, maiming or rendering useless,	This section criminalises killing, poisoning, maiming or rendering useless *any* animal, thus possibly criminalising the killing of animals for any reason. The IPC's logic was to criminalise the killing of animals which were of value to someone, possibly covering domesticated animals killed by a third person without the consent of the owner of the animal. Clause 323, by removing the value of the animal, appears to criminalise the killing of any animal, domesticated or otherwise. In light other legislations such as the Prevention of Cruelty to Animals Act, 1960, the Wildlife Protection Act, 1972, etc., this section should have ideally been repealed.

BNS	IPC	IMPLICATIONS OF REVISION
	any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a termwhich may extend to five years, or with fine, or with both.	
Clause 324: Whoever commits mischief by...(d) destroying or moving any sign or signal used for navigation of rail, aircraft or ship or other thing placed as a guide for navigators, or by any act which renders any such sign or signal less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;	Sec. 433 IPC. Mischief by destroying, moving or rendering less useful a light-house or sea-mark.— Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.	The section expands the scope of navigation devices originally in the IPC, which were confined to devices used in maritime navigation to include devices used for navigation in railways and in airways. Destroying a railway signal will now be covered under this section.
Clause 325: (1) Whoever commits mischief to any rail, aircraft, or a decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that rail, aircraft or vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.	437. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.—Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.	Section 437 of the IPC only covered decked vessels (ships). The section now covers railway vessels, and aircrafts.
Clause 335: Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court or an identity document	466. Forgery of record of Court or of public register, etc.[Whoever forges a document or an electronic record], purporting to be arecord or proceeding of or in	This clause now includes forging cards issued by the Government including an Aadhar card or voter identity card.

BNS	IPC	IMPLICATIONS OF REVISION
issued by Government including voter identity card or Aadhaar Card, or a register of birth, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.	a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, ora certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to takeany proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a termwhich may extend to seven years, and shall also be liable to fine.	
Clause 339 (3): Whoever possesses any seal, plate or other instrument knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.	No equivalent provision in the IPC.	This clause criminalises possession of seals, plates and other instrument knowing them to be counterfeit. This fills a possible void in the IPC.
Clause 339 (4): Whoever fraudulently or dishonestly uses as genuine any seal, plate or other instrument knowing or having reason to believe the same to be counterfeit, shall be punished in the same manner as if he had made or counterfeited such seal, plate or other instrument.	No equivalent provision in the IPC.	Continuing from the previous clause, this clause criminalises the use as genuine of a seal, plate or other instrument knowing them to be counterfeit. This fills a possible void in the IPC.

BNS	IPC	IMPLICATIONS OF REVISION
Clause 351(1) : Whoever makes, publishes or circulates any statement, false information, rumour, or report, including through electronic means—(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or(b) with intent to cause, or which is likely to cause, fear or alarm to the public, orto any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.		The BNS now includes circulation of false information, which was not in the IPC.

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NEW OFFENCES ADDED IN THE BNS

S.No.	New offences added in the BNS
1	S. 48- Abetment outside India for offence in India.
2	S. 69- Sexual intercourse by employing deceitful means, etc.
3	S. 95- Hiring, employing or engaging a child to commit an offence.
4	S. 103(2)- Murder by group of five or more persons
5	S. 106(1) [later clause] – relating to registered medical practitioner
6	S. 106(2)- Causing death by rash and negligent driving of vehicle and escaping without reporting it to Police or Magistrate (hit and run)
7	S. 111- Organised crime
8	S. 112- Petty organised crime
9	S. 113- Terrorist act
10	S. 117(3)- Voluntarily causing grievous hurt resulting in permanent vegetative state
11	S. 117(4)- Voluntarily causing grievous hurt by five or more persons
12	S. 152. Acts endangering sovereignty unity and integrity of India.
13	S. 197(1)(d)- Publishing false or misleading information jeopardising the sovereignty, unity and integrity or security of India
14	S. 226- Attempt to commit suicide to compel or restraint exercise of lawful power
15	S. 304- Snatching
16	S. 305. (b) Theft of any means of transport used for the transport of goods or passengers
17	S. 305(c)- Theft of any article or goods from any means of transport used for the transport of goods or passengers
18	S. 305(d)- Theft of idol or icon in any place of worship
19	S. 305(e)- Theft of any property of the Government or of a local authority
20	S. 341(3)- Possession of counterfeit seal, plate or other instrument knowing the same to be counterfeit
21	S. 341(4)- Fraudulent or dishonest using as genuine any seal, plate or other instrument knowing or having reason to believe the same to be counterfeit

Sections deleted from the IPC

S.No	Sections deleted from the IPC
1	S. 14- "Servant of Government"
2	S. 18- "India"
3	S. 29A- "Electronic record"
4	S. 50- "Section"
5	S. 53A- Construction of reference to transportation
6	S. 124A- Sedition
7	S. 153AA-Punishment for knowingly carrying arms in any procession or organizing, or holding or taking part in any mass drill or mass training with arms
8	S. 236- Abetting in India the counterfeiting out of India of coin S. 264-Fraudulent use of false instrument for weighing
9	S. 264- Fraudulent use of false instrument for weighing
10	S. 265- Fraudulent use of false weight or measure
11	S . 266- Being in possession of false weight or measure
12	S. 267- Making or selling false weight or measure
13	S. 309- Attempt to commit suicide
14	S. 310- Thug
15	S. 311- Punishment
16	S. 377- Unnatural offences
17	S. 444- Lurking house-trespass by night
18	S. 446-House-breaking by night
19	S. 497- Adultery

Provisions where Community Service has been introduced as punishment in BNS *Green colour here denoting BNS / Red colour IPC*									
S.no.	**BNS Sec.**	**IPC Sec.**	**Offence**	**Punishment**	**Cognizable or non-cognizable**	**Bailable or Non-bailable**	**By what Court triable**	**Compoundable or non-compoundable**	**Remark**
1	202	168	Public servant unlawfully engaging in trade.	Simple imprisonment for one year, or fine, or both, or community service.	Non-cognizable	Bailable	Magistrate of the first class	Non-compoundable	Community service
2	209	174A	Non-appearance in response to a proclamation under section 84(1) of BNSS. (Failure to appear at specified place and specified time as required by a proclamation published under sub-section (1) of section 82 of this Code)	Imprisonment for three years or fine or both, or community service.	Cognizable	Non-bailable	Magistrate of first class	Non-compoundable	Community service
3	226	New	Attempt to commit suicide to compel or restrain exercise of lawful power.	Imprisonment for one year, or fine, or both, or community service.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	New Section Community service.
4	303(2) Proviso *	New	Where value of property is less than five thousand rupees and a person is convicted for the first time.	Upon return of the value of property or restoration of the stolen property, shall be punished	Non-cognizable	Bailable	Any Magistrate	Non-compoundable	New sub-Section Community service.

				with community service.					
5	355	510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Simple Imprisonment for twenty-four hours, or fine of one thousand (ten rupees) or both or with community service.	Non-Cognizable	Bailable	Any Magistrate	Non-Compoundable	Fine increased Community service
6	356(2)	500	Defamation	Simple Imprisonment for two years or fine or both, or community service	Non-Cognizable	Bailable	Court of session (President etc.) Magistrate of first class (any other cases)	Compoundable with permission	Community service

* - This is the only instance where Community Service is exclusively provided as a punishment.

Details of Sections where Punishment has been increased in BNS in comparison to IPC									
S.No.	**BNS Sec.**	**IPC Sec.**	**Offence**	**Punishment**	**Cognizable or non-cognizable**	**Bailable or Non-bailable**	**By what Court triable**	**Compoundable or non-compoundable**	**Remarks**
1	8(5)(C)	67	Amount of fine, liability in default of payment of fine, etc.	Imprisonment for one year (six months)					
2	57	117	Abetting the commission of an offence by the public or by more than ten persons.	Imprisonment which may extend to seven years and fine. (3 Years or fine, or both)	According as offence abetted is cognizable or non-cognizable	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.	Non-compoundable	Imprisonment enhanced
3	99	373	Buying Child (minor) for purposes of prostitution, etc.	Imprisonment for not less than seven years but which may extend to fourteen (ten) years and fine.	Cognizable	Non-bailable	Court of Session.	Non-compoundable	Phrase changed Imprisonment enhanced
4	106(1)	304A	Causing death by negligence (rash or negligent act)	Imprisonment for five years and fine (two years, or fine, or both)	Cognizable	Bailable	Magistrate of the first class	Non-compoundable	Imprisonment enhanced Mandatory fine
5	121 (1)	**332**	Voluntarily causing hurt to deter public servant from his duty.	Imprisonment for five years (three years) or fine, or both	Cognizable	Non-bailable	Magistrate of the first class	Non-compoundable	Imprisonment enhanced

6	122 (2)	**335**	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for five years (four years), or fine of ten thousand (two thousand) rupees, or both	Cognizable	Bailable	Magistrate of the first class	Compoundable	Both Imprisonment and Fine increased
7	125 (b)	**338**	Where grievous hurt is caused (Causing grievous hurt by an act which endangers human life, etc.)	Imprisonment for three years (two years) or fine of ten thousand (one thousand) rupees, or both	Cognizable	Bailable	Any Magistrate	Compoundable with permission	Phrase changed Punishment and fine both increased
8	127 (3)	**343**	Wrongfully confining for three or more days	Imprisonment for three years (two years), or fine of ten thousand rupees or both	Cognizable	Bailable	Any Magistrate	Compoundable	Imprisonment enhanced Fine defined
9	127 (4)	**344**	Wrongfully confining for ten or more days	Imprisonment for five years (three years) and fine of ten thousand rupees.	Cognizable	Non-bailable (Bailable)	Magistrate of the first class (Any Magistrate)	Compoundable	Classification changed, Imprisonment enhanced and fine defined
10	127 (6)	**346**	Wrongful confinement in secret.	Imprisonment for three years (two years, in addition to imprisonment under any other section) in addition to other punishment which he is liable to and fine.	Cognizable	Bailable	Magistrate of the First Class	Compoundable	Imprisonment enhanced Fine added

11	139 (1)	**363A**	Kidnapping a child for purposes of begging (or obtating the custody of a minor in order that such miner may be employed or used for the purposes of begging)	Rigorous imprisonment not be less than ten years but may extend to imprisonment for life (imprisonment for ten years) and fine.	Cognizable	Non-bailable	Magistrate of the First Class	Non-compoundable	Phrase changed Minimum punishment Introduced Imprisonment enhanced
12	144 (1)	**370A**	Exploitation of a trafficked child.	Rigorous imprisonment for not less than five years but which may extend to ten years (seven years) and fine.	Cognizable	Non-bailable	Court of Session	Non-compoundable	Imprisonment enhanced
13	144 (2)	**370A**	Exploitation of a trafficked person	Rigorous imprisonment for not less than three years but which may extend to seven years (five years) and (with) fine	Cognizable	Non-bailable	Court of Session	Non-compoundable	Imprisonment enhanced
14	166	138	Abetment of act of insubordination by an officer, soldier, sailor or airman if the offence be committed in consequence.	Imprisonment for two years (six months), or fine or both.	Cognizable	Bailable	Any Magistrate.	Non-compoundable	Imprisonment enhanced
15	191(3)	148	Rioting, armed with a deadly weapon.	Imprisonment for five years (three years), or fine, or both.	Cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Imprisonment enhanced

16	204	170	Personating a public servant.	Imprisonment for not less than six months but which may extend to three years (two years) and fine.	Cognizable	Non-bailable	Any Magistrate	Non-compoundable	Minimum Punishment Introduced Imprisonment enhanced
17	217	182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Imprisonment for one-year (six month), or with fine of ten thousand (one thousand) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Both imprisonment and fine increased
18	223(a)	188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to person lawfully employed.	Simple imprisonment for six months (one month), or fine of two thousand and five hundred (two hundred) rupees, or both;	Cognizable	Bailable	Any Magistrate	Non-compoundable	Both imprisonment and fine increased
19	223(b)	188	If such disobedience causes danger to human life, health or safety, (etc.) or causes or tends to cause a riot or affray.	Imprisonment for one-year (six months), or fine of five thousand (one thousand) rupees, or both.	Cognizable	Bailable	Any Magistrate	Non-compoundable	Both imprisonment and fine increased
20	241	204	Secreting or destroying any document to prevent its production as evidence.	Imprisonment for three years (two years) or fine of five thousand rupees, or both.	Non-cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Imprisonment enhanced Fine defined

21	243	206	Fraudulent removal or concealment, etc., of property to prevent its seizure as forfeiture or in satisfaction of a fine under sentence, or in execution of a decree.	Imprisonment for three years (two years) or fine of five thousand rupees, or both.	Non-cognizable	Bailable	Any Magistrate	Non-compoundable	Imprisonment enhanced Fine defined
22	248(a)	211	False charge of offence made with intent to injure	Imprisonment for five years (two years) or fine of two lakh rupees, or both.	Non-cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Imprisonment enhanced Fine defined
23	248(b)	211	Criminal proceeding instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for ten years or upwards. (If offence charged be punishable with imprisonment for 7 years or upwards.If offence charged be capital or punishable with imprisonment for life.)	Imprisonment for ten years (seven years) and fine.	Non-cognizable	Bailable	Court of Session.	Non-compoundable	Imprisonment enhanced

24	276	274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Imprisonment for one-year (six months), or fine of five thousand (one thousand) rupees, or both.	Non-Cognizable	Non-bailable	Any magistrate	Non-compoundable	Both imprisonment and fine increased
25	279	277	Fouling (Defiling the) water of public spring or reservoir.	Imprisonment for six months (three months), or fine of five thousand (five hundred) rupees, or both.	Cognizable	Bailable	Any magistrate	Non-compoundable	Both imprisonment and fine increased
26	303(2)	379	Theft.	Rigorous imprisonment for not be less than one year but which may extend to five years and fine. (three years, or fine or both)	Cognizable	Non-bailable	Any Magistrate	Non-compoundable	Minimum fine introduced Imprisonment enhanced
27	308(2)	384	Extortion	Imprisonment for seven years (three years), or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class	Non-compoundable	Imprisonment enhanced
28	316(2)	406	Criminal breach of trust	Imprisonment for five years (three years and fine), or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class	Compoundable with permission	Imprisonment enhanced
29	318 (2)	417	Cheating	Imprisonment for three years (one year), or fine, or both	Non-cognizable	Bailable	Any Magistrate	Compoundable	Imprisonment enhanced

30	318 (3)	418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Imprisonment for five years (three years), or fine, or both.	Non-cognizable	Bailable	Any Magistrate	Compoundable with permission	Imprisonment enhanced
31	319 (2)	419	Cheating by personation	Imprisonment for five years (three years), or with fine, or with both	Cognizable	Bailable	Any Magistrate	Compoundable	Imprisonment enhanced
32	322	423	Dishonest or fraudulent execution of deed of transfer containing a false statement or consideration.	Imprisonment for three years (two years), or fine, or both.	Non-cognizable	Bailable	Any Magistrate	Compoundable	Imprisonment enhanced
33	323	424	Fraudulent removal or concealment of property, of himself or any other person or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Imprisonment for three years (two years), or fine, or both.	Non-cognizable	Bailable	Any Magistrate	Compoundable	Imprisonment enhanced
34	324 (2)	426	Mischief.	Imprisonment for six months (three months), or fine, or both.	Non-cognizable	Bailable	Any Magistrate	Compoundable	Imprisonment enhanced

35	325	428, 429	Mischief by killing or maiming animal.	Imprisonment for five years or fine, or both. (section 428 IPC -Two years, section-429 IPC- Five years)	Cognizable	Bailable	Magistrate of the first class	Compoundable	The scope of sections 428-429 of IPC has been broadened by covering any animal irrespective of the value/species of animal.
36	139(2)	363A	Maiming a child for purposes of begging (a minor in order that such minor may be employed or used for purposes of begging)	Imprisonment shall not be less than twenty years which may extend to life which shall mean imprisonment for the remainder of that person's natural life (Imprisonment for life) and fine.	Cognizable	Non-bailable	Court of Session	Non-compoundable	Phrase changed Minimum imprisonment Introduced Imprisonment increased (remainder of that person's natural life)

Details of Sections in BNS where Fine has been either increased/ defined/ added									
S.no.	**BNS Sec.**	**IPC Sec.**	**Offence**	**Punishment**	**Cognizable or non-cognizable**	**Bailable or Non-bailable**	**By what Court triable**	**Compoundable or non-compoundable**	**Remark**
1	8(5)(a)	67(a)	Amount of fine, liability in default of payment of fine, etc.	Fine of five thousand (Fifty rupees)					
2	8(5)(b)	67(b)	Amount of fine, liability in default of payment of fine, etc.	Fine of ten thousand (hundred rupees)					
3	105	304	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Imprisonment for ten years, and with fine (or fine, or both.)	Cognizable	Non-bailable	Court of Session	Non-compoundable	Mandatory Fine
4	115 (2)	323	Voluntarily causing hurt	Imprisonment for one year or fine of ten thousand (one thousand) rupees or both	Non-Cognizable	Bailable	Any Magistrate	Compoundable	Fine increased
5	118 (1)	324	Voluntarily causing hurt by dangerous weapons or means	Imprisonment for three years or fine of twenty thousand rupees or both	Cognizable	Non-bailable (Bailable)	Any Magistrate	Non-compoundable	Classification changed Fine defined

6	122 (1)	334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation	Imprisonment for one month or fine of five thousand (five hundred) rupees or both.	Non-Cognizable	Bailable	Any Magistrate	Compoundable	Fine increased
7	122 (2)	335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for five years (four years), or fine of ten thousand (two thousand) rupees, or both	Cognizable	Bailable	Magistrate of the first class	Compoundable	Both Imprisonment and Fine increased
8	125	336	Doing any act endangering (endangers) human life or (the) personal safety of others.	Imprisonment for three months, or fine of two thousand five hundred (two hundred fifty) rupees, or both	Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
9	125 (a)	337	Where hurt is caused (Causing hurt by an act which endangers human life, etc.)	Imprisonment for six months, or fine of five thousand (five hundred) rupees or both.	Cognizable	Bailable	Any Magistrate	Compoundable with permission	Phrase changed Fine increased
10	125 (b)	338	Where grievous hurt is caused (Causing grievous hurt by an act which endangers human life, etc.)	Imprisonment for three years (two years) or fine of ten thousand (one thousand) rupees, or both	Cognizable	Bailable	Any Magistrate	Compoundable with permission	Phrase changed Punishment and fine both increased
11	126 (2)	341	Wrongfully restraining any person	Simple Imprisonment for one month, or fine of five thousand (five hundred) rupees, or both	Cognizable	Bailable	Any Magistrate	Compoundable	Fine increased

12	127 (2)	342	Wrongfully confining any person	Imprisonment for one year, or fine of five thousand (one thousand) rupees, or both	Cognizable	Bailable	Any Magistrate	Compoundable	Fine increased
13	127 (3)	343	Wrongfully confining for three or more days	Imprisonment for three years (two years), or fine of ten thousand rupees or both	Cognizable	Bailable	Any Magistrate	Compoundable	Imprisonment enhanced Fine defined
14	127 (4)	344	Wrongfully confining for ten or more days	Imprisonment for five years (three years) and fine of ten thousand rupees.	Cognizable	Non-bailable (Bailable)	Magistrate of the first class (Any Magistrate)	Compoundable	Classification changed, Imprisonment enhanced and fine defined
15	127 (5)	345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation	Imprisonment for two years in addition to any term of imprisonment to under any other section and fine.	Cognizable	Bailable	Magistrate of the first class	Non-compoundable	Fine added
16	127 (6)	346	Wrongful confinement in secret.	Imprisonment for three years (two years, in addition to imprisonment under any other section) in addition to other punishment which he is liable to and fine.	Cognizable	Bailable	Magistrate of the First Class	Compoundable	Imprisonment enhanced Fine added
17	131	352	Assault or (use of) criminal force otherwise than on grave provocation	Imprisonment for three months, or fine of one thousand (five hundred) rupees, or both	Non-Cognizable	Bailable	Any Magistrate	Compoundable	Fine increased
18	135	357	Assault or use of criminal force in attempt wrongfully to confine a person	Imprisonment for one year or fine of five thousand (one thousand) rupees or both	Cognizable	Bailable	Any Magistrate	Compoundable with permission	Fine increased

19	136	358	Assault or use of criminal force on grave and sudden provocation	Simple Imprisonment for one month, or fine of one thousand (two hundred) rupees, or both	Non-Cognizable	Bailable	Any Magistrate	Compoundable	Fine increased
20	165	137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Fine of three thousand (five hundred) rupees	Non-cognizable	Bailable	Any Magistrate.	Non-compoundable	Fine increased
21	168	140	Wearing grab or carrying token used by soldier, sailor or airman. (Wearing the dress or carrying any token used by a soldier, sailor or airman with intent that it may be believed that he is such a soldier, sailor or airman.)	Imprisonment for three months or fine of two thousand (five hundred) rupees, or both	Cognizable	Bailable	Any Magistrate.	Non-compoundable	Phrased changed Fine increased
22	176	171H	Illegal payments in connection with elections.	Fine of ten thousand (five hundred) rupees.	Non-cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Fine increased
23	177	171-I	Failure to keep election accounts.	Fine of five thousand (five hundred) rupees.	Non-cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Fine increased
24	182(1)	489E	Making or using documents resembling currency-notes or bank notes.	Fine of three hundred (one hundred) rupees.	Non-cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
25	182 (2)	490	On refusal to disclose the name and address of the printer	Fine of six hundred (two hundred) rupees.	Non-cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased

26	194(2)	160	Committing affray.	Imprisonment for one month, or fine of one thousand (one hundred) rupees, or both.	Cognizable.	Bailable	Any Magistrate	Non-compoundable	Fine increased
27	195(1)	152	Assaulting or obstructing public servant when suppressing riot, etc.	Imprisonment for three years, or fine not less than twenty-five thousand rupees, or both.	Cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Minimum fine introduced
28	205	171	Wearing garb or carrying token used by public servant with fraudulent intent.	Imprisonment for three months, or fine of five thousand, (two hundred) rupees, or both.	Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
29	206(a)	172	Absconding to avoid service of summons or other proceedings from a public servant.	Simple imprisonment for one month, or fine of five thousand (five hundred) rupees or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
30	206(b)	172	If summons or notice require attendance in person, etc., in a Court (Court of Justice).	Simple imprisonment for six months, or fine of ten thousand (one thousand) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
31	207(a)	173	Preventing service of summons or other proceedings or preventing publication thereof. (Preventing the service or the affixing of any summons of notice, or the removal of it when it has been affixed, or preventing a proclamation)	Simple imprisonment for one month, or fine of five thousand (five hundred) rupees, or both	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased

32	207(b)	173	If summons, etc., require attendance in person, etc., in a Court (Court of Justice)	simple imprisonment for six months, or fine of ten thousand (one thousand) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Phrase changed Fine Increased
33	208(a)	174	Non-attendance in obedience to an order from public servant. (Not obeying a legal order to attend at a certain place in person or by agent, or departing there from without authority)	simple imprisonment for one month, or fine of five thousand (five hundred) rupees, or both	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
34	208(b)	174	If the order requires personal attendance, etc., in a Court (Court of Justice).	simple imprisonment for six months, or fine of ten thousand (one thousand) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Phrase changed Fine Increased
35	210(a)	175	Omission (Intentionally omitting) to produce document to public servant by person legally bound to produce or deliver it (such document).	simple imprisonment for one month, or fine of five thousand (five hundred) rupees, or both	Non-Cognizable Non-Compoundable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVIII (XXVI); or, if not committed, in a court, any Magistrate	Non-compoundable	Fine increased

36	210(b)	175	If the document is required to be produced in or delivered to a Court (Court of justice)	Simple imprisonment for six months, or fine of ten thousand (one thousand) rupees, or both.	Non-Cognizable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVIII (XXVI); or, if not committed, in a court, any Magistrate	Non-compoundable	Phrase changed Fine Increased
37	211(a)	176	Intentional omission (Intentionally omitting) to give notice or information to public servant by person legally bound to give it (such notice or information)	Simple imprisonment for one month, or fine of five thousand (five hundred) rupees, or both;	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
38	211(b)	176	If the notice or information required respects the commission of an offence, etc.	Simple imprisonment for six months, or fine of ten thousand (one thousand) rupees or both;	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
39	212(a)	177	Knowingly furnishing false Information to (a) public servant.	Simple imprisonment for six months, or fine of five thousand (five hundred) rupees, or both	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased

40	213	178	Refusing oath when duly required to take oath by a public servant.	Simple imprisonment for six months, or fine of five thousand (one thousand) rupees, or both.	Non-Cognizable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVIII (XXVI); or, if not committed, in a court, any Magistrate	Non-compoundable	Fine increased
41	214	179	Being legally bound to state truth, and refusing to answer public servant authorised to question.	Simple imprisonment for six months, or fine of five thousand (one thousand) rupees, or both.	Non-Cognizable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVIII (XXVI); or, if not committed, in a court, any Magistrate	Non-compoundable	Fine increased

42	215	180	Refusing to sign statement made to a public servant when legally required to do so.	Simple imprisonment for three months, or fine of three thousand (five hundred) rupees, or both.	Non-Cognizable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVIII (XXVI); or, if not committed, in a court, any Magistrate	Non-compoundable	Fine increased
43	217	182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Imprisonment for one-year (six month), or with fine of ten thousand (one thousand) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Both imprisonment and fine increased
44	218	183	Resistance to the taking of property by the lawful authority of a public servant.	Imprisonment for six months, or fine of ten thousand (one thousand) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
45	219	184	Obstructing sale of property offered for sale by authority of a public servant.	Imprisonment for one month, or fine of five thousand (five hundred) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
46	221	186	Obstructing public servant in discharge of his public functions.	Imprisonment for three months, or fine two thousand and five hundred (five hundred) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased

47	222(a)	187	Omission to assist public servant when bound by law to give such assistance.	Simple imprisonment for one month, or fine of two thousand and five hundred (two hundred) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
48	222(b)	187	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences etc.	Simple imprisonment for six months or fine of five thousand (five hundred) rupees, or both.	Non – Cognizable	Bailable	Any Magistrate	Non-compoundable	Fine increased
49	223(a)	188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to person lawfully employed.	Simple imprisonment for six months (one month), or fine of two thousand and five hundred (two hundred) rupees, or both;	Cognizable	Bailable	Any Magistrate	Non-compoundable	Both imprisonment and fine increased
50	223(b)	188	If such disobedience causes danger to human life, health or safety, (etc.) or causes or tends to cause a riot or affray.	Imprisonment for one-year (six months), or fine of five thousand (one thousand) rupees, or both.	Cognizable	Bailable	Any Magistrate	Non-compoundable	Both imprisonment and fine increased
51	229 (1)	193	Intentionally giving or fabricating false evidence in a judicial proceeding.	Imprisonment for seven years and ten thousand rupees (fine).	Non-cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Fine defined
52	229 (2)	193	Giving or fabricating false evidence in any other case	Imprisonment for three years and (fine) five thousand rupees.	Non-cognizable	Bailable	Any Magistrate	Non-compoundable	Fine defined

53	230(1)	194	Giving or fabricating false evidence with intent to cause any person to be convicted of capital offence	Imprisonment for life, or rigorous imprisonment for ten years and fifty thousand rupees (fine).	Non-cognizable	Non-bailable	Court of Session	Non-compoundable	Fine defined
54	239	202	Intentional omission to give information of offence by person legally bound to inform.	Imprisonment for six months, or fine of five thousand rupees, or both.	Non-cognizable	Bailable	Any Magistrate.	Non-compoundable	Fine defined
55	241	204	Secreting or destroying any document to prevent its production as evidence.	Imprisonment for three years (two years) or fine of five thousand rupees, or both.	Non-cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Imprisonment enhanced Fine defined
56	243	206	Fraudulent removal or concealment, etc., of property to prevent its seizure as forfeiture or in satisfaction of a fine under sentence, or in execution of a decree.	Imprisonment for three years (two years) or fine of five thousand rupees, or both.	Non-cognizable	Bailable	Any Magistrate	Non-compoundable	Imprisonment enhanced Fine defined
57	248(a)	211	False charge of offence made with intent to injure	Imprisonment for five years (two years) or fine of two lakh rupees, or both.	Non-cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Imprisonment enhanced Fine defined

58	267	228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Simple imprisonment for six months, or fine of five thousand (one thousand) rupees, or both.	Non-cognizable	Bailable	The Court in which the offence is committed, subject to the provisions of Chapter XXVIII (XXVI); or, if not committed, in a Court, any Magistrate.	Non-compoundable	Fine increased
59	274	272	Adulterating food or drink intended for sale, so as to make the same noxious.	Imprisonment for six months or fine of five thousand (one thousand) rupees, or both	Non-Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
60	275	273	Selling any food or drink as food and drink, knowing the same to be noxious.	Imprisonment for six months, or fine of five thousand rupees (one thousand rupees), or both	Non-Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
61	276	274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Imprisonment for one-year (six months), or fine of five thousand (one thousand) rupees, or both.	Non-Cognizable	Non-bailable	Any magistrate	Non-compoundable	Both imprisonment and fine increased

62	277	275	Sale of adulterated drugs (Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated)	Imprisonment for six months, or fine of five thousand (one thousand) rupees, or both.	Non-Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
63	278	276	Knowingly selling of drug as a different drug or preparation. (Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation)	Imprisonment for six months, or fine of five thousand (one thousand) rupees, or both.	Non-Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
64	279	277	Fouling (Defiling the) water of public spring or reservoir.	Imprisonment for six months (three months), or fine of five thousand (five hundred) rupees, or both.	Cognizable	Bailable	Any magistrate	Non-compoundable	Both imprisonment and fine increased
65	280	278	Making atmosphere noxious to health	Fine of one thousand (five hundred) rupees.	Non-Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
66	282	280	Rash navigation of vessel. (Navigating any vessel so rashly or negligently as to endanger human life, etc.)	Imprisonment for six months, or fine of ten thousand (one thousand) rupees, or both	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
67	283	281	Exhibition of false light, mark or buoy.	Imprisonment for seven years, and fine which shall not be less than ten thousand rupees (or fine or both)	Cognizable	Bailable	Magistrate of the first class.	Non-compoundable	Minimum fine introduced

68	284	282	Conveying person by water for hire in unsafe or overloaded vessel. (Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life).	Imprisonment for six months, or fine of five thousand (one thousand) rupees, or both.	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
69	285	283	Causing danger or obstruction (or injury) in (any) public way or line of navigation.	Fine of five thousand (two hundred) rupees.	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
70	286	284	Negligent conduct with respect to poisonous substance. (Dealing with any poisonous substance so as to endanger human life, etc.)	Imprisonment for six months, or fine of five thousand (one thousand) rupees, or both.	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
71	287	285	Negligent conduct with respect to fire or combustible matter. (Dealing with fire or any combustible matter so as to endanger human life, etc.)	Imprisonment for six months, or fine of two thousand (one thousand) rupees, or both.	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
72	288	286	Negligent conduct with respect to explosive substance. (So dealing with any explosive substance)	Imprisonment for six months, or fine five thousand (one thousand) rupees, or both.	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased

73	289	287	Negligent conduct with respect to machinery. (so dealing with any machinery)	Imprisonment for six months, or fine of five thousand (one thousand) rupees, or both.	Non-Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
74	290	288	Negligent conduct with respect to pulling down, repairing or constructing buildings, etc. (A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it)	Imprisonment for six months, or fine of five thousand (one thousand) rupees, or both.	Non-Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
75	291	289	Negligent conduct with respect to animal (A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal)	Imprisonment for six months, or fine of five thousand (one thousand) rupees or with both.	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
76	292	290	Committing public nuisance in cases not otherwise provided for.	Fine of one thousand (two hundred) rupees.	Non-Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased

77	293	291	Continuance of nuisance after injunction to discontinue.	Simple imprisonment for six months, or fine of five thousand rupees, or with both.	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine defined
78	294	292	Sale, etc., of obscene books, etc.	On first conviction, with imprisonment for two years, and with fine of five thousand (two thousand) rupees, and, in the event of a second or subsequent conviction, with imprisonment for five years, and fine of ten thousand (five thousand) rupees.	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
79	296	294	Obscene acts and songs.	Imprisonment for three months, or fine of one thousand rupees, or both.	Cognizable	Bailable	Any magistrate	Non-compoundable	Fine defined
80	297(2)	295(2)	Publishing proposals relating to lotteries.	Fine of five thousand (one thousand) rupees.	Non-Cognizable	Bailable	Any magistrate	Non-compoundable	Fine increased
81	329 (3)	447	Criminal trespass.	Imprisonment for three months, or fine of five thousand (five hundred) rupees, or both.	Cognizable	Bailable	Any Magistrate	compoundable	Fine increased
82	329 (4)	448	House-trespass.	Imprisonment for one year, or fine of five thousand (one thousand) rupees, or both.	Cognizable	Bailable	Any Magistrate	compoundable	Fine increased

83	355	510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Simple Imprisonment for twenty-four hours, or fine of one thousand (ten rupees) or both or with community service.	Non-Cognizable	Bailable	Any Magistrate	Non-Compoundable	Fine increased Community service
84	357	491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Imprisonment for three months, or fine of five thousand (two hundred) rupees, or both	Non-Cognizable	Bailable	Any magistrate	Compoundable	Fine increased

Mandatory minimum punishment (in terms of imprisonment) in BNS *Green colour here denoting BNS / Red colour IPC*								
S.no.	**BNS Sec.**	**IPC Sec.**	**Offence**	**Punishment**	**Cognizable or non-cognizable**	**Bailable or Non-bailable**	**By what Court triable**	**Compoundable or non-compoundable**
1	99	373	Buying Child (minor) for purposes of prostitution, etc.	Imprisonment for not less than seven years but which may extend to fourteen (ten) years and fine.	Cognizable	Non-bailable	Court of Session.	Non-compoundable
2	105	304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc.	Imprisonment for life, or imprisonment for not less than five years but which may extend to ten years and fine.	Cognizable	Non-bailable	Court of Session	Non-compoundable
3	111 (2)(b)	New	In any other case	Imprisonment for not less than five years but which may extend to imprisonment for life and fine of not less than five lakh rupees.	Cognizable	Non-bailable	Court of Session	Non-compoundable
4	111 (3)	New	Abetting, attempting, conspiring or knowingly facilitating the commission of organised crime	Imprisonment for not less than five years but which may extend to imprisonment for	Cognizable	Non-bailable	Court of Session	Non-compoundable

				life and fine of not less than five lakh rupees				
5	111 (4)	New	Being a member of an organised crime syndicate	Imprisonment for not less than five years but which may extend to imprisonment for life and fine of not less than five lakh rupees	Cognizable	Non-bail able	Court of Session	Non-compoundable
6	111 (5)	New	Intentionally harbouring or concealing any person who committed offence of organised crime	Imprisonment for not less than three years but which may extend to imprisonment for life and fine of not less than five lakh rupees	Cognizable	Non-bail able	Court of Session	Non-compoundable
7	111 (6)	New	Possessing property derived, or obtained from the commission of organised crime	Imprisonment for not less than three years but which may extend to imprisonment for life and fine of not less than two lakh rupees	Cognizable	Non-bail able	Court of Session	Non-compoundable
8	111 (7)	New	Possessing property on behalf of a member of an organised crime syndicate	Imprisonment for not less than three years but which may extend to imprisonment for ten years and fine of not less	Cognizable	Non-bail able	Court of Session	Non-compoundable

				than one lakh rupees				
9	112	New	Petty Organised Crime	Imprisonment for not less than one year but which may extend to imprisonment for seven years and fine	Cognizable	Non-bail able	Magistrate of First Class	Non-compoundable
10	113 (2)(b)	New	In any other case	Imprisonment for not less than five years but which may extend to imprisonment for life and fine	Cognizable	Non-bail able	Court of Session	Non-compoundable
11	113 (3)	New	Conspiring, attempting, abetting, etc., or knowingly facilitating the commission of terrorist act	Imprisonment for not less than five years but which may extend to imprisonment for life and fine	Cognizable	Non-bail able	Court of Session	Non-compoundable
12	113 (4)	New	Organising camps, training, etc., for commission of terrorist act	Imprisonment for not less than five years but which may extend to imprisonment for life and fine	Cognizable	Non-bail able	Court of Session	Non-compoundable
13	113 (6)	New	Harbouring, concealing, etc., of any person who committed a terrorist act	Imprisonment for not less than three years but which may extend to imprisonment for life and fine	Cognizable	Non-bail able	Court of Session	Non-compoundable
14	117 (3)	New	If hurt results in permanent disability or persistent vegetative state	Rigorous imprisonment for not less than ten years but which	Cognizable	Non-bail able	Court of Session	Non-compoundable

				may extend to imprisonment for life which shall mean the remainder of that person's natural life				
15	118 (2)	**326**	Voluntarily causing grievous hurt by dangerous weapons or means [except as provided in section 122(2)]	Imprisonment for life or imprisonment of not less than one year but which may extend to ten years (ten years) and fine.	Cognizable	Non-bail able	Magistrate of the first class	Non-compoundable
16	121 (2)	**333**	Voluntarily causing grievous hurt to deter public servant from his duty	Imprisonment not less than one year, or imprisonment for ten years and fine	Cognizable	Non-bail able	Court of Session	Non-compoundable
17	139 (1)	**363A**	Kidnapping a child for purposes of begging (or obtating the custody of a minor in order that such miner may be employed or used for the purposes of begging)	Rigorous imprisonment not be less than ten years but may extend to imprisonment for life (imprisonment for ten years) and fine.	Cognizable	Non-bail able	Magistrate of the First Class	Non-compoundable
18	139 (2)	**363A**	Maiming a child for purposes of begging (a minor in order that such minor may be employed or used for purposes of begging)	Imprisonment not be less than twenty years which may extend to remainder of that person's natural	Cognizable	Non-bail able	Court of Session	Non-compoundable

				life (Imprisonment for life) and fine.				
19	204	170	Personating a public servant.	Imprisonment for not less than six months but which may extend to three years (two years) and fine.	Cognizable	Non-bail able	Any Magistrate	Non-compoundable
20	303(2)	379	Theft.	Rigorous imprisonment for not be less than one year but which may extend to five years and fine. (Three years, or fine or both)	Cognizable	Non-bail able	Any Magistrate	Non-compoundable
21	310(3)	396	Murder in dacoity	Death, imprisonment for life, or rigorous imprisonment for not less than ten years (ten years) and fine	Cognizable	Non-bail able	Court of Session	Non-compoundable
22	314	403	Dishonest misappropriation of movable property, or converting it to one's own use.	Imprisonment of not less than six months but which may extend to two years and fine (two years or fine or both)	Non-cogniz able	Bailable	Any Magistrate	Compoundable
23	320	421	Fraudulent removal or concealment or property, etc., to	Imprisonment of not be less than six months but which may	Non-cogniz able	Bailable	Any Magistrate	Compoundable

			prevent distribution among creditors.	extend to two years (two years) or fine, or both.				

PART -III
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (BNSS)

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 23 फरवरी, 2024

का.आ. 848(अ).—केन्द्रीय सरकार, भारतीय नागरिक सुरक्षा संहिता, 2023 (2023 का 46) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 1 जुलाई, 2024 को उस तारीख के रूप में नियत करती है, जिसको उक्त संहिता के उपबंध, पहली अनुसूची में भारतीय न्याय संहिता, 2023 की धारा 106 की उपधारा (2) से सम्बंधित प्रविष्टि के उपबंधों के सिवाय, प्रवृत होंगे।

[फा. सं. 1/3/2023 न्यायिक प्रकोष्ठ-I]
श्री प्रकाश, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 23rd February, 2024

S.O. 848(E).—In exercise of the powers conferred by sub-section (3) of section 1 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023), the Central Government hereby appoints the 1st day of July, 2024 as the date on which the provisions of the said Sanhita, except the provisions of the entry relating to section 106(2) of the Bharatiya Nyaya Sanhita, 2023, in the First Schedule, shall come into force.

[F. No. 1/3/2023-Judicial Cell-I]

SHRI PRAKASH, Jt. Secy.

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MANOJ KUMAR VERMA

Repeal and Savings

531. (1) The Code of Criminal Procedure, 1973 is **hereby repealed.**

(2) **Notwithstanding such repeal—**

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.

Key Highlights on Bharatiya Nagarik Suraksha Sanhita, 2023

1. The name of the Act is the "Bharatiya Nagarik Suraksha Sanhita (BNSS). 2023" and it has replaced the Code of Criminal Procedure, 1973.

2. Section 2 of BNSS has been expanded to introduce new definitions for key terms such as 'audio-video electronic means' [Section 2(1)(a)], 'bail' [Section 2(1)(b)], 'bail bond' [Section 2(1)(c)], 'bond' [Section 2(1)(e)], and 'electronic communication' [Section 2(1)(i)]. These changes reflect the evolving landscape of technology in investigation, trial, and court proceedings, covering aspects such as the service of summons, notices, audio-video conferencing for deposition of evidence, and recording of search and seizure. Additionally, previously undefined, terms relating to 'bail' have now been defined. Further, the definition of 'victim' [Section 2(1)(y)) has been broadened by eliminating the requirement of the accused person being formally charged. This modification expedites the process of victims receiving compensation entitled to them in certain cases.

