



DES'S SHRI. NAVALMAL
FIRODIA LAW COLLEGE

BOOKLET ON NEW CRIMINAL LAWS

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**BHARATIYA NYAYA
SANHITA, 2023**

**BHARATIYA NAGRIK
SURAKSHA SANHITA, 2023**

**BHARATIYA SAKSHYA
ADHINIYAM, 2023**

INDEX:

Topic	Page no.
Introduction	2
Bharitya Nyaya Sanhita	3 - 23
Comparative Table of IPC and BNS	13 - 18
Comparative Table of Punishments	18 - 23
Bharitya Nagrik Sanhita Surakha	24 – 39
Bhartiya Sakshya Adhiniyam	40 - 41

THE HANDBOOK OF NEW CRIMINAL LAWS

INTRODUCTION –

The criminal justice system in India is rooted in Western jurisprudence, having been introduced during the consolidation phase of the British Empire. Notably, the Indian Penal Code (IPC), drafted in the 1830s by the first Law Commission led by Thomas Macaulay, was enacted in 1860, following the 1857 revolt and the subsequent transfer of power from the East India Company to the British Crown. The other laws governing the criminal procedure were the Code of Criminal Procedure of 1898 which was further replaced in 1973 by another criminal code, and the laws governing the production of evidence was duly governed by the Indian Evidence Act of 1872.

Following India's independence, these laws were retained and subjected to numerous amendments over time, prompting the government to undertake a comprehensive review. Consequently, the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagrik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) which replaced the Indian Penal Code, 1860, the Code of Criminal Procedure (1973) and Indian Evidence Act, 1872 respectively, was passed by Parliament in 2023.

The reasoning provided for the enactment of new criminal laws is that the older criminal laws brought during the phase of British rule, carry the colonial impact and these older laws were still in operation in the territory of India despite independence. Another reason etched in bringing new criminal laws pertains to the fact that the older laws, being drafted in the 19th century, lacked numerous such aspects and elements which were essential for their operation in the 21st century which is heavily impacted by the technological evolutions and advancement in different spheres of human life.

Hence, the Parliament came up with the new three criminal laws thereby repealing the older ones and these new laws came into operation with effect from 1st July 2024.

CHANGES BROUGHT BY THE BHARATIYA NYAYA SANHITA (BNS)

SIGNIFICANT CHANGES:

The new IPC incorporates various newer topics and has attempted to deal with several other issues that were not present in the previous legislation. Following are the subjects that have found a place in the BNS.

1. Punishments:

A] Community Service as a form of punishment:

Historically there have been only 5 kinds of punishment under Criminal Law namely that

- i. Death
- ii. Life imprisonment
 - Simple imprisonment
 - Rigorous imprisonment
- iii. Imprisonment for the specified duration
- iv. Forfeiture of property
- v. Fine

A new kind of punishment, “**Community service**” has been introduced as a new punishment. Under **Section 4**, community service has been introduced as a form of punishment; however, the specifics of what constitutes community service have not been defined. For offences such as attempting suicide to compel or restrain the exercise of lawful power, defamation, public misconduct by an intoxicated person, and failure to appear at the designated place and time as mandated by a proclamation issued under sub-section (1) of section 84 of the Bharatiya Nyaya Sanhita, 2023, community service may be imposed in addition to the prescribed penalties.

B] Enhanced Punishment for Gang Rape of a Victim Under 18 Years of Age:

According to Section 70, if a woman under the age of eighteen is raped by one or more individuals acting as a group or with a common intention, each of these individuals shall be deemed to have

committed the offence of rape. They shall be punished with life imprisonment, which implies imprisonment for the remainder of their natural lives, and may also be fined or sentenced to death.

It is important to note that under Section 376DA of the IPC, the enhanced punishment was applicable to victims under the age of sixteen.

2. Significant offences newly added:

A] Marital Rape Involving a Minor Wife Constitutes an Offence

According to Section 63 of the Bharatiya Nyaya Sanhita (BNS), sexual intercourse or acts by a man with his wife, provided she is not under eighteen years of age, do not constitute rape. This implies that sexual intercourse or sexual acts with the wife who has not attained the age of majority (18) would constitute an offence.

Under the Indian Penal Code (IPC), this age was previously set at fifteen years. In 2017, the Supreme Court, in the judgment of **Independent Thought v. Union of India**¹, interpreted 'fifteen years' in **Exception 2 to Section 375** of the IPC as 'eighteen years,' thereby including sex with a minor wife within the scope of the offence of rape.

B] Sexual Intercourse by Deceitful Means, etc.

The Bharatiya Nyaya Sanhita (BNS) establishes sexual intercourse by employing deceitful means as an offence. According to **Section 69**, any person who engages in sexual intercourse with a woman by deceitful means or by falsely promising marriage, without intending to fulfil such a promise, commits an offence.

Although this act does not amount to rape, it is punishable by imprisonment of either description for a term that may extend up to ten years and shall also be subject to a fine.

Incorporation of such an offence was the result of an uncountable number of cases being registered where consent from the woman was obtained to have sexual intercourse, usually on the pretext of

¹ (2017) 10 SCC 800

marriage and certain other promises which were made without intending to fulfil them. By terming it as an offence, it has specifically been brought under the purview of a penal offence.

C] Publishing Trial Proceedings on Sexual Offences Without Permission, Illegal.

Section 73 stipulates that printing or publishing any material related to court proceedings concerning offences such as rape, sexual intercourse by a husband with his wife during separation, sexual intercourse by a person in authority, sexual intercourse by deceitful means, or gang rape, without prior court permission, is an offence. This offence is punishable by imprisonment of either description for a term up to two years and may also include a fine.

