

## Detailed Report on the Procedure for a Sessions Trial in India under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

The procedure is structured to ensure a logical progression from prosecution opening to judgment. Below is a step-by-step breakdown, including relevant sections, detailed explanations, timelines, and key changes from the CrPC.

### 1. Conduct of Trial by Public Prosecutor (Section 248)

- Detailed Procedure: Every sessions trial must be conducted by a Public Prosecutor appointed under Section 18 of the BNSS, who represents the state and ensures the prosecution is fair and impartial. The prosecutor handles all aspects of presenting the case against the accused.

- Explanation: This ensures professional handling of serious cases, preventing private prosecutions and maintaining state oversight. The accused may appear physically or via electronic means (e.g., video conferencing).

- Changes from CrPC: Similar to Section 225 CrPC, but BNSS emphasizes electronic appearances for efficiency.

### 2. Opening the Prosecution's Case (Section 249)

- Detailed Procedure: When the accused appears or is brought before the court (physically or electronically), the Public Prosecutor opens the case by describing the charges in detail and outlining the evidence (witnesses, documents, etc.) intended to prove the accused's guilt.

- Explanation: This step provides a clear overview of the prosecution's strategy, allowing the defense to prepare accordingly. It sets the foundation for the trial, ensuring transparency.

- Changes from CrPC: Equivalent to Section 226 CrPC, but BNSS allows electronic modes for opening statements to expedite proceedings.

### 3. Discharge of the Accused (Section 250)

- Detailed Procedure: The accused may file an application for discharge within 60 days of the case's committal. The Judge reviews the case records, documents, and hears arguments from both the prosecution and defense. If insufficient grounds exist to presume the accused committed the offense, the Judge discharges the accused, recording detailed reasons. If grounds exist, the trial proceeds.

- Explanation: This acts as a safeguard against frivolous prosecutions, preventing unnecessary trials and harassment. The Judge must evaluate if a prima facie case is made out.

- Timelines: Discharge application must be filed within 60 days of committal; decision follows hearings promptly.

- Changes from CrPC: Under Section 227 CrPC, no specific 60-day timeline for applications existed; BNSS introduces this to enhance procedural efficiency and allow prompt action.

#### **4. Framing of Charge (Section 251)**

- Detailed Procedure: If discharge is denied, the Judge frames formal charges in writing based on the evidence. Charges are read and explained to the accused (physically or electronically), who is asked to plead guilty or claim trial. If the offense is not exclusively triable by the Sessions Court, the case may be transferred to a Magistrate.

- Explanation: Framing charges formalizes the accusations, ensuring the accused understands them fully. It must be specific and supported by evidence.

- Timelines: Charges must be framed within 60 days from the first hearing on charge.

- Changes from CrPC: Section 228 CrPC had no 60-day timeline; BNSS adds this to prevent delays.

#### **5. Conviction on a Plea of Guilty (Section 252)**

- Detailed Procedure: If the accused pleads guilty, the Judge records the plea verbatim and may convict the accused at their discretion, ensuring the plea is voluntary.

- Changes from CrPC: Similar to Section 229 CrPC, with added electronic recording options.

#### **6. Date for Prosecution Evidence (Section 253)**

- Detailed Procedure: If no guilty plea or conviction, the Judge schedules a date for witness examination. The court may issue summons or warrants to compel witness attendance or document production upon prosecution request.

- Explanation: This transitions the trial to evidence presentation, ensuring all necessary materials are available.

- Changes from CrPC: Equivalent to Section 230 CrPC, but BNSS permits electronic processes.

#### **7. Evidence for the Prosecution (Section 254)**

- Detailed Procedure: On the scheduled date, the prosecution examines witnesses and presents evidence. Witnesses are cross-examined by the defense. Evidence, including testimonies, must be recorded via audio-video means where practicable. The Judge may defer cross-examination or recall witnesses.

- Explanation: The prosecution must prove guilt beyond reasonable doubt, presenting all material witnesses. Audio-video recording enhances reliability and allows for review.

- Changes from CrPC: Section 231 CrPC lacked mandatory audio-video recording; BNSS mandates it for transparency and efficiency.

