Chapter – 7 Laws relating to Crime and its Procedure

Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita, 2023 is a modern day legislation which has replaced the colonial Indian Penal Code of 1860 which was retained as the main. penal law of the country even after India became independent in 1947. Enforced from 1st July 2024, The Bharatiya Nyaya Sanhita (BNS) 2023 represents a transformative update to India's criminal laws, replacing the colonial era Indian Penal Code (IPC) of 1860. By introducing modernized definitions and addressing new forms of crime, such as cyber offenses and organized crime, the BNS 2023 aims to make India's legal system more aligned with contemporary social and technological realities. It incorporates provisions for community service as punishment, refines terrorism and sedition laws, and eliminates obsolete offenses, reflecting India's commitment to justice and human rights. The BNS 2023 is a crucial step in enhancing the accessibility, relevance, and efficiency of the Indian criminal justice system, while upholding the constitutional rights of all citizens

The Indian Penal Code, 1860 (IPC) was a colonial legislation which was retained as the main penal law of the country even after India became independent in 1947. The Bharatiya Nyaya Sanhita, 2023 which came into force on 1st July 2024 and applies to the whole of India replaced the colonial IPC.

Crime is a social phenomenon. It is a wrong committed by an individual in a society. It arises first when a state is organized, people set up rules, the breaking of which is an act called crime. Law regulates the social interest, arbitrates conflicting claims and demands. The security of persons and property which is an essential function for the State is achieved through the instrumentality of criminal law. Crime being a relative conception is an act defined by State as a crime. The concept of crime changes from time to time and as per the society.

For determination of crime there is no fixed rule. Crime is what the law says it is. The difference between a criminal offence and a civil wrong is that while the former is considered a wrong against the society because of their grave nature, a civil wrong is a wrong done to an individual. It is believed that serious crimes threaten the very existence of an orderly society, and therefore, if such a crime is committed, it is committed against the whole society.

It should be kept in mind that what is criminal, illegal or unlawful may still be a socially acceptable practice. It is also likely that all that a society considers as reprehensible is not criminal in the eyes of law. The divergence of criminal law, however, with the moral and cultural standards of society cannot be too great because governments in framing and amending criminal laws cannot be ignorant of societal standards.

In India, the base of the crime and punitive provision has been laid down in Bharatiya Nyaya Sanhita, 2023. In BNS the definition of crime has not been attempted or defined but according to section 2(24) the word 'Offence' 'means a thing made punishable by BNS'. The word offence and crime are interchangeable. The BNS doesn't uses the word 'crime'. Instead it uses the term 'Offence' as defined under section 2(24).

The Bharatiya Nyaya Sanhita, 2023 is the substantive law of crimes. It defines acts which constitute an offence and lays down punishment for the same. It lays down certain principles of criminal law. The procedural law through which the BNS is implemented is the Bhartiya Nagarik Suraksha Sanhita 2023(BNSS). BNS consists of 20 chapters and 358 sections.

Bharatiya Nagarik Suraksha Sanhita

The Bharatiya Nagarik Suraksha Sanhita(BNSS) is an Act to consolidate and amend the law relating to Criminal Procedure. BNSS was introduced to replace the Criminal Procedure Code, 1973 as part of India's efforts to modernize and streamline its criminal justice system in alignment with contemporary needs and societal expectations. The shift reflects an intent to enhance the efficiency of criminal procedures, ensure victim-centric justice, and integrate technological advancements into the investigative and judicial processes. By addressing delays, redundancies, and complexities in the earlier framework, the BNSS incorporates provisions to expedite trials, strengthen digital evidence mechanisms, and improve transparency. Furthermore, it emphasizes safeguarding the rights of individuals, ensuring fairness, and reducing procedural bottlenecks, thereby making the legal system more accessible and effective for citizens while maintaining the principles of justice and equity.

Company Secretaries and the secretarial profession would have relatively less to do with the Bharatiya Nagarik Suraksha Sanhita, 2023 than with other procedural laws, except for safeguarding against incurring of liability for criminal offences by Directors, Secretary, Manager or other Principal Officer under different corporate and industrial laws. Nevertheless, it is necessary that company secretaries and other secretarial staff should be familiar with some of the relevant features of the Code. It is an Act to consolidate and amend the law relating to the procedure to be followed in apprehending the criminals, investigating the criminal cases and their trial before the Criminal Courts. It is an adjective law but also contains provisions of substantive nature (e.g. Chapters VIII, IX, X and XI). Its object is to provide a machinery for determining the guilt of and imposing punishment on offenders under the substantive criminal law, for example, the Bharatiya Nyaya Sanhita (BNS). The two Codes are to be read together. The Code also provides machinery for punishment of offences under some other Acts.

Jurisdiction of Bharatiya Nyaya Sanhita, 2023

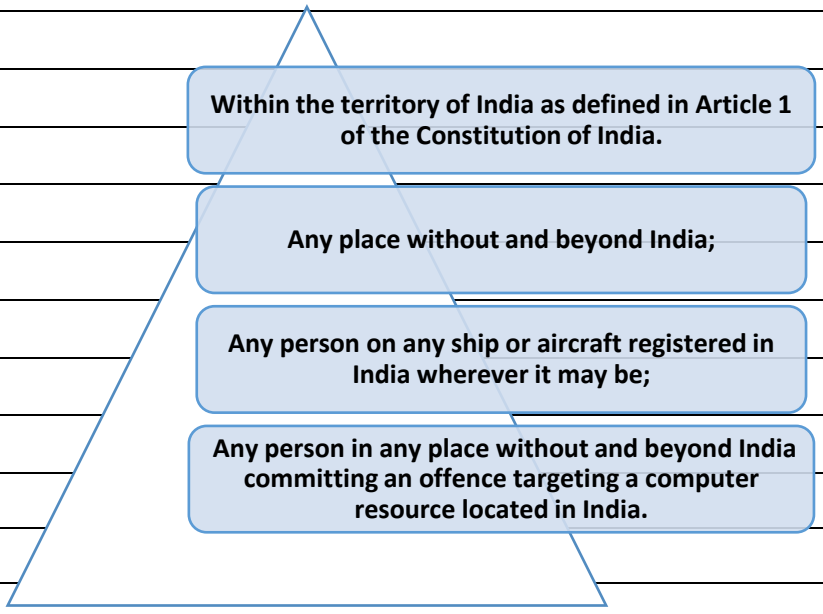
The geographical area or the subjects to which a law applies is defined as the jurisdiction of that law.

