

BRIEF ANALYSIS ON

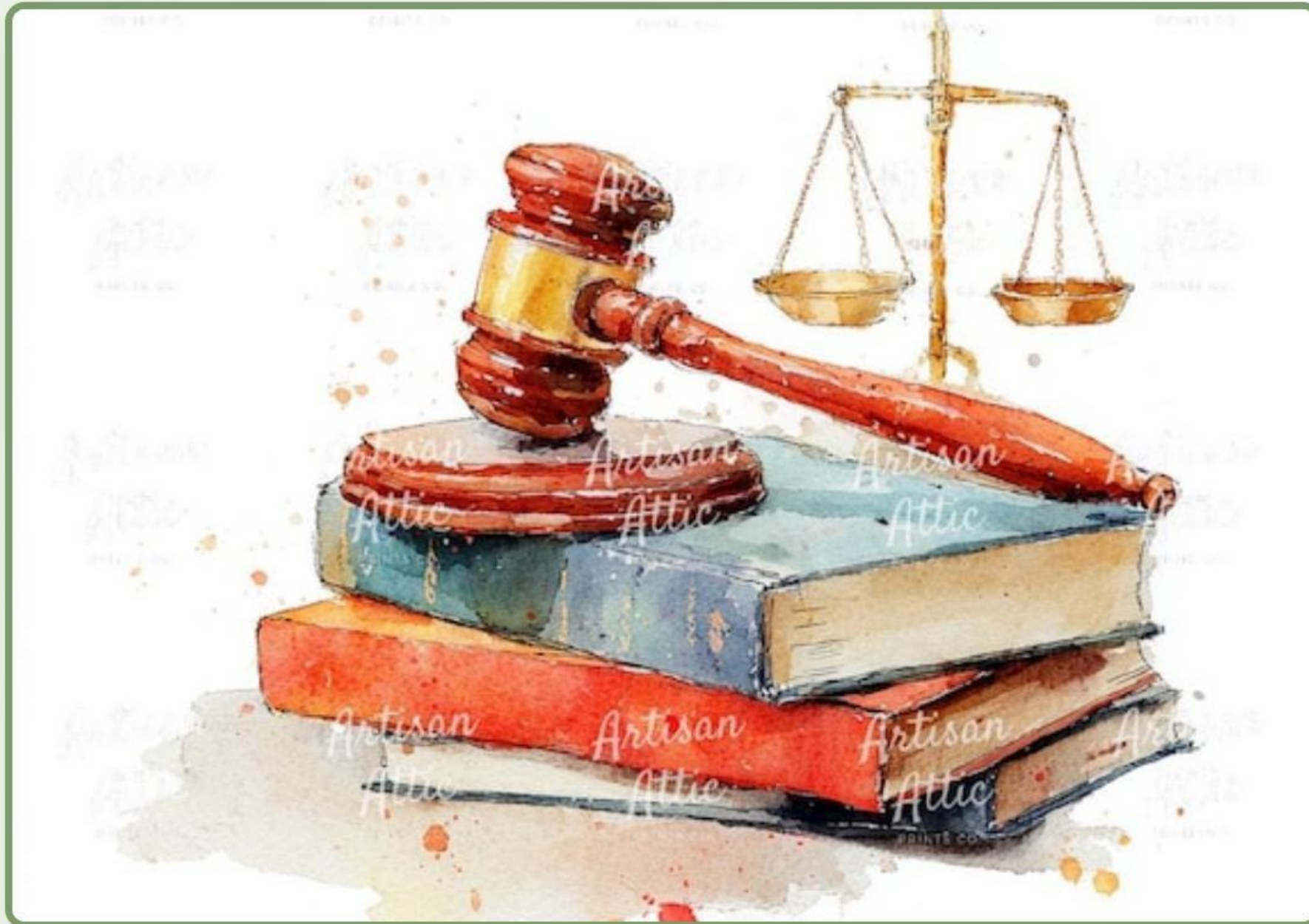
Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

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FACULTY IN LAW

BNSS Overview

LEGAL FRAMEWORK



Date of Enactment	25th December, 2023
Preamble	An Act to consolidate and amend the law relating to Criminal Procedure.
Enforcement Date	1st July, 2024
Act Repealed	The Code of Criminal Procedure, 1973 (Act No. 2 OF 1974)
Chapters and Sections	39 Chapters & 531 Sections

