

General Provisions of B NSS

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Introduction

- Criminal law consists of both the substantive criminal law and the procedural criminal law. Substantive criminal law is that part of the criminal law which defines offences and prescribes punishments for the same, while the *procedural criminal law provides the machinery for the enforcement of substantive criminal law*. Thus, the BNSS 2023, provides a mechanism for the treatment of offences provided in substantive criminal laws. The BNSS 2023, is essentially a procedural law. It contains 531 Sections arranged in 39 chapters. It also contains 2 schedules.

Provisions of special act over BNSS shall prevail:

- The BNSS introduces a crucial clarification in the Explanation to Section 2(1)(l) regarding the interplay between special laws and the BNSS itself. This provision establishes a clear hierarchy in the application of laws, specifically addressing potential conflicts between special acts and the BNSS. The explanation unequivocally states that when provisions of a special act are inconsistent with those of the BNSS, the special act's provisions shall prevail.

HEROISM

- Hero notices some goons(2) thrashing one old person (Heroine's father), Hero thrashes the goons. Is Hero Justified in doing that?
- Somebody steals the wallet of the heroine. Hero chases the thief, takes the wallet gives it to the heroine and then when the thief tries to run away catches (arrest)the thief and thrashes the thief. Taking the wallet is OK but what about catching (arresting)as well as thrashing, is there justification?
- *Commensurate with the injury with which he is threatened*

Six Hours Limit after Arrest by a Private Person:

- Section 40 of the BNSS, introduces a significant modification to the procedure for citizen's arrests. The new provision imposes a strict six-hour time limit for private individuals who make an arrest to transfer custody of the arrested person to law enforcement authorities. Specifically, the section mandates that any person arrested by a private individual must be either brought before a police officer or taken to the nearest police station within six hours from the time of the arrest.

FUNCTIONARIES UNDER THE CODE

- The Courts & Judicial Magistrates.
- The Executive Magistrates.
- The Police.
- The Prosecutors.
- The Defence Counsels.
- The Prison Authorities & Correctional Services Personnel.

Abolition of Certain Classes of Judges:

- **Abolition of Certain Classes of Judges:** The B NSS introduces a comprehensive restructuring of India's judicial hierarchy, aimed at streamlining and standardizing the classification of Courts and Judges nationwide. This reform eliminates several judicial positions, including **Judicial Magistrate of the third class, Metropolitan Magistrate, and Assistant Session Judges**, replacing them with a simplified four-tier system: Judicial Magistrate of the second class, Judicial Magistrate of the first class (incorporating Chief and Additional Chief Judicial Magistrates), Sessions Judge (including Additional Session Judges), and Executive Magistrates. This reorganization seeks to create a more uniform and efficient judicial framework across India, potentially expediting case resolutions and enhancing overall system efficiency.

Executive Magistrates from the Police Force:

- The BNSS introduces a significant provision in Section 15, empowering State Governments to appoint Special Executive Magistrates from the police force. This section authorizes the appointment of *police officers of the rank of Superintendent of Police* or above as Special Executive Magistrates for specific areas or functions. The State Government has the discretion to determine the tenure of these appointments and to confer upon these Special Executive Magistrates any powers that are typically vested in Executive Magistrates under the BNSS.

DCP Now Empowered to Combat Public Nuisances:

- Section 162 of the BNSS introduces a significant expansion of authority in addressing public nuisances. This amendment extends the power to prohibit the repetition or continuance of public nuisances to the Deputy Commissioner of Police (DCP), in addition to the existing authorities such as the District Magistrate, Sub-Divisional Magistrate, and Executive Magistrate. This provision applies to public nuisances as defined in the Bharatiya Nyaya Sanhita, 2023, as well as those specified in any special or local law. By including the DCP in this list of empowered officials, the BNSS enhances the efficiency and responsiveness of law enforcement in dealing with public nuisances.

The Prosecutors

- Public Prosecutors are appointed for conducting any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be. *The Prosecutor must be impartial even though acts on behalf of the State.* His duty is to *place before the court all evidence in his possession, even the evidence which is in favour of the accused.*

Appointment of Public Prosecutors

- The Public Prosecutors and Additional Public Prosecutors are appointed to conduct prosecutions in High Court and Courts of Session. The Assistant Public Prosecutors are appointed to conduct prosecution in the Courts of Magistrates. The Special Public Prosecutors can be appointed for any court.
- In some states Assistant Public Prosecutors are regular government servants, while Public Prosecutors and Additional Public Prosecutors are appointed for fixed term from the bar.

Establishment of District Directorate of Prosecution:

- Section 20 of the BNSS establishes a Directorate of Prosecution under the State Government. This directorate comprises a Director of Prosecution, Deputy Directors, and Assistant Directors, appointed based on specific experience criteria. The hierarchy within the directorate is clear, with the Director of Prosecution at the helm. Notably, for the first time, Section 20(1)(b) introduces the provision for a District Directorate of Prosecution. It stipulates that the Directorate of Prosecution shall be overseen by the Director of Prosecution under the administrative purview of the Home Department in the State. The Director of Prosecutions [Section 20(7)] will be tasked with offering opinions on filing appeals and overseeing cases punishable with 10 years or more, life imprisonment, or death penalty. Additionally, the Deputy Director of Prosecution [Section 20(8)] is entrusted with the examination of police reports and the monitoring of cases punishable with 7 years or more but less than 10 years, ensuring their prompt disposal. Moreover, the Assistant Director of Prosecution [Section 20(9)] is empowered to monitor cases punishable with less than 7 years.