The section further clarifies that the printing or publication of judgments from the High Court or the Supreme Court does not constitute an offence under this provision.

D] Organised Crime:

The new IPC (BNS) has inserted 'organised crime' as the new offence which has been enumerated in section 111 of the same. The definition of what would constitute an "organised crime" is reproduced below:

The organised crime is defined as "*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.*"

It is pertinent to note here that it also defines organised crime syndicate, continuing unlawful activity, and economic offence.

- Punishment prescribed for organised crime:

If such an offence results in the death of any person, the perpetrator shall be punished with death or life imprisonment and shall also be subject to a fine of no less than ten lakh rupees.

In any other instance, the offender shall be punished with imprisonment for a term of no less than five years, which may extend to life imprisonment, and shall also be subject to a fine of no less than five lakh rupees.

Comments:

Offences of organised crimes have been dealt with by various state-regulated statutes having their jurisdiction in respective states, despite this, a new offence having the same effect or rather having its scope even wider than the ones contemplated in the state statutes, has specifically been added. The punishments and the fines which the BNS prescribes for such crimes are also not in conformity with the ones enumerated or prescribed in the state statutes. For example, the Maharashtra Control of Organised Crimes Act, 1999 (MCOCA) prescribes a fine of Rs. 1 lac as opposed to the one in BNS.²

- Punishment for being a member:

Any individual who is a member of an organized crime syndicate shall be punished with imprisonment for a term of no less than five years, which may extend to life imprisonment, and shall also be liable to a fine of no less than five lakh rupees.

DA] Petty Organised Crime:

The Bharatiya Nyaya Sanhita (BNS) introduces the concept of Petty Organised Crime under Section 112. This section stipulates that any individual who, as a member of a group or gang, commits acts such as theft, snatching, cheating, unauthorized ticket selling, unauthorized betting or gambling, selling public examination question papers, or similar criminal activities, is deemed to commit petty organized crime.

The prescribed punishment for engaging in petty organized crime is imprisonment for a term of no less than one year, which may extend to seven years, and shall also include a fine.

² Refer to Section 3 of Maharashtra Control of Organised Crimes Act, 1999.

E] Terrorist Act

A significant development introduced by the criminal law amendment is the inclusion of the "Terrorist Act," in Section 113 of the BNS, which was conspicuously absent in the IPC. Actions intended to threaten or likely to threaten the "economic security of India," causing or likely to cause "damage to the monetary stability of India" through the production, smuggling, or circulation of counterfeit Indian currency, coin, or any other material, are now classified as "terrorist acts."

Furthermore, actions that threaten or are likely to threaten the unity, integrity, sovereignty, or security of the country, or that instill terror in the minds of the populace, are also encompassed within this offence. Such actions include causing death or property damage through the use of bombs, explosives, firearms, or other lethal weapons, as well as poisonous or noxious gases, chemicals, or any other hazardous substances (biological, radioactive, nuclear, or otherwise).

The punishment for committing this offence is death or life imprisonment. Individuals who conspire, attempt to abet, incite, or knowingly facilitate the commission of a terrorist act may face imprisonment for a term of not less than five years, which can extend to a life sentence.³

F] Act Endangering Sovereignty, Unity And Integrity Of India:

BNS incorporates a 'new' offence that criminalises the acts which endanger or tend to endanger the sovereignty, unity and integrity of India. It has been argued that the effect of this section derives its idea of incorporation from the jurisprudence of Section 124A that talked about the highly contentious offence of sedition. However, while sedition criminalised acts against the government, the BNS replaces the "government" with the "country".

Section 152 of the new BNS stipulates that anyone who, intentionally or knowingly, through spoken or written words, signs, visible representations, electronic communication, financial means, or other methods, incites or attempts to incite secession, armed rebellion, subversive activities, or promotes separatist sentiments, or endangers the sovereignty, unity, and integrity of

³ Refer to Section 113 and clauses enumerated therein under BNS.

India, or engages in or commits any such acts, shall be punished with life imprisonment or imprisonment for a term extending up to seven years, and shall also be liable to a fine.

Comments expressing disapproval of the government's measures, administrative actions, or other actions, with the intent to seek their alteration through lawful means, will not constitute an offence under this provision.

G] Mob Lynching:

Mob Lynching has now been made a separate offence **under Section 103** of BNS. Older IPC did not contain any such provision which specifically referred to the killing of any person by a group of people. However, BNS now criminalises mob lynching and prescribes punishment for the same.

Section 103(2) of BNS reads,

“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.”

H] Negligence by Medical Practitioner:

The new Bharatiya Nyaya Sanhita (BNS), under **Section 106**, introduces a specific classification for doctors regarding the punishment for causing death by medical negligence. While Sanhita increases the general punishment for causing death by negligence to imprisonment of up to 5 years, if the death is caused by a doctor, the punishment is limited to imprisonment of up to 2 years.

In contrast, under Section 304A of the Indian Penal Code (IPC), causing death by negligence was punishable by imprisonment of up to 2 years, a fine, or both, without any distinct classification for doctors. However, in the recently enforced IPC, there is a separate and particular section that enumerates specific punishment for medical practitioners. This will also regulate the enormous number of cases of medical negligence which were preferably dealt with by the consumer redressal forums where the aggrieved individuals sought compensation in proportion to the injury suffered.

By carving out specific provision for the doctors now, the era of criminal litigation in this regard can very well be speculated.

I] Hit and Run as an offence:

BNS has incorporated a new offence thereby criminalising the act of hit and run. Fundamentally, “hit and run” refers to the act where the driver causes the death of any person due to rash and negligent driving of the vehicle and thereafter escapes the spot. BNS has stipulated stringent punishment for the offence of hit-and-run and any driver who commits this offence shall be punished with 10 years of imprisonment.