3. An Explanation has been added to the definition of "investigation" [2(1) (1)] to clarify that in case any provisions of a special act is inconsistent with the provisions of the BNSS, 2023, the provision of special act shall prevail.

4. The post of Judicial Magistrate of the third class, Metropolitan Magistrate and Assistant Session Judges has been abolished to bring uniformity in classes of Courts and Judges across the country. There will be 4 kinds of Judges now, i.e., Judicial Magistrate of the second class, Judicial Magistrate of the first class (includes Chief Judicial Magistrate or Additional Chief Judicial Magistrate), Sessions Judge (includes Additional Session Judge) and Executive Magistrates. Consequential changes have been made to sections 8, 11,12, 14, 17, 22, 29, 113, 196, 214, 320, 321, 415, 422 and 436 of the BNSS, 2023.

5. Under section 15 of BNSS, the State Government is now authorized to appoint as a Special Executive Magistrate, any police officer not below the rank of Superintendent of Police or equivalent in addition to an Executive Magistrate.

6. A proviso has been added in section 18(1) of the BNSS, 2023 to allow Central Government to appoint the Public Prosecutor or Additional Public Prosecutor for the purpose of prosecution before the Delhi High Court.

7. In case of appointment of any other person in the absence of Assistant Public Prosecutor, the District Magistrate is required to give 14 days' notice to the State Government before making such an appointment [section 19(3)].

8. Section 20 of BNSS establishes a comprehensive Directorate of Prosecution and defines the eligibility, functions and powers of various authorities under it. For the first time, under Section 20(1)(b) the provision for District Directorate of Prosecution has been made. It is prescribed that the Directorate of

Prosecution shall be headed by the Director of Prosecution under the administrative control of the Home Department in the State. The Director of Prosecutions [section 20(7)] will be responsible for giving opinions on filing appeals and monitoring cases punishable with 10 years or more/life imprisonment/death. The Deputy Director of Prosecution [section 20(8)) has been made responsible to examine police report and monitor the cases punishable for 7 years or more, but less than 10 years and for ensuring their expeditious disposal. The Assistant Director of Prosecution [section 20(9)] has been empowered to monitor cases punishable for less than 7 years, This provision delineates the powers and functions of the Prosecution and instils accountability in the overall process of justice dispensation.

9. In section 23, the power of limit of imposing fine by a Magistrate of the first class has been increased from Rs. 10,000 to maximum of Rs. 50,000 and for the Magistrate of second class from Rs. 5,000 to Rs.10,000. These two classes of Magistrates have also been empowered to impose community service as a form of sentence. Community service has been explained as "Court ordered work that benefits the community and which is not entitled to any remuneration" [Explanation to Section 23]. This provision seeks to not only decrease the prison population but also adopts a more rehabilitative and reformative approach to punishment.

10. In the matter of sentences in several offences, an addition has been made in section 25 of the BNSS, 2023 that the Court considering the gravity of the offences shall order punishments to run concurrently or consecutively.

11. In section 35(7), the aged and infirm persons have been protected from arrest. It has been provided that no arrest shall be made in case of an offence punishable for less than three years if the person is infirm or above the age of 60 years, without prior permission of the officer not below the rank of Deputy Superintendent of Police. The rights of the aged and infirm have further been protected as witnesses in section 179(1) of BNSS where no person above the age of 60 years or a person with acute illness will be required to attend at any place other than where they reside.

12. Section 37(b) introduces that there shall be one designated police officer in every district and at every police station, not below the rank of ASI who shall be responsible for maintaining and giving information to the general public about details of persons arrested, etc. For clear visibility, the names, addresses, and charges against arrested persons can now be prominently displayed through digital means.

13. In case of arrest by a private person, section 40 of the BNSS, 2023 has been modified to mandate the production of such arrested person within six hours before a police officer or to be taken to the nearest police station.

14. In section 43(3), a specific provision has been made to provide for the use of handcuff while effecting the arrest and production before court of an arrested person who has either escaped from custody earlier or is a habitual or repeat offender in heinous offences like organized crime, terrorist act, drug related crime, illegal possession of arms and ammunition, murder, rape, sexual offences againstchildren, acid attack, counterfeiting of coins and currency notes, human trafficking. offences against the State.

15. Section 50 provides for the 'immediate' seizure of offensive weapon after the arrest is made.

16. In section 51(3), it has been provided that the medical practitioner shall without any delay forward the examination report of the arrested person to the L.O.

17. The additional medical examination of the arrested person in police custody is specifically included in section 53 of the BNSS, 2023.

18. Section 63 introduces technology compatibility for issuance and service of summons. The Court can now issue summons in electronic form authenticated by the image of the seal of the Court or digital signature. Further, Section 70 allows for service of summons through electronic means. For the purpose of making the process effective, transparent and accountable, a provision has been made in Section 64 for maintaining the register in the police station and in the

Court to keep the address, email address, phone number etc. of the person to be summoned.

19. In section 66, gender neutrality has been introduced and women have been included as an adult member of the family for the purpose of service of summons on behalf of the person summoned. The earlier reference to 'some adult male member" has been replaced with 'some adult member'.

20. In case of arrest under a warrant, section 82 in BNSS casts a duty on the police officer making the arrest to forthwith give information regarding such arrest and the place where the arrested person is being held to the designated police officer and to such police officer of another district where the arrested person normally resides.

21. Earlier a person could have been declared a "proclaimed offender" only under few sections. Even heinous offences like rape, trafficking, etc. were not covered under this category. Significant changes have been brought in section 84(4) where it has been provided that proclaimed offender can be declared in all the offences which are punishable with imprisonment of 10 years or more, or with life imprisonment, or with death.

22. In newly introduced section 86 of the BNSS a police officer not below the rank of Superintendent of Police may make a written request to the Court to initiate the process of assistance from a court/authority in the contracting State outside

India for identification, attachment and forfeiture of the property belonging to a proclaimed person.

23. In Section 94, the BNSS introduced production of electronic communication, including communication devices which is likely to contain digital evidence.

24. To ensure the use of technology and to bring accountability in investigation during search and seizure, a new provision in section 105 has been added making the videography of the process of search and seizure including the preparationof a list of seized items and the signing of it by the witness mandatory, Such videography may be done on mobile phone.

25. In section 107, a new provision has been added to enable the police, with the permission of the Court, to attach and forfeit any property obtained as proceeds of crime. For the first time such a provision on attachment, forfeiture and restoration of proceeds of crime has been introduced in the BNSS, 2023. This provision will increase the liability on fugitive criminals and act as compelling factor for their participation in the proceedings instituted against them.

26. In the Chapter on Order for Maintenance of Wives, Children and Parents (Chapter X), an important addition has been made in the BNSS, 2023 in section 145 whereunder in case of the dependent father or mother, the proceedings for order of maintenance may be initiated at the place where he/she resides. This removed the difficulty which existed in the CrPC wherein

in case of parents, the place for initiation of proceeding was the place of residence of their son.

27. The Deputy Commissioner of Police has been added in section 162 relating to the District Magistrate/Sub-Divisional Magistrate/Executive Magistrate who can deal with procedure in case of public nuisance.

28. In the newly inserted section 172, the power of police to detain or remove any person resisting, refusing, disregarding etc to conform to any direction of a police officer is introduced which warrants production of such person before the Magistrate and in petty cases release of such person within 24 hours after the occasion is past.

29. In section 173, the provision of filing of Zero FIR has been introduced Now, when information is received by the police that discloses the commission of an offence outside the limits of a police station, it shall be entered in the book to be kept by such officer. Further, the provision for lodging information through electronic communication (e-FIR) has been added with the enabling provision that the signature of the person giving such information be taken within 3 days before the e-FIR is taken on record.

30. The BNSS introduced the right of the victim to get, free of cost, the copy of FIR in section 173(2).

31. The BNSS in section 173(3) introduced the concept of 'preliminary enquiry' in cases punishable with 3 years or more but less than 7 years. The timeline to complete such preliminary enquiry is fixed as 14 days. Such preliminary enquiry may be conducted only with the prior permission of the officer not below the rank of Deputy Superintendent of Police. 32. In section 173(4), specific mention of 'making an application to the Magistrate' is introduced in the event the FIR is not registered even after the intervention of the Superintendent of Police.

32. In order to increase the credibility of investigation and the accountability of police, it has been provided in section 174 that in cases of non-cognizable offences, the police officer apart from referring the complainant to Magistrate, shall also forward the daily diary report of such cases to the Magistrate fortnightly.

33. In serious cases considering the nature and gravity of the offence, the BNSS in section 175(1) allows the SP to depute DSP rank officer to conduct the investigation.

34. Now under Section 175(3), in case of a cognizable offence, the Magistrate before directing an investigation by the police requires to examine the application of the complainant along with affidavit and submission made by the police officer. The Magistrate may make inquiries in this regard.

35. Section 175(4) of BNSS provides protection against false and frivolous cases against public servants discharging their official duties. The Magistrate shall now take cognizance of a complaint against a public servant arising in course of discharge of his official duties, after considering his assertions made by him and receiving a report containing facts and circumstances of the incident from his superior officer.

36. In order to provide more protection to the victim, and enforcing transparency in investigation, section 176(1) provides that in relation to an offence of rape, the statement of the victim shall be recorded through audio video means.

37. For bringing credibility to investigation, forensic experts have been mandated to visit the crime scene to collect forensic evidence for offences punishable for 7 years or more in section 176(3). The States shall, as early as possible but not later than 5 years, make forensic evidence collection in such cases compulsory. Also, where a forensic facility is not available for the time being, it has been provided that the State Government may notify the use of such facility in another State. This provision will strengthen evidence collection, and bring accountability to investigation, the lack of which today results in low conviction rate.

38. In section 179 of BNSS the exemption from attending the police station is given to women, person above 60 years and a person with acute illness.

Further, a proviso is added to allow the persons mentioned in the exemption category to attend at the police station, if he/she is willing so to do.

39. In section 183, now the Judicial Magistrate in whose district the offence has been registered (whether having jurisdiction in the case or not) is made competent to record the confession or statement in the course of investigation.

40. For serious and heinous offences, it has been introduced in section 183 that in cases relating to the offences punishable with imprisonment for ten years or more or imprisonment for life or with death, the Judicial Magistrate shall mandatorily record the statement of the witness brought before him by the police officer. This provision adds credibility to the criminal process.

41. Affording further protection to the victims of rape, it has been mandated in section 183(6)(a) that their statement shall be recorded only by a lady Judicial Magistrate and in her absence, by a male Judicial Magistrate in the presence of a woman.

42. To facilitate speedy and accountable criminal proceedings, section 184(6) provides that the registered medical practitioner shall forward the report of examination of a victim of rape to the investigating officer within 7 days, who shall further forward it to the Magistrate. This provision establishes a specific timeframe for the supply of medical reports and streamlines the overall process of supply of documents.

43. Section 185 introduces several checks on the powers of the police while conducting search. Firstly, the police officer is required to record the grounds of his belief for conducting search at a place in the 'case-diary' under section 185(1). Further, any search conducted by a police officer shall be recorded through audio- video electronic means as per section 185(2). Further, Section 185(5) makes the police officer accountable to send, within 48 hours, the copies of any record made in this regard to the nearest Magistrate empowered to take cognizance of the offence.

44. To address the issue of accused persons avoiding police custody in the initial 15 days, section 187 gives the opportunity to examine the accused in custody for a maximum of 15 days spread over the first 40/60 days of the period of total detention of 60/90 days. The section provides that the police officer shall have such custody of an accused only if he is not on bail or if his bail has been cancelled. This provision strengthens investigation without curtailing the rights of the accused persons more than before. To further protect the right of the accused to bail, section 480 specifically provides that the accused being required for police custody beyond the first 15 days, will not be the sole ground for refusing grant of bail to the accused.

45. Further, Section 187 provides that the detention shall only be in a police station under police custody or in prison under judicial custody or any other place declared as a prison by the Central Government or the State Government.

46. Previously, an accused who was not in custody was mandatorily arrested and produced in court for the Magistrate to take the cognizance of the charge sheet (police report). This provision has been changed in order to remove the condition of the accused being in custody. It has now been provided in section 190 that if the accused is not in custody, the police officer shall take security for his appearance before the Magistrate and the Magistrate shall not refuse to accept the charge sheet on the ground that the accused is not taken in custody.

47. Section 193(3)(i) has made forwarding of the police report by the officer in charge of the police station to the Magistrate including through electronic means. Under section 210, technology compatibility has been further provided to the Magistrate enabling him to take cognizance of any offence upon receiving police report electronically. Electronic evidence has been dealt with separately in this provision, where a police report must also include details of the sequence of custody in case of electronic device [section 193(3)(1)(h)].

48. Further, in a step to make the law more victim centric, section 193(3) (ii) mandates that the police officer must inform the progress of investigation to the informant or victim within 90 days of the investigation. Technology has been included as a valid mode of communication for conveying this to the victim/ informant.

49. Earlier, supplying the police report and other documents to the accused was often delayed due to vexatious tactics being used by the accused to cause

unnecessary disruptions in the proceedings. In order to streamline the process of supply of copies to the accused, section 193(8) has been introduced which makes the police officer responsible to submit such number of copies of the police report along with other documents duly indexed as required to be furnished to the accused persons, to the Magistrate at the time of filing of charge sheet for supplying to the accused. Further, to make this process of supply of documents citizen friendly and technologically compatible, supply of documents through the electronic communication has been included. In section 230 this process has been further streamlined and the Magistrate has to supply the documents so received to the accused within 14 days from the date of production/appearance of the accused. Such supply of documents has also been made technologically compatible by including its supply through electronic communication.

50. Proviso to section 193(9) provides a timeline for conducting further investigation during trial. It has been provided that after filing of charge sheet if further investigation is required, it shall be completed within 90 days, and any extension of time period beyond 90 days shall only be with the permission of the Court. This provision serves as a safeguard against the potential abuse of police power, makes the police more accountable, and prevents unnecessary delays in criminal proceedings.

51. Section 194(2) of BNSS provides a time period of 24 hours for forwarding the report on suicide to the District Magistrate or Sub-divisional Magistrate.

52. For the ease and convenience of the witness and to prevent undue harassment by police, the proviso to section 195 provides that no male person under the age of fifteen years or above the age of 60 years (65 years earlier) or a woman or a mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than the place in which such male person or woman resides. In case, where such a person is willing to attend the police station, they may be allowed to do so.

53. In case of offence committed outside India, the jurisdiction of the Court where the offence is registered is also included in section 208. Further, in case of receipt of evidence relating to offences committed outside India, the depositions or exhibits may be produced in electronic form as well.

54. In case of cognizance of offences by Magistrates on police report, section 210 includes submission of police report in electronic mode as well.

55. In an attempt to end the delay caused in receiving sanction for prosecution of public servants, it has been provided in section 218 that the sanctioning authority shall take decision within 120 days from the date of receipt of the request, failing which, the sanction shall be deemed to have been accorded by such authority,

56. Currently in complaint cases, the Court takes cognizance of an offence even without the knowledge of the accused person. In order to strengthen the rights of citizens, it has been provided in section 223 that the Magistrate shall grant

an opportunity to the accused person to present his side to the Court before the Court proceeds to take cognizance of an offence on a complaint.

57. In compliant cases, section 223 provides protection against false and frivolous cases against public servants discharging their official duties in complaint cases. The Magistrate shall now take cognizance of a complaint against a public servant arising in course of discharge of his official duties, after considering his assertions and receiving a report containing facts and circumstances of the incident from his superior officer.

58. In section 227 dealing with issuance of process, the summons and warrants may also be issued through electronic means.

59. In section 230, timeline has been prescribed with respect to the supply of copies of police report and other documents to the accused and the victim which is to be made within 14 days from the date of production or appearance of the accused. In case of voluminous documents, the copies may be furnished through electronic means. Similarly in case of Sessions triable cases instituted on a complaint, the copies statements and documents may be furnished through electronic means in section 231.

60. To address delays in commitment cases, section 232 stipulates that the proceedings must be completed within 90 days from the date the Magistrate takes cognizance. This period may be extended to 180 days, with reasons

recorded in writing. Further, any application filed before the Magistrate by the accused or the victim shall also be forwarded to the Court of Session.

61. To minimize delays and ensure a prompt trial in sessions cases, Section 250 mandates a 60-day window from the date of committal for the accused to file a discharge application. Additionally, Section 251 reinforces this effort by setting a 60-day timeline for framing charges from the first hearing on charge. To enhance efficiency, the use of audio-video means to communicate and explain charges to the accused person, is introduced [Section 251(2)].

62. To expedite criminal proceedings using technology, section 254 allows for the use of audio-video electronic means in Sessions cases for the deposition of evidence or statements of witnesses, police officers, public servants, or experts. A similar provision is included in Section 265 for the trial of warrant-cases, enabling the use of electronic means for examining witnesses.

63. In Sessions cases, timelines have been prescribed for delivering judgments. Section 258 provides for a period of 30 days, from the date of conclusion of arguments for giving the judgment. Such period may be extended to 45 days with reasons recorded in writing. Further, section 392 (1) provides that judgment in every trial in any criminal court shall be pronounced no later than 45 days after the termination of trial. Section 392 also provides that the Court shall, within 7 days from the date of judgment, upload its copy on the portal.

64. In section 262 of BNSS dealing with warrant cases, the time period for filing a discharge application by the accused has been prescribed as 60 days from the date of supply of documents. Similarly, section 263 mandates that the charges must be framed within 60 dates from the date of first hearing on the charge.

65. In sections 265 and 266 which deal with the evidence for prosecution and for defence, the examination of a witness is allowed to be done through audio video electronic means at the designated place to be notified by the State Government

66. In section 269(7), if the attendance of the prosecution witness cannot be secured despite giving opportunity and after taking all reasonable measures, it shall be deemed that such witness has not been examined for not being available so that the Magistrate may close the prosecution evidence and proceed with the case on the basis of material on record

67. Under section 272, in a case instituted on a complaint, if the complainant remains absent even after giving thirty days' notice, the Magistrate is empowered to discharge the accused. It is aimed to reduce delays in complaint cases and limit the scope of false or frivolous complaints.

68. In summons cases, a proviso has been inserted in section 274 to allow discharge of the accused person if the accusation appears as groundless.

69. To reduce the burden on judiciary and expedite trial process in petty and less serious cases, section 283 makes summary trial mandatory for petty and less serious offences (like theft, receiving or retaining stolen property, house trespass, breach of peace, criminal intimidation, etc.). In cases where punishment is extendable up to 3 years (earlier 2 years) the Magistrate may, for the reasons to be recorded in writing and after giving the accused a reasonable opportunity of being heard, try such cases summarily.

70. In section 290, a time period has been prescribed for filing an application for plea bargaining. An accused person, may within 30 days from the date of framing of charges, may make such application. Further, a time period of 60 days has been prescribed for completing the process of 'mutually satisfactory disposition".

71. Section 293 adopts a lenient and rehabilitative approach in plea bargaining cases. In instances involving first-time offenders, where minimum punishment is prescribed, the Court may impose a sentence equal to one-fourth of the minimum punishment-marking a departure from the existing norm of one-half of the punishment. Further, in cases where the punishment is extendable and no minimum punishment is prescribed, a first-time offender may receive a sentence equivalent to one-sixth of the prescribed punishment, decreasing the quantum of punishment from the previous one-fourth standard. This provision underscores a commitment to a more progressive and individualized approach to sentencing, especially for the first-time offenders.10

72. In a concerted effort to enhance the seamless integration of technology. section 308 empowers the examination of the accused through electronic means, specifically utilizing audio-video conferencing (VC) facilities accessible in any place designated by the State Government. Complementing this, section 316 stipulates that the signature of an accused who undergoes examination via video conferencing must be obtained within a timeframe of 72 hours. This provision underscores a commitment to harnessing technology for efficient legal procedures while maintaining procedural integrity through timely documentation.

73. In section 330, timeline of thirty days has been introduced to challenge the genuineness of any document which may be relax at the discretion of the Court. Further, the experts are exempted to be called before the Court unless the report of such expert is disputed by any parties to the trial.

74. To make criminal proceedings more efficient, section 336 provides that where any document or report prepared by a public servant, expert or officer is used as evidence, the Court shall secure the presence of the successor in office of such public servant, expert or officer. This process has also been equipped with the use of audio-video electronic means for the purpose of such deposition.

75. To curtail delays resulting from frequent adjournments, Section 346 establishes a framework wherein the Court, after considering objections from the opposing party, may grant not more than two adjournments when circumstances are

genuinely beyond the control of a litigant, for reasons to be recorded in writing. This provision aims to streamline legal proceedings, fostering efficiency while maintaining fairness and accountability in the judicial process.

76. Section 349 safeguards the rights of citizens and restricts the need for arrest of persons. The Magistrates of the first class are empowered under this provision, to direct any individual to provide specimens and/or samples without necessitating their arrest. This legal mechanism strikes a balance between the protection of individual rights and the investigative process, offering a measured approach to obtaining necessary evidence without resorting to unwarranted detention. Further, the ambit of this provision is expanded by including voice samples and finger impressions within its purview,

77. Addressing the problem of fugitive criminals, a new provision of trial in absentia has been incorporated under section 356 of BNSS for persons declared as proclaimed offenders. The process involves the issuance of two warrants of arrest within an interval of 30-days, publication of notices in two local or national newspapers, notification of the commencement of trial to relatives and the affixing of notices regarding the trial's initiation before the commencement of such trial. Further, the trial against the proclaimed offender can only commence after the passage of 90 days from the date of framing charges. The provision extends the right to legal representation of the proclaimed offender with the State appointing an advocate for the absent accused's defence. This innovative framework diverges from the prevailing

norm limited to only recording witness testimonies during trial in absentia. Instead, it encompasses the entire judicial process, extending from the presentation of evidence to the final judgment and determination of punishment. Importantly, should the absconding individual rejoin the proceedings mid-trial, they are entitled to participate and benefit from due process in their defence. This comprehensive approach reflects a equitable stance, ensuring fair treatment throughout the trial process.

78. To foster a more victim-centric approach in the criminal justice system, there has been an inclusion of victims in key decisions. Under section 360 before withdrawal of prosecution the victim must be afforded an opportunity to be heard before the Court. This provision acknowledges and incorporates the concerns of victims, enhancing the overall fairness and responsiveness of the criminal justice process.

79. In section 392, the accused person, if in custody, may be produced through audio video electronic means to hear the judgment.

80. Section 398 mandates the preparation and notification of a witness protection scheme by every State Government. A witness protection scheme serves as a safeguarding mechanism, fostering an environment where witnesses can contribute to the legal process devoid of fear or duress. The necessity for a comprehensive witness protection scheme has been underscored by the Malimath Committee and various Law Commission Reports, including the

14th, 154th. 172nd, 178th, and 198th Reports. In Mahendra Chawla v UOI, the Witness Protection Scheme 2018 (draft) was approved by the Supreme Court.

81. A new provision for time bound disposal of mercy petitions filed before the President and Governor has been made in section 472. This provision prescribes a timeframe, requiring such petitions to be filed within 30 days before the Governor and 60 days before the President. The Superintendent of the jail is now entrusted with the responsibility of informing the convicts about the confirmation of their death sentence or the dismissal of their appeal or review of a special leave appeal. Additionally, the jail superintendent is mandated to ensure that every convict, especially in cases involving multiple convicts, submits their mercy petition within 60 days. In situations where no other petitions are received from the remaining convicts, the jail superintendent is required to forward their names, addresses, and case records to the Central or State government for consideration alongside the mercy petition filed. Further, the Central Government is to give its recommendations to the President within 60 days, commencing from the date of receiving comments from the State Government and records from the Jail Superintendent. It has also been provided that no appeal shall lie in any Court against the order of the President made under article 72 of the Constitution; it shall be final, and not to be enquired into by any Court. This comprehensive provision streamlines and ensures timely and equitable consideration of mercy petitions.

82. Section 474 amends the existing section of commutation of any sentence in fine etc. The sections provides that appropriate Government may, without the consent of the person sentenced, commute-

(a) a sentence of death, for imprisonment for life;

(b) a sentence of imprisonment for life, for imprisonment for a term tiot less than seven years;

(c) a sentence of imprisonment for seven years or more for imprisonment for a term not less than three years,

(d) a sentence of imprisonment up to three years, for fine.

(e) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced;

These changes foster equal and just treatment under the law, aligning sentencing practices with principles of fairness and justice.

83. In Section 479, provision for bail to undertrials prisoners has been relaxed and liberalized. A sympathetic view has been taken towards first-time offenders, who are now eligible to be released on bond by the Court if they have undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for that offence. The provision has also entrusted the jail superintendent to make an application for bail to the Court

where an under trial completes one-half or one-third of the maximum period. The release of an undertrial prisoner who is involved in more than one offence or in multiple cases is made stringent under the provision. Further, the sentence of life imprisonment or death has been excluded from the purview of this provision.

84. Section 497 introduces the quick disposal of case properties even during the investigation, on preparation of a statement of the property by the Court within 14 days after such property has been photographed/ video graphed. Such statement, photographs and videography shall be used as evidence in any inquiry, trial or other proceeding. The Court shall then, within 30 days after the statement has been prepared, order the disposal, destruction, confiscation or delivery of such property.

85. Section 530 envisages that all trials, inquiries and proceedings may be made compatible with technology and held in electronic modes by use of electronic communication or through the use of audio-video electronic means.

COMPARATIVE STUDY OF BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (BNSS) & CODE OF CRIMINAL PROCEDURE, 1973 (Cr.PC.)

NEW DEFINITIONS

- Section 2(/) of the BNSS contains definitions of certain terms used in the legislation. Section 2(/) gives the following new definitions which were not there in Cr.PC:
  - Audio video electronic means [Section 2(1)(a)]
  - Bail [Section 2(/)(5))
  - Bail bond [Section 2(d)
  - Bond [Section 2(/)(e)]
  - Electronic communication [Section 2(/)(i)]

Audio video electronic means [Section 2(1)(a)] of BNSS)

- Section)(a) of the BNSS defines “audio-video electronic means”
- In BN SS, unless the context otherwise requires, the term “audio-video electronic means’ shall include use of any communication device for the purposes 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 as the state government may, by rules provide

"Bail" [Section 2(1)(b) of BNSS]

- [Section 2(1)(b) of BNSS defines bail to mean release of a persona of or suspected of commission of an offence from the custody of law of conditions imposed by an officer or Court on execution by person of a bond or a bail bond

"Bail Bond"[Section 2(1)(d) of BNSS]

- Section 2(1)(d) of BNSS defines 'bail bond' to mean an undertaking release with surety

"Bond" [Section 2(1)(e) of BNSS]

- Section 2(1)(e) of BNSS defines 'bond' to mean a personal bond undertaking for release without surety

"Electronic communication" [Section 2(1)(i) of BNSS]

◆**"Electronic communication" means-**

- the communication of any written, verbal, pictorial information video content transmitted or transferred

- whether from one person to another, or from one device or from a person to a device or from a device to a person

- by means of an electronic device including a telephone, mobile phone or other wireless telecommunication device, or a computer, or au video players or cameras or any other electronic device or elect form as may be specified by notification, by the Central Government.

CHANGE IN DEFINITIONS

Investigation" [Section 2(1)(1) of BNSS/Section 2(h) of Cr.PC.]

- New Explanation inserted in section 2(1)() of BNSS clarifies that where any of the provisions of a special Act as regards investigation are inconsistent with the provisions of this Sanhita, the provisions of the special Act shall prevail.

Words and phrases used in the legislation but not defined [Section 2(2) of BNSS/section 2(y) of the Cr.PC.]

- Section 2(y) of Cr.PC provided that words and expressions used herein and not defined shall have the meanings respectively assigned to them in the Indian Penal Code if they are defined in that Code
- Section 2(2) of the BNSS provides that words and expressions used herein and not defined but defined in the Bharatiya Nyaya Sanhita, 2023 (BNS) and Information Technology Act, 2000 have the meanings respectively assigned to them in that Act and Sanhita.

CRIMINAL COURTS AND OFFICES, CONSTITUTION OF [SECTIONS 6 TO 20 OF BNSS]

- **METROPOLITANAREA/METROPOLITAN MAGISTRATE [SECTION 6 OF (6 OF Cr.PC.]**
  - Concepts of Metropolitan Area' & 'Metropolitan Magistrate' are now abolished
- **SPECIAL EXECUTIVE MAGISTRATES [SECTION 15 OF BNSS/SECTION 21 OF Cr.PC.]**
  - Besides Executive Magistrate, State Government can also appoint any police officer not below the rank of Superintendent of Police or equivalent to be known as Special Executive Magistrate

PUBLIC PROSECUTORS [SECTION 18 OF BNSS/SECTION 24 OF Cr.PC.]

Public prosecutors for National Territory of Delhi Region

- New proviso to section 18(1) of BNSS provides that the Central Government shall appoint the Public Prosecutor or Additional Public Prosecutors for the National Capital Territory of Delhi after consultation with the High Court of Delhi

Special Public Prosecutor

- Under BNSS, the definition of "Prosecuting Officer" includes a Special Public Prosecutor also

ASSISTANT PUBLIC PROSECUTORS [SECTION 19 OF BNSS/SECTION 25 OF Cr.PC.]

Notice to State Government

◆Section 19 of the BNSS stipulates a new requirement that provides that when no Assistant Public Prosecutor is available District Magistrate may exercise his power of appointment of any other person as Assistant Public Prosecutor after giving notice of 14 days to the State Government

DIRECTORATE OF PROSECUTION [SECTION 20 OF BNSS/SECTION 25A OF Cr.PC.]

District Directorate of Prosecution

- Section 20(1)(b) of BNSS provides that the State Government may establish District Directorate of Prosecution of every district consisting of as many Deputy Directors & Assistant Directors of Prosecution as it thinks fit.

Eligible criteria of appointment of Director/Deputy Director of Prosecution

- Section 25A(2) of Cr.PC. provided that a person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, if he has been in practice as an advocate for not less than ten years and such appointment shall be made with concurrence of the chief justice of the high court.

- Section 20(2)(a) of the BNSS has changed the eligibility criteria for appointment of a Director of Prosecution or Deputy Director of Prosecution, Section 20(2) provides that a person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, if he has been in practice as an advocate for not less than fifteen years or is or has been a Sessions Judge.
- Section 20 omits the requirement of concurrence of the Chief Justice of the High Court for appointment of a Director of Prosecution or a Deputy Director of Prosecution.

"Assistant Directors of Prosecution

- Section 20(2) creates new posts of Assistant Directors of Prosecution. Section 20(2)(b) provides that person shall be eligible to be appointed as an Assistant Director of Prosecution if he has been in practice as an advocate for not less than seven years or has been a Magistrate of the first class
- Assistant Director shall be subordinate to Deputy Director of Prosecution

Roles and responsibilities of Director/Deputy Director/Assistant Director of Prosecution

Unlike section 25A of Cr.PC, section 20 of BNSS provides clear roles for Director of Prosecution, Deputy Director of Prosecution and Assistant Director of Prosecution and does not leave it entirely to the discretion of State Government to specify their roles and responsibilities. The roles and responsibilities of these officials are as under:

- The powers and functions of the Director of Prosecution shall be to monitor cases in which offences are punishable for ten years or more, or with life imprisonment, or with death, to expedite the proceedings and to give opinion on filing of appeals.
- The powers and functions of the Deputy Director of Prosecution shall be to examine and scrutinise police report and monitor the cases in which offences are punishable for seven years or more, but less than ten years, for ensuring their expeditious disposal.

- The functions of the Assistant Director of Prosecution shall be to monitor cases in which offences are punishable for less than seven years
- The Director, Deputy Director or Assistant Director of Prosecution shall have the power to deal with and be responsible for all proceedings under this Sanhita.
- The other powers and functions of the Director of Prosecution, the Deputy Directors of Prosecution and Assistant Director of Prosecution and the areas for which each of the Deputy Directors of Prosecution or Assistant Director of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

COURTS, POWERS OF [SECTIONS 21 TO 29 OF BNSS)

SENTENCES WHICH HIGH COURTS AND SESSIONS JUDGES MAY PASS 'SECTION 22 OF BNSS/SECTION 28 OF Cr-PC.]

Assistant Sessions Judge

- Power of Assistant Sessions Judge to pass sentences in section 28(3) of Cr.PC has been omitted by section 22 of the BNSS

SENTENCES WHICH MAGISTRATES MAY PASS [SECTION 23 OF BNSS/ SECTION 29 OF Cr.PC.]

Monetary limits on fines

- The monetary limits on fines which can be imposed by Judicial Magistrates of First class and Judicial Magistrates of second class have been enhanced by the BNSS as under:

Class of Criminal Court	Monetary limit under section 29 of Cr.PC Court can impose	Revised enhanced Court monetary limits under section 23 of BNSS on the fine that Court can impose
The Court of a judicial Magistrate of the first Class	Fine not exceeding Rs.10,000	Fine not exceeding Rs.50,000
The Court of a judicial magistrate of the second class	Fine not exceeding Rs.5,000	Fine not exceeding Rs.10,000

Metropolitan Area/Metropolitan Magistrate

- Concepts as to ‘Metropolitan's Area’ & ‘Metropolitan Magistrate’ are abolished Community Service

Community Service

- Under section 23 of BNSS Court can impose fine or community service or both.
- “Community service” shall mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.

SENTENCE IN CASES OF CONVICTION OF SEVERAL OFFENSES AT ONE [SECTION 25 OF BNSS/SECTION 31 OF Cr.PC.]

Concurrent imprisonment

- Section 25 of the BNSS omits the ‘by default rule’ that punishments shall run consecutively in the order directed by the Court. Section 25 requires the Court to consider the gravity of offences and clearly order such punishments to run consecutively or concurrently.

POLICE, POWERS OF SUPERIOR OFFICERS OF POLICE ANDAID TO THE MAGISTRATES AND POLICE[SECTIONS 30 TO 34 OF BNSS]

DUTY OF OFFICERS EMPLOYED IN CONNECTION WITH AFFAIRS OF AVILLAGE TO MAKE A CERTAIN REPORT [SECTION 34 OF BNSS/ SECTION40 OF Cr.PC.]

Proclaimed offender

- Section 40(2)(ii) of Cr.PC defined 'proclaimed offender' with reference to specific provisions of IPC

- Section 34 of the BNSS defines 'proclaimed offender' to include any person mproclaimed as an offender by any Court or authority in any territory in India to which this Sanhita does not extend, in respect of any act which if committed in the territories to which this Sanhita extends, would be an offence punishable under any of the offence punishable with imprisonment for ten years or more or with imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023

ARREST OF PERSONS [SECTIONS 35 TO 62 OF BNSS]

WHEN MAY POLICE ARREST WITHOUT A WARRANT [SECTION 35 OFBNSS/SECTIONS 41 AND 41A OF Cr.PC.]

Infirm/Old age person

- Section 35(7) of BNSS is a new provision
- New sub-section (7) of section 35 provides that no arrest shall be made without the prior permission of an officer not below the rank of Deputy Superintendent of Police in cases where the offence is punishable for less than three years, and the person is infirm or above sixty years of age.

PROCEDURE OF ARREST AND DUTIES OF OFFICER MAKING ARREST[SECTION 36 OF BNSS/SECTION 41B OF Cr.PC.]

Information of arrest

- Section 41B of the Cr.PC required the information of arrest to be given to‘ relative or friend' named by person arrested
- Section 36 of the BNSS requires the information of arrest be given to 'relative or a friend or any other person' named by person arrested us 01

DESIGNATED POLICE OFFICER [SECTION 37 OF BNSS/SECTION 41C OFCr.PC]

Information display

Section 41C of the Cr.PC provided that the State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests. The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

◆ Section 37 of the BNSS provides that the State Government shall designate a police officer in every district and in every police station, not below the rank of Assistant Sub-Inspector of Police who shall be responsible for maintaining the information about the names and addresses of the persons arrested, nature of the offence with which charged, which shall be prominently displayed in any manner including in digital mode in every police station and at the district headquarters.

ARREST ON REFUSAL TO GIVE NAME AND RESIDENCE [SECTION 39 OFBNSS/SECTION 42 OF Cr.PC]Bond/Bail Bond

◆ Under section 42 of Cr.PC person arrested can be released on his executing a bond, with or without sureties.

◆ Under section 39 of BNSS person arrested can be released on a bond or log bail bond.

ARREST BY PRIVATE PERSON AND PROCEDURE ON SUCH ARREST[SECTION 40 OF BNSS/SECTION 43 OF Cr.PC.]

Time limit of handing over arrestee (subjected to private arrest) to police

◆ Section 43(1) of Cr.PC did not set any time-limit for handing over to the Police of the person subjected to private arrest. It only provided that handing over arrestee to the Police should be without unnecessary delay.

◆ Section 40 of BNSS makes changes to private arrest provisions by setting a deadline of 6 hours from such arrest within which the private person effecting private arrest shall hand over the person subjected to private arrestT20 to the Police.

◆ Section 40 however does not say what the private person is to do if he is unable to hand over the person subjected to private arrest to the Police within the 6 hours deadline due to some unavoidable reasons.

Re-arrest by police

- Section 43(2) of Cr.PC provided that if there is reason to believe that such person comes under the provisions relating to Police arrest, a police officer shall re-arrest him. The Police taking custody of person subjected to private arrest was termed as "re-arrest" under Cr.PC provisions
- . Section 40(2) of BNSS has substituted the words "shall re-arrest him with the words 'shall take him to custody'. In other words, section 40 provides that Police taking custody of privately arrested person is not "re-arrest" but only 'taking him in custody'.

ARREST HOW MADE [SECTION 43 OF BNSS/SECTION 46 OF Cr.PC.]

Hand cuffing

◆ The provisions of section 46 of Cr.PC did not provide for manner of making arrest. It does not provide any guidelines on when arrestee may be hand cuffed Section 43(3) of BNSS fills this gap.

◆ Section 43(3) of BNSS provides that the police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who escaped from custody who has committed offence of organized crime, offence of terrorist act, drug related crime, or offence of illegal possession of arms and ammunition murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children, or offences against the State.

OBLIGATION OF PERSON MAKING ARREST TO INFORM ABOUTARREST, ETC., TO RELATIVE OR FRIEND [SECTION 48 OF BNSS/SECTION50A OF Cr.PC.]

Information as to arrest

- Section 48 of BNSS stipulates a new requirement that information of arrest and place where the arrestee is held shall be given to the designated police officer in the district.

POWER TO SEIZE OFFENSIVE WEAPONS [SECTION 50 OF BNSS/SECTION52 OF Cr.PC.]

Seizure of weapons

- Section 50 of BNSS empowers the Police Officer or other person making the arrest to seize offensive weapons from the arrestee immediately after the arrest is made. Section 52 of Cr.PC offered no clarity on when this power is exercisable.

EXAMINATION OF ACCUSED BY MEDICAL PRACTITIONER AT REQUESTOF POLICE OFFICER [SECTION 51 OF BNSS/SECTION 53 OF Cr.PC.]

Registered medical practitioner

- Section 53 of Cr.PC defined

"registered medical practitioner" as under:“ registered medical practitioner" means a medical practitioner who bolo possesses any medical qualification as defined in clause (h) of section2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register.

- Section 51 of BNSS has substituted the above definition of "registered medical practitioner" with the following new definition:“

  registered medical practitioner" means a medical practitioner who possesses any medical qualification recognized under the National Medical Commission Act, 2019 and whose name has been entered in the National Medical Register or a State Medical Register under that Act.

  - The above revised definition in section 51 is consequent to repeal and replacement of Indian Medical Council Act, 1956 with the National Medical Commission Act, 2019

Request for examination

- Under section 53 of the Cr.PC request for medical examination can be made by police officer not below the rank of sub-inspector.

EXAMINATION OF PERSON ACCUSED OF RAPE BY MEDICAL PRACTI-TIONER [SECTION 52 OF BNSS/SECTION 53A OF Cr.PC.]

Registered Medical Practitioner

- Section 53A(1) of Cr.PC provided that where there is no registered medical practitioner (RMP) employed in a hospital run by the Government or by a local authority within the radius of sixteen kilo-metres from the place where the offence of rape has been committed, it shall be lawful for any other RMP to make an examination of the rape accused on receiving request of a police officer not below the rank of a sub-inspector.

- Section 52 of BNSS modifies above provisions and allows such RMP to action the request of any Police Officer irrespective of rank.

EXAMINATION OF ARRESTED PERSON BY MEDICAL OFFICER [SECTION53 OF BNSS/SECTION 54 OF Cr.PC.]

Medical examination

- Section 54 of Cr.PC provided that when any person is arrested, he shall be examined by a medical officer in the service of Central or State Government ,and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made.
- Section 53 of BNSS has made changes to these provisions by inserting provides that if the registered medical practitioner is of the opinion that one more examination of arrested female is necessary, he may do so.