CLASSIFICATION OF OFFENCES

- The offences have been classified into the following categories :
 1. Cognizable and Non-cognizable offences.
 2. Bailable and Non-bailable offences.
 3. Compoundable and Non-compoundable offences.
 4. Summons and Warrant cases.
 5. Plea bargaining & non-plea bargaining cases

Cognizable offences

1. Nature of offences

Cognizable offences are usually serious offences

2. Arrest without warrant

In a cognizable offence the concerned police officer may arrest without a warrant

3. Investigation by police

In a cognizable offence the concerned police officer has the duty and power to investigate the case

Non-cognizable offences

1. Nature of offences

Non-cognizable offences are usually lighter offences

1. Arrest with warrant

In a non-cognizable offence the police officer cannot arrest without a warrant.

3. Investigation of police

In a non-cognizable offence, a police officer cannot investigate without an order from the Magistrate.

Cognizable/Non-cognizable

Other differences

- **No FIR in Non-cognizable cases-** Only complaint to the concerned Magistrate
- Non-cognizable offences= The rule that any person can set the law in motion does not apply
- **No investigation in non-cognizable cases**
- **No Prosecutor in non-cognizable cases**
- State is a party in all Cognizable offences on behalf of the victim and with respect to Non-cognizable offences, the victim has to take initiative and efforts to collect evidence and have his representative in Court. /LESS THAN 3=Non-Cog

<u>Bailable offences</u>	<u>Non- Bailable offences</u>
1. <u>Nature of offences</u>	1. <u>Nature of offences</u>
Bailable offences are minor offences	Non-bailable offences are serious offences
1. <u>Release on bail</u>	2. <u>Release on bail</u>
In a bailable offence, bail can be claimed as a matter of right.	In a non-bailable offence, grant of bail is left to the discretion of concerned authorities.
1. <u>Anticipatory bail</u>	3. <u>Anticipatory bail</u>
Anticipatory bail is not necessary in bailable offences	Anticipatory bail is granted in non-bailable offences only.

Where the investigation is not completed within time: (S. 187)

If the accused person is in detention and if the investigation is not completed within the prescribed time, it becomes obligatory to grant him bail. The prescribed time is:

- a. ***90 Days*** - Where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than ten years.

- b. ***60 Days*** - Where the investigation relates to any other offence (punishable with imprisonment for less than 10 years).

Enhancing Bail Access for Undertrial Prisoners

- Section 479 of the BNSS introduces significant reforms to bail provisions for undertrial prisoners, reflecting a more compassionate and rights-oriented approach to pretrial detention. For **general cases, individuals detained for up to half of the maximum possible sentence** become eligible for bail consideration. The law shows particular leniency towards **first-time offenders, mandating their release on bond after serving just one-third of the maximum period.** Importantly, the section empowers jail superintendents to proactively initiate bail applications when prisoners meet these time thresholds, potentially expediting the release process. However, the provision maintains safeguards against potential misuse by **excluding individuals facing multiple investigations or trials.**

<u>Compoundable offences</u>	<u>Non-compoundable offences</u>
<p><u>1. Nature of offences</u></p> <p>Compoundable offences are minor offences</p>	<p><u>1. Nature of offences</u></p> <p>Non-compoundable offences are serious offences</p>
<p><u>2. Sub-classification</u></p> <p>Compoundable offences are sub-classified into offences (a) compoundable with permission of court and (b) compoundable without permission of the court.</p>	<p><u>2. Sub-classification</u></p> <p>There is no sub-classification with respect to non-compoundable offences.</p>
<p><u>3 Effect of compromise</u></p> <p>In a compoundable offence a compromise is valid and legal (after taking permission of the court for the second category).</p>	<p><u>3. Effect of compromise</u></p> <p>In a non-compoundable offence, a compromise is invalid and illegal as it is considered to be against public policy.</p>

Summons cases and Warrant cases

- A summons case means a case relating to an offence punishable exclusively with fine or punishable with imprisonment *for two years or less than two years*. A warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment *for a term exceeding two years*.
- This classification is useful for determining the type of trial procedure to be adopted in the case. The trial *procedure of a warrant case is elaborate than that provided for a summons case*. When the *charges* reveal both a warrant case and a summons case, the case is treated as a warrant case.

PLEA BARGAINING

- **Section 289 provides that** the plea bargaining shall be available to the accused who is charged with any offence **other than** offences punishable with death or imprisonment or for life or of an imprisonment **for a term exceeding to seven years.**
- NOT=Offences affecting the socioeconomic condition of the country.
- NOT=Offences against Women and Children

Streamlined Timelines and Lenient Sentencing for Plea Bargaining:

- Section 290 introduces significant reforms to the plea-bargaining process in the criminal justice system, aiming to expedite proceedings and offer more lenient sentences for certain offenders. The provision establishes a clear timeline, allowing accused individuals to file a plea-bargaining application within 30 days of charge framing, with the entire process of reaching a 'mutually satisfactory disposition' to be completed within 60 days. This time-bound approach aims to prevent unnecessary delays and promote efficient case resolution. Section 293 further refines the sentencing guidelines for plea bargaining cases, adopting a more compassionate stance, particularly for first-time offenders. In cases with **minimum prescribed punishments, the court can now impose a sentence as low as one-fourth** of the minimum for first-time offenders, a reduction **from the previous one-half standard**. Similarly, for offences with extendable punishments but no minimum prescribed, first-time offenders may receive a sentence of **just one-sixth of the prescribed punishment, down from the previous one-fourth**.