Ordinarily, laws made by a country are applicable within its own boundaries because a country cannot have legal machinery to enforce its laws in other sovereign countries. Thus, for most of the laws, the territorial jurisdiction of a law is the international boundary of that country.

Countries, however, also make laws that apply to territories outside of their own country. This is called the extra-territorial jurisdiction.

Under the Bharatiya Nyaya Sanhita 2023, criminal courts in India exercise jurisdiction either because a crime is committed by any person (national, or foreigner) within the Indian territory or because a crime though committed outside India, the person committing the crime is liable to be tried for it under any Indian law. The former is known as intra-territorial jurisdiction and the latter as known as extra-territorial jurisdiction.

Intra-territorial jurisdiction: Where a crime under any provision of BNS is committed within the territory of India, the BNS applies and the courts can try and punish irrespective of the fact that the person who had committed the crime is an Indian national or foreigner. This is called 'intra-territorial jurisdiction' because the submission to the jurisdiction of the court is by virtue of the crime being committed within the Indian territory. Section 1(4) and 1(5) of BNS deals with extra-territorial jurisdiction of the courts. This section declares the jurisdictional scope of operation of the BNS to offences committed within India and beyond India. The emphasis on 'any person' makes it very clear that in terms of considering the guilt for any act or omission, the law shall be applied equally without any discrimination on the ground of caste, creed, nationality, rank, status or privilege. BNS applies to any offence committed:



It should be noted that it is not a defence that a foreigner/non-Indian citizen did not know that he was committing a wrong, the act itself not being an offence in his own country. In this regard the Supreme Court in Mobarik Ali Ahmed v. State of Bombay, 1957 AIR SC 857, held that it is obvious that for an Indian law to operate and be effective in the territory where it operates, i.e., the territory of India, it is not necessary that the laws should either be published or be made known outside the country in order to bring foreigners under its ambit. It would be apparent that the test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of everyone who intends to pass through India

Exemption from intra-territorial jurisdiction of BNS:-

- **Article 361(2) of the Constitution of India protects criminal proceedings against the President or Governor of a state in any court, during the time they hold office.**
- **In accordance with well-recognized principles of international law, foreign sovereigns are exempt from criminal proceedings in India.**
- **This immunity is also enjoyed by the ambassadors and diplomats of foreign countries who have official status in India.**

Section 3 of the IPC replaced with Section 1(4) of the BNS:

BNS: Section 1 (4)

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

Section 4 of the IPC replaced with Section 1(5) of the BNS:

BNS: Section 1 (5)

The provisions of BNS shall also apply to any offence committed by—

(a) any citizen of India in any place without and beyond India;

(b) any person on any ship or aircraft registered in India wherever it may be;

(c) any person in any place without and beyond India committing an offence targeting a computer resource located in India.

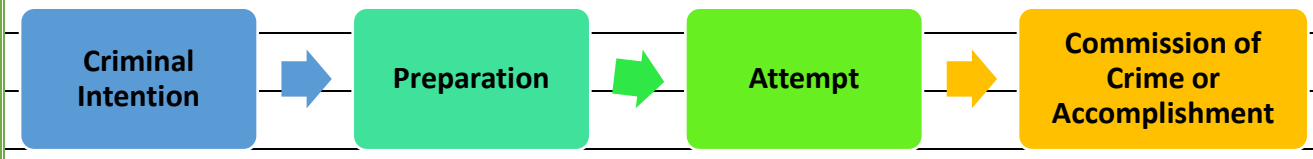
In this section, the word "offence" includes every act committed outside India which, if committed in India, would be punishable under BNS.

Illustration: A, who is a citizen of India, commits a murder in any place without and beyond India. He can be tried and convicted of murder in any place in India in which he may be found.

Changes between Section 3 of the IPC and Section 1(4) of the BNS:	Changes between Section 4 of the IPC and Section 1(5) of the BNS
• Section is included as a subsection in BNS sans heading. "Indian laws" is replaced with "law" and "for the time being in force in India" is inserted.	• Section is included as a subsection in BNS sans heading. In the illustration, "Uganda" has been replaced with "any place outside India."

The stages of Crime

The commission of a crime consists of some significant stages. If a person commits a crime voluntarily, it involves four important stages, viz.



1. ## Criminal Intention

Criminal intention is the first stage in the commission of offence. Intention is the conscious exercise of mental faculties of a person to do an act for the purpose of accomplishing or satisfying a purpose. Law does not as a rule punish individuals for their evil thoughts or criminal intentions. The criminal court does not punish a man for mere guilty intention because it is very difficult for the prosecution to prove the guilty intention of a man.

Intention means doing any act with one's will, desire, voluntariness, malafides and for some purpose. In the BNS, all these varied expressions find place in the various sections of BNS. Intention can also be imputed under the law. For example, if a man drives in a rash and reckless manner resulting in an accident causing death of a person, the reckless driver cannot plead innocence by stating that he never intended to cause the death of the person. It may be true in the strict sense of the term. But a reckless driver should know that reckless driving is likely to result in harm and can even cause death of the persons on the road, So, by virtue of definition of the word 'voluntarily' in BNS, a reckless driver who causes death of a person can be presumed or deemed to have intended to cause the death of the person.

2. Preparation

Preparation means to arrange necessary measures for commission of intended criminal act. Preparation itself is not punishable as it is difficult to prove that necessary preparations were made for commission of the offence. But in certain exceptional cases mere preparation is also punishable.

Under the BNS, mere preparation to commit a few offences is punishable as they are considered to be grave offences. Some of them are as follows:

- Preparation to wage war against the Government (section 190).
- Preparation for counterfeiting of coins or Government Stamps (sections 178 and181).
- Possessing counterfeit coins, false weights or measurements and forged documents (section 180 and 339).
- Making preparation to commit dacoity [section 310 (4)].

3. Attempt

Attempt, which is the third stage in the commission of a crime, is punishable. Attempt has been called as a preliminary crime. Though, section 62 of the BNS does not give any definition of 'attempt' but simply provides for punishment for attempting to commit an offence. Attempt means the direct movement towards commission of a crime after necessary preparations have been made. When a person wants to commit a crime, he firstly forms an intention, then makes some preparation and finally does something for achieving the object; if he succeeds in his object he is guilty of completed offence otherwise only for making an attempt. It should be noted that whether an act amounts to an attempt to commit a particular offence is a question of fact depending on the nature of crime and steps necessary to take in order to commit it. The act constituting the attempt must be proximate to the intended result. Under the BNS, the sections on attempt can be divided into four broad categories:

Those sections in which the commission of an offence and the attempt to commit are dealt within the same section, the extent of the punishment being the same for both the offence as well as the attempt. The examples of this category are those offences against the State such as waging or attempting to wage war against the Government of India, assaulting or attempting to assault the President or Governor with intent to compel or restrain the exercise of lawful power, sedition, a public servant accepting or attempting to accept gratification, using or attempting to use evidence knowing it to be false, dacoity etc.