Statement of Objects & Reasons

PURPOSE

Core Vision:

Use of Technology and forensic sciences in the Investigation, Summons, Information



Scientific

Investigation, Trial and Judgments



Time Bound

Supply of FIR copy & progress of Investigation



CitizenCentricTrial

Summary Trial mandatory for petty offences,
Accused examination through VC, Magisterial
System

Criminal Courts & Offices

Hierarchy of Criminal Courts

Supreme Court



High Court



Court of Session (Sec 8)

Session Judge / Additional Session Judge



Chief Judicial Magistrate (Sec 10)



Judicial Magistrate 1st Class (Sec 9)

Executive Magistrate

Judicial Magistrate 2nd Class (Sec 9)

Power of Courts

JURISDICTION

Sentencing Capacities (Sec 22-23)

- **High Court:** Any sentence authorised by law
- **Session Judge / ASJ:** Any sentence authorised by law (Death sentence subject to HC confirmation)
- **CJM:** Any sentence authorised by law except Death, Life Imprisonment, or Imprisonment exceeding 7 years
- **JM 1st Class:** Imprisonment not exceeding 3 years, or Fine not exceeding ₹50,000, or both
- **JM 2nd Class:** Imprisonment not exceeding 1 year, or Fine not exceeding ₹10,000, or both

⚠ Key Omissions to Uniform System

- Provisions dealing with '**Metropolitan areas**' and '**Metropolitan Magistrates**' have been completely omitted from BNSS.
- The post of **Judicial Magistrate of third-class** and **Assistant Sessions Judge** has been omitted to bring uniformity.

Offence Classification (Part 1)

SEC 2(1)(Q)

S.NO	BASIS	COGNIZABLE OFFENCE	NON-COGNIZABLE OFFENCE
1	Statutory Definition	Sec 2(1)(g) - means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.	Sec 2(1)(o) - an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant.
2	Severity of crimes	Serious or Heinous crimes like Murder, theft, Kidnapping, Rape, Abduction etc.	Less serious like Assault, Cheating, Defamation etc.
3	Permission of Court	Not Required. Investigation initiated as soon as FIR is filed - Zero FIR, e-FIR, Preliminary inquiry to ascertain prima facie case for an offence punishable for 3 yrs but less than 7 yrs. (Sec 173 and Sec 175)	Required. Investigation can begin only after the Court issues an order including arrest - forwarding the daily diary report of non-cognizable cases fortnightly to the Magistrate. (Sec 174, Sec 178)

Offence Classification (Part 2)

SEC 2(1)(Q)

S.NO	BASIS	COGNIZABLE OFFENCE	NON-COGNIZABLE OFFENCE
4	Quantum of Punishment	Generally severe exceeding 3 years including life imprisonment or death penalty.	Punishment less than 3 years.
5	Bail for the Accused	May be bailable or non-bailable depending upon nature of offence and Court's discretion.	Generally bailable due to lesser severity.

i Note: Classifying offenses governs critical investigative powers of police officers under the new Sanhita framework.

Landmark Judicial Precedents

CASE LAW

Landmark Cases on Cognizable Offences



Lalita Kumari vs. State of U.P

AIR 2014 SC 187

Ruled that the Police must **mandatorily register an FIR** if the information they receive discloses a cognizable offence and that action should be taken immediately without any preliminary inquiry.



Sakiri Vasu vs. State of U.P & Ors.

AIR 2008 SC 907

The Hon'ble SC clarified that if anyone is aggrieved by the actions of FIR (like refusal to file etc), they can approach the Magistrate concerned under Sec 156(3) of CrPC **{Refer Sec 175 (3) of BNSS}**.

Bail Classification (Part 1)

SEC 2(1)(B)

Definition: "bail" means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond.

S.NO.	BASIS	BAILABLE OFFENCE	NON-BAILABLE OFFENCE
1	Statutory Definition	Sec 2(1)(c) - bailable offence means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force.	Sec 2(1)(c) - non-bailable offence means any other offence.
2	Gravity of offence	Less serious as compared to non-bailable offence.	Gravity is higher, serious and heinous crimes.
3	Quantum of Punishment	Quantum of sentence is generally less or upto 3 years. <i>Exception: S.137 BNS - Kidnapping - 7 yrs - Bailable</i>	Higher, punishable with death, imprisonment for life, imprisonment exceeding 3 yrs or 7 yrs.