Note: New proviso to section 53(1) of BNSS applies where RMP examines the arrested person and is of the opinion that one more examination of arrested person is necessary. It does not apply if medical officer in the service of Central or State Government examines the arrested person and is of the opinion that one more examination is necessary. It appears that mention of

IDENTITY PARADE (IDENTIFICATION OF PERSON ARRESTED) [SECTION 54 OF BNSS/SECTION 54A OF Cr.PC.]

Identification process

Section 54A of Cr.PC provides that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be video graphed.

◆ Section 54 of BNSS modifies above provision to require recording of identification process by any audio-video electronic means (e.g. mobile) instead of earlier requirement of video graphing the identity parade.

PERSON ARRESTED NOT TO BE DETAINED MORE THAN TWENTY-FOUR HOURS [SECTION 58 OF BNSS/SECTION 57 OF Cr.PC.]

Magistrate having jurisdiction or not

- Section 57 of Cr.PC provided that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

- Section 58 of BNSS modifies the above provisions to provide that Police detention shall not exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

- The words in italics added at the end of the provision in section 58 seems to require the Police to produce every arrestee as soon as possible before the nearest Magistrate whether jurisdictional Magistrate or not.

APPEARANCE, PROCESSES TO COMPEL APPEARANCE - SUMMONS [SECTIONS 63 TO 71 OF BNSS]

FORM OF SUMMONS [SECTION 63 OF BNSS/SECTION 61 OF Cr.PC.]

Electronic summons

- Section 61 of Cr.PC provided that every summons issued by a Court shall be to not in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court. The extant provisions do not provide for summons in electronic form.
- Section 63 of BNSS allows the court to issue summons in an encrypted or any other form of electronic communication with the image of the seal of the court or digital signature.

SUMMONS HOW SERVED [SECTION 64 OF BNSS/SECTION 62 OF Cr.PC]

Summons by electronic communication

- Section 62 of Cr.PC did not provide for service of summons by electronic communication.
- Proviso to section 64(2) of BNSS provides that summons bearing the image of Court's seal may also be served by electronic communication in such form and in such manner, as the State Government may, by rules, provide.

Record keeping

- Proviso to section 64(1) of BNSS requires that the Police Station or the registrar in the Court shall maintain a register to enter the address, e-mail address, phone number or such other details as the State Government by rules provided

SERVICE OF SUMMONS ON CORPORATE BODIES, FIRMS AND SOCIETIES [SECTION 65 OF BNSS/SECTION 63 OF Cr.PC.]

Service of summons to firm, or association of individuals other than company or corporation

- **"Company" means a body corporate and "corporation" means an incorporated company or other body corporate or a society registered under the Societies Registration Act, 1860.**

- **Section 65(2) of BNSS provides that service of a summons on a firm or other association of individuals may be effected by serving it on any partner of such firm or association, or by letter sent by registered post addressed to such partner, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.**

PROOF OF SERVICE IN SUCH CASES AND WHEN SERVING OFFICER NOT PRESENT [SECTION 70 OF BNSS/SECTION 68 OF Cr.PC.]

Summons by electronic communication

- Section 70 of BNSS retains existing provisions of section 68 of Cr.PC. It further provides that all summons served through electronic communication under sections 64 to 71 of BNSS shall be considered as duly served and a copy of such electronic summons shall be attested and kept as a proof of service of summons. Section 68 of Cr.PC did not provide that summons served through electronic communication shall be considered as duly served.

SERVICE OF SUMMONS ON WITNESS [SECTION 71 OF BNSS/SECTION 68OF Cr.PC.]

Summons by electronic communication

- Section 71 of BNSS provides that a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons direct a copy of the summons to be served by electronic communication o by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

- On the proof of delivery of summons under sub-section (3) of section 70 of BNSS by electronic communication to the satisfaction of the Court, the Court issuing summons may deem that the summons had been duly served

APPEARANCE, PROCESS TO COMPEL APPEARANCE - WARRANT OF ARREST [SECTIONS 72 TO 83 OF BNSS]

PROCEDURE ON ARREST OF PERSON AGAINST WHOM WARRANT ISSUED[SECTION 82 OF BNSS/SECTION 80 OF Cr.PC.]

Information regarding arrest

◆ Section 82(2) of BNSS additionally provides for a new requirement that on the arrest of any person against whom warrant is issued, the police officer shall forthwith give the information regarding such arrest and the place where the arrested person is being held to the designated police officer in the district and to such officer of another district where the arrested person normally resides.

APPEARANCE, PROCESS TO COMPEL APPEARANCE - PROCLAMATION AND ATTACHMENT [SECTIONS 84 TO 89 OF BNSS]

IDENTIFICATION AND ATTACHMENT OF PROPERTY OF PROCLAIMED PERSON [SECTION 86 OF BNSS]

Attachment of property

- This is a new provision. There was no corresponding provision in Cr.PC.
- Section 86 of BNSS provides that the Court may, on the written request from a police officer not below the rank of the Superintendent of Police of Commissioner of Police, initiate the process of requesting assistance from a Court or an authority in the contracting State for identification, attachment and forfeiture of property belonging to a proclaimed person in accordance with the procedure provided in chapter VIII.

PROCESSES TO COMPEL THE PRODUCTION OF THINGS - SEARCH AND SEIZURE, ATTACHMENT, ETC.[SECTIONS 94 TO 110 OF BNSS]

SUMMONS TO PRODUCE DOCUMENT OR OTHER THING [SECTION 94 OF NSS/SECTION 91 OF Cr.PC.]

Telegraph authority

- Section 91 of Cr.PC contained references to "telegram" and "telegraph authority“
- As telegram is no longer used, section 94 of BNSS omits references to "telegram" and "telegraph authority“

Electronic communication

- Section 94(1) of BNSS, besides production of any document also refers to production of electronic communications, including communication devices which is likely to contain digital evidence**.**

Electronic summons

- Summons can be issued either in physical form or in electronic form

PROCEDURE AS TO LETTERS [SECTION 95 OF BNSS/SECTION 92 OF Cr.PC.]

Telegraph authority

- Section 92 of Cr.PC contained references to "telegraph authority "As telegram is no longer used, section 94 of BNSS omits references to "telegraph authority"

ATTACHMENT, FORFEITURE OR RESTORATION OF PROPERTY [SECTION 107OF BNSS]

Attachment, forfeiture, etc.

- **Section 107 of the BNSS is a new provision**
- **Section 107 provides as under:**

1. Where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Judicial Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.
2. If the Court or the Judicial Magistrate has reasons to believe, whether before or after taking evidence, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.
3. 3. Where the notice issued to any person in (2) above specifies any property as being held by any other person on behalf of such person, a copy of the notice shall also be served upon such other person.

4. The Court or the Judicial Magistrate may, after considering the explanation, if any, to the show-cause notice issued as above and the material fact available before such Court or Magistrate and after giving a reasonable opportunity of being heard to such person or persons, may pass an order of attachment, in respect of those properties which are found to be the proceeds of crime.

If such person does not appear before the Court or the Magistrate or represent his case before the Court or Judicial Magistrate within a period of fourteen days specified in the show-cause notice, the Court or the Judicial Magistrate may proceed to pass the ex-parte order.

5. If the Court or the Judicial Magistrate is of the opinion that issuance of notice under the said sub-section would defeat the object of attachment or seizure, the Court or Judicial Magistrate may by an interim order passed ex-parte direct attachment or seizure of such property, and such order shall remain in force till an order in

(6) below is passed. 6. If the Court or the Judicial Magistrate finds the attached or seized properties to be the proceeds of crime, the Court or the Judicial Magistrate shall by order direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such crime.

7. On receipt of an order passed in (6) above, the District Magistrate shall, within a period of sixty days distribute the proceeds of crime either by himself or authorize any officer subordinate to him to effect such distribution.

8. If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government. For the purposes of this section, the word "property" and the expression "proceeds of crime" shall have the meaning assigned to them in clause (d) of section 111 of BNSS.

ORDER TO BE MADE [SECTION 130 OF BNSS/SECTION 111 OF Cr.PC.]

Sureties

- Section 130 of the BNSS provides that instead of "character and class of sureties" (as stated in section 111 of Cr.PC.), Magistrate shall consider "the fitness for payment of sureties". Section 130 replaces the words "the number, character and class of sureties (if any) required" as used in section 111 of Cr.PC with "the number of sureties after considering the fitness for payment of sureties" in section 130 of BNSS.

MAINTENANCE OF WIVES, CHILDREN AND PARENTS, ORDER FOR [SECTIONS 144 TO 147 OF BNSS]

PROCEDURE [SECTION 145 OF BNSS/SECTION 126 OF Cr.PC.]

Advocate

- Word 'advocate' is used for word 'pleader‘

Residence of father or mother

- Section 145(1)(d) provides that proceedings may be taken against any person in any district 'where his father or mother resides'. This is a new provision.

PUBLIC ORDER AND TRANQUILITY, MAINTENANCE OF - UNLAWFUL ASSEMBLIES [SECTIONS 148 TO 151 OF BNSS]

DISPERSAL OF ASSEMBLY BY USE OF CIVIL FORCE [SECTION 148 OF BNSS/SECTION 129 OF Cr.PC.]

Gender of person

◆ Section 129 of Cr.PC empowered the Executive Magistrate or Officer-in-charge of Police Station or any Police Officer not below the rank of sub-inspector (in absence of such officer in charge) to require the assistance of any male person for dispersing unlawful assembly where it does not disperse on being commanded to disperse.

◆ Section 148 of BNSS has replaced the words **"any male person"** with the words **"any person"** so as to empower the Executive Magistrate or Police Officer to take assistance of any person irrespective of gender of such person.

USE OF ARMED FORCES TO DISPERSE ASSEMBLY [SECTION 149 OF BNSS/SECTION 130 OF Cr.PC.]

District/Executive Magistrate

- Section 130 of Cr.PC empowered the Executive Magistrate of the highest rank present to cause unlawful assembly to be dispersed by the armed forces.
- Section 149 of the BNSS has changed these provisions to empower District Magistrate or any other Executive Magistrate authorized by him, who is present, to cause unlawful assembly to be dispersed by the armed forces.

PUBLIC NUISANCE [SECTIONS 152 TO 162 OF BNSS]

CONDITIONAL ORDER FOR REMOVAL OF NUISANCE [SECTION 152 OF BNSS/SECTION 133 OF Cr.PC.]

Scope of provision

◆ Under section 133 of Cr.PC, order can be made 'to prevent or stop the construction of such building, tent or structure or to remove or support of SOLID such trees'. Section 152 of BNSS order can be made 'to prevent or stop the [w construction of such building, or to alter the disposal of such substance'.

PERSON TO WHOM ORDER IS ADDRESSED TO OBEY OR SHOW CAUSE [SECTION 154 OF BNSS/SECTION 135 OF Cr.PC.]

Audio video conference

- Section 135 of Cr.PC provided that the person against whom conditional order for removal of nuisance is made shall (a) obey the order; or (b) appear in accordance with such order and show cause against the same
- Section 154 of BNSS has made changes to these provisions to allow such person to show cause through audio video conferencing instead of appearing in person and showing cause

- **PROCEDURE WHERE PERSON AGAINST WHOM ORDER IS MADE APPEARS TO SHOW CAUSE [SECTION 157 OF BNSS/SECTION 138 OF Cr.PC.]**

Time-limit for completion of proceedings

- Section 138 of Cr.PC contained provisions regarding procedure to be followed where person against whom conditional order for removal of nuisance is made appears in court to show cause Section 157 of BNSS has made changes to these provisions to make this procedure time-bound.

- Section 157 of BNSS provides that the proceedings under this section shall be completed, as soon as possible, within a period of ninety days, which may be extended for the reasons to be recorded in writing, to one hundred and twenty days.

Magistrate MAY PROHIBIT THE REPETITION OR CONTINUANCE OF BLIC NUISANCE [SECTION 162 OF BNSS/SECTION 143 OF Cr.PC.]

Deputy Commissioner of Police

- Section 143 of Cr.PC provides that a District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance
- Besides any other Executive Magistrate, under section 162 of BNSS, a Deputy Commissioner of Police may also be empowered by the State Government or District Magistrate to order any person not to repeat or continue a public nuisance and such DCP can also issue such an order. This modification intends to reduce workload on Executive Magistrates

POLICE, PREVENTIVE ACTION OF [SECTIONS 168 TO 172 OF BNSS]

PERSONS BOUND TO CONFORM TO LAWFUL DIRECTIONS OF POLICE [SECTION 172 OF BNSS]

Binding force of lawful directions of Police

◆ Section 172 of the BNSS is a new provision.

◆ Section 172 of BNSS provides as under:

- All persons shall be bound to conform to the lawful directions of a police officer given in fulfilment of any of his duty under this Chapter [Chapter XII of BNSS dealing with Preventive Action of the Police].
- A police officer may detain or remove any person resisting, refusing, ignoring or disregarding to conform to any direction given by him as above and may either take such person before a Judicial Magistrate or, in petty cases, release him as soon as possible within a period of 24 hours.

POLICE, INFORMATION TO THE, THEIR POWERS TO INVESTIGATE [SECTIONS 173 TO 196 OF BNSS]

INFORMATION IN COGNIZABLE CASES [SECTION 173 OF BNSS/ SECTION 154 OF Cr.PC.]

Electronic communication

- Section 154(1) of Cr.PC contained no provision for enabling information relating to the commission of a cognizable offence to be given to an officer in charge of a police station by electronic communication

- Section 173(1) of BNSS allows the information to the commission of a cognizable offence to be given to an officer in charge of a police station by electronic communication. In such a case, it shall be taken on record by him on being signed within three days by the person giving it. The substance of such electronic communication shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf

- In section 154 of Cr.PC, there was no option or provision to give information relating to the commission of a cognizable offence to be given to an officer in charge of a police station by electronic communication

Information to informant/victim

- Section 154(2) required copy of information recorded to be given forthwith, A free of cost, to the informant. Section 173(2) requires a copy to be so given to the informant or the victim

Preliminary enquiry

- Section 173(3) is a new provision. It provides that 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.

- There was no provision along these lines in section 154 of Cr.PC

Powers of Superintendent of Police

- Section 173(4) of the BNSS provides that any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which he may make an application under sub-section (3) of section 175 to the Magistrate. Words in italics depicts the additional provision which was not there in section 154(4) of Cr.PC.

Audio--video electronic data

- **Second proviso to section 176(1) BNSS**

permits recording of rape victim's statement through any aud1 -v1deo electronic means preferably cell phone. Section 157 Cr.PC contained no provision along these lines.

Forensic facility

- Section 176(3) of BNSS is a new provision. It provides that on receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall, from such date, as may be notified within a period of five years by the State Government in this regard, cause the forensics expert to visit the crimes scene to collect forensic evidence in the offence and also cause videography of the process on mobile phone or any other electronic device.
- Where forensics facility is not available in respect of any such offence, the State Government shall, until the facility in respect of that matter is developed or made in the State, notify the utilization of such facility of any other State.
- Section 157 of Cr. PC did not contain such a provision.

Non-compliance with requirement of section 176(1)

Section 176(2) of BNSS [corresponding to section 156(2) of Cr.PC] additionally provides that when officer in-charge of Police Station has not fully complied with the requirement of first proviso to section 176(1), he shall state reasons for such non-compliance and forward the daily diary report to Magistrate. Such report shall also be sent to informant in case of non-compliance with clause (b) of first proviso to section 176(1).

POLICE OFFICER'S POWER TO REQUIRE AITENDANCE OF WITNESSES [SECTION 179 OF BNSS/SECTION 160 OF Cr.PC.]

- **Acute illness**
  - ♦ Section 160 of Cr.PC dealing with Police officer's power to require attendance of witnesses provided that any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required. However, no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male person or woman resides
  - ♦ Section 179 of BNSS extends the above exemption to person with acute illness

Exempted person Willingness to attend

- Second proviso to section 179(1) of BNS further provides that if Such exempted person is willing to attend the policestation or at any other plate within the limits of such police station, such person may be permitted so to do.

RECORDING OF CONFESSIONS AND STATEMENTS [SECTION 183 Of' BNSSISECTION 164 OF Cr.PC.]

Woman Magistrate

- Newly inserted first provides that such section 183(6)(a) provides that such statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male Judicial Magistrate in the presence of a woman.

Recordings statement of witness

- Newly inserted second proviso to section 183(6)(a) provides that in cases relating to the offences punishable with imprisonment for ten years or more or imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer.

Audio-video electronic means

- Fourth proviso to section 183(6)(a) provides that where the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be recorded through audio-video electronic means preferably cell phone instead of the existing requirement that the statement be video graphed.

Metropolitan Area/Metropolitan Magistrate

- Concepts as to 'Metropolitan Area' & 'Metropolitan Magistrate' are abolished

MEDICAL EXAMINA.TION OF VICTIM OF RAPE [SECTION 184 OF BNSSI SECTION 164A OF Cr.PC.]

Time-limit for submission of medical examination report of rape victim

- Section 184 of BNSS incorporates the provisions of section 164A with one difference. Section 184 makes the submission of medical examination report by **RMP** time-bound by requiring that medical examination report be submitted within a period of *seven days.* Hitherto, existing provision required that registered medical practitioner shall, "without delay" forward the report to the investigating officer and fixed no time limit.

SEARCH BY POLICE OFFICER [SECTION 185 OF BNSSISECTION 165 Of Cr.PC.]

Recordings of search by mobile

- ♦ Proviso to section 185(2) of BNSS stipulates a new requirement which makes it compulsory to record the search conducted through audio-video electronic means preferably by mobile phone

Time Limit for Sending records

- Sub-section (5) of section 185 of BNSS provides that copies of record made under section 185(1) (3) shall forthwith, but not later than 48 hours, be sent to magistrate

Procedure when investigation cannot be completed in 24 Hours (Section 187 of BNSS / Section 167 of Cr.PC)

Period of declaration

- Section_167(2) of Cr.PC provided that the Magistrate to whom an accused person is forwarded under the section may whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the ac used in such custody as such Magistrate thinks fit, for a term not exceeding mg fifteen days in the whole; and if he has no jurisdiction to try the case or commit It for trail, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such Jurisdiction.

•Section 187(2) of **BNSS** provides that the Magistrate to whom an accused **person** is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration the status of the accused person as to whether he is not released on bail or his bail has not been cancelled, authorize, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3) of section 187, and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Judicial Magistrate having such jurisdiction

Detention in police station

- Second proviso to section 187(5) provides that no person shall be detained otherwise then in police station under police custody or in prison under Judicial custody or place declared as prison by the Central/State Government.

Audio-video electronic means

- Words 'audio-video electronic means' have replaced the words 'medium of electronic video linkage' which were used in section 167 of Cr.PC.

CASES TO BE SENT TO MAGISTRATE, WHEN EVIDENCE IS SUFFICIENT [SECTION 190 OF BNSS/SECTION 170 OF Cr.PC.]

Security for appearance

- Section 170 of Cr.PC provided that if, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused commit him for trial, or, if the offence is bail able and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.
- Section 190 of BNSS makes a change to these provisions.
- Proviso below section 190(1) provides that if the accused is not in custody, the police officer shall take security from such person for his appearance before the Magistrate and the Magistrate to whom such report is forwarded shall not refuse to accept the same on the ground that the accused is taken in custody.

REPORT OF POLICE OFFICER ON COMPLETION OF INVESTIGATION [SECTION 193 OF BNSS/SECTION 173 OF Cr.PC.]

Requirement of time-bound completion of investigation within 2 months applicable to offences of rape and gang rape have been extended to offences under POSCO

- Hitherto, section 173 of Cr.PC provided for time-bound completion of Police investigation into offence under section 376, 376A, 376AB, 376B, 376C, 376D 376DA, 376DB or 376E of the Indian Penal Code (offences of rape and rape).
- Investigation into offences of rape and gang rape were required to be completed within 2 months from the date on which information was recorded by officer in charge of Police Station.
- Section 193(2) extends this requirement to offences under Provisions of Protection of Children from Sexual Offences Act also [See sections 4,6,8,10 and 12 of POSCO, 2012]

Electronic communication

- Section 193(3)(i) of BNSS provides that report to Magistrate can also be forwarded through electronic communication
- Sub-clause (i) of section 193(3)(i) of BNSS provides that report shall also contain 'the sequence of custody in case of electronic device'

Progress of investigation

- Section 193(3)(ii) of BNSS provides that the police officer shall within 90 days inform the progress of investigation by any means including electronic communication to informant or the victim

Supply of copies of documents

- Section 173(7) of Cr.PC provided that where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the following documents:
  (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
  (b) the statements recorded under section 161 of Cr.PC (Section 180 of BNSS) of all the persons whom the prosecution proposes to examine as its witnesses.

Section 193(8) of BNSS makes the following changes to above provisions:

- Section 193(8) makes it obligatory for Police Officer investigating the case to submit such number of copies of the police report along with other documents duly indexed to the Magistrate for supply to the accused as required under section 230. The words "where the police officer investigating the case finds it convenient so to do, he may furnish" have been replaced with the words "shall also submit".
- Supply of report and other documents by electronic communications shall be considered as duly served.

Time-limit for completion of investigation

◆ Proviso to section 193(9) of BNSS provides that investigation during the trial may be conducted with the permission of the Court trying the case and same shall be completed within a period of 90 days which may extend with the permission of Court

POLICE TO ENQUIRE AND REPORT ON SUICIDE, ETC. [SECTION 194 OF BNSS/SECTION 174 OF Cr.PC.]

Time-limit for sending enquiry report to DM/SDM

❖ Section 174(2) of the Cr.PC required police to forthwith forward the enquiry report to DM or SDM. Section 194(2) requires forwarding of report to DM or SDM within twenty-four hours

POWER TO SUMMON PERSONS [SECTION 195 OF BNSS/SECTION 175 OF Cr.PC.]

Restrictions on power to summon persons

- Section 175(1) of Cr.PC provided as under:
  - A police officer proceeding under section 174 (Police to enquire and report on suicide, etc.) may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and
  - every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

POWER TO SUMMON PERSONS [SECTION 195 OF BNSS/SECTION 175 OF Cr.PC.]

Restrictions on power to summon persons……

- Section 195(1) of BNSS makes a change to the above provisions. Proviso to section 195(1) provides that no male person under the age of fifteen no years or above the age of sixty years or a woman or a mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than the place where such person resides, unless such person is willing to attend and answer at the police station or at any other place within the limits of such police station.

CRIMINAL COURTS IN INQUIRIES AND TRIALS, JURISDICTION OF THE [SECTIONS 197 TO 209 OF BNSS]

OFFENCES COMMITTED BY MEANS OF ELECTRONIC COMMUNICATIONS, LETTERS, ETC. [SECTION 202 OF BNSS/ SECTION 182 OF Cr.PC.]

Electronic communication

- While section 182 of Cr.PC dealt with offences committed by means of letters or telecommunication messages, section 202 of BNSS deals with offences committed by means of electronic communications or letters or telecommunication message

- Words "electronic communication" are inserted in section 202(1) of BNSS

OFFENCE COMMITTED OUTSIDE INDIA [SECTION 208 OF BNSS/SECTION 188 OF Cr.PC.]

Offence committed outside India

- Section 188 of Cr.PC provided that offender (Indian Citizen committing MC offence anywhere outside India or a foreign national committing offence on an Indian Ship/aircraft) may be dealt with in respect of offence committed outside India as if it had been committed at any place within India at which HOT he may be found
- Section 208 of BNSS provides that such offender may be dealt with in respect of offence committed outside India as if it had been committed at any place within India at which he may be found or where the offence is registered in India
- In section 208(1) of BNSS words "or where the offence is registered in India" are added at end.

RECEIPT OF EVIDENCE RELATING TO OFFENCES COMMITTED OUTSIDE INDIA [SECTION 209 OF BNSS/SECTION 189 OF Cr.PC]

Evidence in electronic form

- Words, "either in physical form or in electronic form" are added in section 209 of BNS

MAGISTRATE, PROCEEDINGS BY, CONDITIONS REQUISITE FOR INITIATION OF [SECTIONS 210 TO 222 OF BNSS]

COGNIZANCE OF OFFENCES BY MAGISTRATE [SECTION 210 OF BNSS/ SECTION 190 OF Cr.PC.]

Mode of taking cognizance

- **Section 190 of Cr.PC specifies three modes of taking cognizance:**
  - Upon receiving a complaint of facts.
  - Upon a police report.
  - Upon information received from any person other than a police officer or upon the Magistrate's own knowledge.
- Section 210 of BNSS retains the same three modes of taking cognizance but adds the term "including any complaint filed by a person authorized under any special law" in the first mode.
- It also explicitly mentions that police reports can be recorded in any mode, including digital mode

PROSECUTION FOR CONTEMPT OF LAWFUL AUTHORITY OF PUBLIC SERVANTS, FOR OFFENCES AGAINST PUBLIC JUSTICE AND FOR OFFENCES RELATING TO DOCUMENTS GIVEN IN EVIDENCE [SECTION 215 OF BNSS/SECTION 195 OF Cr.PC.]

Cognizance by whom

- Section 195(1) of Cr.PC provided for cognizance of offences of contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence, on complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate
- Section 215(1) of BNSS has modified these provisions so as enable cognizance on complaint in writing of public servant concerned or some other public servant who is authorized by the concerned public servant so to do

PROSECUTION FOR CONTEMPT OF LAWFUL AUTHORITY OF PUBLIC SERVANTS, FOR OFFENCES AGAINST PUBLIC JUSTICE AND FOR OFFENCES RELATING TO DOCUMENTS GIVEN IN EVIDENCE [SECTION 215 OF BNSS/SECTION 195 OF Cr.PC.]

PROSECUTION OF JUDGES AND PUBLIC SERVANTS [SECTION 218 OF BNSS/SECTION 197 OF Cr.PC.]

Time limit for sanction

- Section 218 of BNSS provides that government shall take a decision within a period of 120 days from the date of the receipt of the request for sanction and in case it fails to do so, the sanction shall be deemed to have been accorded by such Government. [2nd proviso to Section 218(1)]

PROSECUTION FOR OFFENCES AGAINST MARRIAGE [SECTION 219 OFBNSS/SECTION 198 OF Cr.PC.]

Unsound mind/child

- For words 'person who is under the age of eighteen years, or is an idiot a lunatic', words 'person who is a child or is of unsound mind or is intellectual disability requiring higher support' are used.

PROSECUTION FOR DEFAMATION [SECTION 222 OF BNSS/SECTION 199 OF Cr.PC]

Unsound mind/child

For words 'person is under the age of eighteen years, or is an idiot a lunatic', words 'person is a child, or is of unsound mind or is having intellectual disability' are used.

EXAMINATION OF COMPLAINANT [SECTION 223 OF BNSS/SECTION 200 OF Cr.PC.]

Cognizance of complaint

- **Section 200 of Cr.PC provided as under:**
  - a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and
  - the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

EXAMINATION OF COMPLAINANT [SECTION 223 OF BNSS/SECTION 200 OF Cr.PC.]

Cognizance of complaint

- **Section 223 of BNSS makes two changes to above provisions as under**:
  - The first proviso to section 223(1) provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.
  - New sub-section (2) of section 223 provides that a Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

MAGISTRATES, COMMENCEMENT OF PROCEEDINGS BEFORE [SECTIONS 227 TO 233 OF BNSS]

ISSUE OF PROCESS [SECTION 227 OF BNSS/SECTION 204 OF Cr.PC.]

Electronic summons

- New proviso to section 227(1) of the BNSS provides that summons or warrants may also be issued through electronic means.

SPECIAL SUMMONS IN CASE OF PETTY OFFENCE [SECTION 229 OF BNSS/ SECTION 206 OF Cr.PC.]

Monetary limit of fine

- The monetary limit of fine for the purpose of definition of "petty offence" is increased by section 229 of BNSS from 1000 to 5000.
- The monetary limit for fine specified in summons is increased by section 229 of BNSS from 1000 to 5000

SUPPLY TO ACCUSED OF COPY OF POLICE REPORT AND OTHER DOCUMENTS [SECTION 230 OF BNSS/SECTION 207 OF Cr.PC.]

Time limit stipulated for supply of copy of police report, FIR etc

- Section 207 of Cr.PC provided that in any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

  (i)the police report;

  (ii)the first information report recorded under section 154;

(i) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173

(ii) the confessions and statements, if any, recorded under section 164;

(iii) any other document or relevant extract thereof forwarded to theMagistrate with the police report under sub-section (5) of section 173.

- Section 230 of BNSS requires the above documents to be supplied free of cost to the accused without any delay, and in no case beyond 14 days from the date of production or appearance of the accused.
- **The words "without delay" have been replaced by the words "without delay, and in no case beyond fourteen days from the date of production or appearance of the accused".**

Copy to victim

Supply of police report and other documents free of cost within 14 days is to be made to the accused and the victim also if victim is represented by an advocate.

Report in electronic form

- Supply of documents in electronic form shall be considered as duly furnished
- **SUPPLY OF COPIES OF STATEMENTS AND DOCUMENTS TO ACCUSED IN OTHER CASES TRIABLE BY COURT OF SESSION [SECTION 231 OF BNSS SECTION 208 OF Cr.PC.]**

Time limit and form for supply of copy

- The words "without delay" have been replaced by the word "forthwith“
- Second proviso to section 231 provides that supply of documents in electronic form shall be considered as duly furnished.

COMMITMENT OF CASE TO COURT OF SESSION WHEN OFFENCE IS TRIABLE EXCLUSIVELY BY IT [SECTION 232 OF BNSS/SECTION 209 OF Cr.PC.]

Time limit for completion of proceedings

- Proceedings have been made time-bound. The proceedings of commitment shall be completed within a **period of ninety days from the date of taking cognizance, and such period** may be extended by the Magistrate for a period not exceeding **180 days for the reasons** to be recorded in writing [First proviso to Section 232]

Copy to Court of Sessions

- Any application filed before the Magistrate by the accused or the victim or any person authorized by such person in a case triable by Court of Session, shall be forwarded to the Court of Session with the committal of the case. [Second proviso to Section 232]

FRAMING OF CHARGE [SECTION 263 OF BNSS/SECTION 240 OF Cr.PC)

Time limit for making application for discharge within 60 days from date of commital as per 232 of BNSS.

Time-bound framing of charges

If, upon such consideration, examination, if any, and hearing, the Magistrate of opinion that there is ground for presuming that the accused has committee to try and which, in his opinion, could be adequately punished by him, he an offence triable under this Chapter, which such Magistrate is competent shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge. No such time-limit was then in section 240 of Cr.PC

PROCEDURE WHERE ACCUSED IS NOT DISCHARGED [SECTION 269 OF BNSS/SECTION 246 OF Cr.PC.]

Closure of prosecution evidence where attendance of PWs cannot be secured despite giving opportunity to the prosecution and after taking all reasonable measures under this Sanhita.

New sub-section (7) of section 269 of BNSS provides that where, despite giving opportunity to the prosecution and after taking all reasonable measures under this Sanhita, if the **attendance of the prosecution witnesses under sub-sections (5) and (6) of section 269 cannot be secured for cross examination,** it shall be **deemed** that such witness has **not been examined** for not being available, and the Magistrate may close the prosecution evidence for reasons to be recorded in writing and **proceed with the case** on the basis of the materials on record

SUBSTANCE OF ACCUSATION TO BE STATED [SECTION 274 OF BNSS/ SECTION 251 OF Cr.PC.]

Release of accused

- New proviso to section 274 requires that if the Magistrate considers the accusation as groundless, he shall, after recording the reasons in writing, release the accused. Such release shall have the effect of discharge. This is a new requirement which was not there in corresponding provision of section 251 of Cr.PC

NON-APPEARANCE OR DEATH OF COMPLAINANT [SECTION 279 OF BNSS SECTION 256 OF Cr.PC.]

Time-limit for appearance of complainant

- 30 days time-limit is laid down. No such time-limit was there in section 256of Cr.PC

- **New sub-section (2) of section 283 of the BNSS** provides that the Magistrate may, after giving the accused a reasonable opportunity of being heard, for reasons to be recorded in writing, try in a summary way all or any of the offences not punishable with death or imprisonment for life or imprisonment for a term exceeding three years.

No appeal shall lie against decision of Magistrate to try a case in a summary way.

- **APPLICATION FOR PLEA BARGAINING [SECTION 290 OF BNSS/ SECTION265B OF Cr.PC.]**

Time-limit for filing application for plea bargaining

- Section 290 of BNSS fixes a time limit for filing of application of plea bargaining by the accused**. Such application must be filed within a period of thirty days from the date of framing of charge in the Court.** There was no such time-limit in existing provisions of section 265B of Cr.PC

Time-limit for reaching a mutually satisfactory disposition

◆ Section 265B did not provide any limit on the time the Court may allow for the Public Prosecutor/Complainant and accused to work out a mutually satisfactory disposition. Section 290 of **BNSS provides that Court will allow time not exceeding 60 days for the Public Prosecutor/Complainant and accused to work out a mutually satisfactory disposition**

DISPOSAL OF CASE [SECTION 293 OF BNSS/SECTION 265E OF Cr.PC.]

◆ Section 265E of Cr.PC. contained provisions as to how Court will dispose of the case where a mutually satisfactory disposition of the case has been worked out by Public Prosecutor/Complainant and accused.

◆ Section **293 of BNSS makes changes to these provisions to require the Court to show leniency towards first-time offenders who opt for plea bargaining**

◆ Section 265E(a) of Cr.PC. provides that the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused.

- Section 293 (a) of BNSS provides that the Court shall award the compensation to the victim in accordance with the disposition under section 292 and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 401 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused. Section 265E(b) of Cr.PC. provides that after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be.
- Admonition means the offender receives a warning from the court.

- Section 293(b) of BNSS provides that after hearing the parties under clause (a), if the Court is of the view that section 401 or the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law.

- Section 265E(c) of Cr.PC. provides that after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment.

- Section 293(c) of BNSS provides that after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment, and where the accused is a first-time offender and has not been convicted of any offence in the past, it may sentence the accused to one-fourth of such minimum punishment.

- Section 265E(d) of Cr.PC. provides that in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

- Section 293(d) of BNSS provides that in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence and where the accused is a first-time offender and has not been convicted of any offence in the past, it may sentence the accused to one-sixth of the punishment provided or extendable, as the case may be, for such offence.

EVEVIDENCE OF PUBLIC SERVANTS, EXPERTS, PUBLIC OFFICERS IN CERTAIN CASES [SECTION 336 OF BNSS]

Successor officer/expert

- **Section 336 of the BNSS is a new provision.**
- Section 336 provides that where any document or report prepared by a public servant, scientific expert, medical officer or investigating officer is purported to be used as evidence in any inquiry, trial or other proceeding under this Sanhita, and-

  i) such public servant, expert or officer is either transferred, retired, or died; or

  (ii) such public servant, expert or officer cannot be found or is incapable of giving deposition; or

  (iii) securing presence of such public servant, expert or officer is likely to cause delay in holding the inquiry, trial or other proceeding,

  the Court shall secure presence of successor officer of such public servant, expert, or officer who is holding that post at the time of such deposition to give deposition on such document or report.

INQUIRY, TRIAL OR JUDGMENT IN ABSENTIA OF PROCLAIMED OFFENDER [SECTION 356 OF BNSS]

Section 356 of BNSS is a new provision

- **Section 356 provides as follows:**

1. When a person declared as a proclaimed offender, whether or not charged jointly, has absconded to evade trial and there is no immediate prospect of arresting him,
  - it shall be deemed to operate as a waiver of the right of such person to be present and tried in person,
  - and the Court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as if he was present and pronounce the judgment:

The Court shall ensure that the following procedure has been complied with before proceeding under (1) above namely:-

(i) issuance of execution of two consecutive warrants of arrest within the interval of at least thirty days;

(ii) publish in a national or local daily newspaper circulating in the place of his last known address of residence, requiring the proclaimed offender to appear before the Court for trial and informing him that in case he fails to appear within thirty days from the date of such publication, the trial shall commence in his absence;

(iii) iii) inform his relative or friend, if any, about the commencement of the trial; and

(iv) (iv) affix information about the commencement of the trial on some conspicuous part of the house or homestead in which such person ordinarily resides and display in the police station of the district of his last known address of residence.

3. Where the proclaimed offender is not represented by any advocate, he shall be provided with an advocate for his defence at the expense of the State.

4. Where the Court, competent to try the case or commit for trial, has examined any witnesses for prosecution and recorded their depositions, such depositions shall be given in evidence against such proclaimed offender on the inquiry into, or in trial for, the offence with which he is charged. before If the proclaimed offender is arrested and produced or appears the Court during such trial, the Court may, in the interest of justice, allow him to examine any evidence which may have been taken in his absence.

5. Where a trial is related to a person under this section,

- the deposition and examination of the witness, may, as far as practicable, be recorded by audio-video electronic means preferably mobile phone and
- such recording shall be kept in such manner as the Court may direct.

6. In prosecution for offences under this Sanhita, voluntary absence of accused after the trial has commenced under (1) above shall not prevent continuing the trial including the pronouncement of the judgment even if he is arrested and produced or appears at the conclusion of such trial.

7. No appeal shall lie against the judgment under this section unless the proclaimed offender presents himself before the Court of appeal. No appeal against conviction shall lie after the expiry of three years from the date of the judgment.

8. The State may, by notification, extend the provisions of this section to any absconder mentioned in section 84(1) of this Sanhita

WITNESS PROTECTION SCHEME [SECTION 398 OF BNSS]

Protection of witness

- Section 398 of BNSS is a new provision.
- section 398 of BNSS provides that every State Government shall prepare and notify a witness protection scheme for the State with a view to ensure protection of the witnesses.

COPY OF JUDGMENT TO BE GIVEN TO ACCUSED AND OTHER PERSONS [SECTION 404 OF BNSS/SECTION 363 OF Cr.PC.]

Copy of Judgment to Government

- Section 363 of Cr.PC provided for Copy of judgment to be given to the accused and other persons
- Section 404 of BNSS provides that the Court may, on an application made in this behalf by the Prosecuting Officer, provide to the Government, free of cost, a certified copy of such judgment, order, deposition or record. [2nd proviso below section 404(5)]

JUDGMENT WHEN TO BE TRANSLATED ISECTION 405 OF BNSS / SECTION 364 OF Cr.PC)

Translation copy

- For words "the accused so requires", words "and if either party so requires are substituted. Translated copy thus can be provided to either party an not only to accused as was the case under section 364 of Cr.PC.

PROCEDURE IN CASES SUBMITTED TO HIGH COURT FOR CONFIRMA- TION [SECTION 412 OF BNSS/SECTION 371 OF Cr.PC.]

Electronic means

- Section 371 of Cr.PC provided that in cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session
- Section 412 of the BNSS has modified above provisions to provide that the order of High Court may be sent to Court of session by the proper Officer of High Court either physically or through electronic means

APPEALS [SECTIONS 413 TO 435 OF BNSS]

NO APPEAL IN PETTY CASES [SECTION 417 OF BNSS/SECTION 376 OF Cr.PC.]

No appeal provision

- Section 376(a) of Cr.PC provided that there shall no appeal by a convicted person where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine
- Section 417(1)(a) of BNSS has modified above provisions so as to provide that there shall no appeal by a convicted person where a High Court passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine

APPEAL BY STATE GOVERNMENT AGAINST SENTENCE [SECTION 418 OF BNSS/SECTION 377 OF Cr.PC.]

Central Act

- In section 418(2) of BNSS words "any Central Act" are substituted for "Delhi Special Police establishment, constituted under Delhi Police Establishment Act“

APPEAL IN CASE OF ACQUITTAL [SECTION 419 OF BNSS/SECTION 378 OF Cr.PC.]Central Act

Central Act

- In section 419(2) of BNSS words "any Central Act" are substituted for "Delhi Special Police establishment, constituted under Delhi Police Establishment Act"

POWER OF SUPREME COURT TO TRANSFER CASES AND APPEALS[SECTION 446 OF BNSS/SECTION 406 OF Cr.PC.]

Compensation

- In section 446(3) of BNSS words "not exceeding one thousand rupees" are replaced by "such sum".

POWER OF HIGH COURT TO TRANSFER CASES AND APPEALS [SECTION447 OF BNSS/SECTION 407 OF Cr.PC.]

Compensation

- In section 447(7) of BNSS words "not exceeding one thousand rupees" are replaced by "such sum".

POWER OF SESSIONS JUDGE TO TRANSFER CASES AND APPEALS [SECTION 448 OF BNSS/SECTION 408 OF Cr.PC.]