Plea bargaining- Procedure/Punishment

- **Section 290** contemplates an application for plea bargaining to be filed by the accused
- The court will thereafter issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the plea bargaining.
- Compensation according to the disposition.
- **PROBATION & ADMONITION**
- Minimum=1/2 (First time offender=1/4th)
- Maximum 1/4th (First time offender=1/6th)
- **Probation=No previous conviction/Person above 21**
- **W/Below 21=NoPC/ Not punishable with death or life**

INVESTIGATION, INQUIRY AND TRIAL

- The three terms “investigation” “inquiry” and “trial” ordinarily denote three different stages of a criminal case.
- **Investigation** : Investigation includes all proceedings under the Cr.P.C. for the **collection of evidence conducted by a police officer** or by any person authorised by a Magistrate.
- **Section 179 prohibits the investigating police officer from requiring a woman(or a male under the age of 15 years or above 60)/ mentally or physically disabled person]to attend before himself for the purpose of examination. Such persons must be examined only at their residence.//WISHES TO=CAN**

Investigation-Steps

1. *Proceeding to the spot of crime;*
2. *Ascertainment of the facts and circumstances;*
3. *Discovery of the suspected offender;*
4. Taking measures for the arrest of the suspected person;
5. *Collection of evidence which includes-*
6. *Examination of the accused and various other persons appearing to be acquainted with the facts and circumstances of the case;*
7. *Search of places of seizure of things.;*
8. *Submission of final report on completion of investigation.*

The investigation would be more effective if the Investigating Police Officer takes the following steps

- a) Taking of photographs and sketching the scene of crime.
- b) Taking finger prints, foot prints, blood stains and any other material which is likely to implicate the accused.
- c) Using scientific aids at the scene of crime.
- d) Requisitioning tracker dogs.
- e) Conducting identification parade.
- f) Seeking opinion of experts.

INQUIRY & TRIAL

- **Inquiry:** An inquiry means every inquiry, other than a trial, *conducted under this code by a magistrate or a Court.* In other words, inquiry means a *process to determine any question (under the BNSS) other than the one relating to the guilt or innocence of the accused..* It is never conducted by the police.
- **Trial:** Trial means a judicial process to *determine the guilt or innocence of the accused.* It is conducted by a Magistrate or Court.

Sl No .	Investigation	Inquiry	Trial
1.	It is conducted by a Police Officer	It is usually conducted by a Court or Magistrate	It is conducted by a Court or Magistrate.
2.	Its object is collection of evidence for inquiry or trial	Its object is determination of any question other than the question of guilt or innocence of the accused.	Its object is determination of the guilt or innocence of the accused.
3.	It is always a non-judicial proceeding	It may be a judicial or non-judicial proceeding.	It is always judicial proceeding.

Sl No .	Investigation	Inquiry	Trial
4.	It always relates to an offence.	It may or may not relate to an offence	It always relates to an offence.
5.	Oath cannot be administered to person examined in investigation	Oath can be administered to persons examined in Inquiry	Oath can be administered to persons examined in trial.
6.	It is always exparte	It may or may not be exparte	It is never exparte
7.	It ends in filing of charge-sheet or submission of final report.	It ends in various orders/repos	It ends in judgment of conviction or acquittal.

Final Report

- Thus, the final report can take several forms:
- **Charge-sheet (Challan):** Filed when there is sufficient prima facie evidence to prosecute the accused in court. If the Magistrate finds the charge-sheet satisfactory, he or she will take cognizance of the offence
- **Cancellation/Closure Report:** Submitted when evidence is insufficient, or allegations are not substantiated.
- **Untraced Report:** Filed in cases where the accused remains unidentified

Magistrate's Independent Assessment of Police Reports:

- The police report submitted under Section 193 will include the relevant facts and the conclusions reached by the police. The Magistrate is required to exercise independent judgment regarding the report and is not obligated to accept the police's conclusions. He has the authority to disagree with the police report, whether it is a charge-sheet or a final report.

	Section 180	Section 183
1	Section 180 deals with statements recorded by investigating police officer in the course of investigation.	Section 183 deals with statements and confessions recorded by a Magistrate during the course of investigation.
2	Oath is not administered to the person making statement u/s 180.	Oath is administered in case of statements other than confessions to the persons making statement u/s 183.
3	Signature of the person making statement is not taken.	Signature of the person making statement is taken.
4	Only statements made by prosecution witnesses for the limited purpose of contradiction are admissible as evidence i.e. the prosecution cannot use the statement for corroboration purpose.	All statements are admissible as evidence
5	Statements made u/s 180 do not constitute substantive evidence.	Statements made u/s 183 constitute substantive evidence if such statement is a confession otherwise not substantive evidence.

Initiating the Criminal Justice Process

The criminal justice process can be initiated in one of the following ways:

1. Calling the Police Control Room (PCR) at 100
2. Filing a First Information Report (FIR) with the police
3. Filing a complaint case under Section 223 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) before a court

Emergency Number 100

- Upon dialing the emergency number 100, which connects to the Police Control Room, a wireless message is immediately dispatched to the police, and an entry is recorded in the Daily Diary Register (DD Register). Additionally, call logs are generated within the Police Control Room. Once a call is received, the PCR staff promptly responds and arrives at the scene to assist the victim or caller, taking necessary emergency measures, including transporting the victim to a hospital if required.
- Subsequently, the local police from the relevant police station, which has territorial jurisdiction over the area, also respond to the scene. In some instances, the beat officers on patrol may arrive before the PCR officials. The PCR personnel manage the emergency situation until the local police arrive.

F.I.R. AND COMPLAINT

- ‘First Information Report’ denotes
 1. the written report given to the police conveying such information, or
 2. in case such information is given orally, the written report prepared by the police in accordance with Section 173.
- The First Information sets the criminal law in motion or starts the police on their investigation.
- Thus, F.I.R. means a report made to a police officer regarding the commission of a cognizable offence and which is first in point of time.