#### **8. Acquittal of the Accused (Section 255)**

- Detailed Procedure: After prosecution evidence and accused examination (under Section 346), the Judge hears arguments. If no evidence supports guilt, an acquittal order is recorded.

- Changes from CrPC: Similar to Section 232 CrPC, with electronic hearing options.

#### **9. Evidence for the Defense (Section 256)**

- Detailed Procedure: If not acquitted, the accused presents defense evidence, files a written statement, and calls witnesses. The court issues processes unless deemed vexatious. Witnesses are cross-examined.

- Changes from CrPC: Equivalent to Section 233 CrPC, with audio-video recording mandated.

#### **10. Arguments (Section 257)**

- Detailed Procedure: Post-defense evidence, the prosecution sums up, and the defense replies. Points of law may be addressed with court permission.

- Changes from CrPC: Similar to Section 234 CrPC

#### **11. Judgment and Sentencing (Section 258)**

- Detailed Procedure: The Judge delivers judgment after arguments, acquitting or convicting. If convicted, sentencing follows, considering factors like prior convictions (heard post-guilt under Section 259). Judgment must be reasoned and uploaded digitally within 7 days.

- Timelines: Within 30 days of argument completion, extendable to 45 days with reasons (or up to 60 in some interpretations).

- Changes from CrPC: Section 235 CrPC had no timeline; BNSS introduces 30-45 days for speed, plus digital upload.

#### **12. Previous Conviction (Section 259)**

- Detailed Procedure: Evidence of prior convictions is considered only post-guilt determination to avoid prejudice.

- Changes from CrPC: Similar to Section 236 CrPC.

#### **Additional Considerations**

- Trial in Absentia: Under Section 356 BNSS, if the accused absconds, trial may proceed after 90 days from charge framing, with warrants and notices— a new feature absent in CrPC.

- Victim Rights: BNSS requires investigation progress updates to victims within 90 days (Section 193), not in CrPC.

- Forensic Mandates: For offenses  $\geq 7$  years imprisonment, forensic visits are required (Section 176), integrating science into trials.

### **Important Points to be remembered:**

1. Receipt of the Case from Sessions Court- entry in (R)-23
2. After Judgement: make entry in Judgement Register, if convictions (R-5, R-43), Copy to CJM, Malkangiri for realisation of fine
3. Recording and handling of the victim's statement under Section 164 of the Criminal Procedure Code (Cr.P.C.).

Upon receiving information about a rape, the IO must promptly take the victim to a Judicial Magistrate, preferably a female, to record her statement under Section 164 Cr.P.C. The contents of this statement are strictly confidential and must not be disclosed to anyone until the charge sheet is filed. The IO must meticulously record the time they learned about the crime and the time the victim was taken to the magistrate. Any delay over 24 hours must be explained and documented in the case diary. The report from the victim's medical examination (u/s 164-A Cr.P.C.) must also be immediately provided to the magistrate who records the statement. No one is entitled to a copy of the 164 Cr.P.C. statement until the court orders it, which typically happens only after the charge sheet is filed and cognizance of the offense has been taken. The right to receive a copy arises at the stages outlined in Sections 207 and 208 of the Cr.P.C.

#### 4. Marking Evidence in Criminal Proceedings

Documents are marked with an exhibit number that corresponds to the party introducing them and the specific witness who first introduced them.

- *Prosecution Documents:* Marked with the prefix "P" (e.g., Exhibit P-1, P-2).
- *Defence Documents:* Marked with the prefix "D" (e.g., Exhibit D-1, D-2).
- *Court Documents:* Marked with the prefix "C" (e.g., Exhibit C-1, C-2).

To easily track the source of a document, the witness number is added after the exhibit number. For example, a document introduced by Prosecution Witness No. 1 (PW1) would be marked as P-1/PW1. If the document is marked without sufficient proof at the time of its introduction, it will be annotated with "(subject to proof)", as in P-1/PW1 (subject to proof).