Monetary limit

- For words "one thousand rupees" and "two hundred and fifty rupees" in section 408(3) of Cr.PC, words "sum" and "sum not exceeding ten thousand rupees" are substituted

SENTENCES,EXECUTION/SUSPENSION/REMISSION OF [SECTIONS 453 TO 477 OF BNSS]

MERCY PETITION IN DEATH SENTENCE CASES [SECTION 472 OF BNSS]

Mercy petition

- Section 472 of BNSS is a new provision.
- Section 472 of the BNSS provides for Mercy petition in death sentence cases. Section 472 provides as under:
- **A convict under the sentence of death or his legal heir or any other relative may, if he has not already submitted a petition for mercy, file a mercy petition before the President of India under article 72 or the Governor of the State under article 161 of the Constitution within a period of thirty days after the date on which the Superintendent of the Jail,-**

  i) informs him about the dismissal of the appeal or special leave to appeal by the Supreme Court; or

  ii) informs him about the date of confirmation of the sentence of death by the High Court and the time allowed to file an appeal or special leave in the Supreme Court has expired

- The petition may, initially be made to the Governor and on its rejection or disposal by the Governor, the petition shall be made to the President within a period of sixty days from the date of rejection or disposal of his petition.
- The Superintendent of the Jail or officer in charge of the Jail shall ensure, that every convict, in case there are more than one convict in a case, also makes the mercy petition within a period of sixty days and on non-receipt of such petition from the other convicts, Superintendent of the Jail shall send the names, addresses, copy of the record of the case and all other details of the case to the Central Government or State Government for consideration along with the said mercy petition.

- The Central Government shall, on receipt of the mercy petition seek the comments of the State Government and consider the petition along with the records of the case and make recommendations to the President in this behalf, as expeditiously as possible, within a period of sixty days from the date of receipt of comments of the State Government and records from Superintendent of the Jail.
- The President may, consider, decide and dispose of the mercy petition and, in case there are more than one convict in a case, the petitions shall be decided by the President together in the interests of justice.

- Upon receipt of the order of the President on the mercy petition, the Central Government shall within forty-eight hours, communicate the same to the Home Department of the State Government and the Superintendent of the Jail or officer in charge of the Jail.
- No appeal shall lie in any Court against the order of the President made under article 72 of the Constitution and it shall be final, and any question as to the arriving of the decision by the President shall not be enquired into in any Court.

MAXIMUM PERIOD FOR WHICH UNDERTRIAL PRISONER CAN BE DETAINED [SECTION 479 OF BNSS/SECTION 436A OF Cr.PC.]

Under trial prisoner

- Section 436A of Cr.PC provided for the maximum period for which an under trial prisoner can be detained

- Section 479 of BNSS corresponds to section 436A of Cr.PC and makes the following changes in provisions:

- Section 436A of Cr.PC was not applicable to an offence for which punishment of death has been specified as one of the punishment. Section 479 of BNSS is not applicable to an offence for which punishment of death or life imprisonment has been specified as punishment.

MAXIMUM PERIOD FOR WHICH UNDERTRIAL PRISONER CAN BE DETAINED [SECTION 479 OF BNSS/SECTION 436A OF Cr.PC.].....

Under trial prisoner

- Where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bail by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law. [First proviso to section 479(1)]
- Where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court. [Section 479(2)]
- The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the maximum period of imprisonment specified for offence under that law, as the case may be, shall forthwith make an application in writing to the Court to proceed under section 479(1) for the release of such person on bail. [Section 479(3)]

WHEN BAIL CAN BE TAKEN IN CASE OF NON-BAILABLE OFFENCE [SECTION 480 OF BNSS/SECTION 437 OF Cr.PC.]

In case of a child/woman/sick or infirm

- Section 437 of Cr.PC provided for denial of bail to a person accused or suspected of commission of non-bailable offence in the following two cases:
  - (i**) if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;**

WHEN BAIL CAN BE TAKEN IN CASE OF NON-BAILABLE OFFENCE [SECTION 480 OF BNSS/SECTION 437 OF Cr.PC.]

In case of a child/woman/sick or infirm

- ii) if such offence is a cognizable offence and he had **been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years.**

To the above rule of bail denial, there was an exception. First proviso to section 437(1) provided that Court may direct such person to be released on bail if such **person is under the age of sixteen years or is a woman or is sick or infirm. Section 480 of BNSS modifies the above exception to bail denial by providing that Court may direct that such person be released on bail if such person is a child or is a woman or is sick or infirm.**

Refusal for bail

- Section 437(1), 2nd proviso, of Cr.PC provided that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may given by the court.
- Section 480, 3rd proviso, **of BNSS now provides that the mere fact that an accused person may be required for being identified by witnesses during investigation or for police custody beyond the first fifteen days shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.**

ANTICIPATORY BAIL(DIRECTION FOR GRANT OF BAIL TO PERSON APPREHENDING ARREST) [SECTION 482 OF BNSS/SECTION 438 OF Cr.PC.]

Anticipatory bail

- Section 438(1) of Cr.PC provided that where any person has reason to believe that he may be arrested on accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

ANTICIPATORY BAIL(DIRECTION FOR GRANT OF BAIL TO PERSON APPREHENDING ARREST) [SECTION 482 OF BNSS/SECTION 438 OF Cr.PC.]

Anticipatory bail

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail

- **Corresponding provisions in BNSS are contained in section 482. Section 482(1) omits factors in (i) to (iv) above to be considered by the Court for grant of anticipatory bail**
- **Section 482(1) of BNSS provides that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail**
- **Proviso to section 438(1) of Cr.PC. providing that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer-in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application *is now omitted***

- **Sub-section (1A) of section 438 of Cr.PC. providing that where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court, *is now omitted.***
- **Sub-section (1B) of section 438 of Cr.PC. providing that the presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice*, is now omitted.***

PROPERTY, DISPOSAL OF[SECTIONS 497 TO 505 OF BNSS]

Magistrate

- Besides any Criminal Court, Magistrate can make an order under section 497(1) of BNSS [Section 497(1) of BNSS]

Statement of property

- The Court or the Magistrate shall, within a period of fourteen days from the production of the property before it, prepare a statement of such property containing its description in such form and manner as the State Government may, by rules, provide. [Section 497(2) of BNSS]

Photograph/videography of property

- The Court or the Magistrate shall cause to be taken the photograph and if necessary, videography on mobile phone or any electronic media, of such property [Section 497(3) of BNSS]
- The statement prepared as above and the photograph or the videography taken as above shall be used as evidence in any inquiry, trial or other proceeding under the Sanhita. [Section 497(4) of BNSS]

Time limit for disposal of property

- The Court or the Magistrate shall, within a period of thirty days after the statement has been prepared and the photograph or the videography has been taken, order the disposal, destruction, confiscation or delivery of the property in the manner specified hereinafter. [Section 497(5) of BNSS]

POWER TO SELL PERISHABLE PROPERTY [SECTION 505 OF BNSS/SECTION 459 OF Cr.PC.]

Prescribed value

- Section 459 of Cr.PC provided that if the **person entitled to the possession of such property is unknown or absent** and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than five hundred rupees, the Magistrate may at any time direct it to be sold
- **Section 505 modifies the above provisions by increasing the limit for value of perishable property from 500 to 10,000 by replacing the words "is less than five hundred rupees" with the words "is less than ten thousand rupees"**

ELECTRONIC MODE, TRIAL ANDPROCEEDINGS TO BE HELD IN [SECTIONS 530 OF BNSS]

- **Section 530 is a new provision. There were no corresponding provisions in Cr.PC**
- **Section 530 of the BNSS relates to trial and proceedings to be held in electronic mode.**
- **This section provides that trials and proceedings under this Code, be held in electronic mode, by use of electronic communication or use of audio-video electronic means**
- **Section 530 provides that all trials, inquires and proceedings under this Sanhita, including-**
- **(i) summons and warrant, issuance, service and execution thereof;**
- **(ii) holding of inquiry;**
- **(iii) examination of complainant and witnesses;**
- **(iv) trial before a Court of Session, trial in warrant cases, trial in summons. cases, summary trials and plea bargaining;**
- **(v) recording of evidence in inquiries and trials;**
- **(vi) trials before High Courts;**
- **(vii) all appellate proceedings and such other proceedings, may be held in electronic mode, by use of electronic communication or use of audio-video electronic means.**

RECAP: ReformS, ADDITIONS, DELETIONS.

- Total **531 sections** spread over in **39 chapters**.
- Total **9 new sections**.
- Total **39 new sub-sections/clauses**.
- Total **44 new provisos and explanations**.
- In **35 places audio-video electronic/ videography means** is **introduced**.
- In **35 places timeline** is **introduced**.
- Total **14 provisions** have been **deleted.**
- Total **177 provisions** are **modified.**

Major Reforms:

- **Definition:**

  - Section 2 of BNSS has been expanded to introduce new definitions for key terms such as **‘audio-video electronic means’** [Section 2(1)(a)], **‘bail’** [Section 2(1)(b)], **‘bail bond’** [Section 2(1)(d)], **‘bond’** [Section 2(1)(e)], and **‘electronic communication’** [Section 2(1)(i)].

  - The definition of **‘victim’** [Section 2(1)(y)] has been expanded by eliminating the requirement of the accused person being formally charged.

  - An Explanation has been added to the definition of **‘investigation’** [2(1)(*l*)] to clarify that in case any provision of a special Act is inconsistent with the provisions of the BNSS, 2023, the provision of special Act shall prevail.

  - The definition of **‘pleader’** is deleted.

  - **The post of Judicial Magistrate of the third class, Metropolitan Magistrate and Assistant Session Judges has been abolished to bring uniformity in classes of Courts and Judges across the country.**

Audio Video electronic meansAny communication device for..

- Video conferencing
- Recording of processes of identification
- Search and Seizure of Evidence
- Transmission of electronic communication, and
- For such other purposes.
- BAIL means
- Release of a person accused of or suspect of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution by a such person of a bond or a bail bond.

Bond..
A personal bond or undertaking for release

- Without surety.

- Electronic communication 2(1) (i)
- Written verbal pictorial information video content transmitted or transferred.
- One person to another or from one device to another
- Person to a device or otherwise.
- Includes telephone, mobie phone, wireless telecommunication device, or a computer or audio video players or cameras or any other electronic device .

Major Reforms:

- **Prosecution related Reforms:**
  - Section 20 of BNSS **establishes a comprehensive Directorate of Prosecution**. For the first time, the provision for **District Directorate of Prosecution** has been made.
  - ▶ The **Director of Prosecution** will be **responsible for giving opinions on filing appeals and monitoring cases punishable with 10 years or more/life imprisonment/death**.
  - ▶ The **Deputy Director of Prosecution** has been made **responsible to examine police report and monitor the cases punishable for 7 years or more but less than 10 years and for ensuring their expeditious disposal**.
  - ▶ The **Assistant Director of Prosecution** has been empowered **to monitor cases punishable for less than 7 years**.
  - The BNSS makes the provision for the Central Government to appoint the Public Prosecutor or Additional Public Prosecutor for the purpose of prosecution before the Delhi High Court. (Section 18(1) proviso).
  - In case of appointment of any other person in the absence of Assistant Public Prosecutor, the District Magistrate is required to **give 14 days' notice to the State Government** before making such an appointment [section 19(3)].

- ASSISTANT PUBLIC PROSECUTORS [SECTION 19 OF BNSS/SECTION 25 OF Cr.PC.]

  Notice to State Government

  ◆ Section 19 of the BNSS stipulates a new requirement that provides that when no Assistant Public Prosecutor is available District Magistrate may exercise his power of appointment of any other person as Assistant Public Prosecutor after giving notice of 14 days to the State Government

  DIRECTORATE OF PROSECUTION [SECTION 20 OF BNSS/SECTION 25A OF Cr.PC.]

  District Directorate of Prosecution

  ◆ Section 20(1)(b) of BNSS provides that the State Government may establish

  District Directorate of Prosecution of every district consisting of as many Deputy Directors & Assistant Directors of Prosecution as it thinks fit

  Eligible criteria of appointment of Director/Deputy Director of Prosecution

  ◆ Section 25A(2) of Cr.PC. provided that a person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution,

if he has been in practice as an advocate for not less than ten years and such appointment shall be made with concurrence of the Chief Justice of the High Court.

◆ Section 20(2)(a) of the BNSS has changed the eligibility criteria for appointment of a Director of Prosecution or a Deputy Director of Prosecution. Section 20(2) provides that a person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, if he has been in practice as an advocate for not less than fifteen years or is or has been a Sessions Judge

◆ Section 20 omits the requirement of concurrence of the Chief Justice of the High Court for appointment of a Director of Prosecution or a Deputy Director of Prosecution

Assistant Directors of Prosecution

◆ Section 20(2) creates new posts of Assistant Directors of Prosecution. Section 20(2)(b) provides that person shall be eligible to be appointed as an Assistant Director of Prosecution if he has been in practice as an advocate for not less than seven years or has been a Magistrate of the first class

◆ Assistant Director shall be subordinate to Deputy Director of Prosecution

Roles and responsibilities of Director/Deputy Director/Assistant Director of Prosecution

◆ Unlike section 25A

Procedure related to Punishment

- In section 23 the power of limit of imposing fine by a Magistrate of the first class has been increased from Rs. 10,000 to maximum of Rs. 50,000 and for the Magistrate of second class from Rs. 5,000 to Rs.10,000. These two classes of Magistrates have also been empowered to impose community service as a form of sentence.

- Community service has been explained as *"Court ordered work that benefits the community and which is not entitled to any remuneration"* [Explanation to Section 23].

- In the matter of sentences in several offences, an addition has been made in section 25 of the BNSS, 2023 that the Court considering the **gravity of the offences** shall order punishments to **run concurrently or consecutively.**

Major Reforms:

- **Investigation related Reforms:**
  - **FIR mode- Introduction of Zero FIR, e-FIR, Preliminary Enquiry, Investigation by senior police officer, use of forensic experts, timeline for completing further investigation (90 days), deemed sanction in 120 days.**
  - **Magisterial power to direct registration of FIR and investigation is subjected to complainant's affidavit and submission made by the police officer.**
  - **Public servant is protected against false and frivolous cases at both the stages- Complaint before the Magistrate and Application made under section 175(3) [earlier section 156(3)]-** Now considering the assertions made by the public servant and receiving a report containing facts and circumstances of the incident from his superior officer is mandatory.
  - **In Complaint cases-** hearing the accused is made mandatory before taking cognizance
  - **Arrest and custody:**
    - **Partial restriction in making arrest in less than three years punishable offence**
    - **No need of arrest while forwarding the police report to the Magistrate**
    - **No arrest for taking sample of handwriting/signature/voice sample/finger impressions**
    - **additional medical examination of the arrested person in police custody**

- **Arrest and custody:**
  - **One designated police officer in every district and at every police station to maintain records of arrest**
  - **Notice of appearance- Form 1 has been added in Schedule 1 of the BNSS.**
  - **Use of handcuffs while effecting the arrest and production before court of an arrested person.**
  - **Power of police to detain or remove any person resisting, refusing, disregarding etc. to conform to any direction of a police officer is introduced in section 172 BNSS.**
  - **Police custody period is 15 days spread over the initial period of 40/60 days based on the total period of 60/90 days.**
  - **The accused being required for police custody beyond the first 15 days, will not be the sole ground for refusing grant of bail to the accused.**
  - **No scope for house arrest-** detention shall only be in a police station under police custody or in prison under judicial custody or any other place declared as a prison by the Central Government or the State Government.

Summoning Process:

- Section 63 introduces technology compatibility for issuance and service of summons. The Court can now **issue summons in electronic form** authenticated by the image of the seal of the Court or digital signature.
- Further, Section 70 allows for **service of summons through electronic means**. For the purpose of making the process effective, transparent and accountable, a provision has been made in **Section 64** for **maintaining the register in the police station and in the Court** to keep the address, email address, phone number etc. of the person to be summoned.
- In **section 66**, gender neutrality has been introduced and women have been included as an adult member of the family for the purpose of service of summons on behalf of the person summoned. The earlier reference to 'some adult male member' has been replaced with 'some adult member'.
- In section 227 dealing with issuance of process, the summons and warrants may also be issued through electronic means.
- In Section 94, the BNSS introduced **production of electronic communication, including communication devices** which is likely to contain digital evidence.

- **Search and Seizure related reforms:**
  - **Section 107- videography of the process of search and seizure including the preparation of a list of seized items and the signing of it by the witness is made mandatory.**
  - **Proceeds of crime-** Enable the police, with the permission of the Court, **to attach and forfeit any property obtained as proceeds of crime**.
  - **Search without warrant-** Section 185 introduces several checks on the powers of the police while conducting search. Firstly, the police officer is required to **record the grounds of his belief for conducting search at a place in the 'case-diary'** under section 185(1). Further, **any search conducted by a police officer shall be recorded through audio-video electronic means** as per section 185(2). Further, Section 185(5) makes the police officer accountable **to send, within 48 hours, the copies of any record made in this regard to the nearest Magistrate** empowered to take cognizance of the offence.
  - **Disposal of case property-** Section 497 introduces the **quick disposal of case properties even during the investigation, on preparation of a statement of the property by the Court within 14 days after such property has been photographed/ video graphed.**

Major Reforms:

- **Recording of Statements and Confessions:**
  - In **section 179** of BNSS the **exemption from attending the police station** is given to women, person not below 15 years and **above 60 years,** person with disability and **a person with acute illness**. Further, a proviso is added to allow the persons mentioned in the exemption category to attend at the police station, if he/she is willing so to do.
  - In **section 183**, now the Judicial Magistrate in whose **district the offence has been registered** (whether having jurisdiction in the case or not) is made **competent** to record the confession or statement in the course of investigation.
  - For serious and heinous offences, it has been introduced in **section 183 that in cases relating to the offences punishable with imprisonment for ten years or more** or imprisonment for life or with death, the Judicial Magistrate **shall mandatorily record the statement of the witness** brought before him by the police officer.
  - Affording further protection to the **victims of rape**, it has been mandated in **section 183(6)(a)** that their statement shall be recorded only **by a lady Judicial Magistrate and in her absence, by a male Judicial Magistrate in the presence of a woman**.
  - In order to provide more protection to the **victims of rape**, **section 176(1)** provides that the **statement of such victim shall be recorded through audio-video means**.

Major Reforms:

Introduction of Technology: Police Report and Supply of Documents etc.

- Section 193(3)(i) has made forwarding of the police report by the officer in charge of the police station to the Magistrate including **through electronic means**.
- Under section 210, technology compatibility has been further provided to the Magistrate **enabling him to take cognizance** of any offence **upon receiving a police report electronically**.
- The police report must also include **details of the sequence of custody in case of electronic device** [section 193(3)(i)(h)].
- In order to streamline the process of **supply of copies to the accused**, section 193(8) has been introduced which makes the police officer responsible to **submit such number of copies of the police report along with other documents duly indexed as required to be furnished to the accused persons**, to the Magistrate at the time of filing of charge sheet for supplying to the accused.
- Further, to make this process of supply of documents citizen friendly and technologically compatible, **supply of documents through the electronic communication has been included**.

Proclaimed Offender

- **Three significant reforms**
  - **Widening the scope of 'proclaimed offender'-** Earlier a person could have been declared a "proclaimed offender" only under few sections. Even heinous offences like rape, trafficking, etc. were not covered under this category. Significant changes have been brought in section 84(4) where it has been provided that proclaimed offender can be declared in **all the offences which are punishable with imprisonment of 10 years or more, or with life imprisonment, or with death**. (This will cover more than 100 offences under the BNS, 2023)
  - **Forfeiture and attachment of property-** In newly introduced **section 86** of the BNSS police officer not below the rank of Superintendent of Police may make a written request to the Court to initiate the process of assistance from a court/authority in the contracting State outside India for identification, attachment and forfeiture of the property belonging to a proclaimed person.
  - **In absentia trial- Section 356**

Reforms in Commencement of Proceedings and Trial Procedure

- **Introduction of timeline:**
  - **Supply of police report, documents etc. (Section 230)- 14 Days** from the date of production/appearance of the accused
  - **Committal of case (Section 232)- 90 days** extendable up to 180 days from the date the Magistrate takes cognizance. Further, **any application filed before the Magistrate by the accused or the victim shall also be forwarded to the Court of Session.**
  - **Filing discharge application-** 60 days from the date of committal of the case.
  - **Framing of charge-** 60 days from the first hearing on charge.
  - **Delivering and uploading of judgments-** 30 days extendable up to 45 days and 7 days respectively.
  - **Complaint case- 30 days notice to complaint for appearance** (Sections 272 and 279)

Reforms in Commencement of Proceedings and Trial Procedure

- **Summary Trial:**
  - To reduce the burden on judiciary and expedite trial process in petty and less serious cases, **section 283 makes summary trial mandatory for petty and less serious offences** (like theft, receiving or retaining stolen property, house trespass, breach of peace, criminal intimidation, etc.).
  - In cases where punishment is extendable up to 3 years (earlier 2 years) the Magistrate may, for the reasons to be recorded in writing and after giving the accused a reasonable opportunity of being heard, try such cases summarily.
- **Plea Bargaining:**
  - In section 290, a **time period of 30 days has been prescribed for filing an application for plea bargaining** from the date of framing of charges.. Further, a time period of **60 days** has been prescribed for completing the process of **'mutually satisfactory disposition'.**
  - Section 293 adopts a **lenient and rehabilitative approach in plea bargaining sentencing**. In instances involving **first-time offenders**, where minimum punishment is prescribed **one-fourth of the minimum punishment** and in cases where the punishment is extendable and no minimum punishment is prescribed, a first-time offender may receive a sentence equivalent to **one-sixth of the prescribed punishment.**

Reforms in Commencement of Proceedings and Trial Procedure

- In **summons cases**, a proviso has been inserted in section 274 **to allow discharge of the accused person** if the accusation appears as groundless.

- **Use of technology for deposition of evidence:**

  – Section 308 empowers the **examination of the accused through electronic means**, specifically utilizing audio-video conferencing (VC) facilities accessible in any place designated by the State Government. Complementing this, **section 316** stipulates that the **signature** of an accused who has been examined *via* video conferencing must be **obtained within a timeframe of 72 hours**.

  – Section 392 allows **the accused person, if in custody, to be produced through audio video electronic means to hear the judgment**.

- **Deposition of evidence of witnesses by audio-video electronic means at the designated place to be notified by the State Government- section 254 and 265** allows for the **use of audio-video electronic means** in cases for the deposition of evidence or statements of witnesses, police officers, public servants, or experts.

- **Deposition by successor-in-office *via* audio-video electronic means- section 336** provides that **where any document or report prepared by a public servant, expert or officer is used as evidence, the Court shall secure the presence of the successor in office of such public servant, expert or officer.** This process has also been equipped with the use of audio-video electronic means for the purpose of such deposition.

Reforms in Commencement of Proceedings and Trial Procedure

- In section 330, **timeline of thirty days has been introduced to challenge the genuineness of any document** which may be relax at the discretion of the Court. Further, the experts are exempted to be called before the Court unless the report of such expert is disputed by any parties to the trial.

- To curtail delays resulting from frequent adjournments, Section 346 establishes a framework wherein the Court, after considering objections from the opposing party, may grant **not more than two adjournments when circumstances are genuinely beyond the control of a party**, for reasons to be recorded in writing.

- **Victim Centric Reforms**

  - Victim **to get, free of cost, the copy of FIR** under section 173(2).
  - **The police officer needs to inform the progress of investigation to the informant or victim within 90 days of the investigation**.
  - Magistrate has to **supply the police report and other documents** so received to the victim **within 14 days**.
  - Before **withdrawal of prosecution** the victim must be afforded an **opportunity to be heard** before the Court.
  - Section 398 mandates the preparation and notification of a **witness protection scheme** by every State Government.

• Bail related Reforms

- Bail, bail-bond and bond have been defined.
- Section 479 provision for bail to undertrials prisoners has been relaxed and liberalized. A sympathetic view has been taken towards **first-time offenders**, who are now eligible to be released on bond by the Court if they have **undergone detention for the period extending up to one-third of the maximum period of imprisonment** specified for that offence.
- The jail superintendent to make an application for bail to the Court where an under-trial completes one-half or one-third of the maximum period.
- The release of an **undertrial** prisoner who is **involved in more than one offence or in multiple cases is made stringent** under the provision.
- Further, the sentence of **life imprisonment and death** has been **excluded** from the purview of this provision.
- **Bail in cases of acquittal** is made pro-liberty oriented. Section 483 relaxed the term of surety bail for acquitted persons. Under the changed provision release on personal bond is also added.

- Under **section 15** of BNSS, the State Government is now authorized to appoint **any police officer not below the rank of Superintendent of Police or equivalent to act as a Special Executive Magistrate.**
- The **Deputy Commissioner of Police** has been added in section 162 relating to the District Magistrate/Sub-Divisional Magistrate/Executive Magistrate who can deal with procedure in case of **public nuisance**.
- In the Chapter on Order for Maintenance of Wives, Children and Parents (Chapter X), an important addition has been made in the BNSS, 2023 in **section 145 whereunder in case of the dependent father or mother, the proceedings**

Further Reforms

- In case of **offence committed outside India**, the **jurisdiction of the Court where the offence is registered** is also included in **section 208**. Further, in **Section 209** receipt of evidence relating to offences committed outside India, the **production of depositions or exhibits in electronic form is allowed**.
- Section 530 envisages that all trials, inquiries and proceedings may be made compatible with technology and held in electronic modes by use of electronic communication or through the use of audio-video electronic means.
- In an attempt to end the delay caused in receiving **sanction for prosecution** of public servants, it has been provided in **section 218** that the sanctioning authority shall take decision within 120 days from the date of receipt of the request, failing which, the sanction shall be deemed to have been accorded by such authority.

LANDMARK JUDGMENTS

NO ROUTINE ARREST OF HUSBAND OR FAMILY OF HUSBAND IN CRUELTY CASES
Arnesh Kumar Vs. State of Bihar(2014) 8 SCC 273: AIR 2014 SC 2756: 2014 (8) SCALE 250: 2014 (3) Crimes 40 (SC): 2014 Cri LJ 3707Decided on 02.07.2014Hon'ble Judges/Coram: C.K. Prasad and Pinaki Chandra Ghose, JJ., Supreme Court of India

Facts in Nutshell :

The Petitioner apprehends his arrest in a case under Section 498A of the Indian Penal Code, 1860 (hereinafter called as Indian Penal Code) and Section 4 of the Dowry Prohibition Act, 1961. The maximum sentence provided under Section 498A of Indian Penal Code is imprisonment for a term which may extend to three years and fine whereas the maximum sentence provided under Section 4 of the Dowry Prohibition Act is two years and with fine.

Petitioner happens to be the husband of Respondent No. 2, Sweta Kiran. The marriage between them was solemnized on 1st July, 2007. His attempt to secure anticipatory bail has failed and hence he knocked the door of Supreme Court by way of Special Leave Petition.

In sum and substance, allegation leveled by the wife against the Appellant was that demand of Rupees eight lacs, a maruti car, an air-conditioner, television set etc., was made by her mother-in-law and father-in-law and when this fact was brought to the Appellant's notice, he supported his mother and threatened to marry another woman. It has been alleged that she was driven out of the matrimonial home due to non-fulfilment of the demand of dowry.

Issue:

Can automatic arrest be done by police in cases under section 498A, IPC?

Decision by Supreme Court:

Supreme Court held that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. Court gave the following directions:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above the flowing section 41, Code of Criminal Procedure.

(2) The Magistrate while authorizing detention of the accused shall the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

(3) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing.

POLICE ENCOUNTERS GUIDELINES

People's Union for Civil Liberties vs. State of Maharashtra

(2014) 10 SCC 635: 2014 (11) SCALE 119: 2015 (3) SCJ 584: 2015 Cri LJ 610: 2014 (4) RCR (Criminal) 423

Decided on 23.09.2014Hon'ble Judges/Coram: R.M. Lodha, C.J.I. and Rohinton Fali Nariman, J.,

Facts in Nutshell:

In the three writ petitions, which were filed by People's Union for Civil Liberties (for short, "PUCL") before the Bombay High Court, the issue of genuineness or otherwise of nearly 99 encounters between the Mumbai police and the alleged criminals resulting in death of about 135 persons between 1995 and 1997 was raised. Inter alia, the following prayers were made:

(i) directing the Respondent Nos. 1 to 3 (State of Maharashtra and Mumbai Police) to furnish the particulars regarding the number of persons killed in last one year in police encounters, their names, addresses, the circumstances in which they were killed, the inquiries, if any, conducted with respect to the said killings and any other relevant information and the action taken, if any, by them;

(ii) directing the Respondent No. 1 i.e., State of Maharashtra to register offence Under Section 302 of Indian Penal Code and other enactments against the police officers found prima facie responsible for the violations of fundamental rights and other provisions of the Indian Penal Code and other relevant enactments.

Directions by Supreme Court:

Court held that following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation:

(1) Whenever the police is in receipt of any intelligence or tip-off regarding grave criminal movements or activities pertaining to the commission of into case diary) or in some electronic form. Such recording need not reveal criminal offence, it shall be reduced into writing in some form (preferably details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

(2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-charge/Head of the District Hospital. Post-mortem shall be video-graphed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever, applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

Posting Comment on the Facebook / Social Media May not Attract ingredients of criminal intimidation

MAY NOT ATTRACT INGREDIENTS OF CRIMINAL INTIMIDATION

Manik Taneja Vs. State of Karnataka

(2015) 7 SCC 423: 2015 (2) SCJ 235: 2015 Cri LJ 1483:

2015 (1) SCALE 484: 2015 (1) UC 318

Decided on 20.01.2015

Hon'ble Judges/Coram: V. Gopala Gowda and R. Banumathi, JJ.,

Facts in Nutshell:

The Appellant No. 1 and his wife Sakshi Jawa met with an accident with an auto rickshaw, while Sakshi Jawa was driving Maruti. One of the passengers, who s travelling by the auto, namely Mrs. Laxmi Ganapati, sustained injuries and she was duly admitted in the Santosh Hospital for treatment. Sakshi Jawa, the Appellant No. 2, was said to have paid all the hospital expenses of the injured and the matter and no FIR was lodged. The Constable, who was present at the time of incident, was said to have been amicably settled between the injured and the Appellants Traffic Police Station, Bangalore City.

The Appellants allege that as soon as they directed the Appellants to meet Mr. Kasim, Police Inspector, Pulakeshi Nagar entered the office of Mr. Kasim, he behaved in a rude manner. Further, Mr. Kasim summoned the Appellant No. 2-Sakshi Jawa to produce her driving licence and other documents. As at that time no FIR was lodged, the Appellant No. 2 questioned the Police Inspector as to why she was being asked to produce those documents. Mr. Kasim, in reply, was alleged to have threatened Appellant No. 2 by saying that he would drag her to court if she continued to argue and she was also thrown out of his office. On the orders of Mr. Kasim, his deputy told the Appellants that they are booking them on the charge of rash and negligent driving.

Being aggrieved with the manner with which they were treated, the Appellants posted comments on the Bangalore Traffic Police Facebook page, accusing Mr. Kasim of his misbehavior and also forwarded an email complaining about the harassment meted out to them at the hands of the Respondent Police Inspector. The Respondent No. 2-Police Inspector filed a complaint regarding the posting of the comment on the Facebook by the Appellants and subsequently FIR was registered against the Appellants for offences punishable under Sections 353 and 506 of the Indian Penal Code.

The Appellants filed Criminal Petition under Section 482 of the Code of Criminal Procedure before the High Court seeking to quash the FIR and the criminal proceedings initiated against them on the ground that the complaint is an afterthought.

Decision by Supreme Court:

Supreme Court observed that the allegation was that the Appellants have abused the complainant and obstructed the second Respondent (Police) from discharging his public duties and spoiled the integrity of the second Respondent Mr. Kasim, Police Inspector, Pulakeshi Nagar Traffic Police Station, Bangalore City From the facts and circumstances of the case, it appears that there was no intention on the part of the Appellants to cause alarm in the minds of the second Respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it was a public forum meant for helping the public and the act of Appellants posting a comment on the Facebook attract ingredients of criminal intimidation in Section 503 of the Indian Penal Code

In Court view, the Appellants might have posted the comment online under the bona fide belief that it was within the permissible limits. As per Court none of the ingredients of the alleged offences were satisfied.

THE OFFENCE OF RAPE CAN BE DISTINGUISHED ON THE BASIS OF THE INTENTION OF THE ACCUSED

Sunil Mahadev Patil Vs. State of Maharashtra2016 All MR (Cri) 1712: 2016 (3) Bom CR (Cri) 435 Decided on 03.08.2015Hon'ble Judges/Coram: Mridula Bhatkar, J., High Court of Bombay

Facts in Nutshell:Application was moved for regular bail by appellant-Sunil Mahadev Patil under Section 439 of Cr.P.C., as the appellant/applicant/accused was prosecuted for the offences punishable under Sections 376, 363, 366A of the Indian Penal Code and under Section 3, 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012. The age of prosecutrix was 15 years old.

It was the case of the prosecution that complainant, father of prosecutrix gave information to the police that his daughter, who was studying in 9th Std., informed him on 25th November that she was going to meet her teacher but she did not return home. So, he searched for her in the village, but she could not be found. Hence, he gave missing complaint to the police on 27th November, 2014. Accordingly, missing report was registered at Police Station. On the same day, he informed the police that after enquiry, applicant/accused was not found in the village since 25th November, 2014. So, the offence was registered under Sections 363 and 366A against the applicant/accused. Both of them were found on 9th December, 2014. The applicant/accused was arrested on the same day and he was in jail since then. Thereafter on 11th December, 2014, Section 376 and Sections 3, 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 were added, as applicant Sunil had kidnapped the prosecutrix and performed alleged marriage and established sexual relations with her. Hence, Bail Application was applied by appellant before the High Court.

This is a usual case of a boy and girl having an affair and then they eloped and got married. As the girl was minor, the boy is sent behind the prison because of the complaint lodged by the parents of the prosecutrix.

Decision by High Court:

High Court observed that prosecutrix was 15 years old and the accused was 20 years old. They were in love with each other, so they eloped and went to the temple. There they garlanded each other and according to them they performed marriage and thereafter they started residing together in the house of their relative.

Court granted bail to the applicant/accused on the following terms and conditions:

(i) The applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/-, with one or two sureties in the like amount;

(ii) (ii) The applicant shall not tamper with the evidence;

(iii) (iii) The applicant shall not pressurize the prosecutrix, complainant and his family members;

(iv) The applicant shall not indulge in any offence;

(v) The applicant shall make himself available and attend all Court dates; (vi) The applicant shall not abscond and furnish his address to the police along with address proof;

(vi) The applicant shall not leave India without the prior permission of the Court.

RIGHT OF PRIVATE DEFENCE: WHEN DOES IT ARISE?Raj Singh & Ors. Vs. State of Haryana & Ors.(2015) 6 SCC 268: 2015 (5) SCALE 492: 2015 (7) SCJ 206: 2015 (2) Crimes 307 (SC): 2015 Cri LJ 2803: 2015 (2) RCR (Criminal) 847Decided on 23.04.2015Hon'ble Judges/Coram: T.S. Thakur, R. Banumathi and Amitava Roy, JJ., Supreme Court of India

Facts in Nutshell:

Appeal by way of Special Leave Petition was filed by the appellant-Raj Singh and Ors. in Supreme Court which arise out of the common judgment dated 30.01.2013, passed by the Punjab and Haryana High Court in Criminal Appeal & Criminal Revision by which, the High Court dismissed the Criminal Appeal of the Appellant- Raj Singh and partly allowed the Criminal Revision qua Raj Singh filed by Bharat Singh and thereby converting the conviction of the Appellant under Section 304 Part 1 to Section 302 of the Indian Penal Code and maintained sentence of life imprisonment imposed on him and dismissed the revision qua Rishi Pal and Rajpal.

Brief facts which led to the filing of the appeals are as follows: The complainant- Bharat Singh served in the Army and on 23.11.2004, he came to his village for fifteen days holidays. They were three brothers, Girdhari Lal, Devender Singh and Bharat Singh. In his complaint, Bharat Singh alleged that on 3.12.2004 at about 6.00 when he was standing at the main gate of his cousin's house with one Tilak Raj, Rishipal-brother of the Appellant-Raj Singh came there with an axe in his hand and there was wordy altercation. Rishipal assaulted the complainant-Bharat Singh with a Kulhari (axe) on his left buttock, however, Bharat Singh managed to save his life, and rushed towards his home. The complainant narrated the whole incident to his brother Devender Singh and he was taken to the hospital wherein Dr. Gobind Singh treated him and thereafter both the brothers returned to the village. When the elder brother Girdhari returned home at about 8.30 P.M., Bharat Singh narrated the whole incident to him and he was rebuked by his elder brother.

While the complainant and others were talking to each other at the main gate, the Appellant-Raj Singh, armed with licensed pistol, Rishi, armed with countrymade pistol, Rajendra and Ram Pal, armed with lathies came to the house of Girdhari Lal and attacked Bharat Singh and others. Appellant-Raj Singh fired shot at Girdhari's chest from his pistol and Girdhari fell down on the ground. When Bharat Singh raised alarm, Appellant fired at Bharat Singh which hit his left back side below the shoulders. As Bharat Singh raised alarm, Mahabir Singh and his elder brother Gajraj rushed to the spot. Mahabir tried to lift Girdhari in order to save him, at that time, Rishi again fired from the countrymade pistol on Mahabir Singh and Gajraj. Further Rajender and Rampal assaulted Gajraj with lathis. Girdhari was immediately taken to Government Hospital, Gurgaon for treatment where the doctor declared him as "brought dead". Injured persons Mahabir, Gajraj and Bharat Singh were given treatment.

On receipt of ruqqa (medical receipt) from the Government Hospital, Gurgaon, Rajender Singh (ASI) recorded the statement of Bharat Singh and registered the case under Section 302 of the Indian Penal Code. On completion of investigation, charge sheet was filed under Sections 323, 324, 302, 307 and 506 read with Section 34 of the Indian Penal Code.

Decision by Supreme Court:

Supreme Court held that the complainant party were not armed with lethal weapons; but the Appellant was armed with a pistol. When the Appellant and his party were the aggressors firing several rounds of firearm, the High Court rightly held that the plea of self defence raised by the accused/appellant was not sustainable. Court found no reason warranting interference with the conviction of the Appellant under Section 302 of the Indian Penal Code and sentence of life imprisonment imposed on him.

Court held that it cannot be said that the reasoning's recorded by the courts (Trial court and High Court) for acquittal of Rishipal and Raj Pal are unreasonable warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India and therefore there appeal was dismissed.

Upon consideration of the facts and circumstances and the nature of injuries caused, Supreme Court held that the complainant party - Mahabir and others actedin private defence and acquitted them of the charges.

OFFENCE UNDER SECTION 304A, IPC CANNOT BE QUASHED ON THE BASIS OF COMPROMISE BETWEEN PARTIES Baldev Singh Vs. State of Punjab and Ors.MANU/PH/0932/2016Decided on 02.06.2016Hon'ble Judges/Coram: Mahesh Grover and Lisa Gill, JJ., High Court of Punjab and Haryana at Chandigarh

Facts in Nutshell:

Petition was filed by Appellant- Baldev Singh for quashing of FIR dated 11.12.2013 under Sections 279, 304A, 427 of IPC registered at Police Station Sadar Sangrur as well as subsequent proceedings on the basis of compromise/settlement arrived at between the accused petitioner with respondent No. 2 who was brother of the deceased-Balbir Singh.

Decision by High Court:

High Court observed that it would indeed be paradoxical and incorrect to hold that the offence under Section 304-A is private in nature. Its serious impact on society is not subject to understatement. When a person or persons lose their life/lives due to the rash and negligent act of the accused, the question of mens rea or intention in such a situation pales into insignificance. The wrong cannot be termed to be private or personal in nature like offences arising out of matrimony, relating to dowry etc., family disputes or criminal cases having overwhelmingly and predominantly a civil flavor like commercial, financial, mercantile, civil or partnership matters.

Court held that to quash the proceedings under Section 304A solely on the basis of a settlement or compromise arrived at between the accused and the legal representatives is not permissible and militates against all canons of justice. Inclusion

of the legal representatives in the definition of victim does not clothe him/them to enter into such a settlement, though the legal representative, undoubtedly has the authority to file an appeal or receive compensation. However, it is trite to mention that the power of the High Court under Section 482 of CrPC can nevertheless be exercised in appropriate matters where it is felt that a prima facie case is not made out in consonance with the settled principles of law. There can indeed be no fetter on this power to act for securing the ends of justice or to prevent the abuse of process of law.

Court further held that there can be no quashing of an offence registered under Section 304A and subsequent proceedings, solely on the basis of a compromise arrived at between the legal heirs/representatives of the victim (deceased) and the accused.

UPLOADING OF FIRST INFORMATION REPORT WITHIN THE TERRITORY OF INDIA IN THE OFFICIAL WEBSITE OF THE POLICE OF ALL STATES, PREFERABLY WITHIN 24 HOURS Youth Bar Association of India Vs. Union of India (UOI)(2016) 9 SCC 473: AIR 2016 SC 4136: 2016 (4) Crimes 1: 2017 Cri LJ 1093: 2016 (4) AJR 438: 2016 All MR (Cri) 4957 Decided on 07.09.2016

Facts in Nutshell:

In the Writ Petition preferred under Article 32 of the Constitution of India, the Petitioner/Appellant- Youth Bar Association of India, prayed for issuance of a writ in the nature of mandamus, directing the Union of India and the States to upload each and every First Information Report registered in all the police stations within the territory of India in the official website of the police of all States, as early as possible, preferably within 24 hours from the time of registration.