Zero FIR and e-FIR. - Enhancing Accessibility in Crime Reporting (S.173):

- The Zero FIR system allows for the *filing of a First Information Report (FIR) at any police station, regardless of jurisdictional boundaries, for cognizable offences.* This process facilitates immediate action in urgent cases, bypassing potential delays caused by jurisdictional issues. Once filed, the Zero FIR is transferred to the appropriate police station with jurisdiction over the crime scene for further investigation. Additionally, when a police officer receives information about an offence committed outside their station's jurisdiction, they must record it in a designated book. To modernize the reporting process, the law now includes provisions for electronic FIRs (e-FIRs). These can be filed through electronic communication channels, with the stipulation that *the informant's signature be obtained within three days for the e-FIR to be officially recorded.*

Essentials of an F.I.R. :

1. It must be information.
2. It must be given to a police officer.
3. It must relate to a cognizable offence.
4. *It must be first in point of time (amongst such information).*
5. *A copy of the information shall be given immediately to the informant.*

Evidentiary Value of the F.I.R. : The F.I.R. is admissible in evidence in all cases whether made by a prosecution witness or a defence witness and both for the purposes of corroboration and contradiction.

Recourse for FIR Registration Refusal:

- When an officer-in-charge of a police station declines to register a First Information Report (FIR), the aggrieved party has a multi-step recourse process:
 - Appeal to Higher Authority: The individual may submit the substance of their information in writing to the Superintendent of Police, either directly or via post.
 - Review and Action: If the Superintendent determines that the information indicates a cognizable offence, they will either:
 - Personally investigate the case, or
 - Assign a subordinate officer to conduct an investigation in compliance with legal procedures.
 - Judicial Intervention: Should the above steps fail to yield satisfactory results; the complainant retains the right to approach a Magistrate with an application for FIR registration.

Essentials of Complaint

1. It is *usually made to a Magistrate.*
2. It *must be made with a view that the Magistrate may take action on it.* Thus a mere statement to a Magistrate by way of information without asking him to take action, is not a complaint.
3. It *must allege the commission of an offence.*
Thus, a petition for maintenance (under S. 144 BNSS) is not a complaint.

Examination of complainant - When a petition of complaint is filed, *the Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any.*

Complaint	F.I.R.
1. It is made to a Magistrate	1. It is given to a Police Officer.
2. The complaint made to Magistrate must be under oath.	1. The person giving F.I.R. need not take oath
3 Complaint may relate to a cognizable or non-cognizable offence.	3 F.I.R. relates only to a cognizable offence.
4.Cognizance of an offence can be taken directly on the basis of complaint	4.Cognizance of an offence cannot be taken directly on the basis of F.I.R.

PROCESS TO COMPEL THE APPEARANCE OF ACCUSED IN COURT

- Summons.
- Warrant of Arrest
- Proclamation and attachment

Purpose of Summons: Summons is either

- For personal appearance, or
- For producing a document or thing.

Arrest of a woman

- Only a woman police officer can touch the person of the woman.
- Save in exceptional circumstances, **no woman shall be arrested after sunset and before sunrise**, and where such **exceptional circumstances exist , the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the First Class** within whose local jurisdiction the offence is committed or the arrest is to be made(S.43(5)).

Arrest Restriction for Vulnerable Individuals (S.35 (7):

- Law enforcement officers require prior authorization from an officer ranking Deputy Superintendent of Police or above to arrest individuals aged 60 or older or those with infirmities for offences punishable by less than three years of imprisonment.

Arrest without a warrant by a Police Officer : (Ss. 35,39&170).

1. Proclaimed offender.
2. Deserter of armed forces.
3. *Person obstructing a police officer in discharge at his duties,*
4. Person attempts to escape or escaped from lawful custody.
5. **Person concerned in an offence committed outside India which makes him liable to be arrested under the Indian law.**

Arrest without a warrant by a Police Officer

6. Released convict committing breach of rules.
7. Person for whose arrest, requisition is sent by another competent police officer.
8. *Person designing to commit a cognizable offence (if such offence cannot otherwise be prevented).*
9. *For obtaining correct name and address in a non-cognizable offence*
10. Person possessing without any lawful excuse property suspected to be stolen.

Arrest without a warrant by a Police Officer

11. Where a person committed a cognizable offence in the presence of a police officer

12. Above 7 years=Where credible information has been received that a person has committed a cognizable offence and the police officer has reason to believe on the basis of that information that such person has committed the offence

Punishable with imprisonment upto 7 yrs

- (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
- (ii) the police officer is satisfied that such arrest is necessary-
 - (a) to prevent such person from committing any further offence; or
 - (b) for proper investigation of the offence; or
 - (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

Punishable with imprisonment upto 7 yrs

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured

- and the police officer *shall record while making such arrest, his reasons in writing*

NOTICE OF APPEARANCE BEFORE POLICE OFFICER

- S.35 (3) The police officer may, in all' cases where the arrest of a person is not required under the provisions of sub-section (I) of section 35, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

Complies with Notice

- As long as==Shall not be arrested.
- **Restrictions on arrest of aged and infirm persons:** Section 35(7) offers protection to elderly and infirm individuals from arrest. It stipulates that for offences punishable with *less than three years' imprisonment*, individuals who are *above 60 years of age or infirm* cannot be arrested without *prior permission from an officer of at least the rank of Deputy Superintendent of Police.*

Preliminary Enquiry for Establishing a Prima Facie Case:

- As per section 173 (3) Upon receiving information about the commission of a cognizable offence punishable by imprisonment for a term of **three to seven years**, the officer-in-charge of the police station **may**, with prior **authorization from an officer of or above the rank of Deputy Superintendent of Police, and taking into account the nature and severity of the alleged crime**:
 - (i) Conduct a preliminary enquiry within a 14-day period to determine whether sufficient grounds exist to establish a prima facie case for further action; or (ii) Proceed directly with a full investigation if a prima facie case is already apparent.