Those offences in which the attempt to commit specific offences are dealt side by side with the offences themselves, but separately, and separate punishments have been provided for the attempt other than that provided for the offences which have been completed. The examples of this category are attempt to commit an offence punishable with death or imprisonment for life including robbery, murder etc.

Attempt to commit suicide to compel or restrain from applying or restrain of lawful power specifically provided as an offence under section 226 of the BNS.

The fourth category relates to the attempt to commit offences for which no specific punishment has been provided in the BNS. Such attempts are covered under section 62. This section of BNS provides that whoever attempts to commit an offence punishable by BNS with imprisonment for life or imprisonment, or cause such an offence to be committed, and in such attempt does any act towards commission of the offence, shall, where no express provision is made by BNS for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

4. Commission of Crime or Accomplishment:

The last stage in the commission of crime is its accomplishment. If the accused succeeds in his attempt, the result is the commission of crime and he will be guilty of the offence. If his attempt is unsuccessful, he will be guilty for an attempt only. If the offence is complete, the offender will be tried and punished under the specific provisions of the BNS.

Types of punishment

- Death
- Imprisonment for life
- Imprisonment, which is of two descriptions, namely:

1) Rigorous, that is, with hard labour;

2) Simple;

- Forfeiture of property
- Fine
- Community Service

Death:

A death sentence is the harshest of punishments provided in the BNS, which involves the judicial killing or taking the life of the accused as a form of punishment. The Hon'ble Supreme Court in various cases has ruled that death sentence ought to be imposed only in the 'rarest of rare cases'. This doctrine was propounded by the Supreme Court in the case of Bacchan Singh v. State of Punjab (AIR 1980 SC 898). The BNS provides for capital punishment for the following offences:

(a) Murder

(b) Dacoity with Murder.

(c) Waging War against the Government of India.

(d) Abetting mutiny actually committed.

(e) Giving or fabricating false evidence upon which an innocent person suffers death

(f) Abetment of a suicide by a minor or insane person;

(g) Attempted murder by a life convict.

The Bharatiya Nyaya Sanhita (BNS) has increased the number of offenses punishable by death. Some of the offenses that are now punishable by death under the BNS include:

i. Murder

The punishment for murder is death or life imprisonment, and the offender may also be liable to a fine.

ii. Mob lynching

The punishment for murder or grievous hurt by five or more people on specified grounds is a minimum of seven years imprisonment to life imprisonment or death.

iii. Terrorism

The punishment for attempting or committing terrorism is death or life imprisonment and a fine of Rs 10 lakh if it results in death.

iv. Organized crime

The punishment for attempting or committing organized crime is death or life imprisonment and a fine of Rs 10 lakh if it results in death.

In either of the cases, when the court decides that death penalty is the appropriate sentence to be imposed in the light of the gravity of matter and consequences of the offence committed and the absence of mitigating factors, then the court has to give special reasons as to why the court came to this conclusion.

Life Imprisonment:

Imprisonment for life meant rigorous imprisonment, that is, till the last breath of the convict.

Imprisonment:

Imprisonment which is of two descriptions namely –

i) Rigorous Imprisonment, that is hard labour; (ii) Simple Imprisonment

Forfeiture of property:

Forfeiture is the divestiture of specific property without compensation in consequence of some default or act forbidden by law. The Courts may order for forfeiture of property of the accused in certain occasions. The courts are empowered to forfeit property of the guilty under section 154 and 155 of the BNS.

Fine:

Fine is forfeiture of money by way of penalty. It should be imposed individually and not collectively. When court sentences an accused for a punishment, which includes a fine amount, it can specify that in the event the convict does not pay the fine amount, he would have to suffer imprisonment for a further period as indicated by the court, which is generally referred to as default sentence.

Community Service as Punishment:

The Bharatiya Nyaya Sanhita (BNS) 2023 includes community service as a form of punishment for minor offenses:

Purpose

The BNS aims to create a more balanced and rehabilitative criminal justice system by focusing on restorative justice. The goal is to promote rehabilitation and reduce the burden on the prison system. Community service has been used. widely in America to punish petty offences, for example in cases of vandalism, petty theft, etc

Examples of offenses under BNS

Community service can be an option for offenses like petty thefts, public nuisance, false defamation complaints, and drunken misconduct in public.

How it works

Courts can choose community service over incarceration or fines. For example, offenders involved in thefts of property valued under Rs 5,000 can avoid traditional punishments by returning the stolen goods and performing

community service.

Community service for offences under the Bharatiya Nyaya Sanhita (BNS) 2023:

I. Involvement of public servants in illegal trade (Sec 202 BNS)

II. Non-appearance in response to a proclamation (Sec 209 BNS)

III. Attempt to commit suicide to influence legal authority (Sec 226 BNS)

IV First conviction of petty theft involving property valued below ₹5,000 and the property must have been recovered. (Sec 303 BNS)

V. Public misconduct by a drunken person (Sec 355 BNS)

VI. Defamation (Sec 356 BNS)

Difference between Fine and Penalty

Fine	Penalty	Analysis
•According to merriam-webster dictionary fine "a sum imposed as punishment for an offense".	•According to merriam-webster dictionary, "the suffering or the sum to be forfeited to which a person agrees to be subjected in case of non fulfillment of stipulations."	•An inference may be drawn from the definitions above that punishments are against offences and penalties are against non-compliances. •According to section 2(38) of the General Clauses Act, 1897, offence shall mean any act or omission made punishable by any law for the time being in Force. •According to Merriam-webster dictionary, the meaning of Non-compliances is failure or refusal to comply with something (such as a rule or regulation) : a state of not being in compliance. •Accordingly, we can analyse that the mention of fine and penalty in a particular provision may depend upon the nature of provision i.e. Criminal or Civil.

Example

According to section 12(8) of the Companies Act, 2013, if any default is made in complying with the requirements of section 12, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

In this provision, we may note that here the default is in nature of non-compliance there the provision creates the liability of penalty.

According to section 16(3) of the Companies Act, 2013, if a company makes default in complying with any direction given under section 16(1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.