5. As per the instruction of the Hon'ble High Court's Circular Letter No. 5560 dated 14.08.1968, the statement of accused u/s 313 Cr.P.C should be recorded as soon as cross-examination is over, and no separate adjournment should ordinarily be granted for that purpose, except in the case of complicated one.
6. If the accused is not in judicial custody, a formal undertaking or memo is required. This document serves as a safeguard to ensure the security of the court and to prevent the accused from later filing an appeal based on a claim that they were not present during a crucial part of the proceedings.

comparison table summarizing offenses against women

Offense	IPC Section	IPC Punishment	BNS Section	BNS Punishment
<b>Rape</b>	375, 376	Min. 7 years, up to life imprisonment + fine; Aggravated cases: Min. 10 years, up to life + fine	63, 64	Min. 10 years, up to life (natural life) + fine
<b>Rape of Minors</b>	376	Min. 10 years, up to life + fine	65	Under 16: Min. 20 years, up to life; Under 12: Min. 20 years, up to life or death + fine
<b>Gang Rape</b>	376D	Min. 20 years, up to life + fine	70(2)	Under 18: Death or life imprisonment
<b>Rape Causing Death/Vegetative State</b>	376A	Min. 20 years, up to life or death + fine	66	Min. 20 years, up to life or death
<b>Sexual Intercourse by Deceit</b>	Not specific (partly 375)	Prosecuted as rape, if applicable	69	Up to 10 years + fine
<b>Marital Rape (During Separation)</b>	Not specific	Not criminalized unless wife <15 years	67	2 to 7 years + fine
<b>Assault to Outrage Modesty</b>	354	Up to 2 years, or fine, or both	74	1 to 5 years + fine
<b>Sexual Harassment</b>	354A	Physical contact: Up to 3 years, or fine, or both; Remarks: Up to 1 year, or fine, or both	75	Physical contact: Up to 3 years (rigorous) + fine; Remarks: Up to 1 year + fine
<b>Assault to Disrobe</b>	354B	3 to 7 years + fine	76	3 to 7 years + fine

Offense	IPC Section	IPC Punishment	BNS Section	BNS Punishment
Voyeurism	354C	First: 1 to 3 years + fine; Subsequent: 3 to 7 years + fine	77	First: 1 to 3 years + fine; Subsequent: 3 to 7 years + fine
Stalking	354D	First: Up to 3 years + fine; Subsequent: Up to 5 years + fine	78	First: Up to 3 years + fine; Subsequent: Up to 5 years + fine
Insulting Modesty	509	Up to 3 years + fine	79	Up to 3 years + fine
Dowry Death	304B	7 years to life imprisonment	80	7 years to life imprisonment
Cruelty by Husband/Relatives	498A	Up to 3 years + fine	85	Up to 3 years + fine
Acid Attack	326A	10 years to life + fine	124	10 years to life + fine
Attempt to Administer Acid	326B	5 to 7 years + fine	125	5 to 7 years + fine
Trafficking	370	7 years to life + fine	85	7 years to life + fine
Kidnapping to Compel Marriage	366	Up to 7 years + fine	87	Up to 10 years + fine

**Rape Provisions under the Indian Penal Code (IPC)**

The Indian Penal Code, 1860 (IPC), which was in force until June 30, 2024, defined and punished rape primarily under Sections 375 and 376. These provisions were amended multiple times, notably in 1983, 2013 (following the Nirbhaya case), and 2018, to broaden definitions and enhance punishments.

**Punishment for Rape (Section 376 IPC)**

Punishments varied based on the severity and circumstances, with minimum sentences increasing over time.

Offense Type	Punishment (Post-2013 and Pre-2018 Amendments)	Key Notes
General Rape (Sec 376(1))	Rigorous imprisonment for not less than 7 years, up to life, and fine.	Applied to most cases; could be reduced for "adequate and special reasons."
Aggravated Rape (e.g., by police officer, public servant, on pregnant woman, gang rape) (Sec 376(2))	Rigorous imprisonment for not less than 10 years, up to life, and fine.	Included abuse of position or vulnerability.
Rape Causing Death or Vegetative State (Sec 376A)	Imprisonment for not less than 20 years, up to life (remainder of natural life), or death.	Introduced in 2013.
Gang Rape (Sec 376D)	Rigorous imprisonment for not less than 20 years, up to life (remainder of natural life), and fine.	Fine to cover victim's medical/rehabilitation costs.
Repeat Offenders (Sec 376E)	Imprisonment for life (remainder of natural life) or death.	For subsequent convictions.