Police officer's power to investigate cognizable case(S. 175)

- **PUBLIC SERVANT**

(4) Any Magistrate empowered under section 210 may, upon receiving a complaint against a public servant arising in the course of the discharge of his official duties, order an investigation, subject to the following conditions:

(a) receiving a report containing the facts and circumstances of the incident from the officer superior to him; and

(b) considering the assertions made by the public servant regarding the situation that led to the alleged incident.

Section 223. Examination of complainant.

(2) A Magistrate shall not take cognizance of a complaint against a public servant for any offense alleged to have been committed in the course of the discharge of his official functions or duties unless:

- (a) such public servant is given an opportunity to make assertions regarding the situation that led to the alleged incident; and
- (b) a report containing the facts and circumstances of the incident from the officer superior to such public servant is received.

S. 218/Prosecution of Judges & Public Servants

- (1) When any person who is or was a Judge, Magistrate, or a public servant not removable from his office except by or with the sanction of the Government is accused of any offense alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offense except with the previous sanction, save as otherwise provided in the Lokpal and Lokayuktas Act, 2013.

Power of Lokpal to Grant Sanction for Initiating Prosecution (Section 23)

- Notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 (2 of 1974), section 6A of the Delhi Special Police Establishment Act, 1946 (25 of 1946), or section 19 of the Prevention of Corruption Act, 1988 (49 of 1988), the Lokpal shall have the power to grant sanction for prosecution under clause (a) of sub-section (7) of section 20.
- Section 20 (7): A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and, after obtaining the comments of the competent authority and the public servant, may—
- (a) grant sanction to its Prosecution Wing or investigating agency to file a charge-sheet or direct the closure of the report before the Special Court against the public servant;

Streamlined Prosecution Sanction

Process for Public Servants:

- Section 218 introduces significant reforms to address the longstanding issue of delays in obtaining prosecution sanctions for public servants accused of criminal offences. This provision sets a strict 120-day time limit for sanctioning authorities to decide on prosecution requests. If no decision is made within this period, the sanction is automatically deemed granted, effectively preventing indefinite delays in the criminal justice process. Crucially, the section also eliminates the requirement for sanction in cases involving serious offences such as rape, sexual offences, acid attacks, non-treatment of victims, and disobedience of legal directives pertaining to investigations.

84. Proclamation for person absconding

- (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.

Proclaimed Offender [84(4)]

- Offence which is made punishable with imprisonment of *ten years or more, or imprisonment for life or with death*
- The Court may, after making such *inquiry* as it thinks fit
- *Pronounce him a proclaimed offender*

BNSS Expands Proclaimed Offender Status

- The BNSS introduces a significant expansion of the "proclaimed offender" status through Section 84(4), addressing a critical gap in the previous legal framework. This amendment broadens the scope of offences for which an individual can be declared a proclaimed offender, now encompassing all crimes punishable by imprisonment of 10 years or more, life imprisonment, or death penalty. This change marks a substantial shift from the earlier, more limited application of the proclaimed offender status, which notably excluded serious offences like rape.

Identification and attachment of property of proclaimed person (S. 86):

- Section 86 of the BNSS introduces a mechanism for dealing with the property of proclaimed offenders within India. The provision empowers courts to initiate a process for identifying, attaching, and forfeiting property belonging to individuals who have been proclaimed as offenders. The process can be initiated by a written request from a senior police officer of the rank of Superintendent of Police or Commissioner of Police or above. The court, upon receiving such a request, can seek assistance from another court or relevant authority to carry out these actions.

Inquiry, Trial or Judgment in absentia of Proclaimed Offender (S. 356):

- Section 356 introduces a groundbreaking approach to handling cases involving proclaimed offenders who evade trial, allowing for their inquiry, trial, and judgment in absentia. This provision strikes a balance between ensuring justice is served and protecting the rights of the accused, even in their absence. The process is initiated through a series of carefully structured steps: two arrest warrants must be issued within a 30-day interval, followed by the publication of notices in two newspapers (local or national) to ensure widespread public awareness. The court is also required to notify the offender's relatives about the trial's commencement and affix notices regarding the trial's initiation in public spaces. To safeguard the accused's rights, the trial against the proclaimed offender can only begin after a 90-day period following the framing of charges, providing ample time for the accused to surrender or be apprehended. Crucially, the provision ensures the right to legal representation by mandating the state to appoint an advocate for the absent accused's defence. This approach significantly deviates from traditional practices that typically limited trials in absentia to merely recording witness testimonies.

Mandatory Forensic Evidence Collection for Serious Crimes:

- Section 176(3) introduces a pivotal reform in criminal investigations, mandating the involvement of forensic experts in cases involving offences **punishable by seven years or more** imprisonment. This provision requires the officer-in-charge of a police station to ensure that forensic experts visit the crime scene to collect crucial forensic evidence. To enhance transparency and maintain a reliable record, the entire evidence collection process must be videographed using mobile phones or other electronic devices. Recognizing potential resource constraints, the law grants state governments a five-year window to implement this requirement fully. Furthermore, it addresses potential gaps in forensic capabilities by allowing states to utilize forensic facilities in other states if local resources are temporarily unavailable.

BNSS Expands Age-Related Legal Exemptions:

- Section 179 of the BNSS introduces a significant modification to the age-related exemptions for *personal appearances in legal proceedings. The new provision lowers the age threshold for exemption from 65 to 60 years*, extending this protection to a broader segment of the elderly population. *This provision pertains to Police officer's power to require attendance of witnesses.*

Enhancing Transparency and Accountability in Police Searches:

- Section 185 introduces a comprehensive framework to ensure accountability and transparency in police searches, balancing law enforcement needs with individual rights. Under Section 185(1), police officers must meticulously document their reasons for conducting a search in the 'case-diary', providing a clear record of the decision-making process. This requirement is further strengthened by Section 185(2), which mandates that **all searches be recorded through audio-video electronic means, preferably using mobile phones,** creating an objective record of the search procedure. To ensure oversight, Section 185(5) requires police officers to transmit copies of all search-related records to the nearest authorized Magistrate within 48 hours.