In this provision, we may note that here the default is in nature of offence and. the provision provides for fine as a punishment

Further, it may be noted that in the Companies Act, 2013, where monetary penalty is provided for any default, generally no punishment by way of imprisonment is provided. But, Fine and imprisonment are mostly provided together. Two such examples may be referred as under:

Section 8(11) of Companies Act, 2013

- **"If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twentyfive thousand rupees but which may extend to twenty-five lakh rupees, or with both"**

Section 26(9) of the Companies Act, 2013

- **"If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both."**

The same may also be analysed from SEBI Act, 1992, where imprisonment and fine and kept together for imposition but liability of penalties are provided for non-compliances.

THE FUNDAMENTAL OF ELEMENTS OF CRIME

The basic function of criminal law is to punish the offender and to deter the incidence of crime in the society. A criminal act must contain the following elements:

Elements of Crime ->

Human Being	Mens rea
•The first requirement for commission of crime is that the act must be committed by a human being. The human being must be under legal obligation to act in particular manner and be physically and mentally fit for conviction in case he has not acted in accordance with the legal obligation. Only a human being under legal obligation and capable of being punished can be the proper subject of criminal law.	•The basic principle of criminal liability is embodied in the legal maxim 'actus non facit reum, nisi mens sit rea'. It means 'the act alone does not amount to guilt; the act must be accompanied by a guilty mind'. The intention and the act must both concur to constitute the crime. Mens rea is defined as the mental element necessary to constitute criminal liability. It is the attitude of mind which accompanies and directs the conduct which results in the 'actus reus'. The act is judged not from the mind of the wrong-doer, but the mind of the wrong-doer is judged from the act. 'Mens rea' is judged from the external conduct of the wrong doer by applying objective standards.

Types of mens rea

Hon'ble Supreme Court in Girja Nath v. State said that mens rea is a loose term of elastic signification and covers a wide range of mental status and conditions the existence of which give criminal hue to actus reus. Intention, Negligence and recklessness are the important forms of mens rea.

Intention: Intention is defined as 'the purpose or design with which an act is done'. Intention indicates the position of mind, condition of someone at particular time of commission of offence and also will of the accused to see effects of his unlawful conduct. Criminal intention does not mean only the specific intention but it includes the generic intention as well. For example: A poisons the food which B was supposed to eat with the intention of killing B. C eats that food instead of B and is killed. A is liable for killing C although A never intended it.

Negligence: Negligence is the second form of mens rea. Negligence is not taking care, where there is a duty to take care. Negligence or carelessness indicates a state of mind where there is absence of a desire to cause a particular consequence. The standard of care established by law is that of a reasonable man in identical circumstances. What amounts to reasonable care differs from thing to thing depending situation of each case. In criminal law, the negligent conduct amounts to means rea.

Recklessness: Recklessness occurs when the actor does not desire the consequence, but foresees the possibility and consciously takes the risk. It is a total disregard for the consequences of one's own actions. Recklessness is a form of mens rea.

The word 'mens rea' as such is not used in the Bharatiya Nyaya Sanhita, 2023,. but the idea underlying in it is seen in the entire BNS. Generally, in the BNS, every offence is defined with precision embodying the necessary mens rea in express words. The mens rea or evil intent of the wrong-doer is indicated by the use of such words as- intentionally, voluntarily, fraudulently, dishonestly, maliciously, knowingly etc

Exception of mens rea

1. Statutory Imposition: Where a statute imposes liability, the presence or absence of a guilty mind is irrelevant. The classical view of that 'no mens rea, no crime' has long been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishment even where the offences have been defined to exclude mens rea. Many laws passed in the interest of public safety and social welfare imposes absolute liability. This is so in matters concerning public health, food, drugs, etc. There is absolute liability (mens rea is not essential) in the licensing of shops, hotels, restaurants and chemists establishments. The same is true of cases under the Motor Vehicles Act and the Arms Act, offences against the State like waging of war, sedition etc.

2. Difficulty in proving mens rea: Where it is difficult to prove mens rea and penalties are petty fines. In such petty cases, speedy disposal of cases is necessary and the proving of mens rea is not easy. An accused may be fined even without any proof of mens rea.

3. Interest of Public Safety: In the interest of public safety, strict liability is imposed and whether a person causes public nuisance with a guilty mind or without guilty mind, he is punished.

4. Offence without knowledge: If a person violates a law even without the knowledge of the existence of the law, it can still be said that he has committed an act which is prohibited by law. In such cases, the fact that he was not aware of the law and hence did not intend to violate it is no defense and he would be liable as if he was aware of the law. This follows from the maxim 'Ignorantia juris non excusat' which means ignorance of the law is no excuse.

Corporate Body and Mens Rea

With the proliferation in juristic persons and a growth in their activities which increasingly touch upon the daily lives of ordinary people, criminal law has evolved to bring such persons within its ambit. For example, according to section 2(26) of the BNS, the word 'person' includes any Company or Association, or body of persons, whether incorporated or not. Thus companies are covered under the provisions of the BNS. Virtually in all jurisdictions across the world governed by the rule of law, companies can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary

mens rea for the commission of criminal offences. The criminal intent of the 'alter ego' of the company/ body corporate, i.e., the person or group of persons that guide the business of the company, is imputed to the company.

In State of Maharashtra v. M/s Syndicate Transport, AIR 1964 Bom 195, it was held that the question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend on the nature of offence disclosed by the allegations in the complaint or in the charge sheet, the relative position of the officer or agent vis-à-vis the corporate body and other relevant facts and circumstances which could show that the corporate body, as such, meant or intended to commit that act.

Actus Reus (act or omission): *The third essential element of crime is actus reus. A human being and an evil intent are not enough to constitute a crime for one cannot know the intentions of a man. Actus reus means overt act or unlawful commission done in carrying out a plan with the guilty intention. Actus reus is defined as a result of voluntary human conduct which law prohibits. It is the doing of some act by the person to be held liable. An 'act' is a willed movement of body.*

A man may be held fully liable even when he has taken no part in the actual commission of the crime. For example, if a number of people conspire to murder a person and only one of them actually shoots the person, every conspirator would be held liable for it. A person will also be held fully responsible if he has made use of an innocent agent to commit a crime.

COGNIZABLE OFFENCE AND NON-COGNIZABLE OFFENCE

According to section 2(1)(g) of BNSS, "cognizable offence" 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.

However, according to section 2(1)(o), "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant.

(Note: It may be observed from the First Schedule that non-cognizable offences are usually bailable while cognizable offences are generally non-bailable).