Supreme Court issued the following directions:

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Code of Criminal Procedure.

(b) The copies of the F.I.R.'s, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the F.I.R. and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location

(c) The decision not to upload the copy of the F.I.R. on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

ARREST AND DETENTION BY POLICE OFFICERSD.K. Basu Vs. State of West Bengal(1997) 1 SCC 416: AIR 1997 SC 610: 1996 (9) SCALE 298: 1996 (4) Crimes 233 (SC): 1997 Cri LJ 743: JT 1997 (1) SC 1Decided on 18.12.1996Hon'ble Judges/Coram: Kuldip Singh and Dr. A.S. Anand, JJ.,Supreme Court of India

Facts in Nutshell:

The Executive Chairman, Legal Aid Services, West Bengal, a non-political organization registered under the Societies Registration Act, on 26th August, 1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items published in the Telegraph dated 20, 21 and 22 of July, 1986 and in the Statesman and Indian Express dated 17th August, 1986 regarding deaths in police lock-ups and custody. The Executive Chairman after reproducing the news items submitted that it was imperative to examine the issue in depth and to develop "custody jurisprudence" and formulate modalities for awarding compensation to the victim and/or family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. It was also stated in the letter that efforts are often made to hush up the matter of lock- deaths and thus the crime goes unpunished and "flourishes". It was requested that the letter along with the news items be treated as a writ petition under "public interest litigation" category.

Guidelines by Supreme Court:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and n tags with their designations. The particulars of all such police personnel who handle 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 be either 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 counter signed 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 a police station or interrogation center or other lock-up, shall be entitled(A-260) in to have one friend or relative or other person known to him or having 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 Organization in the District and the police station of the area concerned telegraphically within a period of8 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 is 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.

(8) The arrestee should be subjected to 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 Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal 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 should 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.

JUDGMENT -2REGISTRATION OF FIRS tate of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.AIR 1992 SC 604: 1992 Cri LJ 527: 1990(2) SCALE 1066: JT 1990 (4) SC 650: 1992 Supp (1) SCC 335: (1990) Supp 3 SCR 259 Decided on 21.11.1990Hon'ble Judges/Coram: S.R. Pandian and K. Jayachandra Reddy, JJ., Supreme Court of India

Facts in Nutshell:

Guidelines by the Supreme Court Appeal by grant of special leave was directed by the appellants, namely, the State of Haryana and two others assailing the judgment dated 8.9.1988 of a Division Bench of the High Court of Punjab and Haryana rendered in Writ Petition No. 9172/87 quashing the entire criminal proceedings inclusive of the registration of the Information Report and directing the second respondent, Mr. Dharam Pal to pay the costs to the first respondent, Ch. Bhajan Lal.

Guidelines by Supreme Court:

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission offence and make out a case against the accused

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

HUSBAND OR RELATIVE OF HUSBAND OF A WOMAN SUBJECTING HER TO CRUELTY

Rajesh Sharma and Ors. Vs. State of U.P. and Ors. (2018) 10 SCC 472: AIR 2017 SC 3869: 2017 (8) SCALE 313: 2017 (3) Crimes 268 (SC): 2018 Cri LJ 3593: ILR 2017 (3) Ker 425 Decided on 27.07.2017Hon'ble Judges/Coram: Adarsh Kumar Goel and U.U. Lalit, JJ., Supreme Court of India

Facts in Nutshell:

The question which aroused in the appeal was whether any directions are led for to prevent the misuse of Section 498A, IPC as acknowledged in certain studies and decisions

(a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected. (h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The Members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

(l) Complaints under Section 498A and other connected offences may investigated only by a designated Investigating Officer of the area. Such be made within one month from today. Such designated designations may officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may completed within four months from today.

BASIS OF ARREST Joginder Kumar Vs. State of U.P. and Ors.(1994) 4 SCC 260: 1994 (2) SCALE 662: AIR 1994 SC 1349: 1994 (2) Crimes 106 (SC): 1994 Cri LJ 1981: JT 1994 (3) SC 423Decided on 25.04.1994Hon'ble Judges/Coram: M.N. Venkatachaliah, C.J., S. Mohan and Dr. A.S. Anand, JJ,

Facts in Nutshell:

The Petitioner was a young man of 28 years of age who has completed his LL.B. and has enrolled himself as an advocate. The Senior Superintendent of police, Ghaziabad, Respondent No. 4 called the Petitioner in his office for making enquiries in some case. The Petitioner on 7-1-1994 at about 10 O'clock appeared personally along with his brothers before the Respondent No. 4. Respondent No. 4 kept the Petitioner in his custody. When the brother of the Petitioner made enquiries about the Petitioner, he was told that the Petitioner will be set free in the evening after making some enquiries in connection with a case. On 7-1-1994 at about 12.55 p.m. the brother of the Petitioner being apprehensive of the intentions of Respondent No. 4, sent a telegram to the Chief Minister of U.P. apprehending his brother's implication in some criminal case and also further apprehending the Petitioner being shot dead in fake encounter.

Guidelines by Supreme Court:

For effective enforcement of fundamental rights, following directions were issued:

1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.
2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

REGISTRATION OF FIR Lalita Kumari Vs. Govt. of U.P. and Ors.(2014) 2 SCC 1: 2013 (13) SCALE 559: AIR 2014 SC 187: 2013 (4) Crimes 243 (SC): 2014 Cri LJ 470: 2013 (4) RCR (Criminal) 979Decided on 12.11.2013Hon'ble Judges/Coram: P. Sathasivam, C.J.I., B.S. Chauhan, Ranjana Prakash Desai, Ranjan Gogoi and S.A. Bobde, JJ., Supreme Court of India

Facts in Nutshell:

Whether "a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short 'the Code) or the police officer has the power to conduct a "preliminary inquiry" in order to test the veracity of such information before registering the same?"

(i) Registration of FIR is mandatory under Section 154 of the Code, f the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the F.I.R. if information received by him discloses a cognizable offence. (v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

v. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

MEDICAL NEGLIGENCE AND CAUSING DEATH BY NEGLIGENCE Jacob Mathew Vs. State of Punjab and Ors.(2005) 6 SCC 1: AIR 2005 SC 3180: 2005 (3) Crimes 63 (SC): 2005 Cri LJ 3710: JT 2005 (6) SC 584: 2005 (3) RCR (Criminal) 836 Decided on 05.08.2005Hon'ble Judges/Coram: R.C. Lahoti, C.J., G.P. Mathur and

Facts in Nutshell:

P.K. Balasubramanyan, JJ., Supreme Court of India Ashok Kumar Sharma, filed a First Information Report with police station, whereupon an offence under Section 304A read with section 34 of the Indian Penal Code (for short "the IPC") was registered. The gist of the information is that on 15.2.1995, the informant's father, late Jiwan Lal Sharma was admitted as a patient in a private ward of CMC Hospital. Jiwan Lal felt difficulty in breathing. The oxygen cylinder was found to be empty. There was no other gas cylinder available in the room.

Guidelines by Supreme Court:

(1) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(2) (2) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e., gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(3) The word 'gross' has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act as occurring in Section 304A of the IPC has to be read as qualified by the word 'grossly'.

(4) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

JUDGMENT - 11NO AUTOMATIC ARREST IN CASES OF CRUELTY AND DEMAND OF DOWRY FROM WOMAN

Arnesh Kumar Vs. State of Bihar(2014) 8 SCC 273: AIR 2014 SC 2756: 2014 (8) SCALE 250: 2014 (3) Crimes 206 (SC): 2014 Cri LJ 3707: JT 2014 (7) SC 527Decided on 02.07.2014Hon'ble Judges/Coram: C.K. Prasad and Pinaki Chandra Ghose, JJ. Supreme Court of India

Facts in Nutshell:

The Petitioner apprehends his arrest in a case under Section 498A of the Indian Penal Code, 1860 (hereinafter called as Indian Penal Code) and Section 4 of the Dowry Prohibition Act, 1961.

Guidelines by Supreme Court:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 of the Code of Criminal Procedure;

(2) All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/ producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

HANDCUFFING Citizens for Democracy Vs. State of Assam and Ors.(1995) 3 SCC 743: (1995) 3 SCR 943: JT 1995 (4) SC 475: (1995) 2 MLJ 66 (SC): 1995 (2) ALT (Cri) 701Decided on 01.05.1995Hon'ble Judges/Coram: Kuldip Singh and N.G. Venkatachala, JJ., Supreme Court of India

Facts in Nutshell:

The indiscriminate resort to handcuffs, when accused persons are taken to and from court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in small category of cases where an under-trial has a credible tendency for violence and escape a humanely graduated degree of "iron" restraint is permissible if - other disciplinary alternatives are unworkable. Guidelines by Supreme Court:

1. Handcuffs or other fetters shall not be forced on a prisoner (convicted or under-trial) while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back.
2. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

3. Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate.

4. In all the cases where a person arrested by police, is produced before the Magistrate and remand (judicial or non-judicial) is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

5. When the police arrests a person in execution of a warrant of arrest obtained form a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

RAREST OF RARE CASE is setAppellantMachhi Singh and Ors. Vs. State of Punjab(1983) 3 SCC 470: AIR 1983 SC 957: 1983 (2) Crimes 268(SC): 1983 Cri LJ 1457: 1983 (2) SCALE 1: 1984 (2) RCR (Criminal) 412Decided on 20.07.1983Hon'ble Judges/Coram: A. Vardarajan, M.P. Thakkar and S. Murtaza Fazal Ali, JJ., Supreme Court of India

Guidelines by Supreme Court:

I Manner of Commission of Murder When the murder is committed in an extremely brutal, grotesque, diabolical, or dastardly manner so as to arouse intense and extreme

(i) When the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner. II Motive for Commission of murder When the murder is committed for a motive which evince total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over

II Motive for Commission of murder

When the murder is committed for a motive which evince total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, (c) a murder is committed in the course for betrayal of the motherland.

III Anti-Social or Socially abhorrent nature of the crime

(a) When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them with a view to reverse past injustices and in order to restore the social balance.

(b) (b) In cases of 'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV Magnitude of Crime

When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

ACCUSED IS ENTITLED TO GET A COPY OF THE FIRST INFORMATION REPORTYouth Bar Association of India Vs. Union of India (UOI) (2016) 9 SCC 473: AIR 2016 SC 4136: 2017 (6) SCJ 503: 2016 (4) Crimes 1: 2017 Cri LJ 1093: 2016 (4) RCR (Criminal) 359Decided on 07.09.2016Hon'ble Judges/Coram: Dipak Misra and C. Nagappan, JJ., Supreme Court of India

Facts in Nutshell:

Writ Petition, preferred under Article 32 of the Constitution of India, the Petitioner, Youth Bar Association of India, has prayed for issue of a writ in the nature of mandamus, directing the Union of India and the States to upload each and every First Information Report registered in all the police stations within the territory of India in the official website of the police of all States, as early as possible, preferably within 24 hours from the time of registration.

Guidelines by Supreme Court:

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Code of Criminal Procedure.

(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.

(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the

(d) The copies of the F.I.R.S., unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the F.I.R. on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

HANDCUFFS OR OTHER FETTERS SHALL NOT BE FORCED ON A PRISONER Citizen for Democracy through its President Vs. State of Assam and Ors.AIR 1996 SC 2193: 1996 Cri LJ 3247: 1995 (3) SCALE 98: III (1995) CCR 7 (SC): 1995 GLH (2) 1002Decided on 01.05.1995Hon'ble Judges/Coram: Kuldip Singh and N.G. Venkatachala, JJ.,

Guidelines by Supreme Court:

1. Handcuffs or other fetters shall not be forced on a prisoner (convicted or under-trial) while lodged in a jail anywhere in the country or while transporting and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to Court and back.

2. Where the police or the jail authorities have well grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

3. In all the cases where a person arrested by police, is produced before the Magistrate and remand (judicial or non-judicial) is given by the Magistrate the person concerned shall not be hand-cuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant the remand.

4. When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.do so

5. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by us in para above, that it is necessary to handcuff such a person, he may till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters there after can only be under the orders of the Magistrate as already indicated by us.

GUIDELINES REGARDING GOOD SAMARITAN NOT TO BE HARASSED BY POLICE OFFICIAL Section only be under Save life Foundation and Ors. Vs. Union of India (UOI) and Ors. (2016) 7 SCC 194: AIR 2016 SC 1617: 2016 (3) SCALE 522: 2016 (3) KLJ 237:(2016) 3 MLJ 366: 2016 (2) RCR (Civil) 725: 2016 (6) SCJ 560 Decided on 30.03.2016Hon'ble Judges/Coram: V. Gopala Gowda and Arun Mishra, JJ., Supreme Court of India

Guidelines by Supreme Court:

1. The Good Samaritan shall be treated respectfully and without a any discrimination on the grounds of gender, religion, nationality, caste or any other grounds.
2. 2. Any person who makes a phone call to the Police control room or Police or death, except station to give information about any accidental injury or an eyewitness may not reveal personal details such as full name, address, phone number etc.

3. Any Police official, on arrival at the scene, shall not compel the Good Samaritan to disclose his/her name, identity, address and other such details in the Record Form or Log Register.

4. Any Police official or any other person shall not force any Good Samaritan who helps an injured person to become a witness in the matter. The option of becoming a witness in the matter shall solely rest with the Good Samaritan.

5. The concerned Police official(s) shall allow the Good Samaritan to leave after having informed the Police about an injured person on the road, and

Arrest and Medical Examination of an Accused
[Clauses 35, 37, 43, 48, 50, 51, 52, 53 and 54 BNSS]

Cls.35 to 62 BNSS (Chapter V) deal with the procedure for the arrest of persons suspected to have committed an offence. Although much of the chapter retains arrest procedures prescribed under Chapter V of the Cr.P.C., changes which may be of significance include additions to Cl.35 (when police may arrest without warrant), Cl.37 (designated police officer), Cl.43 (arrest how made), Cls.51 and 52 (medical examination of the arrestee at the request of a police officer) and Cl.53 (medical examination of an arrestee). The list below describes all the changes brought in by the BNSS to provisions relating to arrest and medical examination of the accused. This piece, however, delves only into those changes that may have the most significant implications.

1. Cl.35(7): Inserts an additional requirement that a police officer cannot arrest without prior permission of an officer not below the rank of Deputy Superintendent of Police where the offence is punishable with imprisonment below three years *and* where the accused is infirm or above sixty years of age.

2. Cl.36(c): Inserts additional category of persons [`*any other person*'] whom the arrestee has the right to inform regarding their arrest. Presently, the Cr.P.C. makes provision for intimation of arrest to only a relative or friend of the accused.

3. Cl.37(b): Inserts additional obligation on the State government to designate a police officer who would be responsible for maintaining information regarding all arrests and arrestees. This sub-clause also requires such information to be displayed prominently in every police station and at the district headquarters.

4. Cl.40(1): Inserts an obligation requiring private persons who arrest

to turn over the arrestee to a police officer or police station, without unnecessary delay, but within six hours of arrest. Presently, the CrPC only uses the phrase '*without unnecessary delay*'.

5. Proviso to Cl.43(1): Adds a phrase (to the existing proviso on arrest of a woman) that in the arrest of a female, the details of such arrest must be given to her relatives, friends or such other persons as disclosed or mentioned by her.

6. Cl.43(3): The clause, a new addition to s.46 Cr.P.C., empowers the police to use handcuffs for habitual, repeat offenders who have escaped from custody and who have committed a variety of bodily, social and economic offences listed therein.

7. Cl.48(1): Inserts obligation on persons making an arrest to provide information of such arrest and place of arrest to the police officer designated in the district, as provided under Cl.37(b).

8. Cl.48(3): Inserts a phrase enabling the State government to frame rules as to the manner in which entries of arrests may be recorded within the police station.

9. Cls.51 and 52: Enable *any* police officer to seek the medical examination of the arrestee for purposes of investigation and collection of bodily samples, by replacing the phrase '*police officer not below the rank of a sub-Inspector*', under the existing ss.53 and 53A Cr.P.C., with '*any police officer*'.

10. Cl.53: Inserts a proviso, enabling a medical practitioner conducting the medical examination of an arrested person, to conduct *one more* examination if such practitioner deems it fit.

11. Cl.58: Inserts a phrase to the effect that an arrestee may be produced before a Magistrate, within the first 24 hours of arrest, even if such Magistrate does not have jurisdiction.

I. Obligation of the Police to inform about the Arrest to a Friend or Relative

S.50A(1) Cr.P.C. places an obligation upon the police to inform the arrestee's friend, relative or any other person disclosed or nominated by the arrestee on the details of such arrest. This provision, recast in the BNSS in Cl.48(1), replaces the word '*nominated by the arrested person*' with '*mentioned by the arrested person*'. By replacing the word 'nominated' with 'mentioned', Cl.48(1) possibly indicates a shift in the autonomy granted to the arrestee. While 'nominated' in the Cr.P.C. enables an accused's choice to some extent, 'mentioned' can cover a wide range of persons, regardless of the arrestee's choice or interest in having such person informed. Thus, the BNSS clause may water down whatever emphasis existed on the accused's choice of person, potentially weakening the scope of this safeguard further.

Similarly, the proviso to Cl.43(1) BNSS, which prevents a police officer from touching a woman during her arrest, unless such police officer is female, additionally specifies the requirement to inform the female arrestee's relative, friend or such other person as disclosed or '*mentioned by her*', about the arrest. This addition merely reiterates the general obligation upon the police to inform a relative, friend or any other person about the details of arrest, found both under Cl.48(1) BNSS and in s.50A(1) Cr.P.C.

II. Use of Handcuffs during Arrest

Cl.43(3) BNSS introduces discretionary powers for the police to use handcuffs, keeping in mind the 'nature and gravity of offence' upon arrest if the following conditions are met: i) where the offender is a habitual, repeat offender; ii) the person has escaped from custody; and iii) has committed offences including organised crime, terrorist acts, drug related crime, sexual offences, murder, acid attack, human trafficking, offences against the State, illegal possession of arms and ammunition, or

economic offences amongst others. Such provisions pertaining to handcuffs, are currently existing in several state prison manuals. The BNSS introduces these handcuffing powers as a *statutory* power. However, Cl.43 (3) BNSS falls short of well settled constitutional thresholds, established to protect a person's right to dignity under Art.21, that must be met for the exercise of handcuffing powers.

Handcuffs and other iron fetters to bind arrestees and prisoners have been found *prima facie* unconstitutional for its arbitrariness and degrading impact on human dignity. Recognising these implications, the Supreme Court (through *Sunil Batra* and *Prem Shankar Shukla*) sets an extremely high threshold for the use of handcuffing powers, including during arrest. The exercise of such powers must meet the following criteria:

i) the prisoner has a 'credible tendency for violence',
ii) used on a person only for a short spell of time,
iii) grounds for using such fetters are to be recorded in a journal, and communicated both to victims and the arrestee and
iv) the use of such handcuffs are subjected to *quasi judicial* oversight, and any extended use of the same will need the approval of a judge. Significantly, the Court in both decisions also held that the mere risk of escape alone does not warrant handcuffs. Instead, the police and the State have the obligation to use less restrictive measures to prevent such escape before turning to handcuffs as a last resort. Taking this further, the Court in *Citizens for Democracy* placed onus on the police or prison officials to undertake an *individualised* assessment for the need to use handcuffs.

However, Cl. 43 (3) enables a police officer to use handcuffs for a wide range of offences, without incorporating the constitutional requirement of the tendency to commit violence upon escape. The few qualifiers present in Cl. 43(3) are of wide import. Firstly, the clause requires a police officer to keep in mind the 'nature and gravity of the offence'. The phrase is

vague; it is unclear whether this simply alludes to the kind of offence (for example, it may apply to arrestees in murder cases but not theft) or whether it also requires consideration of other crime related details such as the manner of commission (its brutality etc.). This can be a subjective determination, and does not meaningfully guide the officer's discretion. Crucial considerations including the use of alternative means (to restrict a person, prevent their escape, or reduce propensity to cause harm before resorting to handcuffs) and the parameters to undertake individualised assessments for the use of handcuffs are conspicuously absent.

In the context of constitutional requirements for handcuffing, the nexus between some offences, such as economic offences, counterfeiting of coins and currency notes, and the need to use handcuffs remains unclear. In sum, Cl. 43(3) provides no qualifiers to ensure that the use of handcuffs meet the threshold to ascertain a 'credible tendency for violence'. The only other restriction on this power may be Cl.46 BNSS, which lays out that arrested persons cannot be subjected to more restraint than necessary, which is identical to S.49 CrPC.

Another significant gap is the lack of clarification regarding the meaning of the phrase 'habitual, repeat offender'. The term 'habitual offender' has a distinct connotation from the phrase 'repeat offender'. Habitual offenders may refer to the terminology used under various state legislations pertaining to 'habitual offenders'. While some states have defined 'habitual offender' as any person convicted and sentenced to imprisonment at least *three* times in five years for certain bodily and economic offences, other states have fewer requirements (for instance, some states do not require prior convictions within a five year period). On the other hand, there is no pre-existing legislative definition or prior conceptualisation of the term 'repeat offender' and the term could possibly refer to anyone who has committed more than *one* offence.

The BNSS clause does not clarify whether 'habitual' and 'repeat' are taken to have the same meaning, or whether it alludes to two distinct concepts. Cl.43 (3) also does not clarify whether handcuffs can be used only where the offence in question is one that an arrestee is habitually and repeatedly accused of. Furthermore, it is unclear whether the metric for assessing habitual or repeat offences are prior convictions, arrests or charge sheets.

III. Medical Examination of the Accused at the request of a Police Officer

Cls.51 and 52 BNSS, pertaining to the medical examination of an accused for the purposes of investigation, recast ss.53 and 53A CrPC. S.53 (1) CrPC enables a police officer not below the rank of Sub-Inspector to direct a medical practitioner to conduct the arrestee's medical examination if the officer has reasonable grounds to believe that such examination will produce evidence linked to the offence. S.53A Cr.P.C. extends this power in the context of persons accused of rape, with the provision allowing both Government medical practitioners and other practitioners within 16 kms of such custody to conduct the examination. The explanation of the section makes it clear that the practitioner may collect a variety of bodily fluids and samples, including DNA profiling, blood, sweat, hair samples etc. However, Cls.51 and 52 BNSS replace the phrase 'police officer not below the rank of sub-inspector' by 'any police officer'. Further, by way of an addition, sub-clause (3) of Cl.51 mandates the medical practitioner to forward the examination report without delay to such police officer.

Enabling any police officer to request such an examination removes the safeguard present in the Cr.P.C. (requiring a police officer who was qualified to be a Sub-Inspector), and widens the range of officers who can request and collect such samples. Pertinently, the power exercisable by these provisions extends to the accused's body, and involves furnishing

such evidence which are of a highly sensitive and private nature. It is important to note here that samples collected under this provision will be used during forensic examinations. Widening the scope to 'any police officer' creates greater risk of improper collection of samples by junior officers who may not have the required skills, training or experience. Given the intimate nature of the samples and their use for forensic analysis, this may adversely affect an accused's right to a fair trial and right to privacy. It may be noted that this modification replicates the position under the CPIA.

Ⅳ. Medical Examination of the Accused at the Time of Arrest

S.54 CrPC (which mandates the medical examination of an arrestee soon after arrest) is retained in Cl.53 BNSS with an additional proviso inserted. Unlike Ss.53 and 53A, the medical examination stipulated under S.54 CrPC acts as a safeguard for the arrestee, who is required to be medically examined for any signs of custodial violence, torture or ill treatment during confinement in custody. The additional proviso introduced in Cl.53 BNSS enables the medical practitioner to conduct one more examination of the arrestee if the practitioner finds it necessary. This proviso is discretionary, as opposed to the mandatory nature of Cl. 53(1). Presently, the *D.K. Basu* guidelines require the medical practitioner to conduct medical examinations once every 48 hours when the arrestee is in custody. Contrary to this, Cl.53(1) does not mandate multiple examinations ('one more examination') and instead leaves this issue to the discretion of the medical practitioner.

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Proclaimed Offenders and Trials *in Absentia* (Clauses 84, 86, 115 and 356)

Chapter VI of the Cr.P.C. envisages a scheme of issuing summons, warrants, and notices to compel the appearance of an accused in court. If a court has reason to believe that an accused person is intentionally evading these processes, it may issue a proclamation notice and direct them to appear at a specified time and place. After issuing a proclamation notice, a court may also pass an order attaching any property that belongs to the absconding accused, in order to compel their appearance in court. If they fail to appear pursuant to a proclamation notice, and they are accused of an offence specified in s.82(4) Cr.P.C., the court may declare them as a 'proclaimed offender'.

The BNSS proposes three modifications to this scheme. One, it clarifies the nature of offences for which an accused may be declared as a proclaimed offender (Cl.84(4)). Two, it allows courts to try proclaimed offenders *in absentia,* i.e., without them being personally present (Cl.356). Three, it allows courts to request for assistance in attaching properties belonging to proclaimed persons in countries or places outside India (Cl.86).

I. Proclaimed Offender under Cl.84(4)

The list of offences for which a person may be declared as a proclaimed offender under S.82(4) Cr.P.C. is restricted to certain offences under the IPC. Most of these offences carry punishments of imprisonment for seven years, ten years, or with life, and as such, are grave offences. However, s. 82(4) does not include many

other offences that carry equal or higher punishments. Cl.84(4) BNSS proposes to replace the list of specified offences under s.82(4) Cr.P.C. with a sentence-based qualifier, i.e., *any* offence that is punishable with

ten years' imprisonment or more, with life imprisonment, or with death. The BNSS also extends the concept of proclaimed offenders to persons accused of offences punishable under *any other* law, in addition to the BNS.

The BNSS does not propose any other changes to the provisions related to issuing a proclamation notice or declaring an accused as a proclaimed offender. Accordingly, it retains the distinction between a 'proclaimed person', as someone to whom a proclamation is issued under Cl.84(1); and a 'proclaimed offender', as someone accused of an offence specified in Cl.84(4) and who fails to appear pursuant to a proclamation notice.

II. Proclaimed Offenders and Trials in Absentia

In 2017, the Supreme Court suggested that procedure be adopted to conduct trials of absconding offenders *in absentia*, in order to remedy delays caused by their absence during trial. *Inter alia,* High Courts of Gujarat, Delhi, Jharkhand, and West Bengal have taken different approaches to address this concern. Any attempts at codifying *in absentia* trials must keep in mind fair trial rights of an accused. Currently, the Cr.P.C. allows evidence to be recorded in the absence of the accused, but does not provide for trials to be *completed* or for judgments be pronounced against absconding persons. To that extent, the Cr.P.C. strikes a balance by allowing trials to continue against apprehended accused and utilizing the evidence recorded against the absconding accused during trial, while at the same safeguarding an accused's right to defend themselves. The new procedure for conducting certain trials *in absentia* drastically changes this scheme.

Under the provisions of the BNSS, three conditions must be met before a court can proceed to hold a trial in the absence of the accused. *One*, the accused is declared a proclaimed offender under Cl. 84(4). *Two*, they have absconded to evade trial. *Three*, there is no immediate prospect of their arrest. Once these conditions are met, Cl.356 deems

the proclaimed offender to have waived their right to be present for their trial. After recording reasons in writing, a court may proceed with the trial as if they were present in court.

Only a proclaimed offender can be tried *in absentia*. Under Cl.84(4), proclaimed offenders must be accused of a *grave offence*, i.e., an offence punishable with imprisonment for ten years or more, life, or death. It follows that the scope of trials under Cl.356 is limited to persons accused of grave offences, at least until State governments decide to issue a notification and extend this procedure to absconders mentioned in Cl.84(1). Unrestricted power to notify offences for *in absentia* trials is prone to misuse and may result in arbitrary State action.

The trial under Cl.356 cannot begin until ninety days after the framing of charge. Offences punishable with imprisonment for ten years or more are exclusively triable by a court of sessions, and in such cases, charges cannot be framed in the absence of the accused. The Bill retains this position. If framing of charge is a prerequisite for trials *in absentia*, the scope of Cl.356 is limited to those who abscond during trial, and it excludes an accused person who has absconded during the investigation. This is consistent with the second precondition for proceeding with a trial *in absentia*, that the accused should have absconded to evade trial.

A proclamation can be issued if the court has reason to believe that the accused is intentionally avoiding warrants of arrest and absconding.[36] A proclamation notice must be published and affixed at a conspicuous place where the accused last resided, and the notice may also be published in a newspaper. Under Cl. 356(2), courts must ensure that attempts are made to inform the accused about the

proposed commencement of trial. It is unclear whether these procedural requirements will be understood as part of the process before issuing a proclamation notice, or as separate, additional measures to ensure that attempts are made to inform the accused of the commencement of trial. The standard format prescribed for a proclamation notice (Form No. 4) does not extend to notification of the accused about commencement of trial. A significant challenge under the Cr.P.C. is ensuring that summons, warrants, and notices are in fact issued to the accused and it is guaranteed that the accused is *intentionally* absenting themselves from court. The Bill does not propose any changes to address this problem.

Similar to Cl.356 BNSS, s. 299(1) Cr.P.C. (retained verbatim in the BNSS as Cl.335), also requires that the accused person is absconding *and* there is no immediate prospect of their arrest, before evidence may be recorded in their absence. These requirements are conjunctive. ***[Jayendra Vishnu Thakur v. State of Maharashtra (2009) 7 SCC 104 [29]*** These requirements must be 'proved' to trigger Cl.335, but there is no such requirement of proof under Cl.356. It is unclear whether this is an inadvertent error, or the drafters envisaged weaker safeguards before completing a trial in the accused's absence than for recording evidence as part of the trial. Nevertheless, both Cls.335 and 356 are a departure from the general principle that trials should be conducted in the presence of the accused, and accordingly, these provisions must be construed strictly.

The possibility of securing an easy conviction by conducting trials *in absentia* under Cl.356 may serve as an incentive for prosecutors and police officers to manipulate warrants and summons, or proceeding without making adequate efforts to locate the accused. Although under Cl.356(3), the accused has a right to legal counsel where they are not already represented by an advocate, no additional safeguards are provided for those aspects of the trial where the presence of the accused

is indispensable. This *inter alia* includes the hearing under s.313 Cr.P.C., cross examination of witnesses in the presence of the accused, and a separate hearing on sentence.

Cl.356(7) prevents filing of appeals against trials in absentia unless the proclaimed offender appears in court, and in any case, prescribes a blanket limitation of three years for all appeals against conviction in such trials. Proclamations under s.82 Cr.P.C. are understood to stand cancelled after the accused enters appearance. Should an appeal against conviction be filed, the question remains: how will appellate courts appreciate evidence collected without the presence of the accused? Appellate courts frequently remand matters where these safeguards are denied to the accused. If appellate courts regularly start remanding matters to cure irregularities in the trial and consideration of evidence against proclaimed offenders, *in absentia* trials may risk prolonging trials indefinitely.

Cl.356 attempts to strike a balance between two considerations: the constitutional right to a fair trial where the accused has a meaningful opportunity to defend themselves, and the overarching public interest of delivering timely justice. But in doing so, the BNSS does not propose changes to the mode of delivering summons, warrants, and proclamations. As a result, people can not only be declared as proclaimed offenders, but may now also be tried and punished, all without their knowledge.

III. Proclamation and Attachment of Property abroad

The BNSS retains the procedure under Chapter VI(C) of the Cr.P.C. for attachment, release, sale, and restoration of property belonging to proclaimed persons; and introduces an important new provision, Cl.86. This provision allows a court to request a *contracting state* to assist with the identification, attachment, and forfeiture of a property belonging to a proclaimed person.[41] Presumably, the intention with Cl.86 is to target a proclaimed person's property that is located in a country or place *outside*

India. While Cl.86 stipulates that the procedure under Chapter VIII of the BNSS will apply to such requests, the procedure, scope, and purpose of attachment under Chapter VI(C) is different from attachment under Chapter VIII of the BNSS.

Attachment and forfeiture under Chapter VIII relates to a property derived or obtained, directly or indirectly, from the commission of an offence. Under Cl.115(2), a court must have *reasonable grounds to believe* that property is derived from an offence before issuing an order of attachment or forfeiture, or making a request for assistance from a contracting state in this regard. Once an order for attachment or forfeiture is passed by an Indian court, enforcement of this order will depend on the relevant treaty between India and the concerned contracting state. Chapter VIII of the BNSS is identical to Chapter VII(A) of the Cr.P.C., insofar as attachment and forfeiture proceedings are concerned. After considering the historical context to Chapter VII(A) of the Cr.P.C., the Supreme Court has identified two restrictions to its applicability: the property must relate to the commission of an offence, and this offence must have international ramifications.

Prima facie, these restrictions do not apply to attachment proceedings under Chapter VI(C) of the Cr.P.C.. Attachment of property under this chapter is intended to compel accused persons to appear in court. ***[Vimlaben jitbhai Patel v. Vatslaben Ashokbhai Patel and Ors. (2008) 4 scc 649 (32)]*** *Any* property belonging to the proclaimed person may be attached, so long as a proclamation notice has been issued validly. The law does not require that the property sought to be attached be derived, obtained, or be in any other way related to the commission of any offence — and accordingly there is no requirement that a court record *reasonable grounds* to believe that there is a connection between the property and an offence. Chapter VIII of the BNSS additionally provides for *forfeiture* of property to the Central government, which is not permitted under Chapter VI of the Cr.P.C.. It is

unclear why Cl.86 has been introduced in Chapter VI(C), instead of Chapter VIII.

The text of the proposed addition to Chapter VI (Cl.86), does not consider the inconsistency between the purpose and procedure for attachment under Chapter VI and Chapter VIII. This raises some questions: Can a request be made to attach foreign property belonging to a proclaimed offender that is *not* obtained or derived from the commission of an offence, in order to compel their presence in court? Can such a request be made in relation to a proclaimed offender accused of a *local* offence, i.e., an offence without international ramifications? If the intention is *only* to attach or forfeit property obtained related to the commission of crime, on the basis of what material can a court form *reasonable grounds*, when the accused is absconding? Is a mere request made by a police officer (admittedly not below the rank of a Superintendent or Commissioner) sufficient? How will such requests for assistance be executed in a contracting state? Will suitable amendments be made to India's Mutual Legal Assistance Treaties (MLATs) in this regard, or will this provision only apply to treaties ratified after the new law comes into force?

In conclusion, the changes to proclaimed offenders, the addition of new procedure for trials *in absentia*, and the new provision permitting requests for assistance to attach property abroad raise more questions than they answer, and pose serious threat to the fair trial rights of an accused.

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Audio-Video Recordings during Investigation
(Clauses 54, 105, 176, 183 and 185)

In the BNSS there has been an overall emphasis on the use of technology at every stage of the criminal legal process. This piece will specifically consider the key changes proposed regarding the use of audio-video recording during investigation.

Table 1: New additions to Audio-Video Recording during Investigation

SN	BNSS			Cr.P.C.
	Provision	Scope	Requirement for Audio-Video	
1	Clause 105 'Recording of search and seizure through audio-video electronic means'	Applicable to search and seizure under Chapter VII 'Processes to Compel the Production of Things' and Clause 185 'Search by police officer'	Search and seizure, including the process of seizure memo, '*shall* be recorded through *any audio-video electronic means preferably cell phone*'	None
2	Clause 185 'Search by police officer'	'Search by police officer'	Search conducted '*shall* be recorded through *audio-video electronic means preferably by mobile phone*'	This proviso is absent in corresponding Section 165 'Search by police officer'

3	Clause 176 'Procedure for investigation'	Sub-clause (1): Any statement (made before the police) under this 'sub-section'	*Option* for statement to also be recorded through '*any audio-video electronic means preferably cell phone*'	This proviso is absent in corresponding Section 157 'Procedure for investigation' However, Section 161 'Examination of witnesses by police' provides the option of recording any statement made to the police 'by audio-video electronic means'. This has also been retained in the corresponding Clause 180 BNSS Section 154 'Information in cognizable offences' provides that the statement of certain victim-informants with physical or mental disabilities 'shall be videographed'. This has also been retained in the corresponding Clause 173 BNSS

		Sub-clause (3): Process of collection of forensic evidence from the scene of crime by forensic experts, for offences punishable with 7 years or more. The mandatory nature of this provision is	*Mandatory* requirement for *videography* of the process of collection of forensic evidence *on mobile phone or any other electronic device*	This sub-section is absent in the corresponding Section 157 'Procedure for investigation'
		subject to State government notification, within 5 years		
4	Clause 183 'Recording of confessions and statements'	Sub-clause (6): Process of recording of statement before the magistrate of temporarily or permanently, physically or mentally disabled victims of certain offices including crimes against women	In this particular context, the statement before the magistrate '*shall* be recorded through *audio-video electronic means preferably cell phone*'	Replaces 'shall be videographed' in otherwise similar provision Section 164(5A)
5	Clause 54	Test identification parade involving identifying witnesses with temporary or permanent physical or mental disabilities	In this particular context, the identification process *'shall* be recorded by *any* *audio-video electronic means*'	Replaces 'shall be videographed' in otherwise similar provision Section 54A

Exclusions

Cr.P.C.	BNSS
Section 164 'Recording of confessions and statements' 'Provided that any confession or statement made under this sub-section may *also be recorded by audio-video electronic means* in the presence of the advocate of the person accused of an offence'	Clause 183 'Recording of confessions and statements' 'Provided that any confession or statement made under this sub-section may also be recorded in the presence of the advocate of the person accused of an offence'

I. Background

The inclusion of audio-video in investigation is a positive move geared towards ensuring greater transparency and accountability in police investigation, protecting the rights of both accused and victims, and improving the quality of evidence.

The inclusions made by the BNSS are in line with the general trend of expanding the use of technology in investigation, as evident from legislative developments and judicial discourse.

The Cr.P.C. currently includes the option of audio-video recording of witness statements before the police (S.161) and confessions and other statements before the Magistrate (S. 164(1)). There are also mandatory provisions requiring videography of procedures involving persons with physical or mental disability, including the recording of police statements of such victim-informants in cases of sexual violence (S.154), statements before the Magistrate (S.164(5A)), and test identification proceedings (S.54A). Additionally, the POCSO Act, also provides the option of use of audio-electronic means for recording the statement of a child victim. Courts have time and again emphasised the need for the utilisation of audio-video recording, for inspection of crime scene/spot; dying declarations; statements of victims of sexual assault; post mortems in custodial death cases, to name a few.

While audio-video has the potential to strengthen the quality of evidence, it is also more susceptible to alteration, modification and transposition, through direct intervention or unintended corruption of a digital record. Recognising this, the Supreme Court in ***Arjun Panditrao Khotkar***, settled conflict in jurisprudence, and held that the procedure under Section 65B IEA must be mandatorily provided for the admissibility of an electronic record. This procedure is essential in order to ensure the authenticity and accuracy of electronic evidence.

The Supreme Court in ***Shafhi Mohammad*** not only emphasised the significance of audio-video technology to aid the police in crime scene investigation, but also drew attention to the importance of building institutional and infrastructural capacity for its effective and mandatory implementation. During the proceedings in this case, infrastructural and institutional limitations, across states, in the effective use of audio-video technology in investigation were highlighted including lack of funding; equipment; systems for collection, and secure storage and transfer of electronic record; training; and forensic facilities. These were identified as barriers to mandatory requirement for the use of audio-video technology during investigation.

II. Implications of changes proposed under the BNSS

a. Search and Seizure

Considering the risk of manipulation of evidence and possibility of misuse of police power, the mandatory inclusion of audio-video recording in search and seizure proceedings is a laudable addition proposed. This requirement under Cl.105 extends to all search and seizure procedures, under Chapter VII and Cl.185. However, the scope of Cl.105 is restricted to the search of a place, and appears to exclude the search of a person and seizure of articles from their person. A clear limitation of Cl.105 is that provisions related to search of place of arrest (Cl.44) and search of a person arrested (Cl.49) are clearly excluded from the mandatory requirement of audio-video recording under Cl.105. Since Cl.105 pertains to the process of 'search of a place or taking possession of any property, article or thing' under the provisions specified, it should include the search of a person suspected of concealing relevant articles, under Cl.103(3) (under Chapter VII).

Nevertheless, Cl.105 significantly extends the scope of audio-video recording during search and seizure, to include the process of preparing a list of seized items and the signature of witnesses. Transparency in search and seizure proceedings, in this manner, has the

potential to deter against fabrication of evidence and subversion of the safeguard requiring the presence of independent witnesses to these proceedings.

Cl. 105 also requires that this audio-video recording be submitted before the District Magistrate, Sub-divisional Magistrate or Judicial Magistrate of first class 'without delay'. Under Cl.103, which provides the procedure for conducting search and seizure, (6) and (7) clearly provides that the occupant of place searched/person searched be provided a copy of the seizure memo.

However, an important aspect to be noted is that there is no clear provision in the BNSS that entitles the concerned persons, including the accused, access to the audio-video recordings.

b. **Other Investigation**

Cl. 176(3)'s requirement for videography of the process of collection of forensic evidence is another move towards greater transparency and accountability in evidence gathering, and a safeguard against irregularities and manipulation.