It is worth noting that following the passage of the BNS in 2023 by Parliament, transporters and drivers protested against this new offence. Their concern was that a driver involved in a serious road accident might be at risk of attack by an angry mob, making it reasonable for anyone in such a situation to flee or escape. However, the BNS stipulates that if the driver escapes the spot and reports the same to the police officer at the nearest police station then such reporting of the incident will be considered and a deduction in the span of imprisonment would take place. i.e. 10 years to 7 years.

3. Significant Miscellaneous Changes:

i. Snatching as a distinct offence:

Section 304 of the BNS defines theft as snatching if the offender, in the course of committing theft, suddenly, quickly, or forcibly seizes, secures, grabs, or takes away any movable property from any person or from their possession.

The punishment for snatching is imprisonment of either description for a term that may extend up to three years, along with liability to a fine.

ii. Employment of children to commit crime

Section 95 of BNS makes Hiring or employing a child to commit a crime an offence punishable with 3 to 10 years imprisonment. If the child so hired (Child as defined under BNS means any

person below the age of eighteen) actually commits a crime then whatever is the punishment for that offence, which cannot be imposed on the child can be imposed on the person found guilty of hiring that child. BNS, thus makes stringent and deterrent provisions against hiring children to commit crimes.

iii. Attempt to commit suicide, not an offence now:

Earlier, Section 309 of the IPC criminalized an attempt to commit suicide, thereby making it an offence and also stipulated punishment for the same. However, this stringent provision does not find its place in the BNS. Even if an 'attempt to commit suicide' is no longer an offence, **Section 226** of the BNS criminalizes the act of attempting to commit suicide to compel or restrain the exercise of lawful power. This offence is punishable by simple imprisonment for a term that may extend up to one year, a fine, both, or community service.

It intends to address situations like someone making demands from a person in lawful authority to perform a certain task by threatening such a person in authority with the consequences in the form of suicide. In such a case even if the demand is reasonable, irrespective of the merit of the demand the act of threatening to commit suicide would be a criminal offence.

iv. Unnatural offences as contemplated u/s 377 IPC, no longer offences in BNS:

Section 377 criminalised 'carnal intercourse against the order of nature' and also prescribed imprisonment for life for the same. However, the landmark ruling in the Navtej Singh Johar case, which was delivered by the Constitution Bench of the Apex Court, partially struck down Section 377.

The BNS has entirely removed this offence, indicating that forcible carnal intercourse against a man and bestiality are no longer considered offences under the BNS.

v. Adultery Omitted.:

In light of the Supreme Court's judgment in **Joseph Shine's case**, the offence of adultery has been removed. However, the second BNS retains Section 498 of the IPC (Section 84), which penalizes a man for enticing another man's wife with the intent that she engages in intercourse with any person.

vi. Relating to possession of fake currency notes:

Under Section 489C of the IPC, mere possession of counterfeit currency notes constituted an offence. This provision was deemed unfair because, in the presence of counterfeit currency in circulation, anyone could unknowingly come into possession of such notes during regular cash transactions. Instead of being regarded as a victim, the IPC presumed the individual to be an offender. This provision has been rectified in the BNS.

Section 180 of BNS states,

“Whoever has in his possession any forged or counterfeit coin, stamp, currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—If a person establishes the possession of the forged or counterfeit coin, stamp, currency-note or bank-note to be from a lawful source, it shall not constitute an offence under this section.”

IPC TO BNS; WHAT IS NEW & WHAT HAS CHANGED

1. OMISSION OF SECTIONS & OFFENCES NO LONGER RELEVANT

The offences corresponding to the following section in the IPC have been deleted.

SECTIONS	HEADING
14	“Servant of government”
18	India
50	“Section”
53-A	Construction of reference to transportation
124-A	Sedition
153-AA	Punishment for knowingly carrying arms in any procession or organizing, or holding or taking part in any mass drill or mass training with arms
236	Abetting in India the counterfeiting out of India of coin
237	Import or export of counterfeit coin
238	Import or export of counterfeits of Indian coin
264	Fraudulent use of false instrument for weighing
265	Fraudulent use of false weight or measure
266	Being in possession of weight or measure
267	Making or selling false weight or measure
309	Attempt to commit suicide
310	Thug
311	Punishment
377	Unnatural offence
444	Lurking house-trespass by night
446	House-breaking by night
497	Adultery

2. INTRODUCTION OF NEW OFFENCES

Following new offences have been introduced in BNS, 2023.

SECTIONS	HEADING
2(3)	“child”
48	Abetment outside India for offences in India
69	Sexual intercourse by employing deceitful means, etc.
95	Hiring, employing or engaging a child to commit an offence
103(2)	Punishment for murder
106(2)	Causing death by negligence
111	Organized crime
112	Petty organised crime
113	Terrorist act
117(3)(4)	Voluntarily causing grievous hurt
152	Acts endangering the sovereignty, unity and integrity of India
195(2)	Assaulting or obstructing public servants when suppressing riots, etc.
197(1)(d)	Imputations, assertions prejudicial to national integration
226	Attempt to commit suicide to compel or restrain exercise of lawful power
304	Snatching
324(3)	Mischief
341(3)(4)	Making or possessing counterfeit seal, etc.; with intent to commit forgery punishable under section 338
358	Repeal and savings

❖ The rearrangement of significant sections are produced below:

IPC	BNS	IPC	BNS
8	2(10)	246	178(5)
18	Deleted	250	179
19	2(16)	251	179
20	2(5)	252	180
21	2(28)	253	180
27	3(3)	255	178(3)
29	2(8)	256	181
53	4	257	181
66	8(4)	258	179
67	8(5)	260	179
91	29	272	274
117	57	273	275
124A	95** (Page no.9)	274	276
125	152** (Page no.7)	275	277
148	191(3)	276	278
229	268	277	279
230	178(2)	278	280
231	178(4)	279	281
232	178	280	282
233	181	281	283
234	182	282	284
235	181	283	285