CLASSES OF CRIMINAL COURTS

Following are the different classes of criminal courts:

- Executive Magistrates
- Judicial Magistrates of Second Class
- Judicial Magistrates of First Class
- Sessions Court
- High Court

Besides this, the Courts may also be constituted under any other law. The Supreme Court is also vested with powers to deal with some criminal matters. Article 134 confers appellate jurisdiction on the Supreme Court in regard to criminal matters from a High Court in certain cases.

Changes introduced by BNSS

Section 6 of BNSS (Section 6 of CrPC): Words "in any Metropolitan area, Metropolitan Magistrates" are excluded.

POWER OF COURTS

Chapter III of BNSS deals with the power of Courts. One of such power is to try offences. Offences are divided into two categories:

- those under the Bharatiya Nyaya Sanhita; and
- those under any other law.

According to Section 21, any offence under the Bharatiya Nyaya Sanhita, 2023 may be tried by the High Court or the Court of Session or any other Court by which such offence is shown in the First Schedule to be triable, whereas any offence under any other law shall be tried by the Court mentioned in that law and if not mentioned, it may be tried by the High Court or any other Court by which such offence is shown in the First Schedule to be triable.

This section is a general section and is subject to the other provisions of BNSS.

Power of the Court to pass sentences

(a) Sentences which High Courts and Sessions Judges may pass

According to section 22 of BNSS, a High Court may pass any sentence authorised by law. A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(b) Sentences which Magistrates may pass

Section 23 lays down the quantum of sentence which different categories of Magistrates are empowered to impose. The powers of individual categories of Magistrates to pass the sentence are as under:

The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.	**The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding fifty thousand rupees, or of both, or of community service.**	**The Court of Magistrate of the second class may pass a sentence of imprisonment for 27 a term not exceeding one year, or of fine not exceeding ten thousand rupees, or of both, or of community service**

Explanation.—"Community service" shall mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.

Changes introduced by BNSS

Section 23 of BNSS (Section 29 of CrPC): Change in amount of fine: ten thousand is replaced by fifty thousand, and five thousand is replaced by ten thousand. The explanation of Section 23 defines "community service." Sub-section 29(4) CrPC is excluded.

(c) Sentence of imprisonment in default of fine

According to section 24, the Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law: Provided that the term—

(a) is not in excess of the powers of the Magistrate under section 23;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 23.

(d) Sentences in cases of conviction of several offences at one trial Section 25 relates to the quantum of punishment which the Court is authorised to impose where the accused is convicted of two or more offences at one trial. Under this section, the Court may, subject to the provisions of section 9 (Limit of punishment of offence made up of several offences) of the BNS, sentence to the several punishments prescribed which such Court is competent to inflict. Such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

Changes introduced by BNSS

Section 25 of BNSS (Section 31 of CrPC): Sub section (1) is reframed but the essence is same. In subsection (2) (a) fourteen years is replaced by twenty years.

INHERENT POWERS OF THE COURT

Section 528 of the BNSS is one of the most important section of BNSS. It states that nothing in BNSS shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under BNSS, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The powers of the High Court under section 528 of BNSS are partly administrative and partly judicial. Inherent powers under section 528 include. powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under section 528 of BNSS. These powers are neither limited nor curtailed by any other provisions of BNSS. However, such inherent powers are to be exercised sparingly and with caution

The Supreme Court in Madhu Limaye v. State of Maharashtra, 1978 AIR 47, has held that the following principles would govern the exercise of inherent jurisdiction of the High Court:

1. Power is not to be resorted to, if there is a specific provision in the Code for redress of grievances of aggrieved party.
2. It should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.
3. It should not be exercised as against the express bar of the law engrafted in any other provision of the code.

It is well settled that the inherent powers can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. If an effective alternative remedy is available, the High Court will not exercise its powers under this section, especially when the applicant may not have availed of that remedy.

ARREST OF PERSONS

The word "arrest" when used in its ordinary and natural sense means the apprehension or restrain or the deprivation of one's personal liberty to go where he pleases. The word "arrest" consists of taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge and preventing the commission of a criminal offence. Section 35 enumerates different categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant.

Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) 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 punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(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

(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: Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under BNSS or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 394 of BNSS relating to notification of address of previously convicted offender; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Changes introduced by BNSS:

Section 35 of BNSS (Section 41 of CrPC): A new subsection 7 is added: "No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age."

Certain measures to be followed in the exercise of power under Section 35

Section 35(3) says that the police officer shall, in all cases where the arrest of a person is not required under section 35(1) 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.

Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice. Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

However, where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

Procedure of Arrest

Section 36 provides the provisions relating to procedure of arrest and duties of officer making arrest

Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other

person named by him to be informed of his arrest.

According to Section 38 when any person is arrested and interrogated by the. police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation

Even the above measures while exercising the power to arrest is not always followed. The Supreme Court in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, observed that: "the need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive".

The Supreme Court in the above matter has directed that accused should not be arrested in routine manner and all the pre-conditions must be satisfied. The. above judgement applies to crimes punishable with upto 7 years of imprisonment

Arrest on refusal to give name and residence

- According to section 39, when any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses on demand of such officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.
- When the true name and residence of such person have been ascertained, he shall be released on a bond or bail bond, to appear before a Magistrate if so required. However, if such person is not resident in India, the bail bond shall be secured by a surety or sureties resident in India.
- If the true name and residence of such person is not ascertained within twenty-four hours from the time of arrest or if he fails to execute the bond or bail bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Arrest by private person

- According to section 40, any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, but within six hours from such arrest, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

Arrest by Magistrate

- According to section 41, when any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.
- Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Changes introduced by BNSS

Section 40 of BNSS (Section 43 of CrPC): In subsection (1), without unnecessary delay is further specified by "but within six hours from such arrest." In subsection (2), "re-arrest" is replaced by "take him in custody"

Arrest how made

According to section 43, in making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

However, where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

If any person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while producing such person before the court who is a habitual or repeat offender, or who escaped from custody, or who has committed offence of organised crime, terrorist act, drug related crime, or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency-notes, human trafficking, sexual offence against children, or offence against the State.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

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 Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

Changes introduced by BNSS

Section 43 of BNSS (Section 46 of CrPC): A new subsection (3) is added regarding the handcuff of a habitual or repeat offender or accused who has committed certain offences mentioned in the sub-section, etc.

Section 44 is an enabling provision and is to be used by the police officer with regard to exigencies of a situation and provides for the provisions relating to search of place entered by person sought to be arrested. Section 45 authorises a police officer to pursue the offender whom he is authorised to arrest without warrant into any place in India for the purpose of effecting his arrest.