Bail Classification (Part 2)

SEC 2(1)(B)

S.NO.	BASIS	BAILABLE OFFENCE	NON-BAILABLE OFFENCE
4	Nature of Bail	Bail can be granted as a matter of right. (S.478)	Bail is not a matter of right, rather it is matter of discretion of the court of law.
5	Power to grant bail	Police officer entitled to grant bail.	The accused gets bail through a court of law of proper jurisdiction appropos the offence committed.
6	Discretion of Court	If Police refuse to grant bail then Court shall grant Bail.	Court must be satisfied that there are reasonable grounds to grant bail and it can deny bail based on the severity of offence. Governed by Sec 480 .

Bail Classification (Part 3)

SEC 2(1)(B)

S.NO.	BASIS	BAILABLE OFFENCE	NON-BAILABLE OFFENCE
7	Refusal to grant bail	Refusal to grant bail in case of bailable offence may also amount to Wrongful confinement by Police - Sec 127 BNS.	Court can deny bail upon non-satisfaction.
8	Examples	Kidnapping (S.137 BNS), Stalking, Dishonest Misappropriation of movable property, Cheating (Sec 318 BNS).	Criminal Breach of Trust, Theft, Snatching, Rape, Murder.

Compounding of Offenses

SEC 359

S.NO	BASIS	COMPUNDABLE OFFENCE	NON-COMPUNDABLE OFFENCE
1	Meaning	Offences where the victim and the accused can mutually settle their dispute with the court's permission, leading to the withdrawal of the criminal case.	Offenses where compromise between parties is not legally permitted as these are considered serious crimes against society at large.
2	Examples	Simple Hurt, Criminal Breach of Trust, and Defamation.	Murder, Grievous Hurt, Rape, Kidnapping.
3	Court Scope	Sec 359 BNSS lists which offences are compoundable and specifies whether they can be compounded with court permission or without court permission.	While non-compoundable offences cannot ordinarily be compromised, the Supreme Court may use its inherent powers under Art 142 of the Constitution or High Court under Sec 528 BNSS to allow compromise in exceptional circumstances.

Key Innovations in BNSS (Part 1)

MAJOR ADDITIONS

Selected Key Additions:

- **Sec 2(1)(a) & 2(1)(i):** Introduces and defines “audio-video electronic means” and “electronic communication” for trials and proceedings held via electronic mode.
- **Sec 2(1)(b), 2(1)(d) & 2(1)(e):** Explicitly introduces the statutory definitions of bail, bail bond, and bond respectively.
- **Explanation to Sec 2(1)(l):** Clarifies that provisions of a special Act will prevail if inconsistent with this Sanhita.
- **Sec 64(ii):** Formally introduces that E-summons can be issued.
- **Sec 105:** Mandates videography of search and seizure, requiring witness signatures on it.

Key Innovations in BNSS (Part 2)

MAJOR ADDITIONS

- **Sec 107:** Provides for attachment and forfeiture of property on account of the result of criminal activity.
- **Zero FIR (Sec 173):** Mandates registration of a "Zero FIR", allowing information on cognizable offences to be given orally or electronically, irrespective of location. e-FIR must be signed in 3 days.
- **Sec 185:** Mandates the audio-video recording of searches by Police Officers.
- **Sec 356:** Allows inquiry, trial, or judgment in absentia of a proclaimed offender.
- **Sec 530:** Specifically provides for all trials, inquiries, and proceedings to be held in electronic modes.

Trial Stages & Timelines (Part 1)

EFFICIENCY

To address delays in investigation and trial – no time was prescribed under CrPC 1973

S.NO	STAGE	PROVISION	BNSS TIMELINE
1	Charge	Framing of charges by Magistrate.	Sec 263(1) - Within 60 days from first hearing on charge.
2	Charge	Procedure for an accused to file application for discharge.	Sec 250(1) - Within 60 days from committal.
3	Charge	Procedure for discharge by Magistrate in case of absence of complainant on date fixed for hearing in a complaint case (non-cognizable and compoundable).	Sec 272 - Granting 30 days opportunity to complainant to appear in court.
4	Plea Bargaining	Procedure for application for plea bargaining by the accused, in court where trial for said offence is pending.	Sec 290(1) - Within 30 days from the date of framing of charge.
5	Trial	Procedure for admission and denial of genuineness of documents by the defence and prosecution.	Sec 330(1) - Soon after supply of documents, and no later than 30 days, unless Court relaxes with written reasons.