Modernizing Witness Examination in Warrant Cases:

- Sections 265 and 266 of the new legal framework introduce a significant technological advancement in the conduct of **warrant cases tried by Magistrates**. These provisions allow for the examination of both **prosecution and defence witnesses through audio-video electronic means**, marking a departure from traditional in-person testimonies.

GENERAL PROVISIONS RELATING TO

SEARCH: (applicable to a search with or without a warrant -- S. 103).

- 1. Occupant's duty :** The occupier of the place to be searched must allow free entry and provide reasonable facilities to the maker of the search.
- 2. Use force :** To effect an entrance the police officer can use force if necessary. The police officer can break open any door or window and can arrest anyone obstructing him.

GENERAL PROVISIONS RELATING TO SEARCH

3. **Presence of witnesses:** The search must be conducted *in the presence of two independent and respectable inhabitants of the locality. The police officer has powers to call witnesses for this purpose. The search witnesses must be present at the place of search and must be the actual witnesses to the fact of the finding of the property.*
4. **List of things seized :** The Police Officer has to prepare a list of things seized and *get it attested by the witnesses.*
5. **Occupant's rights:** *The occupant or his nominee must be permitted to witness the search and a copy of the list of things seized shall be given to the occupant.*

Recording of search & seizure through audio-video electronic means (S.105)

The process of conducting search of a place or taking possession of any property, article or thing under this Chapter or under section 185, including preparation of the list of all things seized in the course of such search and seizure and signing of such list by witnesses, shall be recorded through any audio-video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the **District Magistrate, Sub-divisional Magistrate or Judicial Magistrate of the first class.**

Red Corner Notice

- This notice is issued to seek the arrest or provisional arrest of wanted criminals, **with the intention of extradition** of the culprits.

A Red corner Notice is a request to locate and provisionally arrest an individual who is convicted in a criminal case. **But just issue of red corner notice does not mean the person is guilty; he should be proven guilty by the court.**

It is issued by the General Secretariat at the request of a member country or an international tribunal based on a valid national arrest warrant. **A Red corner is not an International arrest warrant.**

INTERPOL cannot compel on any member country to arrest an individual who is served a Red corner Notice. **Each member country is free to decide the value of a Red corner Notice within their borders.** This notice is issued against the Dawood Ibrahim on the request of Indian government.

international airports, railway stations, sea routes

- **Example:** INTERPOL had refused to issue red corner notice against Islamic guru Zakir Naik on request of India. The Indian police had demanded red corner notice from INTERPOL without filing a charge sheet against Zakir. Now the CBI has filed the charge sheet against the Zakir and it will file a fresh appeal to INTERPOL for issuing red corner notice against Zakir Naik.

Tender of Pardon to An Accomplice (Approver)

- Sections 343 to 345 of BNSS deal with tender of pardon to an accomplice. Accomplice means a guilty associate or a partner in crime. In cases where several persons are accused of committing a grave offence, certain magistrates are empowered to grant pardon to an accomplice on the condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence.

Consequences for Non-Compliance with Pardon Conditions (Section 345):

- If the pardoned individual fails to comply with the terms of the pardon—such as by concealing essential information or providing false evidence—the Public Prosecutor can certify the non-compliance. In such a case, the individual can be tried for the original or related offences. They may also face charges of giving false evidence, but this can only occur with the High Court's sanction. Importantly, such individuals will not be tried jointly with other accused persons. Any statement made by the pardoned individual can be used as evidence against them during the trial. The accused may plead compliance with the pardon conditions, which shifts the burden of proof to the prosecution to prove otherwise. If compliance is proven, the court must acquit the accused, irrespective of other legal provisions.
- This process ensures that while the state gains valuable testimony from those involved in the offence, the rights of the individual receiving the pardon are also safeguarded, ensuring a fair trial.

RIGHTS OF AN ARRESTED PERSON:

- 1. Right to be informed of the grounds for arrest (S.47):**
- 2. Right to informed of the right to bail (in bailable offences) (S.47):**
- 3. Right to be produced before a Magistrate without delay:**
- 4. Right of not being detained for more than 24 hours without judicial scrutiny:**
- 5. Right to consult a legal practitioner of his choice:**
- 6. Right to be informed about the arrest to a nominated person (Sec.48):**
- 7. Copy of Medical Examination Report to be provided to the Arrested (S.53 (3)):**

Limitations on the power to take cognizance:

- Prosecution for contempt of lawful authority of public servant (S. 215(1)(a)):
- Prosecution for offences against public justice (S. 215(1)(b) & S. 215 (2)):
- Prosecution for offences against the State and for criminal conspiracy to commit such offence (S. 217(1)):
- Prosecution for the offence of criminal conspiracy of minor offences (S. 217(3)):
- Prosecution of a judge or a public servant [S.218(1)]:
- Prosecution of members of armed forces [S. 218 (2)]:
- Prosecution for offences against marriage [(S. 219(1))]:
- Prosecution of husband for rape [S. 219 (6)]:
- Prosecution for the offence of cruelty by husband or relative of husband (S.220):
- Prosecution for defamation [S. 222]):

Default Bail (S. 187). -

- If the accused person is in detention and if the investigation is not completed within the prescribed time, it becomes obligatory to grant him bail. The prescribed time is:
 - **90 Days** -Where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more.
 - **60 Days** - Where the investigation relates to any other offence (punishable with imprisonment for less than 10 years).