According to section 78, the police officer or other person executing a warrant of arrest shall (subject to the provisions of section 73 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person. However, such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Article 22(2) of the Constitution of India also provides the provision for producing the arrested person before the Magistrate within 24 hours.

When a person is arrested under a warrant, Section 78 becomes applicable, and when he is arrested without a warrant, he can be kept into custody for a period not exceeding 24 hours, and before the expiry of that period he is to be produced before the nearest Magistrate, who can under Section 187 order his detention.

The Magistrate to whom an accused person is forwarded under section 187 may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days

out of detention period of sixty days or ninety days, as the case may be, as. provided in section 187(3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction

According to section 59, officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

According to section 60, no person who has been arrested by a police officer shall be discharged except on his bond, or bail bond, or under the special order of a Magistrate.

According to section 61, if a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India. The provisions of section 44 shall apply to arrests under this section although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

According to section 62, no arrest shall be made except in accordance with the provisions of BNSS or any other law for the time being in force providing for arrest.

SUMMONS AND WARRANTS

The general processes to compel appearance are:

(1) Summons

(2) Warrants

Summons

According to section 63, every summons issued by a Court under BNSS shall be,—

(i) in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court; or

(ii) in an encrypted or any other form of electronic communication and shall bear the image of the seal of the Court or digital signature.

Further as per section 64, every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant. However, by virtue of section 66, 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 the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Changes introduced by BNSS

Section 66 of BNSS (Section 64 of CrPC): The word "male" is excluded to make the provision gender neutral.

Service of summons on corporate bodies, firms, and societies

Section 65 of BNSS provides the provisions relating to Service of summons on corporate bodies, firms, and societies. Service of a summons on a company or corporation may be effected by serving it on the Director, Manager, Secretary or other officer of the company or corporation, or by letter sent by registered post addressed to the Director, Manager, Secretary or other officer of the company or corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

In this section, "company" means a body corporate and "corporation" means an incorporated company or other body corporate registered under the Companies Act, 2013 or a society registered under the Societies Registration Act, 1860.

Service of a summons on a firm or other association of individuals may be effected by serving it on any partner of such firm or association, or by letter sent by registered post addressed to such partner, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Changes introduced by BNSS

Section 65 of BNSS (Section 63 of CrPC): In subsection (1), Director and Manager is added. New subsection (2) regarding service of summons on any partner of a firm or other association of individuals.

Procedure when service cannot be effected as before provided/Substituted Service of Summons

According to section 67, if service cannot by the exercise of due diligence be effected as provided in section 64, section 65 or section 66, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

According to section 68, where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 64, and shall return it to the Court under his signature with the endorsement required by that section. Such signature shall be evidence of due service.

As per section 69, when a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

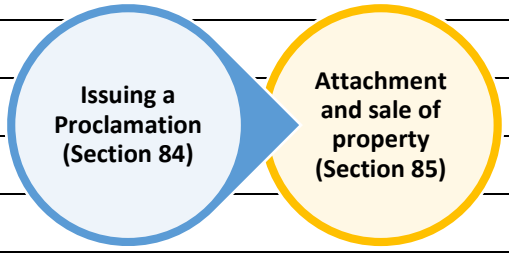
Service of summons on witness

Section 71 provides the provisions relating to service of summons on witnesses. Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by electronic communication or by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

When an acknowledgement purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received or on the proof of delivery of summons under section 70(3) by electronic communication to the satisfaction of the Court, the Court issuing summons may deem that the summons has been duly served.

PROCLAMATION AND ATTACHMENT

Where a warrant remains unexecuted, the Code of Procedure Code, 1973 provides for two remedies:



Section 84 provides that 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.

Section 85 also provides that the Court issuing a proclamation under section 84 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person. However, where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,—

(a) is about to dispose of the whole or any part of his property; or
(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment of property simultaneously with the issue of the proclamation.

The object of attaching property is not to punish him but to compel his appearance.

SUMMONS TO PRODUCE

Sometimes it is necessary that a person should produce a document or other thing which may be in his possession or power for the purposes of any investigation or inquiry under the BNSS 2023. This can be compelled to be

produced by issuing summons (Sections 94 and 95) or a warrant (Sections 96 to 101).

SEARCH WARRANT

Serach Warrants may be issued in the following circumstances (Section 96)

Where any Court has reason to believe that a person to whom a summons order under section 94 or a requisition under of section 95 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition; or

such document or thing is not known to the Court to be in the possession of any person; or

the Court considers that the purposes of any inquiry, trial or other proceeding under this BNSS will be served by a general search or inspection,

But such warrant shall not be issued for searching a document, parcel or other thing in the custody of the postal or telegraph authority, by a Magistrate other than a District Magistrate or Chief Judicial Magistrate, nor would such warrant be issued so as to affect Sections 129 and 130 of the BSA 2023 or the Bankers' Book Evidence Act, 1891.

Search of place suspected to contain stolen property, forged documents, etc

According to section 97, if a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place;

(b) to search the same in the manner specified in the warrant;

(c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies;

(d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety;

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or

having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies.

The objectionable articles to which section 97 applies are—

(a) counterfeit coin;

(b) pieces of metal made in contravention of the Coinage Act, 2011, or brought into India in contravention of any notification for the time being in force issued under section 11 of the Customs Act, 1962;

(c) counterfeit currency note; counterfeit stamps;

(d) forged documents;

(e) false seals;

(f) obscene objects referred to in section 294 of the Bharatiya Nyaya Sanhita, 2023;

(g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

Search for persons wrongfully confined

In terms of Section 100, any District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class who has reasons to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant for the search of the person so confined. The person if found shall be immediately produced before the Magistrate for making such orders as in the circumstances of the case he thinks proper.

Recording of search and seizure through audio-video electronic means

According to section 105, the process of conducting search of a place or taking possession of any property, article or thing under Chapter VII 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.

SUMMARY TRIALS

Summary trial is a speedy trial by dispensing with formalities or delay in proceedings. By summary cases is meant a case which can be tried and disposed of at once. Generally, it will apply to such offences not punishable with imprisonment for a term exceeding two years.