IPC	BNS	IPC	BNS
284	286	331	120(2)
285	287	332	121(1)
286	288	335	122(2)
287	289	336	125
288	290	337	125(a)
289	291	338	125(b)
290	292	342	127(2)
291	293	343	127(3)
292	294	344	127(4)
293	295	346	127(6)
294	296	357	135
294A	297	358	136
302	103	363A	139
304A**	106** (Page no.8)	364	140(1)
309*	226** (Page no.9)	364A	140(2)
323	115(2)	366A	96
324	118(1)	366B	141
325	117(2),(3),(4)	370A	144
330	120(1)	373	99

IPC	BNS	IPC	BNS
375	63	424	323
376(3)	65(1)	426	324(2)
376AB	65(2)	427	324(3), (4), (5)
376D	70(1)	428	325
376DB	70(2)	447	329(3)
377	Deleted*(Page no.10)	448	329(4)
384	308(2)	451	331(3), 332(c)
386	308(4)	453	331(1)
387	308(5)	454	331(4)
389	308(7)	461	334(1)
400	310(6)	462	334(2)
403	314	473	341(2), (3), (4)
405	316(1)	489*	180* (Page no.10)
406	316(2)	497	Deleted
417	318(2)	498	84 (Page no.10)
418	318(3)	510	355
419	319(2)		
421	320		
423	322		

Enhanced Punishments:

Older Sections with Punishment (IPC)	New Sections and Punishment (BNS)
• S. 67. Imprisonment for non-payment of fine, when offence punishable with fine only. six months	• S. 8. Amount of fine, liability in default of payment of fine, etc. Sub-S. (5), Cl. (c)-1 year
• S. 117. Abetting commission of offence by the public or by more than ten persons - 3 years, or with fine, or both	• S. 57. Abetting commission of an offence by the public or by more than ten persons -seven years and with fine
• 373. Buying minors for purposes of prostitution, etc. may extend to 10 years	• S. 99. Buying child for purposes of prostitution, etc. shall not be less than seven years but may extend to 14 years
• S. 303. Punishment for murder by life- convict-punished with death	• S. 104. Punishment for murder by life-convict punished with death or with imprisonment for - life, which shall mean the remainder of that person's natural life

• S. 304. Punishment for culpable homicide not amounting to murder- a term which may extend to 10 years, or fine, or both	• S. 105. Punishment for culpable homicide not amounting to murder a term but which may extend to 10 years with fine
• S. 304-A. Causing death by negligence may extend to 2 years, or with fine, or both	• S. 106. Causing death by negligence. Sub-S. (1) may extend to 5 years, and shall also be liable to fine
• S. 307. Attempt to murder punished with death	• S. 109. Attempt to murder. Sub-S. (2)- punished with death or imprisonment for life, which shall mean the remainder of that person's natural life
• S. 332. Voluntarily causing hurt to deter public servants from his duty. which may extend to 3 years	• S. 121 Voluntarily causing hurt or grievous hurt to deter a public servant from his duty. Sub-S. (1) may extend to 5 years
• S. 335. Voluntarily causing grievous hurt on provocation - may extend to four years	• 122. Voluntarily causing hurt or grievous hurt on provocation. Sub- (2)-may extend to 5 years

• S. 338. Causing grievous hurt by act endangering life or personal safety of others. may extend to 2 years	• S. 125. Act endangering life personal safety of others. Cl. (b) may extend to 3 years
• S. 343. Wrongful confinement three or more days. may extend to 2 years	• S. 127. Wrongful confinement. Sub- S. (3) may extend to 3 years
• S. 344. Wrongful confinement for ten or more days. may extend to 3 years	• S. 127. Wrongful confinement. Sub- S. (4) may extend to 5 years
• S. 346. Wrongful confinement in secret. may extend to 2 years	• S. 127. Wrongful confinement - may extend to 3 years
• S. 370-A. Trafficking of person. Sub- S. (1)-7 years	• S. 144. Exploitation of a trafficked person. Sub-S. (1)-10 years
• S. 138. Abetment of act of insubordination by soldier, sailor or airman. - 6 months	• S. 166. Abetment of act of insubordination by soldier, sailor or airman. - 2 years
• S. 148. Rioting, armed with deadly weapons - 3 years	• S. 191. Rioting. Sub-S. (3)-5 years

• S. 182. False information, with intent to cause a public servant to use his lawful power to the injury of another person. -6 months	• S. 217. False information, with intent to cause a public servant to use his lawful power to injure another person. -1 year
• S. 204. Destruction of documents or electronic records to prevent its production as evidence. -2 years	• S. 241. Destruction of documents or electronic records to prevent its production as evidence. -3 years
• S. 206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution. - 2 years	• S. 243. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution. - 3 years
• S. 211. False charge of offence made with intent to injure. Para. 1-2 years	• S. 248. False charge of offence made with intent to injure. Cl. (a)-5 years
• S. 211. False charge of offence made with intent to injure. -7 years	• S. 248. False charge of offence made with intent to injure. Cl. (b)-10 years

• S.274. Adulteration of Drugs. - 6months	• S. 276. Adulteration of drugs. - 1 year
• S. 277. Fouling water of public springs or reservoirs. 3 months	• S 279, Fouling water of public springs or reservoir. - 6 months
• S. 406. Punishment for criminal breach of trust. 3 years	• S.316. Criminal breach of trust. Sub-S. (2)-5 years
• S. 417. Punishment for cheating. - 1 year	• S. 318. Cheating. Sub-S. (2)-3 years
• S. 418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. - 3 years	• S. 318. Cheating. Sub-S. (3)-5 years
• S. 423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.12 years	• S. 322. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration. - 3 years
• S. 424. Dishonest or fraudulent removal or concealment of property. -2 years	• S. 323. Dishonest or fraudulent removal or concealment of property. - 3 years

• S. 426. Punishment for Mischief. -3 months	• S. 324. Mischief. Sub-S. (2)-6 months
• S. 428. Mischief by killing or maiming animal of the value of ten rupees. - 2 years	• S. 325. Mischief by killing or maiming animal. - 5 years

MAJOR CHANGES BROUGHT BY BHARTIYA NAGRIK SURAKSHA SANHITA.