Relaxed Bail Provisions for Undertrial Prisoners (S.479):

- Section 479 of the BNSS adopts a more compassionate stance on bail for undertrial prisoners, particularly benefiting first-time offenders. Under this provision, individuals who have been detained for up to half of the maximum imprisonment term prescribed for their offence are eligible for bail. Notably, **first-time offenders who have been held for up to one-third of the maximum term** are entitled to be released on bond by the Court. The provision mandates that the jail superintendent must apply for bail on behalf of the undertrial once they have served either half or one-third of the maximum detention period.

Cancellation of Bail

- Bail in a bailable offence, may be cancelled by the High Court or the Court of Sessions, irrespective of whether it was granted by it or by a subordinate court or by the Police.
- The question of cancellation of bail by the Police does not arise at all.
- Bail granted by a subordinate Court in a non-bailable offence may be cancelled by that Court u/s 480 (5), B NSS.
- Bail granted by the Police or by the subordinate Court in a non-bailable offence may also be cancelled by the High Court or the Court of Sessions us 483(3), B NSS.
- Bail granted by the Court of Sessions in non-bailable offence may be cancelled by Sessions or the High Court.
- Bail granted by the High Court in non-bailable offence may be cancelled by the High Court.
- An anticipatory bail granted by the Sessions Judge u/s 482, B NSS may be cancelled by the Sessions Judge himself or by the High Court.
- An anticipatory bail granted by the High Court can be cancelled by that High Court.

Understanding Transit Remand

Through a Practical Example:

- To understand the concept of transit remand, consider the following scenario: Mr. P is accused of committing a non-bailable offence in Hyderabad. To evade arrest, he moves to Chennai. The Hyderabad Police then apply to a Hyderabad court for the issuance of a non-bailable warrant against Mr. P, which the court grants. The investigating officer, along with his team, travels to Chennai to arrest Mr. P in execution of the warrant. They inform the local police in Chennai and arrest Mr. P at Chennai with their assistance. Since the court that issued the warrant is more than 30 kilometers away, the accused must be presented before the nearest Magistrate at Chennai to seek transit remand. Transit remand authorizes the investigating officer and his team to transport the accused, Mr. P, to Hyderabad to appear before the concerned court. The Chief Judicial Magistrate or Sessions Judge in Chennai has the power to grant transit remand. After arresting Mr. P, the investigating officer will present him before the Chief Judicial Magistrate or Sessions Judge in Chennai and request transit remand. If the court in Chennai is satisfied, it may grant transit remand for a day or two, depending on the travel time, with instructions to present Mr. P before the appropriate court in Hyderabad.

Bail Application Outcomes for Accused P.-

- After being arrested for a non-bailable offence, Mr. P, upon being presented before the *Chief Judicial Magistrate or Sessions Judge in Chennai, has the option to file an application for Regular Bail under Section 480 of the BNSS.* The court will evaluate the bail application based on its merits, leading to one of three potential outcomes:
 - a. The Chief Judicial Magistrate or Sessions Judge may grant bail to Mr. P, contingent upon his provision of a *personal bond and surety bond,* while also instructing him to participate and cooperate in the ongoing investigation.
 - b. Alternatively, the court may issue *interim bail* to Mr. P, requiring him to furnish a personal bond and surety bond, and mandating his appearance before the court in Hyderabad on a specified date and time. In this scenario, *the final decision regarding the bail application will be made by the court in Hyderabad.*
 - c. Lastly, the court may choose to *dismiss the bail application altogether and instead grant Transit Remand* for Mr. P, thereby allowing the authorities to transport him back to Hyderabad for further proceedings.

Anticipatory Transit Bail. - A Viable Option for Accused P:

- In the scenario described, where Mr. P was arrested in Chennai, a pertinent question arises: can he seek Anticipatory Transit Bail in Chennai, despite being wanted in Hyderabad for an offence committed there? The answer is affirmative; Mr. P is indeed entitled to apply for Anticipatory Transit Bail. He can approach either the Sessions Court in Chennai or the High Court of Chennai to file his application for this type of bail, thereby securing legal protection even though the offence was committed in Hyderabad.

Parole:

- Parole, though not explicitly defined in the B NSS, plays a significant role in the Indian criminal justice system, primarily governed by state-specific prison manuals and rules. It represents a mechanism for the temporary or early release of convicted prisoners who have served a portion of their sentence, typically granted on humanitarian grounds or for specific purposes. Unlike bail, which is relevant during the trial phase, parole is applicable to individuals already serving their sentences.
- The authority to grant parole generally lies with executive bodies such as state governments or prison administrations, rather than the judiciary. Parole may be granted for various reasons, including family emergencies, urgent personal matters, or to facilitate the prisoner's gradual reintegration into society. However, it comes with strict conditions, and any violation can result in revocation and the individual's return to prison.

Custody Parole and Regular Parole.

- **Parole is categorized into two types:** Custody Parole and Regular Parole. Custody Parole is typically granted for a few hours in cases of family emergencies and can be authorized by the Jail Superintendent for convicts, while undertrial prisoners require court approval for such releases. In contrast, Regular Parole is exclusively available to convicts and is granted for a specified short duration; however, the time spent on Regular Parole is added to the prisoner's overall sentence, requiring them to serve additional time in prison.

Distinction Between Furlough and Parole:

- Neither is explicitly defined in the BNSS, but both are integral to the prison system, governed by state-specific rules and regulations. The primary distinction lies in their purpose and implementation. Parole is typically granted for specific reasons or in response to particular circumstances, such as family emergencies or urgent personal matters. It's a more discretionary form of release, often requiring case-by-case evaluation. In contrast, furlough is a more regularized and structured form of release, often granted periodically as part of a prisoner's overall sentence plan. It's viewed as a means of breaking the monotony of imprisonment and facilitating gradual reintegration into society.
- A crucial procedural difference is the treatment of time spent outside prison. Time spent on furlough is counted as part of the served sentence, effectively reducing the total imprisonment period. Conversely, time spent on parole is added to the original sentence, not diminishing the total time to be served.