Cl. 176(1) also provides an option of audio-video recording of any statement made during police investigation. The scope of this proviso is wide enough to include disclosure statements of accused before the police, besides the statements of other witnesses (audio-video recording for which is already permitted under S.161 Cr.P.C., retained in Cl.180 BNSS). This is an important safeguard to deter against torture and coercion of the accused during custodial interrogations. However, a crucial limitation is that this is not a mandatory requirement. Further, it is unclear whether the scope of Cl.105 is broad enough to include audio-video recording of the subsequent process of recovery evidence, which is most susceptible to irregularities and fabrication. Considering the fact that investigating agencies rely heavily on recovery evidence, mandatory audio-video recording of the process of collection of this evidence would be an important inclusion in the bill.

The BNSS, however, misses the opportunity to introduce the requirement for audio-video recording of other crucial processes during investigation like spot inspection (with the exception of Cl. 176(3)), inquest proceedings or post mortem of the deceased.

The BNSS does not strengthen existing provisions for audio-video recording under the Cr.P.C. For instance, audio-video recording of statements by witnesses to police continues to be optional under Cl.180. Only test identification proceedings involving witnesses with physical or mental disabilities are required to be recorded through audio-video means, under Cl.54, and other identification proceedings remain excluded from this requirement.

Consistent with the Cr.P.C., the BNSS retains the mandatory requirement for videography of police statements, and audio-video recording of statements before the magistrate for certain vulnerable victims with physical or mental disabilities, under Cls.173(1) and 183(6) respectively.

c. **Confessions and Statements before the Magistrate**

The BNSS completely omits the existing safeguard for audio-video recording of statements and confessions before the magistrate.

Audio-video recording of statements before the magistrate was an important safeguard to protect the rights of witnesses, particularly victims of sexual assault. It prevents the loss of evidence due to threat or coercion, which may lead to witnesses withdrawing their statements or turning hostile. With this omission in the BNSS, the protection of audio-video recording of statements before the magistrate is only available to certain victims under Cl. 183(6), but not provided to other witnesses.

The audio-video recording of the confession along with the presence of a lawyer, is an important safeguard against false confessions. Before recording any confession, a magistrate is required to ascertain its voluntariness and ensure that the accused is free from police duress, as per prescribed procedures. The provision for audio-video recording of

confessions is an additional means through which the voluntariness of the confession can be confirmed, through an assessment of the physical condition, body language and manner of speaking of the accused. The BNSS misses the opportunity to strengthen the existing protection under S.164 Cr.P.C., by making it mandatory, and expanding its scope to include audio-video recording of all the procedural safeguards essential to confirm the voluntariness of the accused's confession. Instead, this omission completely deprives the accused of an important safeguard existing in the law.

d. **Access to Audio-Video Recording during Investigation**

The significance of audio-video recording as a safeguard during investigation is only possible if access to these recordings are provided to the witnesses/victim-informants, but also to the accused. This would enable them to substantiate their claims regarding the non-compliance of any procedural safeguards by the police during the investigation.

The language of Cl. 230 under the BNSS may be broad enough to include audio-video recording. Cl. 230 requires the accused and victim (if represented by a lawyer) to be supplied with the police report and all necessary documents, including statements and confessions. The provision does not explicitly mention supply of audio-video recordings.

However, the term 'document' is wide enough to include digital and electronic records. Further, Cl. 230, expands the existing S.207 Cr.P.C., to also explicitly include supply of documents in electronic form, and permits the Magistrate to furnish copies of any documents considered to be 'voluminous' through electronic means, in addition to the provision for allowing them to inspect this record from the court either personally or through an advocate. Nevertheless, in the absence of explicit mandate for supply of audio-video recording, access to these documents by the accused and victim may be largely dependent on the discretion of the Magistrate or the police.

Ⅲ. Scope of Audio-Video Recordings

Cl.2(a) BNSS defines 'audio-video electronic' as 'any communication device' that can be used for the purposes of recording investigation as prescribed. The BNSS uses both terms 'audio-video' recording and 'videography', and there is a lack of clarity about the respective scope of these terms. It is unclear whether 'audio-video' recording includes a requirement for both audio and video, or provides an option of recording either audio or video of the proceedings. Since the BNSS also uses the term 'videography', there is a possibility that the scope of this recording would be limited to visual recording, without the corresponding audio.

In the BNSS, the term 'videography' has been used in the context of recording the process of collection of forensic evidence and recording information by the police from a vulnerable victim-informant. All other provisions in the BNSS use the term audio-video. While recording of victim statements under Cl. 173(1) cannot happen without audio recording, audio is also a useful safeguard for transparency in

collection of forensic evidence under Cl. 176(3). While most provisions specify cell phone as the preferred method of audio-video recording, Cl.176(3) particularly provides for 'videography' to be carried out through 'mobile phone'.

Ⅳ. Use of Mobile Phones for recording Audio-Video Evidence

While there is some inconsistency and lack of clarity in the terminology used, there is little guidance on the nature of recording device to be used. Without such clarity, there is an apprehension of variance in the audio and video recordings, which might lead to poor quality of the electronic record.

There are benefits of using mobile phones, because they are easily accessible by police officers at any point during investigation. However,

the BNSS does not specify that designated equipment be used for investigation. Therefore, without legislative clarity, cell/mobile phones referred to may include personal phone devices of investigating officers.

There are several concerns with the susceptibility of electronic record to alteration, modification and transposition, either through manual intervention or unintended corruption of a digital document. These fears are heightened when a personal communication device is being used for audio-video recording during investigation. Further, it would be more difficult to prove the integrity and proper chain of custody for an electronic record originating from a personal communication device, which is in the constant possession of the police officer. It would also have adverse consequences on the privacy of investigating officers. Further, there are additional risks of contamination or corruption of the electronic record due to malfunctioning of a personal communication device. The confusion over the applicability of the special procedure under Cl.63 BSB (corresponding to S. 65B IEA) to prove authenticity and accuracy of electronic record as an admissibility requirement raises more apprehensions regarding the use of personal communication devices by police offices.

Concerns of misuse and illegal circulation of sensitive evidence, including statements recorded under Cls. 176(1) and 183(6), are aggravated when the evidence is originally recorded on personal communication devices.

V. Infrastructure and Institutional Capacity

The most significant hurdles to the adoption of audio-video technology in investigation is the absence of equipment and the lack of trained personnel to employ these technologies effectively.

There is a serious need for guidelines to set a standard for the quality of the equipment, as well as to establish systems and infrastructure regarding the safe and secure storage and transfer of electronic evidence, ensuring that it is protected from being leaked, deleted or corrupted.

Conditions Requisite for Initiation of Proceedings – Cognizance
(Clauses 210, 218, 223)

Judicial response to a crime, or 'initiation of proceedings', begins with the act of taking 'cognizance' of the alleged crime by a Magistrate. It is a morally and procedurally significant stage in the criminal trial, where a judicial officer, and thus the court, officially becomes aware of the commission of an offence. Cognizance is the precursor to 'initiation of proceedings', whereby a summons or warrant is issued against the accused and charges are framed, while also marking the end of the investigation.

The BNSS proposes three significant changes to the operation of cognizance proceedings. Firstly, it relaxes the precondition of government sanction for taking cognizance in cases involving public servants such as judges (Cl.218). This is a laudable development that brings the legislative provision in consonance with case law. Secondly, it creates an opportunity for the accused to be heard at the stage of cognizance in private complaint cases (Cl.223), and thirdly, it specifically provides for cognizance based on complaints filed under special laws (Cl.210). These two changes, however, raise concerns about their possible implications.

I. Background: Procedure for Cognizance

S.190 Cr.P.C. enumerates the situations in which the Magistrate may (and 'must') take cognizance of an offence. The *first* scenario relates to cases involving commission of cognizable offences, where the police can begin investigation and arrest the accused without permission from the court, and are generally considered to be more 'serious'. The police investigates the commission of the alleged offence after registration of an FIR, with or without arresting the accused, and at the end of the investigation, submits a report to the Magistrate. This report is generally called a

chargesheet, if the police concludes that a criminal offence was committed; or a final report, if the police concludes that no criminal offence was committed. The report of the police, consisting of all evidence collected by them, forms the material on the basis of which a Magistrate takes cognizance of the commission of an offence.

Second, in non-cognizable offences or where the police has refused to register an FIR, a complaint regarding the commission of a crime can be submitted directly to the Magistrate, without involving the police or registration of FIR. In such cases, the Magistrate conducts their own inquiry, as opposed to a police investigation, by examining the complainant and any witnesses mentioned by the complainant. These statements, in turn, form the basis for taking cognizance in non-cognizable cases. Thus, there is a largely impermeable distinction between the investigative and judicial stages of criminal prosecution.

Lastly, cognizance is also taken based upon the Magistrate's own knowledge or information received from any person 'other than a police officer'. This last provision, S. 190(1)(c), is generally utilised in situations where the police has filed a closure report in cognizable cases, but the Magistrate disagrees with the closure and takes cognizance of the offence.

The above structure has been retained in the newly proposed bill, in Chapter XV, with the addition of changes discussed below.

II. Sanction for Prosecution of Public Servants/Judges

Cl.218 BNSS mandates that government sanction must be obtained before a Magistrate can take cognizance of an offence alleged to be committed in the course of duty by a judge, magistrate, or public servant. This corresponds to S.197 Cr.P.C. pertaining to the 'Prosecution of Judges and public servants'. A new proviso to Cl.218 adds to this by providing a timeline of one-twenty days within which sanction must be given; and further, prescribes that where the government fails to give sanction within

one-twenty days, sanction would be 'deemed to have been accorded' by the government.

Under the extant regime, this provisional protection for public servants, essentially turned to immunity for these officers. Instead of forestalling vexatious cases, governments often did not act on the requests for sanction even for non-frivolous complaints. Thus, the requirement for sanction has often acted as a barrier to prosecution of even *prima facie* legitimate cases of corruption or custodial violence. Consequently, the Supreme Court took note of the inaction of governments in granting sanction, and prescribed a time limit of three months (or one hundred and twenty days) for grant of sanction. Similarly, the Central Vigilance Commission has also prescribed a one hundred and twenty days time period for grant of sanction by the government under S.197 Cr.P.C.. Cl.218 proviso follows on the heels of this development in jurisprudence.

The implementation of a time period did not curb the culture of impunity that developed due to delays in prosecution of public servants, due to failure of the government to grant or reject sanction. ***(Vijay Rajmohan V. Central Bureau of Investigation (2003) 1 SCC 329)*** The accused public servant would seek to take benefit of the delay in grant of sanction, by moving to quash the proceedings entirely. This forced the Supreme Court, in 2022, to unequivocally hold that delay in sanction would not result in quashing of the criminal proceedings, but instead subject the competent authority to administrative action and judicial review. Thus, the provision of a 'deemed sanction' is a laudable addition to these developments initiated by the Supreme Court, in preventing the misuse of the power to grant sanction. It also mirrors case law development in the context of a parallel provision in the Prevention of Corruption Act, where the Supreme Court had similarly held that if a sanction is neither granted nor refused within the prescribed period, the sanction would be deemed to be granted.

III. Opportunity for Hearing the Accused

Complications arise in the context of complaint cases, through the addition of a proviso to Cl.223 on 'Examination of complainant'. The extant provision, S.200 Cr.P.C., provides that the magistrate must examine the complainant and any witnesses while taking cognizance of a non-cognizable offence on the basis of a private complaint. A new caveat has been added to this provision, which prohibits taking of cognizance in complaint cases without affording the accused an 'opportunity of being heard'.

The right to be heard, while unquestionably beneficial for an accused at any stage of criminal adjudication, has until now not been provided at the stage of cognizance. This is for multiple reasons, all relating to the nature of cognizance as a judicial function. At the outset, it may be noted that cognizance does not involve any formal action. It is the mere application of judicial mind to *the suspected commission of an offence.* ***(Sourindra Moahn Chuckerbutty v. Emperor 1910 SCC Online Cal 41)*** When a Magistrate reads the complaint or charge-sheet, and applies their mind to determine whether the averments in the complaint or charge-sheet disclose the commission of an offence for the purposes of proceeding further, they are said to take cognizance. Courts have highlighted that at this stage, the Magistrate need not examine the evidence with a view to determine if it would support conviction of the accused, nor assess the reliability or validity of the evidence. As such, the Magistrate is also not bound to give a reasoned order, nor is a superior court ordinarily allowed to substitute its opinion for the Magistrate's. Immediately after cognizance is taken of an offence, the accused is directed to be produced, their plea of guilt or innocence is recorded, and charges are framed. The framing of charges is the first stage where the accused is permitted to be heard and make submissions relating to the commission of the crime. A caveat is that in rare circumstances,

where there is irrefutable evidence (sterling quality) to suggest that the prosecution version is 'totally absurd or preposterous', it may be brought to the notice of court at the stage of taking cognizance as well.

In essence, cognizance is a stage where the law officially recognises the commission of an offence. *After* this, the Magistrate issues process against an accused person and affords them a right of hearing, i.e. at the framing of charges. Naturally, then, the Cr.P.C. does not envisage a right of hearing to the accused, or anyone, at the stage of taking cognizance.

This creates a host of issues, not the least of them being that the purpose of taking cognizance in complaint cases would be frustrated. Complaint cases are lodged either in cases where the offence is non-cognizable, or where, despite the offence being cognizable, the police refuses to register an FIR or the complainant is *unable* to register an FIR. The object of allowing this is to '*ensure the freedom and safety of the subject in that it gives him the right to come to the court if he considers a wrong has been done to him or the Republic and be a check on police vagaries*.' This provision is often utilised by vulnerable complainants where the perpetrator holds relatively more power. This includes instances of violence against members of the SC/ST community by persons from dominant caste; sexual violence against women by men in positions of power including those from dominant caste, class or religious community; and domestic violence against women. In these situations, the victims find it difficult, if not dangerous, to register an FIR and choose to file a private complaint instead. In the context of these power dynamics, the refusal of the police to take these allegations seriously or to register FIRs in these situations, further contributes to the victims' difficulties. By allowing the accused an unrestricted right of hearing at this stage, under Cl.223 before even taking notice of the commission of an offence, gives scope for witness manipulation and suppression. The importance of complaint cases in ensuring '*freedom and*

safety of victims is jeopardised.

This might also exacerbate the concerns of an already overburdened system. As per the provision in the BNSS, to even take note of a crime, the Magistrate will be required to *hear* every accused in a complaint case. The contours of this hearing are also not specified. Courts have been clear that accused persons have no right to produce any material, as cognizance is taken based on charge-sheet/complaint, [***State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568***] apart from the aforesaid evidence of sterling quality. Judicial clarity would be needed to determine if the hearing would be limited to this point. To allow a hearing beyond that, or on the evidence, would also frustrate the purpose of taking cognizance, and be a duplication of the stage that follows immediately after, i.e. hearing on charge.

Crucially, this right has been created only in the context of complaint cases. This creates an anomalous situation, where an additional right has been created for complaint cases, whereas no such right exists where the offence has been investigated by the police. A potential explanation would be that an accused in a cognizable offence would be aware when cognizance is taken, as accused persons must (at the very least) be produced when charge-sheet is filed. On the other hand, no provision mandates that the accused in a complaint case must be made aware of the lodging of a complaint or at the stage of taking cognizance. However, as discussed above, for the provision to be workable, the contours of the hearing must be clarified.

Similar concerns also arise in the context of Cl.210(3), which restrains the Magistrate from taking cognizance of allegations raised against a public servant arising in the course of discharge of official duties, until (a) receipt of a report from an officer superior to the public servant; and (b) consideration of '*assertions made by the public servant*' regarding the incident. This may have been introduced with a view to

prevent vexatious or frivolous complaints against public servants discharging their duties. However, it simultaneously raises concerns about power dynamics highlighted above, and potentially contributes to the culture of impunity generally surrounding actions of public servants.

Cl.210(3) has been duplicated in Cl.175(4). Cl.175 falls within Chapter XIII of the BNSS, which deals only with investigative powers of the police, a stage of the criminal legal process that precedes the stage of cognizance. Issues of cognizance and Magistrate's role after investigation begin with Chapter XV. Thus, the addition of the new sub-clause (4), which is identical to Cl. 210(3), does not fit in the scheme contemplated within the BNSS (or the Cr.P.C.). This is likely a clerical error.

Ⅳ. Circumstances for taking Cognizance

The first clause of S.190(1) has been modified in Cl.210(1)(a) BNSS, which now provides that cognizance may be taken of any offence '*upon receiving a complaint of facts, <u>including any complaint filed by a person authorised under</u> <u>any special law,</u> which constitutes such offence*'. The underlined text is the addition made to S.190(1)(a). Thus, cognizance of reports of specialised agencies (who are authorised under special laws to investigate specific offences) is not only explicitly included under the Cl.210 (1)(a), but these 'complaints' are curiously treated on par with private complaints, rather than a police report.

On the face of it, this equalisation sits odd. The concerning theme with complaints filed under special laws, is that they often pertain to offences which are otherwise 'serious' (as they carry a punishment of more than three years' imprisonment) and require specialised agencies for their investigation. Such specialised agencies are also authorised to undertake investigative procedures of arrest, interrogation and/or seizure. Yet, despite the gravity of offence and detailed investigation, the report submitted by the authorised person is treated as a 'complaint', rather than a 'charge-sheet'. More than a mere issue of terminology, the filing of a

charge-sheet (as opposed to a complaint) at the end of the investigation is a crucial (but not decisive) barometer for whether an investigative agency acts in the role of 'police'. This, in turn, determines whether safeguards which guide the exercise of police powers, would also apply to the investigative acts of such agencies. Thus, this proviso may indicate legislative intent to not treat the entities filing the complaint under special law as exercising 'police powers'.

This addition, however, is not an unexpected development. In the context of the PMLA, the Supreme Court has held that Enforcement Directorate, the specialised agency which investigates offences therein, does not exercise 'police powers', and thus, the report filed by the agency is not comparable to a charge-sheet. Other special statutes also reflect a similar trend in the terminology adopted. The NDPS Act, 1985, allows cognizance of listed offences to be taken on the basis of a *complaint* filed by an officer of the Central or State government. Other instances of complaints filed by authorised officers under a special law, may be found in S.439 r/w s.212 of Companies Act, 2013, and S.13(1D) FEMA, 1999. In the absence of specific provisions for taking cognizance under these special legislations, the procedure under S.190 Cr.P.C. for *inter alia* taking of cognizance is applicable.

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Custody of Arrested Persons During Investigation
(**Clause 187)**

Cl.58 of the BNSS, like S.57 Cr.P.C., provides that arrested persons cannot be detained in police custody beyond 24 hours. Cl.187 BNSS provides for the procedure when investigation cannot be completed within such 24 hours, and the accused is produced before a magistrate to determine custody. This clause seeks to replace S.167 Cr.P.C., with some crucial modifications.

Cl.187 BNSS retains the timelines of sixty or ninety days and the concept of default bail, as in the Cr.P.C.. However, unlike S.167 Cr.P.C., Cl.187(2) additionally provides that the detention in custody of fifteen days (in whole or in part) can be at any time during the initial forty or sixty days out of the sixty or ninety days period, as the case may be. Consistent with the position under the Cr.P.C., Cl.187(2) empowers any magistrate to authorise detention, irrespective of whether they have jurisdiction to try the case; whereas Cl.187(3) requires a jurisdictional Magistrate. Further, Cl.187(3) provides that detention in custody can be authorised beyond the period of fifteen days, but omits the phrase '*otherwise than in police custody*'; implying that police custody can also be provided in such further period. It also specifies that the Magistrate should consider the status of the accused regarding bail, while giving custody. Additionally, through a new proviso added in Cl. 187(5), it defines the kind of custody permissible under the provision. This piece discusses the significant modifications proposed in Cl.187, especially concerning police custody, along with possible implications.

I. Background

Section 167 of the erstwhile Cr.P.C., 1898 simply provided that the Magistrate could authorise detention not exceeding fifteen days. However, this provision was observed more in its breach than its compliance, with the police filing preliminary reports to extend the detention period till the investigation was completed. Ultimately in the new Cr.P.C. of 1973, a proviso was introduced in S.167(2) to empower the Magistrate to authorise detention in custody beyond the period of fifteen days, but up to a maximum of sixty or ninety days (depending on the extent of punishment prescribed); provided that such further custody beyond the period of fifteen days, could not be in police custody. Cl.167 also introduced default bail for the accused, if investigation was not completed

within such sixty or ninety days.

It is clear from the scheme of Ss.57 and 167 Cr.P.C. that the intention is to limit police custody and protect the accused from unscrupulous police officers. ***[Central Bureau of Investigation v. Anupam Kulkarni (1992) 3 SCC 141 (10)]*** Sub-clauses (2)(b), (2)(c), and (3) of S.167 Cr.P.C. make it evident that the law understands the necessity of safeguards before such custody is granted. Custodial torture and deaths in police custody are a well documented reality, and has been consistently acknowledged by the judiciary for its pervasiveness and as a matter of grave concern. ***[D.K. Basu v. State of West Bengal (1997) 1 SCC 416]*** Constitutional protections against police excesses include Art.22(2) which provides for the right of every arrested and detained person to be produced before the nearest magistrate within twenty-four hours; Art.21 has been judicially interpreted to include the right against torture and assault by the state and its functionaries. Further, the judiciary has brought in specific safeguards to prevent police excesses during custody, such as by laying down guidelines for arrest and detention in D.K. Basu v. State of West Bengal, and measures like installation of CCTV cameras in police stations.

II. **Modifications in Duration and Manner of granting Police Custody**

a. **Extended duration of Police Custody**

The total period of detention of an accused is the same under both S.167 and Cl.187, i.e. sixty or ninety days depending on the offence to which the investigation relates. Under the Cr.P.C., police custody cannot exceed fifteen days. However, under Cl.187(3) BNSS, the Magistrate can authorise police custody detention for a period exceeding fifteen days. In fact, such police custody may be authorised for the entire period of detention, i.e. a maximum of sixty or ninety days, as the case may be. Given this, the only difference between Cl.187(2) and (3) is that detention under Cl.187(3) needs to be authorised by a magistrate with jurisdiction to try the case, unlike Cl.187(2). Otherwise unlike the Cr.P.C., police custody detention can be authorised under both sub-clauses.

The proposed change is excessive and in stark contrast to even special legislations such as the UAPA where the duration of police custody permissible is only thirty days; and the investigating officer is required to file an affidavit providing reasons for seeking police custody if the accused

is in judicial custody. Even this safeguard is absent in the BNSS.

Extended police custody magnifies the likelihood of custodial violence; practically nullifying the constitutional and other safeguards against police excesses which recognise the pervasiveness of custodial violence, as noted above. This proposed change is bound to seriously undermine the accused's fundamental rights under Art.21, including the rights to life, dignity, and physical and mental well being.

This is also likely to adversely affect the accused's fair trial rights; especially if they are from a marginalised background and do not have access to a lawyer at this stage, which is often the case. Extended police custody increases the accused's vulnerability to forced confessions and other fabrication of evidence. For instance, the accused are tortured into signing blank papers, which are used by the police to fabricate 'disclosure statements'. These statements usually involve the accused revealing the location of the dead body or other objects related to the crime. It is then shown as if the body/objects were 'discovered' by the police due to the accused's statement. Such 'discovery' can then be treated as strong evidence against the accused under S.27 IEA. Courts have widely recognised the adverse effect of extended police custody on the reliability of evidence, and have routinely disregarded such disclosures as being involuntary and coerced, if obtained after prolonged police custody or multiple interrogations. Courts have also doubted the voluntariness of confessions made to judicial magistrates, if the accused was produced from judicial custody but had been in extended police custody before that.

b. **Initial Police Custody in tranches, beyond the first fifteen days**

Courts have differing interpretations of s.167(2) Cr.P.C. on the issue of whether police custody can be granted only in the first fifteen days after production before the magistrate or even thereafter. In ***Central Bureau of Investigation v. Anupam Kulkarni,*** a division bench of the Supreme Court held that police custody can be authorised only in the first fifteen days. This is even if the accused was unavailable for interrogation for some days in this period, or if his involvement in other offences (in the same case) was discovered later during investigation. In holding so, the court recognised the legislature's intention in placing limitations on police custody, to protect the accused from methods adopted by unscrupulous officers. This decision in *Anupam Kulkarni* was followed with approval by a larger three judge bench of the court. However, other division benches of the Supreme Court sought reconsideration of *Anupam*

Kulkarni. In **Central Bureau of Investigation v. Vikas Mishra***,* the Supreme Court granted police custody after the first fifteen days because the accused had '*frustrated the process*' by getting hospitalised and being unavailable for interrogation. Recently, in *V. Senthil Balaji v. State,* the Supreme Court again held that s.167(2) does not mention that police custody can only be in the first fifteen days, and could be at any time during the investigation period, for any other interpretation of this subsection would cause serious prejudice to the investigation.

In this background, Cl.187(2) BNSS resolves this issue by adopting the rationale in the latter line of cases. It explicitly allows detention in police custody for fifteen days, at any time in the first forty or sixty days out of the investigation period of sixty or ninety days respectively. It thus expands the reach of police custody to the later stages of investigation. When the investigation is at an advanced stage, the police are likely to have their version of how the offence unfolded. At such time, granting them unrestricted access to the accused may incentivise and facilitate fabrication of evidence towards ensuring that the police's version is tenable in court. Even presently, courts routinely disbelieve evidence that is obtained belatedly after arrest, for being involuntary. For instance, police often obtain 'disclosure statements' (discussed above), belatedly i.e. several days after the accused's arrest. There is also a practice of obtaining disclosures in a piecemeal manner. Courts have disbelieved such belated and piecemeal disclosures ***(Ashish Jain v. Makrand Sigh (2019) 3 SCC Online SC 934)*** due to the likelihood of them being obtained pursuant to police pressure.

Another concern is with respect to collection of forensic evidence. Courts have recognised the possibility of police tampering with crime scene samples and falsely planting the accused's biological material. In such situations, courts have disregarded forensic evidence if there is unexplained delay in dispatching samples to forensic labs or issues with sealing after collection. Under the BNSS, such tampering would be made easier if unrestricted access to the accused is permitted via police custody during the later stages. Cl.187(2) is thus likely to incentivise such malpractices and exacerbate these existing issues.

Further, note that the possibility of securing police custody beyond the first fifteen days may reduce the incentive for timely investigations, contrary to the constitutional and legislative prerogatives to limit detention, and to the BNSS' own objective of reducing investigative delays.

c. Consideration of the status of Bail

Cl.187(2) BNSS further requires the magistrate to consider whether the accused '*is not released on bail or his bail has not been cancelled*' while authorising detention. The reason to introduce such language is unclear; it is unclear how the magistrate's decision on remand is sought to be guided, based on the bail status of the accused.

III. Kinds of Custody Permissible

S.167 Cr.P.C. uses the terms 'custody' and 'other than in custody of the police'; the provision is thus generally interpreted to permit police custody or judicial custody. Cl.187 BNSS however introduces a new proviso after sub-clause (5). This provides that detention shall only be in a police station in police custody or in a prison in judicial custody or in a place declared a prison by the central or state government.

Restricting the places of detention to police stations and jails through such a definition may at first blush be seen as safeguarding the rights of the accused. The detention would be in designated places governed by a set of rules including some procedural safeguards; these would also be known places, making it easier for families and lawyers to access the accused. However, the proviso precludes other forms of custody and restricts broader interpretations of 'custody' under this provision. For instance, courts have interpreted custody under s.167 Cr.P.C. to include custody of investigating agencies such as the Enforcement Directorate and Central Bureau of Investigation, transit remands required for transporting accused from one state to another, and house arrest.

The need for many of these forms of custody would continue to exist in reality. Their exclusion from permissible custody under Cl.187 might then be harmful in practice. It may result in situations where the accused's liberty would be curtailed, but the period would not count towards default bail as it would not be 'custody' under Cl.187 BNSS.

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Framing of Charge and Discharge
(Clauses 250, 251, 262, 263, 272 and 274)

The BNSS has introduced maximum timelines for filing of discharge applications and framing of charges. Cl. 250(1) introduces a sixty-day time limit for the accused to file a discharge application from the date of committal in a sessions triable case. For warrant cases instituted on a police report, Cl. 262(1) stipulates that a discharge application can be filed within sixty days from the date of framing of charge.

Additionally, Cl.272 provides discretionary powers to Magistrates to issue thirty days' notice to the complainant prior to discharging an accused in a 'complaints case'. The current framework under S.249 Cr.P.C. does not envisage giving such notice to a complainant. Also, Cl.274 confers express powers to Magistrates to discharge an accused in summons cases; a provision absent in corresponding S.251 Cr.P.C.

Similarly, in the context of framing of charges, Cls. 251(1)(b) and 263(1) mandate that charges against an accused should be framed within sixty days from the date of first hearing on charge, in sessions and warrant triable cases. Further, Cl. 251(2) permits framing of charges in virtual presence of the accused. These changes are focused on reducing delays in the trial process by prescribing timelines.

I. Changes related to Discharge

a. Issues regarding timeline for Filing for Discharge in cases triable by Sessions Court

Unlike S.227 CrPC, Cl.250(1) BNSS expressly recognises the right of the accused to file an application for discharge and prescribes a sixty-day time limit to file it from the date of committal to the Sessions Court.

The introduction of a timeline may *prima facie* appear to be a positive move towards reducing delay in the trial process. However, it ignores

systemic realities regarding pre-trial processes in our country that may defeat the exercise of this right. Firstly, accused persons often do not receive timely access to their case papers ***(P. Gopalkrishnan v. State of Kerala (2020) 9 SCC 161)*** and may not have legal representation at this stage in the criminal proceedings. Further, there is often a considerable time lag between the committal of the matter to the Sessions Court by the Magistrate and assignment of the matter to a Sessions Judge, for the production of the accused and the receipt of the records.

While considering between discharge and framing of charges, courts have to consider whether there exists a "strong suspicion", based on some material, to support a prima facie conclusion that the accused committed the offence. ***(Dipakbhai Jagdishchndra Patel v. State of Gujarat (2019) 16 SCC 547)***

Considering this standard and the burden on the accused to successfully argue their discharge application, this opportunity to file for discharge would be meaningless without addressing the issues regarding timely provision of case papers and ensuring early access to a lawyer for all accused.

b. **Confusions regarding the procedure for Discharge after the Framing of Charges in Warrant cases instituted on Police Report**

Corresponding to S.239 Cr.P.C., Cl.262 discusses discharge of accused in warrant cases instituted on police report. However, it introduces a timeline for filing of an application for discharge by the accused, within sixty days after the date of framing of charges. By prescribing the procedure for discharge *after* the framing of charges, it swaps the order of these two distinct stages and defeats the purpose of filing for discharge.

The purpose of hearing on discharge prior to the framing of charges is to protect the accused from frivolous criminal process and to conserve

judicial time. It is a settled position of law that once charges are framed, either on police report or through a complaint, the Magistrate has no power to discharge the accused. ***[Chandi Puliya v. State of West Bengal 2022 SCC OnLine SC 1710].*** Further, the implication of Cl.262(1) would be that the Magistrate must wait until the expiry of sixty days after the framing of charges, in order to give an opportunity to the accused to file an application for discharge. Therefore, this would prevent the Magistrate from proceeding with the trial after framing of charges.

c. **Notice to Complainant for Discharge of Accused in 'Complaint Cases'**

Cl.272 BNSS provides the Magistrate with discretionary powers to serve thirty days' notice to the complainant, before making an order of discharge in compoundable/non-cognizable cases, where the complainant is absent on the day fixed for hearing of the case. The corresponding provision under Cr.P.C. i.e. S.249 does not stipulate any requirement of notice to the complainant. Cl.272 ensures an additional opportunity to the complainant to make submissions opposing discharge, since an order of discharge and dismissal of matter by the Magistrate is not open for recall and reconsideration. ***[A.S. Gauraya v. S.N. Thakur (1986) 2 SCC 709]***

d. **Discharge in Summons Cases**

Corresponding to S.251 Cr.P.C., Cl.274 prescribes the procedure for the Magistrate to state the particulars of the offence to the accused and record their plea of guilt or hear their defence. The requirement to formally frame charges is absent in summons cases. Cl.274 introduces a new proviso which provides for discharge in case the Magistrate considers the accusation to be groundless.

Presently, courts have held that under Chapter XX of the Cr.P.C., dealing with trial of summons cases, the Magistrate does not have the power to

consider discharge or recall summons. ***(Subramanium Sethuraman v. State of Maharashtra & Anr. (2004) 13 SCC 324) .*** The only recourse available to the accused is under the extraordinary jurisdiction of the High Court under S.482 Cr.P.C. However, through the addition of this proviso under Cl.274, powers of discharge similar to warrant cases have been introduced, which may allow for speedier resolution of summons cases, in case they are found to be baseless by the Magistrate.

II. Changes related to Framing of Charges

a. Issues regarding stipulation of timelines for Framing of Charge

Corresponding to ss.228 and 240 Cr.P.C., Cls.251 and 263 BNSS prescribe a sixty-day timeline for framing of charges from the first hearing on charge, in trials before Sessions courts and warrant cases instituted on a police report, respectively. As mentioned above in reference to the timelines for discharge, without addressing the systemic issues and the gaps in institutional capacity, compliance with such timelines would be ineffective and unjust.

Amongst these, an important issue regarding the lack of timely access to legal representation at the stage of framing of charges, has received significant judicial attention. Recently, the Supreme Court has noted the lack of adequate legal representation at the stage of framing of charges in a few death penalty cases, and ordered a *de novo* trial. It is important to note that in these cases, the Supreme Court has emphasised that expeditious disposal of criminal matters cannot be at 'the cost of basic elements of fairness and opportunity to the accused' and a hasty trial would be vitiated as 'being meaningless & stage-managed'. In cases that may result in life imprisonment and death penalty, the Supreme Court also laid down guidelines that adequate time should be provided to the lawyer for preparation on hearing on charge. Another significant reason for the current delays in criminal proceedings is the high levels of vacancies in the subordinate-level

judiciary, which needs to be addressed in order to ensure just and fair compliance with such timelines.

Another implication of this provision would be on the practice of the police filing supplementary police reports (charge-sheet). Corresponding to S.173(8) CrPC, Cl.193(9) permits the police to file supplementary police reports. As per settled law, courts must conjointly examine the preliminary and the supplementary police reports before the framing of charges, unless there exists an order passed by higher courts in exercise of their extraordinary jurisdiction to exclude certain documents or parts of the police report from consideration. (***Vinay Tyagi v. Irshad Ali (2013) 5 SCC 762)*** Since Cl. 193(9) prescribes a ninety-day time limit for further investigation, it is unclear how this would affect the timeline for the framing of charges.

b. **Issues regarding Presence of Accused using Electronic Means during Framing of Charges**

In addition to the timeline for framing of charges, Cl. 251(2) also introduces the option to produce the accused, either physically or through electronic means, so that the judge can explain the charges framed and record their plea.

Considering the importance of this stage in the trial process, courts have held that it is the duty of the judge to ensure the accused understands the charges framed against them before entering their plea.[150] Production of the accused through electronic means may assist with avoiding delays due to implementation issues such as lack of adequate police escorts for court visits. Also, in cases where there may be a security risk for the accused due to their physical production in court, production through electronic means may be seen as a useful alternative.

However, production through electronic means also raises several concerns that may adversely impact the right to fair trial of the accused. Firstly, considering the limitations of a video conference, the judge may

be restricted in ensuring that the accused has understood the charges framed against them and is under no form of duress or threat while entering their plea. Secondly, it is unclear whether the production through electronic means would be dependent on the accused's preference or would be based on the judge's discretion. As a corollary, it is unclear if the accused would have a right to insist on physical production, in case the court orders otherwise. Lastly, the effective implementation of production through electronic means would be dependent on ensuring adequate infrastructure and building the capacity of prison officials within central and district prisons across India (in case the accused is in judicial custody). This would include provision and maintenance of sufficient number of computer devices, uninterrupted access to the internet, separate space within prisons for attending judicial proceedings, and adequate training of prison officials. Without addressing these systemic gaps, production of the accused through electronic means may severely affect the realisation of their fair trial rights.

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Witness Protection Scheme
(**Clause 398)**

Cl.398 BNSS provides: '*Every State Government shall prepare and notify a Witness Protection Scheme for the State with a view to ensure protection of the witnesses*.' While this clause is an entirely new addition proposed in the criminal procedural framework, it is only an enabling provision for state governments to prepare and notify schemes for witness protection. However, when considered in light of legal developments and discourse on witness protection, the purpose and significance behind the inclusion of this provision is not discernible. In other words, the legislative aim behind the insertion of this clause is unclear.

I. Witness Protection Law in India

The most recent legal development concerning witness protection was the Witness Protection Scheme 2018. The Supreme Court in **Mahender Chawla v. Union of India (2019) 14 SCC 615** declared this scheme to be law until the Parliament or various state governments prepared and notified their own Witness Protection Schemes. Although various provisions in the IPC, IEA and Cr.P.C. recognise the vulnerabilities faced by witnesses and provide some support, the 2018 scheme was the first to develop a comprehensive approach towards ensuring the protection of witnesses in criminal proceedings. This scheme was based on a draft witness protection scheme supplied by the Central government, after deliberation and consultation with state governments.

The decision in *Mahender Chawla* (Supra) comes on the heels of a long line of judicial decisions and committee reports acknowledging the vulnerability of witnesses in the criminal justice system, and the need for an institutional response for their protection. The judgment recognises the extent of problems faced by witnesses ranging from difficulty in

accessing courts due to expenses, travel, time and expense costs due to frequent adjournments, callous treatment by court officials, as well as threats, intimidation and harassment. Through precedents, the Supreme Court also discusses the varying kinds of protection required depending on factors including the context of the crime, social status of the witness, and the power dynamics concerning the accused. For instance, child witnesses in sexual offence cases come with a unique set of protection needs to prevent intimidation and to protect them from the trauma of such proceedings. Similarly, witnesses in offences committed by organised crime syndicates, such as terror outfits, may find their safety far more likely to be jeopardised. (***People's Union for Civil Liberties v. Union of India (2007) 1 SCC 719)***

The 2018 scheme took an expansive approach to establish a holistic legal and institutional framework for the protection of witnesses. This included categorising risk/vulnerability levels of witnesses; procedures for witness protection; introduction of threat analysis reports by the police to gauge the level of protection required by witnesses; and constituting a body comprising police officials and Sessions/District Court judges to implement and oversee its functioning. While, there may be limits to the framework proposed by the 2018 Scheme - including its overreliance on the police for threat assessment or limiting the scope of witness protection to three months; this scheme was a first step towards a comprehensive legal framework for witness protection.

II. Implications of Cl.398

The change, or the purpose behind Cl.398, remains unclear in the face of the aforementioned developments. Cl.398 merely reiterates the direction under *Mahender Chawla* (supra) enabling states to frame their own witness protection schemes. Thus, in the absence of any further guidance, it appears then that the 2018 scheme will remain operational, in the absence of specific state legislation.

Provisions Pertaining to Bail and Bonds
(Clauses 479, 481, 482, 483, 484 and 485)

Chapter XXXV of the BNSS (Cls.479 to 498) deals with the provisions relating to bail and bail bonds. While the contents of most of these clauses are identical to their corresponding sections in the Cr. P.C. (ss.436 to 450), some substantive changes have been proposed. For instance, new insertions in the BNSS include definitions of bail, bail bond, and bond. Further, significant changes have been proposed in two provisions — the provision regarding the maximum period of detention of an undertrial, and the provision on anticipatory bail.

A vital amendment proposed is in Cl.482 BNSS which replaces s.437 Cr.P.C. (bail in non-bailable offences). Under this provision, two categories of persons who are not to be released on bail are provided, and the exception to this ineligibility is mentioned in the first proviso: women, persons who are sick or infirm, and persons under the age of 16. Under the corresponding Cl.482 BNSS, the age is increased from sixteen to eighteen. This amendment makes the provision consistent with the Juvenile Justice (Care and Protection of Children) Act, 2015.

I. Introduction of definitions

The terms 'bail', 'bond' and 'bail bond' while used throughout the Cr.P.C., have not been defined therein. The BNSS introduces definitions for these terms for the first time in Cl.479. Bail is defined under sub-clause (a) as *'release of a person accused of an offence from the custody of law upon certain conditions imposed by an officer or court including execution by such person of a bond or a bail bond.'* Bond is defined under sub-clause (b) as a '*personal bond or an undertaking for release without payment of any surety'* and; bail bond under clause (c) as '*an undertaking for release with payment of surety.'* A combined reading

of these definitions makes apparent the two ways by which a person may be released on bail i.e. execution of a bond (without surety) or a bail bond (with payment of surety).