Introduction:

1st July 2024 marked the commencement and enforcement of the new criminal laws which were passed by the Parliament back in December 2023. The new three criminal laws, as stated in the “objects and reasons” of the said laws, aim to replace the older laws that governed and formed the existing criminal justice system in India to date. The step was taken by the government in the Centre with the view it aspires to revamp the criminal justice system which has prevailed over for decades now. Undoubtedly, the new criminal laws have been equipped with many such provisions which were majorly missing in the older laws. One such law governs the criminal procedure to be followed in the courts of law by the name “Code of Criminal Procedure” and was adopted in the year 1973 on similar lines to the older CrPC enacted in the year 1898.

The new law regulating the criminal procedure carries the nomenclature “Bharitya Nagrik Suraksha Sanhita” and repeals the older CrPC 1973 thereby. The major changes, insertions, and deletions in the new CrPC are as follows:

1. PROVISIONS RELATED TO BAIL:

A]: Definitions

BNSS has implemented significant revisions to the bail provisions, distinguishing itself from the current code ("Cr.P.C."). Although the majority of the provisions in BNSS retain the same wording as those in the existing code, BNSS incorporates definitions for ***bail, bail bond, and bond***.

According to the definition clause under **Section 2** of BNSS:

Clause (b) defines bail as:

“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.

Clause (d) defines “bail bond” as:

"bail bond" means an undertaking for release with surety.

And

Clause (e) defines “bond” as:

"bond" means a personal bond or an undertaking for release without surety.

Comments:

The older criminal procedure code did not contain a specific definition of the word “bail”, despite its frequent usage in regular courses of administering justice. However, various High Courts and the Supreme Court through several cases have attempted to define the feasible meaning of the word “bail”. Of all those cases, the definition propounded by the Hon’ble Supreme Court in the case of Satender Kumar Antil vs Central Bureau of Investigation & Anr⁴ aptly summarises the basic rationale underlying the incorporation of provisions related to bail. The Supreme Court in the above-mentioned case defined bail as,

“release of an accused person either by the orders of the court or by the police or by the investigating agency.”

It further remarked, *“It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process and, thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial”*⁵

B]: Relating to Undertrial Prisoners:

It is pertinent to note that **Section 436A of the Cr.P.C.**, introduced through the Criminal Law (Amendment) Act, 2005 ('2005 Amendment'), stipulates that an undertrial prisoner who has been in custody for a duration equalling up to **one-half** of the maximum sentence prescribed for the offence (excluding offences punishable by death) shall be granted bail by the Court (with or without surety).

⁴ (2022) 10 SCC 51

⁵ Para 10, Satender Kumar Antil vs CBI

This provision was enacted to uphold the right to a fair and expeditious trial for accused individuals detained as undertrial prisoners.

A similar provision, which comes as a reflection of the older provision has been enumerated in the new CrPC (BNSS) u/s 479, however, this section contains certain changes which are imperative in the realm of bail provisions. They are as follows:

i. First-time offender:

Proviso 1 to Section 479 of BNSS contemplates the release of a “first-time offender”. A first-time offender can be labelled as someone who has never been convicted of any offence in the past. Release of such “first-time offender” refers to a situation where the person has spent a certain amount of time in prison, then he must be entitled to a lawful release by the court. This certain period is “**one-third**” of the total sentence prescribed for the offence, as an undertrial prisoner.

Proviso 1 to Section 479 states,

“Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond 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.”

Comments:

The Code of Criminal Procedure, 1973, the ‘predecessor CrPC’ did not contain any such section/provision relating to first-time offenders. By inserting this provision, the legislature has carved out a class of “first-time offenders” that will distinguish them from other accused offenders. The rationale behind the insertion of such a provision seems to be giving slighter relief to the ones, who have committed any offence for the first time, concerning their detention in the custody as the undertrials. The roots of this provision seem to be rooted in the theory of rehabilitation of offenders, where stringency of any procedural rule/law is minutely curtailed because of a person’s non-habitual nature related to the offence.

ii. **Bail not to be granted if multiple cases are pending:**

The current legislation does not include a provision that denies bail to an undertrial prisoner when multiple investigations, inquiries, or trials are pending against them for more than one offence. In contrast, the new legislation has introduced a more stringent measure, refusing bail to an undertrial prisoner under such circumstances. Section 479(2) of BNSS provides that:

“Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, 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.”⁶

iii. **Bail can be granted on the report of the Superintendent of Jail:**

The new legislation requires the Superintendent of Jail to submit a written application to the court to facilitate the release on bail of an undertrial prisoner who has served one-third or one-half of the prescribed sentence, as applicable, for the offense under the 'Sanhita'.

Sub-clause 3 of Section 479 of BNSS2 provides that:

“The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.”