SUMMONS CASE	WARRANT CASE
<p>1. Nature of the offence</p> <p>A summons case relates to an offence punishable with imprisonment for 2 years and less than 2 years.</p>	<p>1. Nature of the offence</p> <p>A warrant case relates to an offence punishable with death and with imprisonment exceeding years.</p>
<p>2. Trial courts</p> <p>A summons case is tried always by a court of magistrate.</p>	<p>2. Trial courts</p> <p>A warrant case is tried either by a sessions court or a court of magistrate.</p>
<p>3. Charge</p> <p>In a summons case the charge need not be in writing and formal. It is enough if the substance of accused is explained to the accused.</p>	<p>3. Charge</p> <p>In a warrant case the charge must be formal and in writing.</p>
<p>4. Discharge</p> <p>In a summons case there is no express provision for discharge.</p>	<p>4. Discharge</p> <p>In a warrant case there is an express provision for discharge of the accused person where no <i>prima-facie</i> case is made out (where there is no sufficient ground for proceeding).</p>

<p>5. Record of evidence</p> <p>In a summons case the evidence of a witness need not be recorded in full. It is enough if the substance of evidence is recorded.</p>	<p>5. Record of evidence</p> <p>In a warrant case the evidence of a witness must be recorded in full (every question put and every answer given).</p>
<p>6. Acquittal during the pendency</p> <p>In a summons cases there is no provision for acquittal during the pendency of proceedings.</p>	<p>6. Acquittal during the pendency</p> <p>In warrant cases, there is provision for acquitting the accused after taking prosecution evidence and before taking defence evidence if prosecution evidence is found insufficient to secure conviction.</p>
<p>7. Representation of accused on quantum of sentence</p> <p>In a summons case no opportunity is given to the accused to address the court on quantum of sentence.</p>	<p>7. Representation of accused on quantum of sentence</p> <p>In a warrant case, after the conviction the accused can address the court requesting for lesser punishment on certain grounds.</p>
<p>8. Conversion</p> <p>A summons case can be converted into a warrant case. In the sense, if the magistrate conducting trial of a summons case opines that it is better to adopt the trial procedure of a warrant case for a summons case, he can do so.</p>	<p>8. Conversion</p> <p>A warrant case cannot be converted into a summons case.</p>

Withdrawal from Prosecution (S.360):

- Section 360 of the BNSS outlines a critical mechanism allowing Public Prosecutors or Assistant Public Prosecutors to withdraw from a case before judgment, subject to court consent and victim input. The timing of withdrawal significantly impacts the accused's fate: a pre-charge withdrawal results in discharge, while post-charge or charge-less case withdrawals lead to acquittal.

Withdrawal of complaint only in summons cases (S.280):

- In summons cases, Section 280 allows complainants to withdraw their complaints before a final order, provided they can demonstrate sufficient grounds to the Magistrate. If permitted, this results in the accused's acquittal. Contrastingly, Section 247 addresses warrant cases initiated by private complaints, where direct withdrawal is not allowed. However, it offers a provision for partial withdrawal in cases with multiple charges. When an accused is convicted on some charges, the complainant or prosecutor can, with court approval, withdraw remaining charges.

Abatement of proceedings:

- Abatement means coming to an end. If the accused person dies, the criminal proceedings come to an end. The reason for this rule is that the object of criminal proceedings is punishing the accused on his conviction. Therefore, the continuance of criminal proceedings on the death of the accused becomes meaningless. However, in case of an appeal from a sentence of fine shall not abate on the death of the convict-appellant.
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	Revision	Appeal
1	Jurisdiction: The revision Jurisdiction is entertained by the Session Judge and High Court.	The appellate jurisdiction is exercised by Sessions Judge, High court and Supreme Court in hierarchy system.
2	Powers: The Revisional powers of High Court or Court of Session are purely discretionary.	A right of appeal is a substantial right and conferred by the statute.
3	Conversion of an acquittal into conviction: In revision, acquittal cannot be converted into conviction.	In appeal, acquittal can be converted into conviction and vice versa.

	Appeal/Revision	Reference
1	By whom made: Appeal or Revision is preferred by a party or interested person.	Reference is made by a lower court to a High Court.
2	Sessions Court's Power: Session's Court has power to entertain an Appeal or Revision petition.	Reference cannot be made to a Sessions Court.
3	Nature of proceeding: Appeal or Revision is of superiority in nature and the order of the Appellate or Revisional Court is of commanding nature.	Reference is of consultative nature from subordinate court to High Court.
4	When made: Appeal or Revision petition is made after the pronouncement of judgement/order.	Reference is made pending a trial or appeal.
5	Question of law or fact: Appeal or Revision may be made on a question of law or a question of fact.	Reference can be made only on a question of law.
6	Object: The object of Appeal or Revision is to correct errors already committed.	The object of Reference is to avoid commission of errors by obtaining the opinion of Higher Court in advance.

Use of Case Diary by accused to cross-examine police officer. -

- The accused and their representatives generally do not have access to these diaries. However, there are two exceptions:
- When the police officer uses it to refresh their memory
- When the court uses it to contradict the officer's testimony
- CORROBORATIVE EVIDENCE

REMAND

- Remand is a Magistrate's order that allows for the detention of a person in either police or judicial custody. If someone is arrested without a warrant, the police cannot hold them for more than 24 hours without a Magistrate's approval. If the police believe that further detention is necessary for investigation, they must present the accused to the nearest Magistrate, who can then authorize continued detention if deemed appropriate. However, a second-class Magistrate, unless specifically empowered by the High Court, cannot authorize police custody.