Although, bail has been understood to include release with or without surety, in jurisprudence, there is currently some confusion regarding the textual usage of the terms bail and bond. This confusion arises as some provisions in Cr.P.C. use the term bail to include release either with or without surety, however, there are a few provisions that make a distinction between release on bail with surety, and on a personal bond without surety. For instance, the proviso to s.436 Cr.P.C. assumes that bail requires surety, and where a person is unable to pay such surety, *instead of bail,* can be released on a personal bond. S. 441 Cr.P.C. is another such provision which uses the language 'released on bail or released on his own bond.' Interestingly, S. 441 (2) and (3) Cr.P.C. use the term bail generically to include release with or without surety.

The BNSS attempted to bring in the much needed clarity on distinction between bail with and without surety. Some changes have further been made to the remaining provisions in the chapter as well, in accordance with these new definitions. However, despite the definition, the confusion on the usage of the terms and bail and surety continue since the Bill seems to have retained the language of the present Cr.P.C. in some provisions. For instance, Cl. 482(2) distinguishes between 'release on bail' and 'release on bond without surety'.

II. Maximum Period of Detention for Undertrials

S.436A Cr.P.C. was inserted *vide* the Criminal Law (Amendment) Act, 2005 ('2005 Amendment'). This provision states that where a person has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence he is under investigation, inquiry or trial for, he shall be released by the Court on bail (with or without surety).

This provision envisages the right of an accused to a speedy trial by prescribing the maximum period for which such accused may be detained. Interestingly, despite vast jurisprudence which has developed over the years on bail being the rule and jail the exception, (Recent directions of the Supreme Court in ***Satendra Kumar Antil v. Central Bureau of Investigation & Anr. (2021) 10 SCC 773,*** the BNSS instead of increasing the scope of bail as a right this provision, has in many ways restricted it.

a. **Exclusion of Offences punishable by Life Imprisonment**

A significant exclusion from this provision is that of a person accused of offences punishable by life imprisonment. So far, the provision under s.436A has excluded persons who are accused of an offence punishable with death. However, the proposed Cl.481 expands this category by also excluding those accused of an offence punishable with imprisonment for life. Thus, the application of this provision has been made narrower, and also excludes persons arrested for a number of offences where the maximum sentence prescribed is either imprisonment for life or imprisonment for life for the remainder of one's natural life.

Notably, Cl.482 BNSS (which is in *pari materia* to S.437 Cr.P.C. relating to bail) also excludes the category of persons who are accused of offences death or imprisonment for life. Cl.483 however has exceptions to this ineligibility, which does not apply in case of Cl.481. Further, the language of Cl.482 provides that such persons would be ineligible for bail *if* there is a reasonable apprehension that they have committed the offence punishable with death or imprisonment for life. This allows a court to consider the *prima facie* case against the accused while deciding the bail application, which is not the case in Cl.481. This defeats the objective of a provision introduced to release under trials who have spent long durations in jail without trial, to prevent further violation of their Art.21 rights and right to speedy trial. **(Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (1994) 6 SCC 731.)**

b. **Reduction in maximum period of Detention for a First Time Offender**

Cl.481 BNSS proposes insertion of a proviso which states that a person who is a first time offender (never convicted of any offence in the past), shall be released on bail if he has undergone a third of the maximum sentence prescribed. This benefit is not made subject to any other consideration, such as the seriousness of the offence of previous conviction or judicial discretion, and remains a matter of right for an undertrial who hasn't been convicted previously.

Under the Cr.P.C., courts have held 'prior conviction' as a relevant consideration for grant of bail under ss.437 or 438. Such categorization was, however, not envisaged under S.436A.

c. **Exclusion of a person against whom Inquiry/Trial is Pending**

Sub-clause (2) to Cl.481 BNSS, which is an addition to the existing provisions under s.436A Cr.P.C., provides that where an investigation, inquiry or trial in more than one offence, or in multiple cases are pending against a person, he shall *not be released on bail* by the court.[255] This sub-clause excludes a category of persons from the benefit of this provision. Not only is this sub-clause palpably contrary to the tenet of presumption of innocence — as it precludes one from the benefit of this section based on the existence of a pending investigation, inquiry or trial — but also raises several other concerns.

First and foremost, the textual language of the provision is extremely wide. Investigation, inquiry or trial in 'more than one offence' could also include a situation where a person is accused under several sections for a series of acts forming a part of the same transaction given that it is differentiated from 'multiple cases'. As such, this sub-clause excludes a substantial number of persons from the benefit of this provision. Secondly, this sub-clause does not consider the nature of these other

cases and thus, fails to account for the possibility of the other offence the person is accused of being bailable or non-cognizable. There may also be a situation where the person is not required to be in custody for investigation, inquiry or trial of such other offence. Thirdly, the sub-clause makes the operation of this provision inapplicable even where a person accused of multiple offences has served half of the maximum prescribed punishment in all of those offences.

Through the inclusion of these broad exclusions, the sub-clause defeats the purpose of this provision, as it substantially narrows the scope, and denies the right conferred by the provision to a wide category of persons who are entitled to this relief under the present law. Further, the exclusion under this sub-clause allows for misuse by filing frivolous complaints against a person already in custody, for the purpose of precluding them from release under this provision.

d. **Obligation of the Prison Superintendent**

A notable insertion proposed under the BNSS is Cl. 481(3) which places the responsibility of applying for bail under this provision upon the superintendent of the prison where the accused is lodged. This is especially relevant as often due to lack of effective (or any) legal aid, prisoners are denied release despite meeting the requisite criteria.

For the first time a statutory obligation is sought to be imposed on the Superintendent of the Jail to ensure that this provision is made use of, and the prisoners eligible for bail under this provision are given the benefit of this right. While it is a welcome step to cast statutory responsibility on the superintendents to file a bail application, this provision misses the point of assigning responsibility for determining eligibility under the provisions. Assessing the eligibility of inmates for bail under this section might involve an in-depth technical understanding of penal laws and their application, which superintendents may not be equipped with.

By means of several notifications by the Ministry of Home Affairs and judicial decisions, processes to ensure operation of this section were laid down. Steps taken by the government to ensure compliance with s.436A Cr.P.C. were discussed by the Supreme Court in ***Inhuman Conditions in 1382 Prisons, In re, (2016) 3 SCC 700*** (Supreme Court order dated 05.02.2016). These steps included issuance of an advisory for creation of an under trial review committee in every district, which would meet every three months to review under trial cases. Interestingly, the standard operating procedure of the Under trial Review Committee had also refrained from giving this responsibility of identification of eligibility for release to prison authorities and left it to the legal services authorities. In *Bhim Singh,* the Supreme Court cast the duty of looking at eligibility under S.436A on the Magistrates and Sessions Judges.

III. Anticipatory Bail

Anticipatory bail or grant of a bail to a person apprehending arrest is presently enshrined under s.438 Cr.P.C.. The provision allows a person who has reason to believe that he may be arrested for committing a non-bailable offence, to apply before the High Court or the Sessions Court seeking a direction that in event of such arrest he be released on bail. Cl.484 BNSS seeks to replace s.438 Cr.P.C.

a. Reverting to pre-2005 provision

The changes proposed to the provision on Anticipatory Bail include replacement of the sub-section (1), and deletion of the proviso to sub-section (1), and sub-sections (1A) and (1B). In doing so, Cl.484 seeks to revert to the provision on anticipatory bail as it existed before 2005. *Vide* the 2005 Amendment the following changes were made to the provision on anticipatory bail:

a. S. 438(1) Cr.P.C. was amended to insert language, which provided guidance to courts regarding factors to be considered while

deciding grant of anticipatory bail. A non-exhaustive list of these factors was enumerated in 1(i) to (iv).

b. The amended sub-section (1) also stated that an application can either be rejected, or an *interim order* granting anticipatory bail may be made.

c. A proviso was inserted which said that where no interim order has been passed or where the application seeking anticipatory bail has been rejected, it shall be open to an officer in-charge to make arrest without warrant, if there are reasonable grounds for such arrest.

d. Sub-section (1A) was inserted which states that notice with a copy of an interim order under S.438(1) shall be sent to the public prosecutor with a notice of at least seven days, to give a reasonable opportunity of being heard when the application is finally heard.

e. Sub-section (IB) was inserted which provides that if the public prosecutor makes an application or if the court considers it necessary, the presence of the application seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of the final order.

The changes made to the provision on anticipatory bail in 2005 came under widespread scrutiny from lawyers and jurists. The amendment to s.438 was believed to interfere with the independence of the judiciary and rights of the accused. Firstly, the proviso to s.438 was criticised as it permitted an officer in-charge to arrest the applicant without warrant in the pendency of the anticipatory bail application. Secondly, sub-section (1B), gave an opportunity for the accused to be arrested in court, should the application be rejected. Thus, it was argued that the amendments to the section defeat the purpose behind s.438 Cr.P.C.

As a response to this criticism, the Law Commission discussed the

amended provision, and recommended *inter alia* that the *proviso*, as well as sub-section (1B) be omitted. The BNSS does away with these sub-sections which have been problematized. At the same time, it also removes the grounds to be considered while deciding grant of anticipatory bail. However, given that these grounds were instructive in the first place, their removal may not change the manner in which courts decide applications seeking anticipatory bail, especially in light of the vast jurisprudence on the subject.

The BNSS also does away with the language of S. 438(1) Cr.P.C. which implies that the initial order made in an application for anticipatory bail is only an interim order. Read together with the s.438 (1A), the provision required for the interim order to then be sent to the public prosecutor and to allow them an opportunity to argue against grant of anticipatory bail. However, in practice courts tend to grant an *ad interim* order on anticipatory bail before hearing the final application, even before the 2005 Amendment, this may not substantially affect the manner in which anticipatory bail applications are decided.

b. **Offences for which Anticipatory Bail cannot be granted**

An inexplicable amendment proposed in the BNSS is in the scheme of offences prescribed under S. 438(4) Cr.P.C. This sub-section provides that the provisions of the section will not apply to any case involving arrest of a person accused of committing an offence under ss.376(3), 376AB, 376DA, and 376DB IPC. These sections pertain to offences involving rape of minor women. The corresponding provision, Cl. 484(4), however, precludes those persons who are accused of aggravated forms of rape under Cls. 64(2), 66, and 70 BNS from being granted anticipatory bail irrespective of the age of the victim.

A similar amendment has been proposed to the scheme of offences mentioned in s.439(1A) as well, which states that the presence of the informant or a person authorised by the informant is obligatory while

considering an application of bail of a person accused of offences under ss.376(3), 376AB, 376DA, and 376DB IPC. Like Cl.484(4) above, the corresponding provision to s.439(1A) Cr.P.C. in BNSS, i.e. Cl.485 (IA) also applies to bail application of a person accused of aggravated forms of rape under Cls. 64(2), 66, and 70 BNS.

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Admissibility of Electronic Records
(Clauses 57 and 63 BSB)

Similar to S.65B IEA, Cl.63 BSB provides a specific procedure for the admissibility of electronic records. However, it introduces the following changes to the other provisions relating to primary and secondary evidence, that would impact the evidentiary nature and admissibility of electronic records:

1. Cl.2(c) BSB which replaces S.3 IEA, defines documents to also include '*electronic or digital records*'. Accordingly, separate references to electronic records have been deleted in certain provisions.

2. Cl.57 BSB, which replaces S.62 IEA, introduces explanations 4 to 7, which expand the meaning of primary evidence to include electronic or digital records. These explanations introduce the following changes:

    a. Any electronic file which is created, or stored simultaneously or sequentially in multiple files (which would include copies) would be primary evidence.

    b. If the proper chain of custody of electronic or digital records is produced, then it would be primary evidence.

    c. Any video recording which is transmitted, broadcasted or stored in another device would be primary evidence.

    d. If an electronic record is stored in multiple storage spaces in a computer, then each automated storage, including the temporary files, would be primary evidence.

II. Cl.62 BSB, which replaces S.65A IEA, states that electronic records must be proved as primary evidence, unless mentioned.

III. Newly introduced Cl.61 BSB, prescribes that the admissibility of electronic records cannot be denied on the basis of their nature as electronic records and their legal effect, validity and enforceability

shall be at par with paper records.

Notably, Cl. 63(4) BSB introduces the stage at which the certificate regarding the electronic record must be submitted. Further, it proposes changes to the authorship of such certificates, which may include the person in charge of the computer or communication device and an expert that retrieves the electronic record. Lastly, it also introduces a format for a two-part certificate to be submitted. Part A of the certificate should be filled by the party, who owns, manages or maintains the computer device from which the electronic record is retrieved. Part B of the certificate should be filled by the expert who retrieves the electronic record from the device. Currently, due to a lack of format for a certificate under s.65B IEA, there is no uniformity in the information that may be present in such certificates.

I. Background

Information Technology Act, 2000 amended IEA *inter alia*, to recognise electronic records as documentary evidence under S.3 IEA and provide a special procedure to govern their admissibility under Ss.65A and 65B IEA.

There were contrary judicial opinions about the applicable procedure for the admissibility of electronic records. On the one hand, courts held that ss.65A and 65B IEA are merely clarificatory, and do not bar the applicability of general provisions for adducing documentary evidence, i.e. Ss.63 and 65 IEA, to electronic records. ***[State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600]*** On the other hand, special provisions under Ss.65A and 65B IEA were considered to be a complete code applicable to electronic records, and therefore, adherence with the requirements under S.65B IEA was necessary for the admissibility of electronic records. In ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors. (2020) 7 SCC 1*** the Supreme Court resolved this conflict in judicial opinion in favour of the latter interpretation.

The Court clarified the following aspects regarding the admissibility of electronic records:

1. The non obstante clause (*notwithstanding anything contained in this Act*') in S. 65B(1) IEA makes it clear that the admissibility and proof of electronic records must necessarily follow the special procedure therein.

2. The general provisions regarding documentary evidence under ss. 62 to 65 IEA have no relevance for the admissibility and proof of electronic records.

3. S. 65B(1) IEA differentiates between the 'original' document — which would be the original electronic record contained in the computer, in which the original information is first stored — and the copies made therefrom.

4. S. 65B(1) IEA creates a deeming fiction that copies of electronic records shall be deemed to be a document if the conditions specified in s.65B(4) are satisfied. The deemed document would be admissible in evidence without production of the original document.

5. The original document being primary evidence would be admissible on producing the same without any requirements under S.65B; whereas copies of the original document being secondary evidence would be admissible only on satisfaction of conditions specified in s.65B IEA.

II. Removal of distinction between Originals and Copies of Electronic Records

Electronic or digital records are susceptible to alteration, transposition and modifications. These changes may occur either through manual intervention or even as unintended digital artefacts. Recognising this, S.65B IEA was introduced as a safeguard to ensure the authenticity of the copies of electronic records. It prescribes conditions for ensuring the lawful custody and operability of the computer from which it was originally produced and the chain of custody of such records. Therefore,

the distinction between original and copies of electronic records is essential, as the latter should be admissible only if the requirements under s.65B IEA are met. However, explanations 4 to 7 in Cl.57 BSB remove the distinction between the original and copies of electronic records, by treating both as primary evidence. This may permit the admissibility of copies of electronic records, without the application of safeguards under Cl.63 BSB (equivalent of S.65B IEA).

As per explanation 4, any copies of electronic records, which may be sequentially stored in multiple files, would also be considered as primary evidence. For instance, this means that any electronic file such as CCTV footage, which is stored in a digital video recorder (DVR) and thereafter transferred to a USB drive, the footage in USB drive would also be primary evidence. This is despite the fact that the footage in the USB drive is a copy of the original DVR footage. Similarly, as per explanation 6, television broadcasts which are recorded by the users would also be primary evidence.

Further, it is unclear whether the explanations 4 to 7 are to be read together or separately. For instance, there may be electronic records which are covered within explanations 4, 6, or 7, but may not meet the requirement under explanation 5, due to lack of proper chain of custody. In this case, it is unclear whether such electronic records that lack proper custody would be considered as primary evidence.

III. Uncertainty regarding the procedure for Admissibility of Electronic Evidence

As discussed above, the explanations 4 to 7 to Cl.57 BSB, consider both originals and copies of electronic records as primary evidence. Therefore, it is uncertain whether copies of electronic records would be governed by the special conditions specified in Cl.63 BSB or would be directly admissible as primary evidence under Cl.57 BSB.

a. Option 1: special procedure may continue to govern Admissibility

In view of the non-obstante clause ('*notwithstanding anything contained in this Adhiniyam*') in Cl.63(1) BSB, the ratio of *Arjun Panditrao Khotkar* may (supra) continue to be good law. Therefore, the procedure prescribed in Cl.63(1) BSB would continue to govern the admissibility of copies, irrespective of whether they come within the purview of primary evidence as per explanations 4 - 7 to Cl.57 BSB.

b. Option 2: general provisions regarding Admissibility of Documentary Evidence may be applicable to Electronic Records

Unlike s.65A IEA which specified that contents of electronic records would be proved in accordance with special provisions under s.65B; Cl.62 BSB marks a significant shift as it prescribes that electronic records may be proved in a similar manner to other documentary evidence under Cl.59 BSB. Further, Cl.61 BSB, which also begins with a non-obstante clause, mandates that the admissibility of electronic records shall be at par with paper records.

These changes may be interpreted to mean that copies of electronic records within the purview of explanations 4 to 7 to Cl.57 BSB, may be proved as primary evidence, without following the special procedure in Cl.63 BSB. This may resurrect the view taken by the Supreme Court in ***Navjot Sandhu and Shafhi Mohammad***, that the general provisions governing the admissibility of documents may also apply to electronic records. In these judgments, the Supreme Court held that the special procedure in s.65B IEA is not mandatory, and can be relaxed, for instance if the electronic record is produced by a party not in possession of the device.

IV. Changes to the conditions specified in Cl.63 BSB

Cl.63 BSB makes three broad changes to the conditions specified in s.65B IEA for the admissibility of electronic records.

Firstly, the definition of computer output in Cl. 63(1) BSB has been

expanded to include output from any communication device. It also adds that information in an electronic record may be '*stored, recorded or copied in any electronic form*' to be covered within this provision. Similarly, Cl.63(3) BSB provides that computer output may be produced by computers or communication devices working standalone or in any system or network, including those managed by an intermediary such as telecom service providers, social media services etc.

Secondly, unlike S.65B(4) IEA, which does not clarify the stage at which the certificate must be submitted, Cl.63(4) BSB mandates that such a certificate shall be submitted along with the electronic record for admission. This is a positive change as it may ensure more meaningful compliance with the admissibility requirements under Cl.63 BSB.

Thirdly, Cl.63(4)(c) provides that the certificate shall be signed by '*a person in charge of the computer or communication device and an expert (whichever is appropriate)*' as per the format specified in the schedule. This marks a change from the position under S. 65B(4) IEA which specified that the certificate may be signed by a person in an official position in relation to the operation of the device or in the management of relevant activities. The proposed changes under Cl.63(4)(c) may help ensure only those persons directly in control of the device, irrespective of their official position or designation, who may be better suited to certify the operability of the computer and the authenticity of the electronic record are permitted.

However, the use of the terms 'whichever is appropriate' creates uncertainty regarding whether the certificate should be issued by both the person in charge of the device and an expert or whether it merely indicates the type of expert that may issue the certificate. This interpretation would be significant since Part A of the prescribed format of the certificate, which must be filled by the person in charge of the device, varies from Part B which has to be filled by the expert.

Only Part B of the certificate carries the requirement to state that the computer device was operating properly and to specify the hash value of the file, which is essential for authenticating the electronic record. Therefore, in case submission of Part A of the certificate filled by the person in charge of the computer or communication device is sufficient, then the proper operation of the device and the hash value of the file may not be specified.

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Offences against Women and Children under the New Law: An overview

Key features of The Bhartiya Nyaya Sanhita, 2023(BNS)

- The various offences have been made gender neutral.
- The terms 'child' has been defined and 'gender' has been redefined.
- It speaks of streamlining the provisions relating to offences and penalties.
- It provides for the first time, community service as one of the punishments for petty offences.
- The offences against women and children, murder and offences against State have been given precedence.
- New offences of terrorist activities and organized crime have been added. Sedition is no longer an offence.
- A new offence on acts of secession, armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity of India has been introduced.
- Fines and punishments of various offences have been enhanced.
- Overlapping of certain offences with special laws is there which needs compliance and possibility of levelling multiple charges.

V. Comparative analysis of offences against woman and child in the BNS

Sections of Indian Penal Code, 1860	Sections of Bhartiya Nyaya Sanhita, 2023	Offence
375	63	Rape
376 (1) & (2)	64	Punishment for Rape
376 (3)	65 (1)	Punishment for Rape in certain cases (under 16 years of age)
376 AB	65 (2)	Punishment for Rape on woman under 12 years of age)
376 A	66	Punishment for causing death or resulting in persistent vegetative state of victim
376 B	67	Sexual intercourse by husband upon his wife during separation
376 C	68	Sexual intercourse by person in authority
---	69	Sexual intercourse by employing deceitful means
376 D	70(1)	Gang rape
376 DA & DB (Gang rape upon woman below 16 years and 12 years respectively)	70(2)	Gang rape Upon a woman below 18 years
376 E	71	Punishment for repeat offenders
228 A(1) & (2)	72	Disclosure of identity of the victim of certain offences
228 A(3)	73	Printing or publishing any matter relating to court proceedings without permission
354 354 A	74, 75	Assault or criminal force to woman with intent to outrage her modesty Sexual harassment
354 B	76	Assault or criminal force to woman with intent to disrobe
354 C	77	Voyeurism
354 D 509	78	Stalking Word, gesture or act intended to insult modesty of a woman
304 B	80	Dowry death
493	81	Cohabitation caused by man deceitfully inducing belief of lawful marriage
494	82(1)	Marrying again during lifetime of husband or wife
495	82(2)	Marrying again during lifetime of husband or wife with concealment of former marriage from person with whom subsequent marriage is contracted
496	83	Marriage ceremony fraudulently gone through without lawful marriage
498	84	Enticing or taking away or detaining with criminal intent a married woman
498 A	85	Husband or relative of husband of a woman subjecting her to cruelty

498 A Explanation	86	Cruelty defined
366	87	Kidnapping, abducting or inducing woman to compel her for marriage etc.
312	88	Causing miscarriage
313	89	Causing miscarriage Without woman's consent
314	90	Death caused by act done with intent to cause miscarriage
315	91	Act done with intent to prevent child being born alive or to cause to die after birth
316	92	Causing death of quick unborn child by act amounting to culpable homicide
317	93	Exposure and abandonment of child under 12 years, by parent or person having care of it
318	94	Concealment of birth by secret disposal of dead body
----		Hiring, employing or engaging a child to commit an offence
366 A (Earlier it was minor girl)	96	Procuration of child
369	97	Kidnapping or abducting a child under 10 years with intent to steal from its person
372	98	Selling child for purposes of prostitution etc
373	99	Buying child for purposes of prostitution etc.
359	137(1)	Kidnapping
360 361 363	137(1)(a) 137(1)(b) 137(2)	Kidnapping from India Kidnapping from lawful guardianship Punishment for Kidnapping
362	138	Abduction
363 A(1) 363 A(2) (Life imprisonment)	139(1) 139(2) (not less than 20 yrs but may extend to life)	Kidnapping a child for purposes of begging Maiming a child for purposes of begging
364	140(1)	Kidnapping or abduction in order to murder
364 A	140(2)	Kidnapping for ransom etc.
365	140(3)	Kidnapping or abducting with intent secretly and wrongfully to confine person
367	140(4)	Kidnapping or abducting in order to subject person to grievous hurt, slavery etc.
366 B	141	Importation of girl from foreign country
368	142	Wrongfully concealing or keeping in confinement
367	140(4)	Kidnapping or abducting in order to subject person to grievous hurt, slavery etc.
368	142	Wrongfully concealing or keeping in confinement kidnapped or abducted person

WOMEN, CHILDREN AND THE NEW CRIMINAL LAWS

An overview of changes introduced in Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita, 2023

BACKGROUND

Over 600 changes introduced

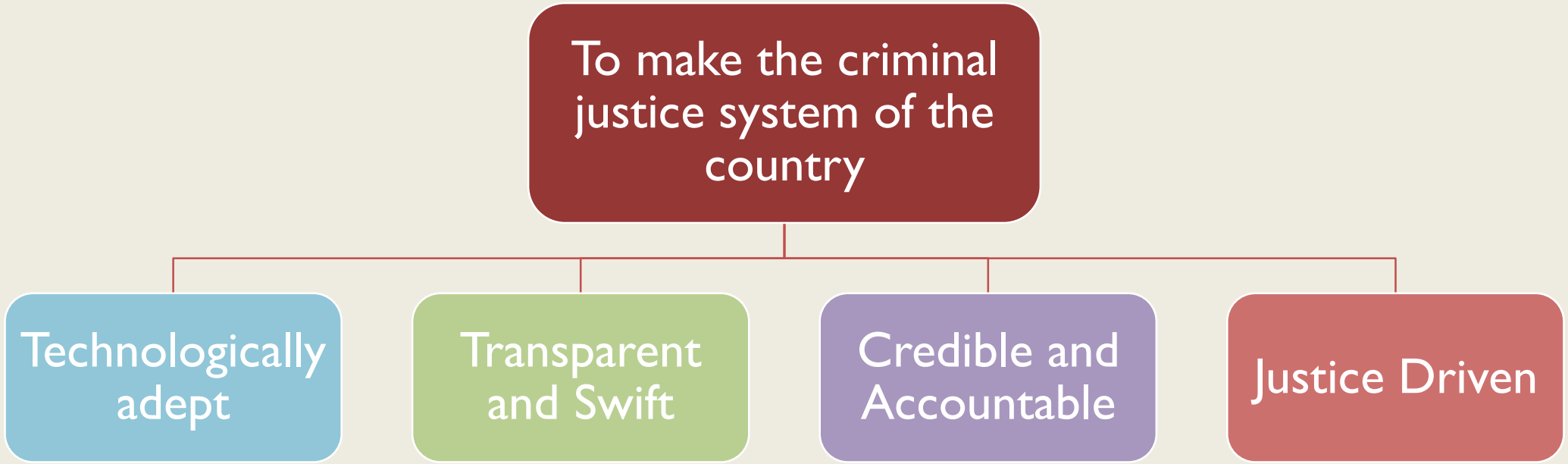
Language modernized, offences re-organized, provisions amended, added and deleted

Made victim and witness central to the criminal legislation

Ease of public engagement in the criminal justice system enhanced

Technology and timelines introduced to streamline processes

INTENDED GOALS



BHARATIYA NAGARIK SURAKSHA SANHITA

CHANGES IN DEFINITION

The requirement of the accused person being formally charged eliminated. This modification expedites the process of victims receiving compensation entitled to them in certain cases

- Definition of 'victim' **broadened**

S. 2(1) (wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission **for which the accused person has been charged** and the expression "victim" includes his or her guardian or legal heir;

- Code of Criminal Procedure, 1973

S. 2(1)(y) "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;

- Bharatiya Nagarik Suraksha Sanhita, 2023

WOMEN CENTRIC CHANGES

- **Section 176(1) Second Proviso –** In order to provide more protection to the victim and enforce transparency in investigation related to an offence of rape, **the statement of the victim shall be recorded through audio video means by police**.

- **183(6)(a) Proviso 1** – For certain offences against woman, statements of the victim are to be recorded, as far as practicable, by a **woman Magistrate and in her absence a male Magistrate in the presence of a woman.**

- **183(6)(a) Proviso 2** – The Magistrate shall now record the statement of a witness in case of certain offences against women that are punishable with imprisonment for ten years or more or with imprisonment for life or with death.

WOMEN CENTRIC CHANGES

Section 184(6) - Medical practitioners are mandated to send the medical report of a victim of rape to the investigating officer within 7 days.

Section 179(1) First Proviso– Exemption from attending the police station is given to **woman**, male person below 15 years, person above 60 years (earlier 65 years), mentally or physically disabled person and a person with acute illness. Further, a second proviso to sub– section (1) is added to allow the persons mentioned in the exemption category to attend at the police station if he/she is willing so to do.

Section 195(1) Proviso – Provides that no male person under the age of fifteen years or above the age of 60 years (65 years earlier) or a **woman** or a mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than the place in which such male person or woman resides. In cases where such a person is willing to attend the police station, they may be allowed to do so.

CHANGES AFFECTING WOMEN

Changes in Information to the Police and their Powers to Investigate

- **Section 173(1)** – The provision of filing of **Zero FIR** has been introduced. Now, when information is received by the police that discloses the commission of an offence **outside the limits of a police station**, it shall be entered in the book to be kept by such officer.
- The provision for lodging information through electronic communication **(e– FIR)** has been added with the enabling provision that the signature of the person giving such information shall be taken within 3 days before the e– FIR is taken on record.
- **Section 173(2) –** The right of the victim to get a **free of cost copy of FIR forthwith** introduced.

Police Report and Supply of Documents

- **Section 193(3)(ii) –** To make the law more victim centric, it is mandated that the police officer must **inform the progress of investigation to the informant or victim within 90 days** of the investigation. Technology has been included as a valid mode of communication for conveying this information to the victim/informant.

CHANGES AFFECTING WOMEN

Process to Compel Appearance

- **Section 66** – Gender neutrality has been introduced and women have been included as an adult member of the family for the purpose of service of summons on behalf of the person summoned. The earlier reference to 'some adult male member' has been replaced with **'some adult member'**

Changes in Order for Maintenance of Wives, Children and Parents

- **Section 145 –** Introduces the inclusion of both **father and mother** in the proceedings for an order of maintenance from the place where the dependent parent resides. This removed the difficulty which existed in the CrPC wherein in case of parents, the place for initiation of proceeding was the place of residence of their son.

CHANGES AFFECTING WOMEN

General Provisions as to Inquiries and Trials

- **Section 360 –** The Court shall afford an **opportunity to the victim to be heard before withdrawal of prosecution**.
- **Section 392 –** A time period of **45 days from the date of termination of trial** is provided for the judgment to be pronounced in any criminal Court. The Court to **upload the copy of the judgment on its portal within 7 days** from the date of judgment. An accused in custody can be brought to hear the judgment pronounced through audio – video electronic means as well.

Introduction of Witness Protection Scheme

- **Section 398 – New Section.** Mandates the preparation and notification of a witness protection scheme by every State Government. A witness protection scheme serves as a safeguarding mechanism, fostering an environment where witnesses can contribute to the legal process devoid of fear or duress. The necessity for a comprehensive witness protection scheme has been underscored by the Malimath Committee and various Law Commission Reports. In Mahendra Chawla v UOI, the **Witness Protection Scheme 2018** (draft) was approved by the Supreme Court.

GENERAL REFORMS INTRODUCED

Introduction of timeline

- **Supply of police report, documents etc.- 14 Days**
- **Committal of case- 90 days extendable up to 180 days**
- **Filing discharge application- 60 days**
- **Framing of change- 60 days.**

Use of technology

- **Deposition of evidence of witnesses by audio-video electronic means at the designated place to be notified by the State Government.**
- **Deposition by successor-in-office *via* audio-video electronic means.**

Introduction of discharge in summons cases

Making summary trial mandatory for limited set of offences and widening the power of Magistrate to try cases punishable with 3 years punishment to try summarily.

GENERAL REFORMS INTRODUCED

Prosecution related Reforms:

- Section 20 **establishes a comprehensive Directorate of Prosecution**. For the first time, the provision for **District Directorate of Prosecution** has been made.
- The **Director of Prosecution** will be **responsible for giving opinions on filing appeals and monitoring cases punishable with 10 years or more/life imprisonment/death**.
- The **Deputy Director of Prosecution** has been made **responsible to examine police report and monitor the cases punishable for 7 years or more but less than 10 years and for ensuring their expeditious disposal**.
- The **Assistant Director of Prosecution** has been empowered **to monitor cases punishable for less than 7 years**.
- The BNSS makes the provision for the Central Government to appoint the Public Prosecutor or Additional Public Prosecutor for the purpose of prosecution before the Delhi High Court. (Section 18(1) Proviso)

GENERAL REFORMS INTRODUCED

Investigation related reforms

- **Introduction of Zero FIR, e-FIR, Preliminary Enquiry, Investigation by senior police officer, use of forensic experts, timeline for completing further investigation (90 days), deemed sanction in 120 days.**
- **Public servant is protected against false and frivolous cases at both the stages- Complaint before the Magistrate and Application made under section 175(3)** (Police officer's power to investigate cognizable cases) Now considering the assertions made by the public servant and receiving a report containing facts and circumstances of the incident from his superior officer is mandatory.

GENERAL REFORMS INTRODUCED

Investigation related reforms

- **In Complaint cases- hearing the accused is made mandatory before taking cognizance**
- **Arrest and custody:**
  - **Partial restriction in making arrest in less than three years punishable offence**
  - **No arrest while forwarding the police report to the Magistrate**
  - **No arrest for taking sample of handwriting/signature/voice sample/finger impressions**
  - **Additional medical examination of the arrested person in police custody**
  - **One designated police officer in every district and at every police station to maintain records of arrest**

GENERAL REFORMS INTRODUCED

Investigation related reforms

- **Arrest and custody:**
  - **Notice of appearance- Form 1 has been added in Schedule 1 of the BNSS.**
  - **Use of handcuffs while effecting the arrest and production before court of an arrested person.**
  - **Power of police to detain or remove any person resisting, refusing, disregarding etc. to conform to any direction of a police officer is introduced in section 172 BNSS.**
  - **Police custody period is 15 days spread over the initial period of 40/60 days based on the total period of 60/90 days.**
  - **The accused being required for police custody beyond the first 15 days, will not be the sole ground for refusing grant of bail to the accused.**
  - **No scope for house arrest-** detention shall only be in a police station under police custody or in prison under judicial custody or any other place declared as a prison by the Central Government or the State Government.

GENERAL REFORMS INTRODUCED

Summoning, Search and Seizure related reforms

- In Summon to produce a document or a thing **production of electronic communication, including communication devices** which is likely to contain digital evidence is introduced.
- **Videography of the process of search and seizure including the preparation of a list of seized items and the signing of it by the witness is made mandatory.**
- **Proceeds of crime-** Enable the police, with the permission of the Court, **to attach and forfeit any property obtained as proceeds of crime**.

GENERAL REFORMS INTRODUCED

Summoning, Search and Seizure related reforms

- **Search without warrant-** Section 185 introduces several checks on the powers of the police while conducting search. Firstly, the police officer is required to **record the grounds of his belief for conducting search at a place in the 'case-diary'** under section 185(1). Further, **any search conducted by a police officer shall be recorded through audio-video electronic means** as per section 185(2). Further, Section 185(5) makes the police officer accountable **to send, within 48 hours, the copies of any record made in this regard to the nearest Magistrate** empowered to take cognizance of the offence.
- **Disposal of case property-** Section 497 introduces the **quick disposal of case properties even during the investigation, on preparation of a statement of the property by the Court within 14 days after such property has been photographed/ video graphed.**

GENERAL REFORMS INTRODUCED

Introduction of Technology

- **Submission of police report**
- Magistrate taking cognizance of any offence **upon receiving a police report electronically.**
- **Supply of copies to the accused**
- **Summoning process-** maintaining the register in the police station and in the Court to keep the address, email address, phone number etc. of the person to be summoned

Proclaimed Offender

- **Widening the scope of 'proclaimed offender'**
- **Forfeiture and attachment of property**
- **In absentia trial**

BHARATIYA NYAYA SANHITA

RE-ORGANIZATION OF OFFENCE

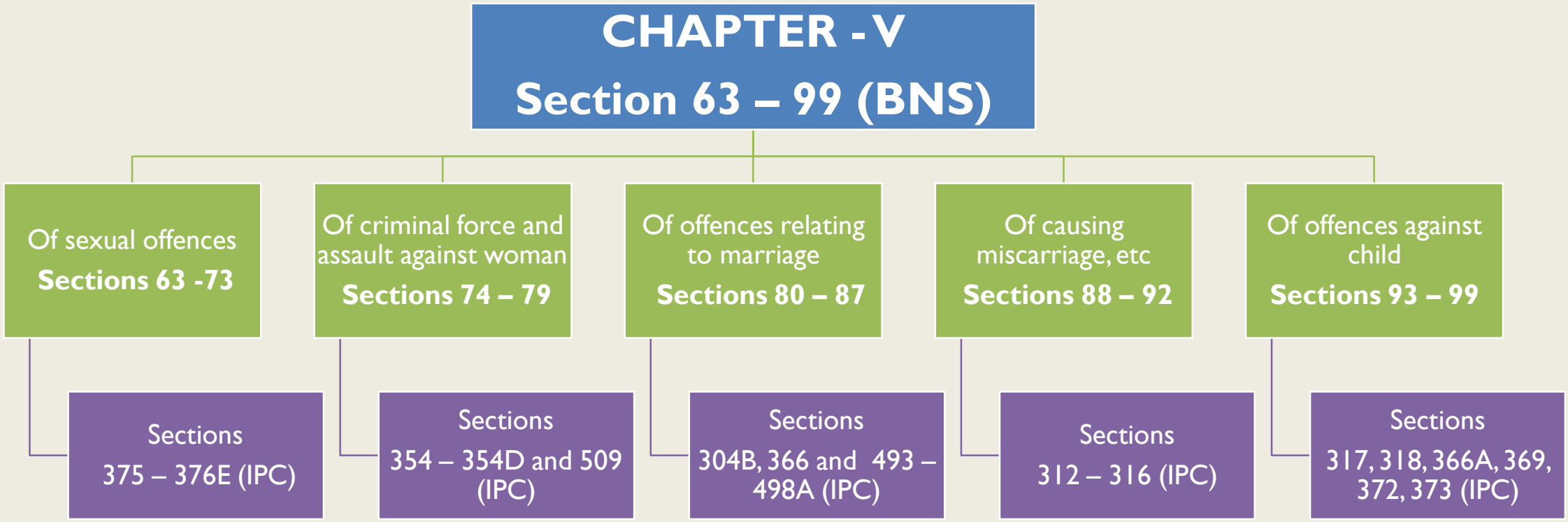
Offences against woman and child which were scattered throughout in Indian Penal Code, 1860.

They have been **consolidated under Chapter–V** of the Bharatiya Nyaya Sanhita, 2023.

Offences against woman and child have been given precedence over other offences.

1.BNS, 2023 consists of only **358 sections** as opposed to 511 sections in IPC, 1860.

CHAPTER V - OF OFFENCES AGAINST WOMAN AND CHILD



NEW OFFENCES INTRODUCED

Section 69. Sexual intercourse by employing deceitful means, etc. - Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation.—"deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity

NEW OFFENCES INTRODUCED

Section 95. Hiring, employing or engaging a child to commit an offence. - Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.

Explanation.—Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section

AGE ENHANCED

IPC Offence	BNS Offence
S. 375 Rape Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.	**S. 63 Rape** Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under **eighteen years** of age, is not rape

SECTIONS MERGED

IPC Offence	BNS Offence
S. 376 Punishment for Rape **376(3)**	**S. 65 Punishment for rape in certain cases.** **65(1)** — Whoever, commits rape on a woman under **sixteen years** of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim
S. 376AB. Punishment for rape on woman under twelve years of age	**65(2)** — Whoever, commits rape on a woman under **twelve years** of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim

SECTIONS MERGED AND PUNISHMENT ENHANCED

IPC Offence	BNS Offence
S. 376D Gang Rape	**S. 70 Gang Rape** **S. 70(1)** Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim.
S. 376DA Punishment for gang rape on woman under sixteen years of age. punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine **S. 376DB Punishment for gang rape on woman under twelve years of age.** punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death	**S. 70(2)** - Where a woman under **eighteen years** of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with **death**: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim.

SECTIONS MERGED

IPC Offence	BNS Offence
S. 494. Marrying again during lifetime of husband or wife.	**S. 82 Marrying again during lifetime of husband or wife.** **82(1)** Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Exception.—This sub-section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.
S. 495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.	**S. 82(2)** Whoever commits the offence under sub-section (1) having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

GENDER NEUTRALITY FOR PERPETRATOR

Old Definitions (IPC)	New Definitions (BNS)
S. 354B Assault or use of criminal force to woman with intent to disrobe.—Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.	**S. 76 Assault or use of criminal force to woman with intent to disrobe. —Whoever** assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.
S. 354C Voyeurism.—Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.	**S. 77 Voyeurism. —Whoever** watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

GENDER NEUTRALITY INTRODUCED FOR VICTIM

Old Definitions (IPC)	New Definitions (BNS)
S. 366B. Importation of **girl** from foreign country. Whoever imports into India from any country outside India or from the State of Jammu and Kashmir **any girl under the age of twenty-one years** with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine	S. 141 Importation of **girl or boy** from foreign country. Whoever imports into India from any country outside India **any girl under the age of twenty-one years or any boy under the age of eighteen years with intent that girl or boy** may be, or knowing it to be likely that girl or boy will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

MINOR GIRL REPLACED WITH CHILD

Old Definitions (IPC)	New Definitions (BNS)
S. 366A. Procuration of minor girl. —Whoever, by any means whatsoever, induces any **minor girl** under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.	**S. 96. Procuration of child.** —Whoever, by any means whatsoever, induces any **child** to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine

PUNISHMENT ENHANCED

Old Punishment (IPC)	New Punishment (BNS)
S. 373. Buying minor for purposes of prostitution, etc.—Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term **which may extend to ten years, and shall also be liable to fine.**	**S. 99. Buying child for purposes of prostitution, etc. —** Whoever buys, hires or otherwise obtains possession of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term **which shall not be less than seven years but which may extend to fourteen years, and shall also be liable to fine.**

AGE DIFFERENTIAL REMOVED

Old Definitions (IPC)	New Definitions (BNS)
S. 361. Kidnapping from lawful guardianship.— Whoever takes or entices **any minor under sixteen years of age if a male, or under eighteen years of age if a female**, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.	**S. 137. Kidnapping.—** (1)(b) whoever takes or entices **any child** or any person of unsound mind, out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child or person from lawful guardianship.