C]: Regular Bail

It is noteworthy that during hearings on the accused's regular bail application, a primary argument advanced by the prosecution to oppose the bail plea is that the accused's custody is necessary for investigative agencies to identify witnesses during the investigation. Consequently, the courts resisted granting bail citing the importance of completion of the investigation in order to commence the trial. Though the courts resisted granting bail genuinely

⁶ Third Proviso to Sub Clause (1) (BNSS2) is as follows:

“Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.”

believing in the stance of the prosecution, there were several instances where such argument did not hold any substance and such ground was misused by the investigative agencies. Therefore, **Proviso 3 to Section 437** stipulated that the requirement of custody cannot be sufficient ground to deny bail to the accused.

What BNSS did is it stipulated a specific time period to be considered while adjudicating the bail application in reference to the defense of requirement of custody usually raised by the prosecution. The new law made a slight departure from the existing provision by adding a caveat that the accused shall be entitled to a regular bail if the court finds that the custody of the accused required for identifying the witnesses during the investigation is more than the **first fifteen days**.⁷

Proviso 3 to Section 437 (CrPC)	Proviso 3 of Section 480 of (BNSS)
<i>“Provided also 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 be given by the Court.”</i>	<i>Provided also 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.”</i>

D]: Anticipatory Bail

When the person accused of committing an offense apprehends arrest against the commission of a crime then an anticipatory bail application can be filed before the court in anticipation of arrest. The BNSS has not significantly altered the provisions regarding anticipatory bail compared to the Cr.P.C., with one notable exception: the existing law prohibits granting anticipatory bail to

⁷ Proviso 3 of Section 480 of BNSS

individuals accused of gang-raping a woman under sixteen (Section 376DA) or twelve years (Section 376DB) of age, as outlined in sub-section 4 of Section 438 Cr.P.C. The new law, however, extends this prohibition, disallowing anticipatory bail for those accused of gang-raping any woman under eighteen years of age. Thus, the new provision broadens the scope by increasing the age threshold from sixteen to eighteen years for the denial of anticipatory bail in cases of gang rape.

Sub-section 4 of Section 482 of BNSS2 reads as:

“Nothing in this section shall apply to any case involving the arrest of any person on an accusation of having committed an offense under section 65 and sub-section (2) of section 70⁸ of the Bharatiya Nyaya Sanhita, 2023.”

2. Provisions related to Remand/Custody:

Overview of the concept of remand/custody under CrPC:-

Under the Code of Criminal Procedure, 1973 (Cr.P.C.), an individual arrested by the police for a punishable offense must be presented before a Magistrate within 24 hours. The Magistrate may extend the custody of the accused only in accordance with the procedure outlined in Section 167 of the Cr.P.C. Should the police require custodial interrogation, they must submit an application seeking the remand of the accused in police custody. If police custody is not sought or deemed unnecessary by the Magistrate, the accused is sent to jail and considered to be in judicial custody. An accused person cannot be remanded to police custody for more than a total of 15 days after their initial appearance before the Magistrate. Beyond this duration, the accused can only be held in judicial custody. Additionally, the Magistrate is required to provide reasons for any extension of the remand, whether in police or judicial custody. The accused retains the right to apply for bail at any point during the remand period.

The provision of Default bail –

⁸ *“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.”*

Section 167(2) of CrPC contemplates the default period of 90 days and 60 days to be made applicable considering the nature of the offense committed. By the stipulation of this period, the investigating authorities have been mandated to complete the investigation and submit the chargesheet within the time frame mentioned. If the same is not fulfilled then the courts are directed to grant the bail to the accused mandatorily.

Changes brought thereto in BNSS:

The counterpart to Section 167 of the CrPC, 1973, is **Section 187** of the BNSS. Sub-section (2) of Section 187 allows an accused to be remanded to police custody for a maximum of 15 days, which can be divided into separate intervals but must cumulatively total 15 days, at any point within the initial 40 or 60 days, out of the overall pre-chargesheet detention period of 60 or 90 days.

Additionally, sub-section (3) of the same section provides that *“the Magistrate may authorize the detention of the accused person, **beyond the period of fifteen days**, if he is satisfied that adequate grounds exist for doing so...”* Importantly, this provision does not specify whether 'custody' is police custody or judicial custody, thereby rendering it open for wide interpretation by the Courts.

3. Provisions related to FIR:

A] Zero FIR:

The introduction of the statutory provision of Zero FIR stands as one of the most significant changes brought in the new CrPC. In earlier CrPC there was no such provision and the lodging of FIR was mostly concerned with the jurisdictional parameters. Now, a Zero FIR may be lodged at any police station upon receipt of information regarding a cognizable offense, **irrespective of the territorial jurisdiction**. In essence, a Zero FIR can be filed at any police station, regardless of the location of the incident. Upon registration, the police station must transfer the required documents to the police station with appropriate jurisdiction over the matter. The jurisdictional police station subsequently assigns a number to the FIR and conducts the investigation accordingly. It goes without saying that the provision for Zero FIR will significantly aid victims, as it mandates police officers to register the first information report regardless of territorial jurisdiction. While Section

154 of the CrPC addresses the registration of FIRs, the equivalent provision in the BNSS is **Section 173**.

Section 173 of BNSS reads as follows:

“173. (1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed may be given orally or by electronic communication and if given to an officer in charge of a police station,— (i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it; (ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it...”⁹

Comments:

Zero-FIR is not a newly discovered concept in the Indian criminal law system. The Indian judiciary in a number of instances has stressed its need in the present times. In the case of **State of Andhra Pradesh vs Punati Ramulu And Others**¹⁰ the court held that “Any lack of territorial jurisdiction should not have prevented the constable from recording information about cognizable offence and forwarding the same to the police station having jurisdiction over the area in which the crime was said to have been committed.”