Trial Stages & Timelines (Part 2)

EFFICIENCY

S.NO	STAGE	PROVISION	BNSS TIMELINE
6	Trial	Procedure for examination of the accused in custody, through electronic means, by Magistrate or Sessions Court.	Sec 316 - Signature of accused to be taken within 72 hours of such examination.
7	Trial	Commencement of in absentia trial against proclaimed offenders by a court.	Sec 356(1) - After a period of 90 days has lapsed from framing of charge.
8	Trial	Issuance of two consecutive arrest warrants by a court against proclaimed offenders, before commencing in absentia trials.	Sec 356(2)(i) - Execution of 2 consecutive arrest warrants within the interval of 30 days.
9	Trial	Publication of notice to proclaimed offender to appear before court, in a newspaper.	Sec 356(2)(ii) - Notice period of 30 days.
10	Judgment	Pronouncement of judgment after termination of trial in any criminal court.	Sec 392(1) - Not later than 45 days.

Trial Stages & Timelines (Part 3)

EFFICIENCY

S.NO	STAGE	PROVISION	BNSS TIMELINE
11	Judgment	Judgment of acquittal or conviction by Court of Sessions.	Sec 258(1) - 30 days from completion of arguments. (Extendable up to 45 days for reasons in writing).
12	Uploading	Court to upload a digital copy of the judgment.	Sec 392(4) - 7 days from pronouncement, as far as practicable.
13	Property	Procedure for custody or disposal of property produced before a Court/Magistrate during investigation, inquiry or trial (preparation of statement of property).	Sec 497(2) - Within 14 days of production of property before the court.

Process to Compel Appearance

A- Summons (Sec 63 to 71)

Sec 2(1)(x) – Summon case

Sec 63 (Form of Summons)

Every summons issued by a Court under this Sanhita shall be:

- In writing, in duplicate, signed by the presiding officer of such Court or directed officer, bearing the Court seal; **or**
- In an encrypted or any other form of electronic communication bearing the image of the seal or digital signature.

Sec 66 (Service when cannot be found)

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some **adult member of his family residing with him**, and such person shall sign a receipt on the back.

■ *Explanation—A servant is not a member of the family within the meaning of this section.*

B. Warrant of Arrest (Sec 72-83)

Sec 2(1)(z) - Warrant case

Sec 72 (Form of Warrant & Duration)

- Every warrant of arrest issued by a Court under this Sanhita shall be in writing, signed by the presiding officer, and shall bear the seal of the Court.
- Every such warrant shall **remain in force** until it is cancelled by the Court which issued it, or until it is executed.

Key Distinction from Summons

Unlike summons, the court issuing the warrant of arrest itself can stay or cancel the warrants at its discretion prior to execution.

Inquiry vs Investigation

CONCEPTUAL COMPARISON

S.NO	BASIS	INVESTIGATION	INQUIRY
1	Definition	Sec 2(1)(l) - Fact finding process	Sec 2(1)(k) - Preliminary examination
2	Conducted by	Police or authorized person	Magistrate of Court
3	Purpose	Gather evidence and identify offenders	Determine if a trial is necessary
4	Final outcome	Collection of evidence	Framing of charge or dismissal
5	Proceeding	Non-judicial proceeding	Judicial or Non-judicial proceeding
6	Evidence	Cannot be taken on oath at this stage	Oath may be administered at this stage

Investigation Framework

CORE CLAUSES



Preliminary Inquiry

Section 176 (3) BNSS

Statutory limits and definitions concerning the application of preliminary inquiry prior to registering case on cognizable offences.



Investigation Mandate

Section 175, 176 BNSS

Governs detailed procedural requirements, guidelines, and execution of the investigation for cognizable offenses by competent police authorities.

THANK YOU!

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