THANK YOU

Ready Reckoner: Trial in Absentia

- The BNSS has introduced provisions for conducting trial in absentia of certain kinds of accused. This allows the trial and pronouncement of judgment in the absence of the accused, which was not provided under the previous Cr.P.C.

- Trial in absentia refers to conducting a criminal trial without the presence of the accused person in court. Earlier, Indian law did not allow trial, conviction or sentencing of any person in absentia even for heinous offences.

- Under Section 355 of the BNSS, the Judge or Magistrate may conduct a trial of an accused in his absence if it is deemed that the personal attendance of the accused is not necessary in the interests of justice, or if the accused persistently disturbs the proceedings in court.

- The BNSS allows in-absentia trial of proclaimed offenders under specific conditions. Section 356 of the BNSS mandates the court to proceed with the trial in absentia when a person declared as a proclaimed offender has absconded to evade trial, and there is no immediate prospect of arresting him. It also specifies a mandatory waiting period of ninety (90) days from the date of framing of the charge before commencing the trial.

- The BNSS provides provisions for the pronouncement of judgment in in-absentia trials. It states that the voluntary absence of the accused after the trial has commenced shall not prevent the continuation of the trial, including the pronouncement of the judgment, even if the accused is arrested or appears at the conclusion of the trial.

Provisions in New Criminal Laws Concerning Trial in Absentia

BNSS	BSA
• **Section 355 BNSS| Bharatiya Nagarik Suraksha Sanhita (BNSS):** Provision for inquiries and trial being held in the absence of accused in certain cases. (1) At any stage of an inquiry or trial under this Sanhita, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by an advocate, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused. (2) If the accused in any such case is not represented by an advocate, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately. Explanation.—For the purpose of this section, personal attendance of the accused includes attendance through audio video electronic means • **Section 356 BNSS| Bharatiya Nagarik Suraksha Sanhita (BNSS):** Inquiry trial or judgment in absentia of proclaimed offender. (1) Notwithstanding anything contained in this Sanhita or in any other law for the time being in force, when a person declared as a proclaimed offender, whether or not charged jointly, has	• **Deemed Joint Trial, Section 24 of Bharatiya Sakshya Adhiniyam, 2023 (BSA)** New Explanation II is added in section 24 of Bharatiya Sakshya Adhiniyam, 2023 so as to clarify that *"A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for a purpose of this section."* • Note: Section 84 BNSS 2023 provides for proclamation for person absconding.

absconded to evade trial and there is no immediate prospect of arresting him, it shall be deemed to operate as a waiver of the right of such person to be present and tried in person, and the Court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as if he was present, under this Sanhita and pronounce the judgment: Provided that the Court shall not commence the trial unless a period of ninety days has lapsed from the date of framing of the charge. (2) The Court shall ensure that the following procedure has been complied with before proceeding under sub-section (1) namely:— (i) issuance of execution of two consecutive warrants of arrest within the interval of atleast thirty days; (ii) publish in a national or local daily newspaper circulating in the place of his last known address of residence, requiring the proclaimed offender to appear before the Court for trial and informing him that in case he fails to appear within thirty days from the date of such publication, the trial shall commence in his absence; (iii) inform his relative or friend, if any, about the commencement of the trial; and (iv) affix information about the commencement of the trial on some conspicuous part of the house or homestead in which such person ordinarily resides and display in the police station of the district of his last known address of residence. (3) Where the proclaimed offender is not represented by any advocate, he shall be provided with an advocate for his defence at the expense of the State. (4) Where the Court, competent to try the case or commit for trial, has examined any witnesses for prosecution and recorded their depositions, such depositions shall be given in evidence against such proclaimed offender on the inquiry into, or in trial for, the offence with which he is	

charged:

Provided that if the proclaimed offender is arrested and produced or appears before the Court during such trial, the Court may, in the interest of justice, allow him to examine any evidence which may have been taken in his absence.

(5) Where a trial is related to a person under this section, the deposition and examination of the witness, may, as far as practicable, be recorded by audio-video electronic means preferably mobile phone and such recording shall be kept in such manner as the Court may direct.

(6) In prosecution for offences under this Sanhita, voluntary absence of accused after the trial has commenced under sub-section (1) shall not prevent continuing the trial including the pronouncement of the judgment even if he is arrested and produced or appears
at the conclusion of such trial.

(7) No appeal shall lie against the judgment under this section unless the proclaimed offender presents himself before the Court of appeal:

Provided that no appeal against conviction shall lie after the expiry of three years from the date of the judgment.

(8) The State may, by notification, extend the provisions of this section to any absconder mentioned in sub-section (1) of section 84 of this Sanhita.

- **Section 84 Of The Bharatiya Nagarik Suraksha Sanhita**

84. (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a

specified place and at a specified time not less than thirty days from the date of publishing such proclamation. (2) The proclamation shall be published as follows:— (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; (c) a copy thereof shall be affixed to some conspicuous part of the Court-house; (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides. (3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day. (4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect. (5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).	

PART IV
BHARATIYA SAKSHYA ADHINIYAM, 2023 (BSA)

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 810] नई दिल्ली, शनिवार, फरवरी 24, 2024/फाल्गुन 5, 1945
No. 810] NEW DELHI, SATURDAY, FEBRUARY 24, 2024/PHALGUNA 5, 1945

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 23 फरवरी, 2024

का.आ. 849(अ).—केन्द्रीय सरकार, भारतीय साक्ष्य अधिनियम, 2023 (2023 का 47) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 1 जुलाई, 2024 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के उपबंध प्रवृत होंगे।

[फा. सं. 1/3/2023 न्यायिक प्रकोष्ठ-I]
श्री प्रकाश, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 23rd February, 2024

S.O. 849(E).— In exercise of the powers conferred by sub-section (3) of section 1 of the Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023), the Central Government hereby appoints the 1st day of July, 2024 as the date on which the provisions of the said Adhiniyam, shall come into force.

[F. No. 1/3/2023-Judicial Cell-I]

SHRI PRAKASH, Jt. Secy.

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and Published by the Controller of Publications, Delhi-110054.

MANOJ KUMAR VERMA

Repeal and Savings

170. (1) The Indian Evidence Act, 1872 is hereby repealed.

(2) Notwithstanding such repeal, if, immediately before the date on which this Adhiniyam comes into force, there is any application, trial, inquiry, investigation, proceeding or appeal pending, then, such application, trial, inquiry, investigation, proceeding or appeal shall be dealt with under the provisions of the Indian Evidence Act, 1872, as in force immediately before such commencement, as if this Adhiniyam had not come into force.

Key Highlights on Bharatiya Sakshya Adhiniyam

1. The new Act on law of evidence has been named as "Bharatiya Sakshya Adhiniyam (BSA), 2023" which has replaced the Indian Evidence Act, 1872.

2. The words like 'Parliament of the United Kingdom', 'Provincial Act", 'notification by the Crown Representative', 'London Gazette', 'any Dominion, colony or possession of his Majesty, 'Jury', 'Lahore', 'United Kingdom of Great Britain and Ireland', 'Commonwealth, 'Her Majesty or by the Privy Council. Her Majesty's Government, 'copies or extracts contained in the London Gazette. or purporting to be printed by the Queen's Printer', 'possession of the British Crown, "Court of Justice in England', 'Her Majesty's Dominions", "Barrister have thus been deleted as they are no longer relevant.

3. Language of the BSA has been modernized. The words like 'Vakil', 'Pleader' and 'Barrister' have been replaced with the word 'Advocate"

4. The definition of "documents" in section 2(1)(d) has been expanded to include an electronic or digital record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, cloud, locational evidence and voice mail messages stored on digital devices. This update acknowledges the shift from traditional paper-based documentation to electronic forms of communication and data storage in contemporary India. It helps ensure that the legal system is equipped to handle cases involving digital evidence. It will provide legal practitioners, law enforcement, and judiciary with a comprehensive framework to deal with digital evidence stored on various platforms.

5. Similarly, the definition of 'evidence' in section 2(1)(e) has been expanded to include any information given electronically. This will permit the appearance of witnesses, accused, experts and victims to depose their evidence through

electronic means. It also establishes 'digital records' as documentary evidence. This addition in BSA demonstrates a technology-neutral approach by recognizing the validity of information given electronically and considering electronic communication on par with traditional in-person statements. It recognizes the challenges involved in ensuring repeated physical presence in Courts and offers a viable alternative, minimizing the necessity for physical travel and the related expenses.

6. 'Coercion' has been added to section 22 as one of the acts causing a confession to become irrelevant. In section 39, the scope of an expert has been expanded to include persons especially skilled in 'any other field'.

7. An Explanation has been added to section 24 that clarifies that in a case when multiple people are tried jointly, if the accused who has absconded or who failed to comply with the proclamation issued against him under Bharatiya Nagarik Suraksha Sanhita, is absent during the trial, the trial will be conducted as a joint trial.

8. Section 52 of BSA enables the Courts to take judicial notice of laws having extra-territorial operations, international treaty, agreement or convention with countries or decisions made at international associations or other bodies; seals of Tribunals, State Legislatures and the territory of India (as opposed to "The territories under the dominion of the Government of India')

9. To leverage the use of technology in collection of evidence, significant changes have been introduced in BSA that recognize contemporary technological practices where information is distributed and stored across various platforms in various forms. In section 57, dealing with primary evidence, new Explanations have been expanded to include-

I. an electronic or digital record which is created or stored, either simultaneously or sequentially in multiple files, then each such file is an original.

II. an electronic or digital record is produced from proper custody, it is sufficient to prove its contents unless it is disputed.

III. a video recording is simultaneously stored in electronic form and transmitted or broadcast to another, each of the stored recordings is an original.

IV. an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is an original.

These additions establish a framework for the legal treatment of electronic or digital records, emphasizing on their proper custody and establishing their originality in various storage scenarios. It streamlines the procedure for validating and verifying electronic content.

10. Scope of secondary evidence has been expanded in section 58. Secondary evidence now also includes oral admissions, written admissions, and evidence provided by a person who is skilled in examining certain documents, which being technical or voluminous cannot be conveniently examined. Now, giving matching hash # value of original record as proof of evidence shall be admissible as secondary evidence. Importance is given to the integrity of a specific file and not to the entire storage medium.

11. Section 61 brings parity in the admissibility of electronic/digital record and other documents. Now, electronic or digital records will have the same legal effect, validity and enforceability as other documents.

12. Section 62 & 63 of the Bharatiya Sakshya Adhiniyam provide a comprehensive framework for the admissibility of electronic records as evidence. This section outlines the requirements for submitting a certificate for establishing the authenticity of an electronic record. Such a certificate is to be signed by the person in charge of the computer or communication device. Furthermore, a separate certificate provided in the schedule to BSA mandates the signature of an expert, whose endorsement serves as proof for any statements contained within the certificate. Once signed, the certificate serves as evidentiary support for the matters it asserts.

13. Changes in section 138 have been made to enable an accomplice to testify in court against the person accused of the crime. It clarifies that a conviction of the accused is not deemed illegal when it is based on the corroborated testimony of the accomplice. The original provision stated that conviction is not illegal merely because it proceeds upon uncorroborated testimony of an accomplice.

14. A proviso has been added to section 165 that disallows any Court to require any communication between Ministers and President of India to be produced before it.

Comparative Study: Bharatiya Sakshya Adhiniyam, 2023 (BSA) & Indian Evidence Act, 1872

1. Aims and Objects of Bharatiya Sakshya Adhiniyam, 2023 (BSA)

- The avowed aims and objects of the Indian Evidence Act, 1872 (Evidence Act), as per its long title, were to consolidate, define and amend the law of evidence.
- The avowed aims and objects of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), as per its long title, are to consolidate and to provide for general rules and principles of evidence for fair trial.
- The BSA recognizes that enunciating the rules and principles of evidence is not an end in The aim for providing for general rules and principles of evidence is to ensure a fair trial.
- It is submitted that the provisions of the BSA should be interpreted in the light of the avowed aim expressed in long title to achieve a fair trial.

Statement of Objects and Reasons to the BSA, 2023 are as under:

"2. The law of evidence (not being substantive or procedural law), falls

in the category of 'adjective law', that defines the pleading and methodology by which the substantive or procedural laws are operationalised. The existing law does not address the technological advancement undergone in the country during the last few decades.

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4. The proposed legislation, namely "Bharatiya Sakshya Adhiniyam", inter alia, provides as under:—

- it provides that 'evidence' includes any information given electronically, which would permit appearance of witnesses, accused, experts and victims through electronic means;
- it provides for admissibility of an electronic or digital record as evidence having the same legal effect, validity and enforceability as any other document;
- it seeks to expand the scope of secondary evidence to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it and giving matching hash value of original record will be admissible as proof of evidence in the form of secondary evidence;
- it seeks to put limits on the facts which are admissible and its certification as such in the courts. The proposed Bill introduces more precise and uniform rules of

practice of courts in dealing with facts and circumstances of the case by means of evidence.

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6. The Bill seeks to achieve the above objectives."

2. Section 1 of BSA: Short Title, Application and Commencement

Corresponding provision

- Section1 of the BSA corresponds to section 1 of the Evidence Act

Territorial extent of the legislation

- Section 1 of the Evidence Act provided that it extended to the whole of India. Section 1 of the BSA omits this provision on territorial It also omits the definition of "India" given in section 3 of the Evidence Act.
- The possible reason for such omission is that any stipulation that the BSA extends to the whole of India would call into question the admissibility of evidence digitally generated outside the borders of India.

Applicability to Courts-martial

- Section 1 of the Evidence Act provided that the said Act did not apply to Courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act or the Air Force Act.
- Section 1 (2) of the BSA omits the words "convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act or the Air Force Act".
- Thus, unlike the Evidence Act, the BSA shall also apply to courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act or the Air Force Act.

3. Section 2 of BSA: Definitions

Corresponding provision

- Section 2(1) of the BSA corresponds to section 3 of the Evidence Act
- There are no changes

3.1 Section 2(1)(a) of BSA: Court

Corresponding provision

- Section 2(1)(a) of the BSA corresponds to section 3, para 1, of the Evidence Act
- There are no changes

3.2 Section 2(1)(b) of BSA: Conclusive Proof

Corresponding provision

- Section 2(1)(b) of the BSA corresponds to section 4, para 3, of the Evidence Act
- There are no changes

3.3 Section 2(1)(c) of BSA: Disproved

Corresponding provision

- Section 2(1)(c) of the BSA corresponds to section 3, para 8, of the Evidence Act
- There are no changes

3.4 Section 2(1)(d) of BSA: Document

Corresponding provision

- Section 2(1)(d) of the BSA corresponds to section 3, para 5, of the Evidence Act

Electronic & digital records

- Section 2(1)(d) of BSA gives a new definition of the word "document" which is compatible with the modern digital era.
- The new definition specifically includes electronic and digital records within the scope of the term "document".
- The five statutory illustrations in old definition have been retained. The new definition gives a sixth statutory illustration No. (vi) which clarifies that"An electronic record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, locational evidence and voice mail messages stored on digital devices are documents".
- Under the new definition, to qualify as "document" or "documentary evidence", it is not necessary that matter be expressed or described upon any substance by means of letters, figures or marks only.
- Any matter which is "otherwise recorded" upon any substance "by any other means" will also qualify as "document" or "documentary evidence". It appears that video recording on mobile phone would qualify as "documentary evidence" as it is "otherwise recorded" upon any substance "by any other means".

3.5 Section 2(1)(e) of BSA: Evidence

Corresponding provision

- Section 2(1)(e) of the BSA corresponds to section 3, para 6, of the Evidence Act

Electronic/Digital records

- Under the new definition of "evidence" in section 2(1)(e) of the BSA, 'statements including statements given electronically' are to be treated as evidence as well as oral evidence. This is a logical corollary to section 530 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) providing for examination of complainant and witnesses in electronic mode by use of electronic communication or by audio-video electronic means.
- Under Evidence Act, only electronic records were treated as documentary evidence and there was no express mention of digital records in definition of 'evidence' under Evidence Act.
- Section 2(1)(e) of BSA specifically includes electronic or digital records as documentary evidence.

3.6 Section 2(1)(f) of BSA: Fact

Corresponding provision

- Section 2(1)(f) of the BSA corresponds to section 3, para 2, of the Evidence Act

Illustration

- Illustration (e) in section 3 (2nd para) of Evidence Act which states that "(e) That a man has a certain reputation, is a " is omitted in new definition of "fact" in section 2(1)(f)

3.7 Section 2(1)(g) of BSA: Facts in Issue

Corresponding provision

- Section 2(1)(g) of the BSA corresponds to section 3, para 4, of the Evidence Act
- There are no changes

3.8 Section 2(1)(h) of BSA: May Presume

Corresponding provision

- Section 2(1)(h) of the BSA corresponds to section 4, para 1, of the Evidence Act
- There are no changes

3.9 Section 2(1)(i) of BSA: Not Proved

Corresponding provision

- Section 2(1)(i) of the BSA corresponds to section 3, para 9, of the Evidence Act
- There are no changes

3.10 Section 2(1)(j) of BSA: Proved

Corresponding provision

- Section 2(1)(j) of the BSA corresponds to section 3, para 7, of the Evidence Act
- There are no changes

3.11 Section 2(1)(k) of BSA: Relevant

Corresponding provision

- Section 2(1)(k) of the BSA corresponds to section 3, para 3, of the Evidence Act
- There are no changes

3.12 Section 2(1)(l) of BSA : Shall Presume

Corresponding provision

- Section 2(1)(l) of the BSA corresponds to section 4, para 2, of the Evidence Act
- There are no changes

3.13 Section 2(2) of BSA: Words and Expressions

Corresponding provision

- No corresponding provision in Evidence Act
- **This is a new provision**

Words not defined

- Sub-section (2) of section 2 of BSA provides that words and expressions used herein and not defined but defined in the Information Technology Act, 2000, Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhita.

4. Section 3 of BSA: Evidence May be Given of Facts in Issue and Relevant Facts

Corresponding provision

- Section 3 of the BSA corresponds to section 5 of the Evidence Act
- There are no changes

5. Section 4 of BSA: Relevancy of Facts Forming Part of Same Transaction

Corresponding provision

- Section 4 of the BSA corresponds to section 6 of the Evidence Act

Facts not in issue

- Section 6 of Evidence Act provided that facts which, though not in issue, but which are so connected with a fact in issue as to form part of the same transaction, are relevant.
- In addition, section 4 of the BSA also provides that facts though not in issue are so connected with a relevant fact as to form part of the same transaction, are relevant.

6. Section 5 of BSA: Facts which are Occasion, Cause or Effect of Facts in Issue or Relevant Facts

Corresponding provision

- Section 5 of the BSA corresponds to section 7 of the Evidence Act
- There are no changes

7. Section 6 of BSA: Motive, Preparation and Previous or Subsequent Conduct

Corresponding provision

- Section 6 of the BSA corresponds to section 8 of the Evidence Act
- The first para in section 8 of Evidence Act is now sub-section (1) of section 6 in the BSA
- The second para in section 8 of Evidence Act is now sub-section (2) of section 6 in the BSA

Illustrations

- In Statutory Illustration (d) to section 8 of Evidence Act, reference to "vakils" is replaced with "advocates"

- InStatutory Illustration (e) to section 8 of Evidence Act, typographical error of "proved" corrected by making it "provided"
- In Statutory Illustration (f) to section 8 of Evidence Act, word "man" is replaced with "person" to make it gender neutral
- In Statutory Illustration (j), word "ravished" has been replaced with the word "raped"

8. Section 7 of BSA: Facts Necessary to Explain or Introduce Fact in Issue or Relevant Facts

Corresponding provision

- Section 7 of the BSA corresponds to section 9 of the Evidence Act
- There are no changes

9. Section 8 of BSA: Things Said or Done by Conspirator in Reference to Common Design

Corresponding provision

- Section 8 of the BSA corresponds to section 10 of the Evidence Act
- There are no changes

10. Section 9 of BSA: When Facts not Otherwise Relevant Become Relevant

Corresponding provision

- Section 9 of the BSA corresponds to section 11 of the Evidence Act
- There are no changes

11. Section 10 of BSA: Facts Tending to Enable Court to Determine Amount are Relevant in Suits for Damages

Corresponding provision

- Section 10 of the BSA corresponds to section 12 of the Evidence Act
- There are no changes

12. Section 11 of BSA: Facts Relevant when Right or Custom is in Question

Corresponding provision

- Section 11 of the BSA corresponds to section 13 of the Evidence Act
- There are no changes

13. Section 12 of BSA: Facts Showing Existence of State of Mind, or of Body or Bodily Feeling

Corresponding provision

- Section 12 of the BSA corresponds to section 14 of the Evidence Act
- There are no changes

14. Section 13 of BSA: Facts Bearing on Question Whether Act was Accidental or Intentional

Corresponding provision

- Section 13 of the BSA corresponds to section 15 of the Evidence Act
- There are no changes

15. Section 14 of BSA: Existence of Course of Business When Relevant

Corresponding provision

- Section 14 of the BSA corresponds to section 16 of the Evidence Act
- There are no changes

16. Section 15 of BSA: Admission Defined

Corresponding provision

- Section 15 of the BSA corresponds to section 17 of the Evidence Act
- There are no changes

17. Section 16 of BSA: Admission by Party to Proceeding or His Agent

Corresponding provision

- Section 16 of the BSA corresponds to section 18 of the Evidence Act
- There are no changes

18. Section 17 of BSA: Admissions by Persons Whose Position Must be Proved as Against Party to Suit

Corresponding provision

- Section 17 of the BSA corresponds to section 19 of the Evidence Act
- There are no changes

19. Section 18 of BSA: Admissions by Persons Expressly Referred to By Party to Suit

Corresponding provision

- Section 18 of the BSA corresponds to section 20 of the Evidence Act
- There are no changes

20. Section 19 of BSA: Proof of Admissions Against Persons Making Them, and by or on their Behalf

Corresponding provision

- Section 19 of the BSA corresponds to section 21 of the Evidence Act
- There are no changes

21. Section 20 of BSA: When Oral Admissions as to Contents of Documents are Relevant

Corresponding provision

- Section 20 of the BSA corresponds to section 22 of the Evidence Act
- There are no changes

22. Section 21 of BSA: Admissions in Civil Cases when Relevant

Corresponding provision

- Section 21 of the BSA corresponds to section 23 of the Evidence Act

Advocate

- "Advocate" is replaced for "barrister, pleader, attorney or vakil"

23. Section 22 of BSA: Confession Caused by Inducement, Threat, Coercion or Promise, When Irrelevant in Criminal Proceeding

Corresponding provision

- Section 22 of the BSA corresponds to sections 24, 28 and 29 of the Evidence Act
- Section 22(1) of BSA corresponds to section 24 of IPC
- Section 22(1), first proviso of BSA corresponds to section 28 of IPC
- Section 22(2), second proviso of BSA corresponds to section 29 of IPC

Coercion

- Words "coercion" are inserted in section 22 of BSA, which was not there in section 24 of Evidence Act

24. Section 23 of BSA: Confession to Police Officer

Corresponding provision

- Section 23(1) of the BSA corresponds to section 25 of the Evidence Act
- Section 23(2) of the BSA corresponds to sections 26 and 27 of the Evidence Act

Magistrate

- Explanation to section 26 of the Evidence Act providing that "Magistrate" does not include head of a village, etc., is omitted

25. Section 24 of BSA: Consideration of Proved Confession Affecting Person Making it and Others Jointly Under Trial For Same Offence

Corresponding provision

- Section 24 of the BSA corresponds to section 30 of the Evidence Act

Joint Trial

- Explanation to section 30 of Evidence Act incorporated in section 24 of BSA is renumbered as Explanation I
- New Explanation II is added in section 24 of BSA so as to clarify that

"A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section."

26. Section 25 of BSA: Admissions Not Conclusive Proof, But May Estop

Corresponding provision

- Section 25 of the BSA corresponds to section 31 of the Evidence Act
- There are no changes

27. Section 26 Of BSA: Cases in Which Statement of Relevant Fact by Person Who is Dead or Cannot be Found, Etc., is Relevant

Corresponding provision

- Section 26 of the BSA corresponds to section 32 of the Evidence Act
- There are no changes

28. Section 27 of BSA: Relevancy of Certain Evidence for Proving, In Subsequent Proceeding, Truth of Facts Therein Stated

Corresponding provision

- Section 27 of the BSA corresponds to section 33 of the Evidence Act
- There are no changes

29. Section 28 of BSA: Entries in Books of Account When Relevant

Corresponding provision

- Section 28 of the BSA corresponds to section 34 of the Evidence Act
- There are no changes

30. Section 29 of BSA: Relevancy of Entry in Public Record or an Electronic Record Made in Performance of Duty

Corresponding provision

- Section 29 of the BSA corresponds to section 35 of the Evidence Act
- There are no changes

31. Section 30 of BSA: Relevancy of Statements in Maps, Charts and Plans

Corresponding provision

- Section 30 of the BSA corresponds to section 36 of the Evidence Act
- There are no changes

32. Section 31 of BSA: Relevancy of Statement as to Fact of Public Nature Contained in Certain Acts or Notifications

Corresponding provision

- Section 31 of the BSA corresponds to section 37 of the Evidence Act

Official Gazette in electronic or digital form

- Electronic or digital form of Official Gazette is made admissible evidence by section 31 of BSA

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Bharatiya Sakshya Adhiniyam, 2023

RSJA

Objectives behind introducing New Law

Remove colonialism or imperialism.

Keeping pace with technological advancement by paving for greater acceptability of electronic evidence

Systematizing the whole Act by arranging the sections and adding explanations

Modifications

Indian Evidence Act, 1872	Bharatiya Sakshya Adhiniyam, 2023
3 Parts and 11 chapters.	4 parts, 12 chapters and a Schedule.
167 sections	170 sections

Preamble of the Act

IEA- WHEREAS it is expedient to consolidate, define and amend the law of Evidence

BNS- An Act to consolidate and to provide for general rules and principles of evidence for fair trial

S. 1 - Applicability

Section 1 omits **“extent”**

Section 1 (2) of the BSA omits the words "convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act or the Air Force Act".

Section 1 of the Evidence Act provided that the said Act did not apply to Courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act or the Air Force Act.

Unlike the Evidence Act, the BSA shall also apply to courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act or the Air Force Act.

Interpretation clause = Definition

- Alphabetical arrangement
- Omission of the definition of India

SECTION 2(2) OF BSA : WORDS AND EXPRESSIONS

This is a new provision *Words not defined*

Sub-section (2) of section 2 of BSA provides that words and expressions used herein and not defined but defined in the Information Technology Act, 2000, Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhita.

Document 2(d)

IEA

Document means “any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.”

BSA

2(d) document as 'any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records

Evidence

IEA – Under Evidence Act, only electronic records were treated as documentary evidence and there was no express mention of digital records in definition of 'evidence'

BNS-'statements including statements given electronically' are to be treated as evidence as well as oral evidence. This is a logical corollary to section 530 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) providing for examination of complainant and witnesses in electronic mode by use of electronic communication or by audio-video electronic means.

Primary evidence S. 56 of BSA

Rule - Contents of documents may be proved by primary or secondary evidence

4 new explanations have been added in Section 57

Primary evidence : New explanation

Explanation 4.—Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.

Explanation 5.—Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.

Explanation 6.—Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.

Explanation 7.—Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence

SECTION 58 OF BSA : Secondary Evidence

Section 58 of the BSA corresponds to section 63 of the Evidence Act "***means and***" has been deleted.

Hon'ble Supreme Court in the case ***Yashoda v. K. Shobha Rani (2007) 5 SCC 730***, held that "means and includes" meant that it is exhaustive but this omission makes the list illustrative.

Under section 58 of BSA Secondary evidence includes -

- Oral admissions
- Written admissions
- Evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.

Section 61 : New Provision

Electronic or digital record -

Section 61 of BSA provides that nothing in the Adhiniyam shall apply to deny the admissibility of an electronic or digital record in the evidence on the ground that it is an electronic or digital record

Subject to section 63 of BSA, electronic or digital record shall have the same legal effect, validity and enforceability as paper records.

In consonance with Anvar v PK Basheer (2014) 10 SCC 473 : Electronic or digital records shall have the same effect as that of any other physical document.

What will be changed when electronic evidence will be a primary document?

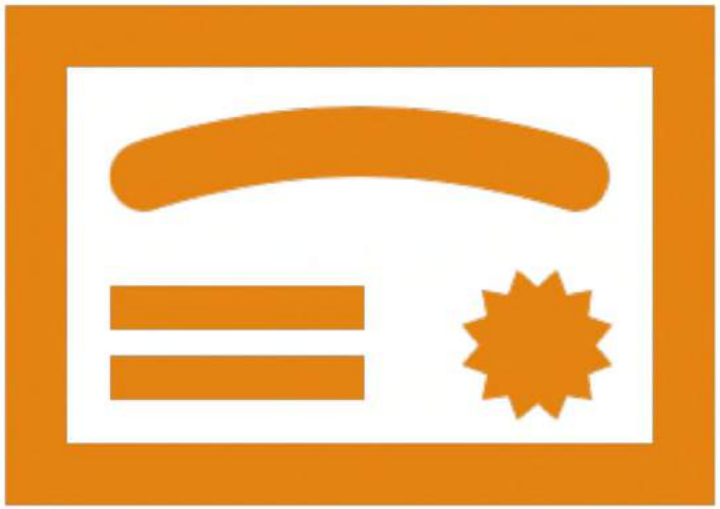
Admissibility of electronic records S. 63

Section 63 of BSA uses the words "computer or any communication device" for words "computer"

Section 63(1) of BSA extends the scope of above provision to make it applicable also to any information contained in semiconductor memory or in any communication device *(e.g.* smartphone) or storage in any electronic form

Stage submission has been clarified in S. 63 (4) : In consonance with State of Karnataka through Lokayukta Police Station, Bengaluru v. M. R. Hiremath, AIR 2019 SC 2377 IEA.

Unlike S. 65-B of, where only responsible people could have given certificate now even in charge of the computer or communication device or management can give certificate



Schedule

Format of certificate under section 63(4) which is to accompany electronic record evidence is specified in Schedule to BSA. There was no such format specified in Evidence Act for certificate in section 65B(4)

Certificate given by party and expert has to be given as per the schedule

This certificate shall be evidence of the matter stated therein.

Doctrine of Res gestae

Section 6 of Evidence Act provided that facts which, though not in issue, but which are so connected with a fact in issue as to form part of the same transaction, are relevant.

In addition, section 4 of the BSA also provides that facts though not in issue are so connected with a relevant fact as to form part of the same transaction, are relevant.

Section 22 : Addition of coercion

SECTION 22 OF BSA : CONFESSION CAUSED BY INDUCEMENT, THREAT, COERCION OR PROMISE, WHEN IRRELEVANT INCRIMINAL PROCEEDING

Words "coercion" are inserted in section 22 of BSA, which was not there in section 24 of Evidence Act

Section 22 of the BSA corresponds to sections 24, 28 and 29 of the Evidence Act

Section 22(1) of BSA corresponds to section 24 of IPC

Section 22(1) first proviso of BSA corresponds to section 28 of IPC

Section 22(2) second proviso of BSA corresponds to section 29 of IPC

Restructuring of Section 25 to 27 of IEA

Confession to police officer S. 25 of IEA is the new S. 23

Confession by accused whilst he is in custody of a police officer shall be proved against him - S. 26 IEA is the new 23(2)

Discovery of fact S. 27 has been made the proviso to section 23 of BSA

Section 24 : Joint trial

Explanation to section 30 of Evidence Act incorporated in section 24 of BSA is renumbered as *Explanation I*

New *Explanation* II is added in section 24 of BSA so as to clarify that "A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita. 2023 shall be deemed to be a joint trial for the purpose of this section."

Opinion of Experts 39

IEA- Section 45 of Evidence Act provided that when the Court has to form an opinion upon a point of foreign law, or of science, or art, the opinions upon that point of persons especially skilled in such foreign law, science or art are relevant facts. Such especially skilled persons are "experts".

BSA- Section 39 of BSA When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.

SECTION 52 OF BSA : FACTS OF WHICH COURT SHALL TAKE JUDICIAL NOTICE

Section 52 of the BSA corresponds to section 57 of the Evidence Act

Section 52(a) of the BSA requires Courts to take judicial notice of 'all laws in force in the territory of India including laws having extra-territorial operation'. Section 57(1) of Evidence Act referred to 'all laws in force in territory of India'.

Section *52(b)* of the BSA requires Courts to take judicial notice of international treaty, agreement or convention with country or countries by India, or decisions made by India at the international associations or other bodies.

Section 80 BSA : Defines what is proper custody

Custody of documents

Section 81 of Evidence Act provided that the Court shall presume the genuineness of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody. However, section 81 did not define what is proper custody.

Explanation to section 80 clarifies that for the purposes of sections 80 and 92 of BSA, document is said to be in proper custody if it is in the place in which, and looked after by the person with whom such document is required to be kept; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render that origin probable.

Section 122 : Estoppel of tenant and of licensee of person in possession

Section 116 of the Evidence Act provided that no tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property

Section 122 of BSA provides that no tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy or *any time thereafter*, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property

Accomplice

Section 133 of Evidence Act provides that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal *merely because* it proceeds upon the uncorroborated testimony of an accomplice.

Section 138 of BSA provides that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal if it proceeds upon the corroborated testimony of an accomplice.

Judge’s power to put questions S. 168

Section 168 of the BSA corresponds to section 165 of the Evidence Act

‘ask any question he pleases’ has been replaced with ‘ask any question he considers necessary’


Thank you

Modifications in BSA

S.No.	Modifications in BSA
1	2(1)(c) "disproved" in relation to a fact, means when, after considering the matters before it, the Court either believes that it does not exist, or considers its non- existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist;
2	2(1)(d) "document" means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records
3	2(1)(e) "evidence" means and includes- (i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence; ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;
4	S. 4 Relevancy of facts forming part of same transaction. Facts which, though not in issue, are so connected with a fact in issue or a relevant fact as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places
5	S. 22 Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding - A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him:
6	S. 22 Proviso: Provided that if the confession is made after the impression caused by any such inducement, threat, coercion or promise has, in the opinion of the Court, been fully removed, it is relevant:
7	S. 26 Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves facts in issue or relevant facts in the following cases-
8	S. 31 Relevancy of statement as to fact of public nature contained in certain Acts or notifications. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Central or State Act or in a Central or State Government notification appearing in the respective Official

	Gazette or in any printed paper or in electronic or digital form purporting to be such Gazette, is a relevant fact.
9	S. 32 Relevancy of statements as to any law contained in law books including electronic or digital form. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published including in electronic or digital form under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book including in electronic or digital form purporting to be a report of such rulings, is relevant
10	S. 35 Relevancy of certain judgments in probate, etc., jurisdiction. 35(1) A final judgment, order or decree of a competent Court or Tribunal, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant
11	S. 39 Opinions of experts When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point, of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts
12	S. 52 Facts of which Court must take judicial notice. The Court shall take judicial notice of the following facts:- (1) All laws in force in the territory of India including laws having extra-territorial operation: (2) International treaty, agreement or convention with country or countries, or decisions made at the international associations or other bodies; (3) The course of proceeding of the Constituent Assembly of India, of Parliament and of the State Legislatures, (4) The seals of all Courts and Tribunals; (5)The seals of Courts of Admiralty and Maritime Jurisdiction, Notaries Public, and all seals which any person is authorised to use by the Constitution or by an Act of Parliament or State Legislatures or Regulations having the force of law in India: (6) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette; (7) The existence, title and national flag of every State or Sovereign recognised by the Government of India; (8) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

	(9) The territory of India
13	S.54 Proof of facts by oral evidence All facts, except the contents of documents may be proved by oral evidence. (old-All facts, except the 1 [contents of documents or electronic records], may be proved by oral evidence.)
14	S. 58. Secondary evidence. Secondary evidence means and includes-- (1) certified copies given under the provisions hereinafter contained; (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies; (3) copies made from or compared with the original; (4) counterparts of documents as against the parties who did not execute them; (5) oral accounts of the contents of a document given by some person who has himself seen it; (6) oral admissions; (7) written admissions; (8) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.
15	S. 63 Admissibility of electronic records. (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible. (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: - (a) the computer output containing the information was produced by the computer or communication device which was used to create, store or process information for the purposes of any activity by the person having lawful control over the use of the computer or communication device; (b) the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents.

	(3) the function of creating, storing or processing information for the purposes of any activities as mentioned in clause (a) of sub-section (2) was performed by one or more computer or communication device, as the case may be, whether- (a) in standalone mode; or (b) on a computer system; or (c) on a computer network; or (d) on a computer resource enabling information creation or providing information processing and storage; or (e) through an intermediary. Explanation. All the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, that is to say, -- (a) identifying the electronic record containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device or other electronic mean as mentioned in clauses (a), (b), (c), (d) and (e) of sub- section (3): (c) dealing with any of the matters to which the conditions mentioned in sub- section (2) relate, and purporting to be signed by a person in charge of the computer or communication device, as the case may be, or an expert (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the form specified in the Schedule (5) For the purposes of this section, -- (a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; (b) a computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic mean as mentioned in clauses (a), (b), (c), (d) and (e) of sub-section (3).
16	S. 64 Rules as to notice to produce Secondary evidence of the contents of the documents referred to in clause (a) of section 60, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate or representative such notice to produce it as is

	prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case
17	S. 74. Public and private documents 74(1)(b) public records kept in any State or Union territory of private documents.
18	S.77 Proof of other official documents Reference to colonial language removed 77(a) Acts, orders or notifications of the Central Government in any of its Ministries and Departments or of any State Government or any Department of any State Government or Union territory Administration 77(b) the proceedings of Parliament or a State Legislature, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned; 77(e) the proceedings of a municipal or local body in a State, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;
19	S. 81. Presumption as to Gazettes in electronic or digital The Court shall presume the genuineness of every electronic or digital record purporting to be the Official Gazette, or purporting to be electronic or digital record directed by any law to be kept by any person, if such electronic or digital record is kept substantially in the form required by law and is produced from proper custody.
20	S. 85 Presumption as to electronic agreements. The Court shall presume that every electronic record purporting to be an agreement containing the electronic or digital signature of the parties was so concluded by affixing the electronic or digital signature of the parties.
21	S. 101 Evidence as to meaning of illegible characters, etc. 'Provincial replaced with 'regional'
22	S. 120 Presumption as to absence of consent in certain prosecution for rape. References to clauses removed No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy or any time thereafter, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.
23	S. 138 Accomplice. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal if it proceeds upon the corroborated testimony of an accomplice.
24	S. 168 Judge's power to put questions or order production.

	The Judge may, in order to discover or obtain proof of relevant facts, ask any question he considers necessary, in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing: and neither the parties nor their representatives shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question

New Sections added in BSA

S.No.	New Sections added in BSA
1	S. 61-Admissibility of electronic or digital record
2	S. 170-Repeal and savings

S.No.	New sub-section added
1	S. 2- Definitions. (2)-Words and expressions used in the Adhiniyam and not defined but defined in the Information Technology Act, the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita shall have the same meaning as assigned to them in said Act and Sanhitas.
2	S. 52- Facts of which Court shall take judicial notice. (1)(b)-The Court shall take judicial notice of international treaty, agreement or convention with country or countries by India, or decisions made by India at the international associations or other bodies as well.
3	S. 58- Secondary evidence. (vi)- Oral admissions included in Secondary evidence
4	S. 58-Secondary evidence. (vii) - Written admissions included in Secondary evidence
5	S. 58- Secondary evidence. (viii) - evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in examination of such documents has been included in Secondary evidence.
6	S. 63- Admissibility of electronic records (3)(e) through an intermediary

Sections deleted from IEA

S.No.	Sections deleted from IEA
1	S. 3- Definition of "India"
2	S. 22A- When oral admission as to contents of electronic records are relevant.
3	S 82. Presumption as to document admissible in England without proof of seal or signature
4	S.88- Presumption as to telegraphic messages
5	S 113-Proof of cession of territory
6	S.166-Power of jury or assessors to put questions.

S.No.	Explanations deleted in IEA
1	S. 26-Confession by accused while in custody of police not to be proved against him.
2	S. 65(B) (5) Explanation
3	S.73A-Proof as to verification of digital signature
4	S.88A - Presumption as to documents thirty years old

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