B] E-FIR:

Sec.173 (1) (ii) of BNSS deals with a new type of FIR. This clause enables the victims to register the FIR electronically. The only requisite that mandatorily has to be followed is the signature of

⁹ Earlier this provision as enumerated in Section 154 of CrPC stood as,

“154. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf...”

¹⁰ 1994 SCC (SUPP) 1 590

the person giving such information is required to be taken within three days before the e-FIR can be taken on record.

This provision serves as a significant relief for female victims, facilitating the prompt registration of sensitive cases and sparing them the distress of recounting their ordeal during the FIR registration process.

Comments:

In this context, it is noteworthy that the Parliamentary Standing Committee on Home Affairs, in its review report of the Bill, recognized the beneficial impact of permitting the online registration of FIRs. However, the Committee also asserted that such online or electronic registration should be allowed only through methods specified by the State. Unregulated implementation would pose technical and logistical challenges for the police and complicate the tracking and management of multiple FIRs.

C]: Preliminary Enquiry:

Section 173(3) of the BNSS now confers statutory recognition to preliminary inquiries for offenses punishable by a term of imprisonment of three years or more, but less than seven years. Such enquiries must be conducted with the prior approval of an officer not below the rank of Deputy Superintendent of Police. Importantly, the enquiry must be completed within fourteen days in cases where a prima facie case is established. If a prima facie case already exists, the officer is obligated to proceed directly with the investigation.

Section 173(3) reads as:

“(3) 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.”

Comments:

The provision contemplates a stage that is ‘preliminary’ in nature before filing any information pertaining to the commission of any offense being cognizable in nature and the punishment for the same ranges from 3 years to 7 years. This can be viewed as an extension of the investigating powers of the police authorities. The case of **Lalitha Kumari vs State of Uttar Pradesh**¹¹, is a vivid case law concerning the issue of preliminary enquiry by the hands of the police authorities. The judgment had categorically enumerated a list of types of offenses wherein the preliminary enquiry ‘may’ be resorted to by the police authorities.

According to *Lalita Kumari*, the category of cases in which preliminary inquiry may be made were :

- 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.

4. Provisions stipulating new timelines:

A] Timelines set for preliminary enquiry

As discussed in the foregoing paragraph, the provisions related to the preliminary enquiry also stipulate the timeline. The preliminary enquiry must be conducted within **fourteen days** where a

¹¹ 2012 (2) SCC(CRI) 1

prima facie case is present. However, if a prima facie case is already established, the officer must proceed directly with the investigation

B] Timeline for submission of Medical Report in certain cases

As per **Section 184 of the BNSS**, the woman against whom rape is alleged or attempted to have been committed or attempted will be examined by a registered medical practitioner. Accordingly, such a woman shall be sent to such registered medical practitioner **within twenty-four hours** of receiving the information of such an offense. The examination shall then be conducted, and the medical practitioner is required to forward the report to the investigating officer within **seven days**. **Section 184(6)**, which prescribes the timeline reads as:

“(6) The registered medical practitioner shall, within a period of seven days forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of sub-section (6) of that section.”

C] Timeline for supply of relevant documents

In cases initiated based on a police report, Section 230 of the BNSS mandates a period of fourteen days for providing relevant documents to both the accused and the victim. This fourteen-day period begins from the date of the accused's production or appearance.

Section 230: In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and the victim (if represented by an advocate) free of cost, a copy of each of the following: ...”

D] Timeline for framing of charges and filing discharge application:

Framing Charges:

To ensure prompt trials and minimize delays, a **sixty-day** timeframe has been established for the framing of charges. This period commences from the date of the first hearing on the charges. For convenience, Section 251(b) reads as:

*"251. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-
(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused within a period of **sixty days** from the date of first hearing on charge..."*

Discharge:

Similarly, a sixty-day window has been prescribed for filling out the discharge application by the accused. Section 250 mandates the same for session cases and Section 262 for warrant cases.

The relevant portions of these Sections are reproduced below:

"250. (1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232..."

"262. (1) The accused may prefer an application for discharge within a period of sixty days from the date of supply of copies of documents under section 230..."

E] Timeline for pronouncing judgment in a criminal trial:

Section 258 of the BNSS stipulates that a judge must deliver a verdict within thirty days following the conclusion of arguments, with the possibility of an extension up to forty-five days.

Section 258 reads as:

"258. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may be extended to a period of forty-five days for reasons to be recorded in writing."¹²

¹² Pertinently, Section 353 of the CrPC states that the Judgment in any criminal court shall be pronounced either 'immediately after the termination of the trial' or 'at some subsequent time.'

In this regard, it may be noted in the decision of *Anil Rai vs State of Bihar* (2001), the Supreme Court in detail had issued guidelines related to the timely pronouncement the judgments in certain cases. Consequently, comprehensive guidelines were established to ensure the timely pronouncement of judgments. These guidelines included:

“i. That Chief Justice of the High Courts, on their administrative side, should direct the Court Officers/ Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that months.

ii. If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as deems fit in the circumstances.”

F] Timeline for informing about the progress of the investigation to victims:

In addition to the aforementioned timelines, the BNSS requires that the police officer inform the informant or victim of the progress of the investigation within a period of ninety days. This notification may also be communicated through electronic means. Section 193(3)(ii) reads as:

“(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim.”