### **Punishments (Sections 64-70 BNS) & Punishments are similar to post-2018 IPC**

Sec	Offense Type	Punishment
664(1)	General Rape	Rigorous imprisonment for not less than 10 years, up to life, and fine. (Court may reduce below 10 years for special reasons.)
664(2)	Aggravated Rape (e.g., by police/public servant/armed forces, on pregnant woman, under 18, repeated on same woman)	Rigorous imprisonment for not less than 10 years, up to life (remainder of natural life), and fine.
665	Rape on Woman Under 18 (including under 16 or 12 in certain cases)	Rigorous imprisonment for not less than 20 years, up to life (remainder of natural life), fine, or death (for under 12 or severe cases). Merges IPC's child-specific provisions.
666	Rape Causing Death or Persistent Vegetative State	Rigorous imprisonment for life (remainder of natural life) or death, and fine.
667	Rape by Husband During Separation	Imprisonment up to 3 years and fine. (New; addresses marital separation.)
668	Gang Rape	Rigorous imprisonment for not less than 20 years, up to life (remainder of natural life), and fine.
669	Sexual Intercourse by Deceit (e.g., false promise of marriage/employment)	Imprisonment up to 10 years and fine. (New offense, not full rape.)
770(1)	Gang Rape on Woman Under 18	Rigorous imprisonment for life (remainder of natural life) or death.
770(2)	Repeat Offenders	Death (for subsequent rape convictions causing death/vegetative state).

**Fines are victim-oriented (medical/rehabilitation). BNS emphasizes speedy trials and does not recognize male rape explicitly.**



## **Key Supreme Court Case Laws on Rape**

1. Tukaram v. State of Maharashtra (1979): Acquitted accused in the Mathura custodial rape case, ruling passive submission as consent. Criticized heavily; led to 1983 amendments broadening consent definitions and shifting burden of proof in custodial rape.

2. Vishaka v. State of Rajasthan (1997): Established guidelines for preventing sexual harassment at workplaces, defining it as a violation of fundamental rights (Articles 14, 19, 21). Basis for the 2013 POSH Act; expanded "rape" to include broader sexual violence.

3. Sakshi v. Union of India (2004): Expanded rape definition beyond penile-vaginal penetration to include other forms, influencing 2013 amendments.

4. Independent Thought v. Union of India (2017): Struck down Exception 2 to Section 375 IPC for wives aged 15-18, criminalizing marital rape of minors under 18 as unconstitutional (violates Articles 14, 15, 21).

5. Mukesh & Anr v. State (NCT of Delhi) (2017) - Nirbhaya Case: Upheld death penalty for gang rape and murder, emphasizing brutality. Led to 2018 amendments introducing death for child rape; clarified that dying declarations and victim testimony suffice as evidence.

6. Naim Ahmed v. State (NCT of Delhi) (2023): Clarified that not every broken promise to marry constitutes rape; consent must be vitiated from inception. Quashed conviction where relationship was consensual but marriage failed.

7. Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) - Victim testimony in rape cases does not require corroboration if credible.

## **Key Orissa High Court Judgments on Rape Cases**

1. Sanu Munda v. State of Odisha (2023): Acquitted a man convicted of raping a minor, ruling that consensual sex (even with a minor) cannot be deemed rape if evidence shows voluntary relationship; criticized reliance on "rape myths" like expected resistance.

2. Jagannath Bithalu v. State of Odisha (August 11, 2023): Upheld conviction in a rape case but emphasized need for strong circumstantial evidence.

3. Unnamed v. State (2024) - Child Rape and Murder: Commuted death sentence to life for a convict in a 6-year-old's rape-murder, citing rehabilitation potential (e.g., habit of offering namaz); faced criticism for leniency.

4. CRLA No. 681 of 2016 (January 10, 2024): Acquitted appellants in a gang rape case under Sections 376(D) IPC and POCSO, due to lack of corroborative evidence.