5. Provisions related to the use of Audio-Video electronic means:

The new legislation underscores the importance of audio-video technology in assisting the police with crime scene investigations. **Section 2(1)(a) of BNSS** defines "audio-video electronic means" as,

"audio-video electronic means" shall include the 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”

A] Audio-Visual Recording During the 'Search and Seizure'

The new law includes a specific provision mandating the 'recording of search and seizure through audio-video electronic means.' It requires police officers to make audio-video recordings during the search of a location or the seizure of any article, property, or item. The seizure list, detailing the items seized, must be accompanied by the recording, which must be promptly forwarded to the appropriate authorities.¹³

B] Compulsory Videography of the Forensic Evidence Collection Process

Section 176(3) mandates that a 'forensics expert' collect forensic evidence at crime scenes for all offenses punishable by seven years or more of imprisonment. Additionally, a police officer must record the process using a mobile phone or another electronic device.¹⁴

6. Provisions related to the Arrest:

ARREST

¹³ Section 105 BNSS2

¹⁴ See Proviso to Section 176(3)

i] No aged or infirm individual shall be arrested for offenses punishable by less than three years of imprisonment... (Section 35 BNSS)

In case of offenses punishable with less than 3 years of imprisonment no arrest of a person, who is

- infirm or
- above 60 years of age

shall be made **without the prior permission of DySP.**

(Non obtaining of prior permission of DySP will operate as a bar to the police authority to proceed with the arrest in this regard)

ii] Appointment of Designated Police Officer (Sec 37 BNSS)

An officer of a rank no lower than Assistant Sub-Inspector shall be designated as the Designated Police Officer at each police station. This officer shall be responsible for **maintaining and digitally displaying** information regarding the name, address, and nature of the offense of each arrested individual at the police station and the district headquarters.

iii] Information of arrest to Designated Police Officer [Sec. 48 BNSS]

Police officer effecting arrest is required to inform about the arrest of a person to

- a) Relatives or friends and
- b) Also to designated Police officer

iv] Use of handcuffs allowed in certain cases [Sec.43 (3) BNSS]

Handcuffing the accused is permissible under the following circumstances:

- When dealing with a habitual or repeat offender,
- When the individual has previously escaped from custody, or
- In cases involving organized crime, terrorism, drug-related offenses, unlawful possession of firearms and ammunition, murder, rape, acid attacks, counterfeiting of currency, human trafficking, sexual offenses against minors, or crimes against the State.

7. Provisions for the Speedy Trial:

A] Trial in-absentia of Proclaimed Offender [Sec. 356 BNSS]

The BNSS has established a provision for conducting trials in absentia for Proclaimed Offenders. This enables the trial and issuance of a judgment without the presence of the accused, a procedure not previously included under the Code of Criminal Procedure (CrPC).

Section 356 of the BNSS requires the court to conduct a trial in absentia when an individual designated as a Proclaimed Offender has fled to avoid trial and there is no immediate likelihood of apprehension. Additionally, it stipulates a mandatory waiting period of ninety (90) days from the date of framing the charges before initiating the trial.¹⁵

Note: All the Provisions stipulating the timeline for the fulfillment of certain procedures as enumerated in **Point 4**¹⁶ can said to have been incorporated for the ultimate purpose of expediting the trial procedures.

8. Provision for Pre-Cognizance Hearing of accused:

A significant modification is the introduction of a pre-cognizance opportunity for the accused to be heard before cognizance of an offense is taken. Cognizance is considered to have been taken when magistrates engage with the alleged commission of an offense, thereby initiating inquiry and trial proceedings. Essentially, it marks the commencement of judicial action against an offender or the judicial acknowledgment of an offense.

Under the legal framework that existed till now, Section 200 of the Cr.P.C. required magistrates to examine the complainant and any witnesses when taking cognizance of a non-cognizable offense based on a private complaint. A recent amendment to this provision imposes a new requirement, prohibiting the initiation of cognizance in complaint cases without first affording the accused an 'opportunity of being heard.'

In simpler words, the new law has put a mandatory requirement thereby forming a new stage that will take place even before the 'cognizance stage' usually taken by the magistrates. Now the

¹⁵ Note: CrPC allowed evidence to be recorded in the absence of the accused u/s 299, but did not provide for trial to be completed or for judgment to be pronounced against Proclaimed offender.

¹⁶ Point 4: "Provisions stipulating new timelines"

magistrate will call the accused against whom the complaint has been registered to give him/her an opportunity to be heard.

Section 223 of BNSS stipulates the abovementioned provision.

Bhartiya Sakshya Adhiniyam (BSA) 2023 and repealing of Indian Evidence Act 1872.

The Bhartiya Sakshya Adhiniyam has been enacted bringing about limited changes to the Evidence Act. The most significant changes in the Act pertain to the consolidation of sections and removal of references from the colonial era, while maintaining a construct largely similar to that of the existing Evidence Act.

Changes brought therein:

Definition of Document

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”. Bhartiya Sakshya Adhiniyam now defines a document as,

“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.”

Thus, the new law considers electronic and digital records under the definition of a document, which was not a part of the IEA.

Addition of new illustration:

The five statutory illustrations in the old definition have been retained. The new definition gives a sixth statutory illustration 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”*.

Mandatory Production of Certificate:

It is important to note that subsection (4) of Section 63 of the Bhartiya Sakshya Adhiniyam retains the mandatory requirement for a certificate as specified under Section 65B (4) of the IEA. However, it now specifies that the certificate must be submitted along with the electronic record each time electronic evidence is presented before a court. Additionally, the revised provision clarifies that the certificate can be provided by any person 'in charge of the computer or communication device and an expert (whichever is appropriate),' replacing the previous requirement for a person 'occupying a responsible official position.'

The BSA provides for the admissibility of electronic records and gives the Court discretion to consult an Examiner of Electronic Evidence to form an opinion on such evidence. New section 61 read with section 63 expressly provides for the admissibility of electronic and digital records in evidence as primary evidence.

The Adhiniyam pitches for uniform interpretation and application of similar standards to the same subject matters, and bringing experts of electronic evidence at par with other experts for determining relevant facts.



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