Section 283 (1) of the BNSS sets out the provisions for summary trials. It states:

Notwithstanding anything contained in BNSS—

(a) any Chief Judicial Magistrate;

(b) Magistrate of the first class,

shall try in a summary way all or any of the following offences:—

(i) theft, under sub-section (2) of section 303, section 305 or section 306 of the Bharatiya Nyaya Sanhita, 2023 where the value of the property stolen does not exceed twenty thousand rupees;
(ii) receiving or retaining stolen property, under sub-section (2) of section 317 of the Bharatiya Nyaya Sanhita, 2023, where the value of the property does not exceed twenty thousand rupees;
(iii) assisting in the concealment or disposal of stolen property under sub-section (5) of section 317 of the Bharatiya Nyaya Sanhita, 2023, where the value of such property does not exceed twenty thousand rupees;
(iv) offences under sub-sections (2) and (3) of section 331 of the Bharatiya Nyaya Sanhita, 2023;
(v) insult with intent to provoke a breach of the peace, under section 352, and criminal intimidation, under sub-sections (2) and (3) of section 351 of the Bharatiya Nyaya Sanhita, 2023
(vi) abetment of any of the foregoing offences;
(vii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
(viii) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871.

The Magistrate may, after giving the accused a reasonable opportunity of being heard, for reasons to be recorded in writing, try in a summary way all or any of the offences not punishable with death or imprisonment for life or imprisonment for a term exceeding three years. However, no appeal shall lie against the

decision of a Magistrate to try a case in a summary way under section 283(2).

When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by BNSS.

According to section 285, in trials under Chapter XXII, the procedure specified in BNSS for the trial of summons-case shall be followed except as hereinafter mentioned. No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under Chapter XXII.

Further according to section 287, in every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

COMPOUNDING OF OFFENCES

Section 359 of the BNSS enumerates the provisions related to compounding of offences. Compounding means settlement of offence committed by a person. The settlement must be with the consent of the court of law.

There may be the times when parties to a suit do not want to continue further proceedings in the court and they want to settle it out of the court amicably, then the compounding comes into picture. In such case, future proceedings do not take place in the court.

Compoundable offence and who can compound

Few examples: The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:

Offence	Section of the Bharatiya Nyaya Sanhita, 2023 applicable	Person by whom offence may be compounded
Voluntarily causing hurt.	115(2)	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	126(2), 127(2)	The person restrained or confined.
Assault or use of criminal force.	131,133,136	The person assaulted or to whom criminal force is used.
Theft.	303(2)	The owner of the property stolen.

Few examples: The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:

Offence	Section of the Bharatiya Nyaya Sanhita applicable	Person by whom offence may be compounded
Voluntarily causing grievous hurt.	117(2)	The person to whom hurt is caused.
Assault or criminal force in attempting wrongfully to confine a person.	135	The person assaulted or to whom the force was used.
Theft, by clerk or servant of property in possession of master.	306	The owner of the property stolen.
Criminal breach of trust.	316(2)	The owner of the property in respect of which breach of trust has been committed.

BAIL

According to section 478, when any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the

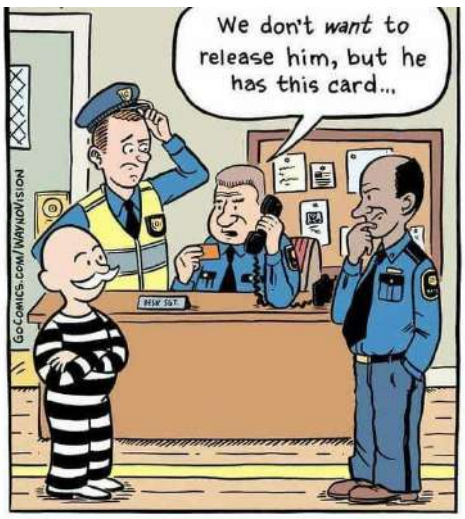
proceeding before such Court to give bail, such person shall be released on bail.

However, such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail bond from such person, discharge him on his executing a bond for his appearance as hereinafter provided.

Where a person is unable to give bail bond within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes above said.

Further nothing in section 478 shall be deemed to affect the provisions of section 135(3) or section 492.

Notwithstanding anything in section 478(1), where a person has failed to comply with the conditions of the bond or bail bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond or bail bond to pay the penalty thereof under section 491.



Direction for grant of bail to person apprehending arrest (Anticipatory Bails)

According to section 482, when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

When the High Court or the Court of Session makes a direction under section 482(1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make 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 any police officer

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.

If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under section 482(1)

Nothing in section 482 shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and section 70(2) of the Bharatiya Nyaya Sanhita, 2023.

Under section 493, when any surety to a bail bond under BNSS becomes insolvent or dies, or when any bond is forfeited under the provisions of section 491, the Court by whose order such bond was taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES

In general, there is no limitation of time in filing complaints under BNSS but delay may hurdle the investigation. Further, the Limitation Act, 1963 provides the period of limitation for appeal and revision applications. Therefore, chapter XXXVIII has been introduced in BNSS prescribing limitation period for taking cognizance of certain offences. (Sections 513 to 519).

According to section 514, except as otherwise provided in BNSS, no Court shall take cognizance of an offence of the category specified below, after the expiry of the period of limitation.

The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment. For the purpose of computing the period of limitation, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173.

Commencement of the period of limitation

According to section 515, the period of limitation, in relation to an offender, shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

In computing the said period, the day from which such period is to be computed shall be excluded.

Exclusion of time in certain cases

Section 516 provides provisions for exclusion of time in certain cases. These are as under:

(a) the period during which another prosecution was diligently prosecuted (the prosecution should relate to the same facts and is prosecuted in good faith);

(b) the period of the continuance of the stay order or injunction (from the date of grant to the date of withdrawal) granted against the institution of prosecution;

(c) where notice of prosecution has been given, the period of notice;

(d) where previous sanction or consent for the institution of any prosecution is necessary, the period required for obtaining such consent or sanction including the date of application for obtaining the sanction and the date of the receipt of the order;

(e) the period during which the offender is absent from India or from territory outside India under Central Govt. Administration; and

(f) period when the offender is absconding or concealing himself. (Section 516) If limitation expires on a day when the Court is closed, cognizance can be taken on the day the Court re-opens. (Section 517)

Continuing Offences

Continuing offence means an offence which is committed for a very long period. It is neither clearly defined in the Bhaartiya Nyaya Sanhita or Bharatiya Nagarik Suraksha Sanhita Whether the offence is continuing one or not, it clearly depends on its nature.

The offence which is happening and continuing again and again comes in the category of continuing offence.

In the case of a continuing offence, a fresh period of limitation begins to run at every moment during which the offence continues. (Section 518)

CASE LAWS

In Udai Shankar Awasthi v. State of U.P. (2013), the Supreme Court observed that the expression, 'continuing offence' has not been defined in the Cr.P.C. because it is one of those expressions which does not have a fixed connotation, and therefore, the formula of universal application cannot be formulated in this respect.

In Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath (1991) the Supreme Court held that the question whether a particular offence is a 'continuing offence' or not must, therefore, necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence.

In Balakrishna Savalram Pujari Waghmare & Ors. v. Shree Dnyaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798, the Court observed that a continuing offence is an act which creates a continuing source of injury, and renders the doer of the act responsible and liable for the continuation of the said injury. In case a wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the said act may continue. If the wrongful act is of such character that the injury caused by it itself continues, then the said act constitutes a continuing wrong. The distinction between the two wrongs therefore depends, upon the effect of the injury.

In State of Bihar v. Deokaran Nenshi & Anr., AIR 1973 SC 908, "A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

Extension of period of limitation — The Court may take cognizance of an offence after the expiry of the period of limitation if it is satisfied that (i) the delay is properly explained or (ii) it is necessary to do so in the interests of justice. (Section 519)

OFFENCES AGAINST PROPERTY

Chapter XVII (Section 303 to 334) of BNS, provides the provisions and law related to the offences against property.

The Property is of two kinds i.e. movable and immovable. The offence which is committed in regard to any kind of property whether it is movable or immovable is punishable under the provisions of the Chapter XVII of BNS.

Theft (Section 303)

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

The essentials elements of theft are:

1. There should an intention to dishonestly take the property.
2. The property should be movable property.
3. The property should be taken out of the possession without that person's consent.
4. The property should be moved in order to take that property.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Example: Wood of the tree.

Explanation 2.—A moving effected by the same act which affects the severance may be a theft.

Example: Opening the tap for the purpose of taking the expensive liquid kept thereunder.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in this section may be express or

implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Situations which constitute theft

(1) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(2) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent. A has committed theft as soon as Z's dog has begun to follow A

Situations which do not constitute theft

(3) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(4) A finds a ring lying on the highroad, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

Punishment for theft

According to section 303(2) of BNS, whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine.

However, in cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.

However, there are different punishment for theft depending upon situation, which may understood with the help of below:

Description	Punishment
Theft in a dwelling house, or means of transportation or place of worship, etc.	shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
Theft by clerk or servant of property in possession of master[1]	shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to[2] fine.
Theft after preparation made for causing death,[3] **hurt or restraint in order to committing of theft**	shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to[4] fine.

Snatching (Section 304)

A new sub-offence from Theft has been defined in the BNS namely "Snatching". Theft is snatching if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his. possession any movable property. Whoever commits snatching, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine-

Extortion (Section 308)

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits extortion.

The essential elements of extortion are:

1. There should be an intention to put any person in fear of any injury.

2. By that fear of injury, dishonestly induces the person so put in fear to deliver any property, or valuable security or anything signed or sealed which may be converted into a valuable security.

Situations which constitute extortion

(1) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(2) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

Punishment of Extortion

Description	Punishment
Whoever commits extortion	shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine,[1] or with both.
Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury	shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Whoever,[2] in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other	shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also[3] be liable to fine.
Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other	shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also[4] be liable to fine.
Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death[5] or with imprisonment for life, or with imprisonment for a term which may extend to ten years	shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also[6] be liable to fine.
Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death,[7] or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted[8] to Induce any other person to commit such offence	shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.[9]

CASE LAW

In Jadunandan Singh v. Emperor (AIR 1941 Pat 129), the accused, along with others, assaulted two persons and forcibly took their thumb impressions on three blank papers. The court observed that cases frequently occur which turn on the difference between the giving and taking of thumb impression. The forcible taking of the victim's thumb impression does not necessarily involve inducing the victim to deliver papers with thumb impressions. Therefore, the offence of extortion is not established. It is not a case of theft because papers were not taken from the victim's possession. It is a case of criminal force or assault.

Distinction between Extortion and Theft

Both are different from in following respects:

i. Extortion is done by wrongfully getting the consent of the owner while there is no present of consent in case of theft.

ii. Both movable and immovable property may be the subject of an extortion whereas theft is limited to movable property only because of its nature.

Robbery (Section 309)

As per Section 309 of BNS, in all robbery there is either theft or extortion.

Theft is robbery if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

Example: If during committing of theft, the offender, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or the fear of these or of instant wrongful restraint, he Commits Robbery.

Extortion is robbery if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint

to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Example: If during committing of extortion, the offender is present before victim and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint, he commits robbery.
The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Situations which constitute robbery

(1) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

Situation which does not constitute robbery

(2) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

Punishment for Robbery

According to section 309(4), whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

According to section 309, whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

According to section 309 (6), If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term

which may extend to ten years, and shall also be liable to fine.

Dacoity (Section 310)

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit dacoity.

The essentials elements of Dacoity are:

1. There should be at least five persons by active participation or aiding.
2. They will commit robbery or its attempt.
3. Every person whether committing or aiding is said to commit dacoity.

CASE LAW

In the case of Emperor v. Lashkar (1921) 2 Lah. 275, a gang of five dacoits, one of whom had a gun, raided the house of X. After looting, while they were running away with their booty, they shot down one villager. It was held that the murder committed by the dacoits while carrying away the stolen property was murder committed in the commission of dacoity, and every offender was therefore liable for the murder.

Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which shall not be less than ten years, and shall also be liable to fine. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Whoever is one of five or more persons assembled for the purpose of committing dacoity, shall be punished with

rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. Whoever belongs to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

However, there are different punishment for dacoity and/or depending upon situation, which may understood with the help of below:

Description	Punishment
Robbery, or dacoity, with attempt to cause death or grievous hurt	shall be punished shall not be less than seven years.
Attempt to commit robbery or dacoity when armed with deadly weapon[1]	shall be punished shall not be less than seven years
Punishment for belonging to gang of robbers, etc.	shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.[2]

CRIMINAL MISAPPROPRIATION OF PROPERTY (SECTION 314 AND SECTION 315)

Dishonest misappropriation of property

The definition of criminal misappropriation has not been provided by the provisions. The section directly states whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to two years and with fine.

Illustrations.

(a) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being, joint owners of a horse. A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations.

(1) A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.

(2) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

Essential ingredients of Dishonest Misappropriation of Property

Dishonestly is an essential ingredient of the offence and BNS provides that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that 'dishonestly'. Misappropriation means the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose.

There are two things necessary before an offence under section 314 can be established. Firstly, that the property must be misappropriated or converted to the use of the accused, and, secondly, that he must misappropriate or convert it dishonestly.

CASE LAWS

In Bhagiram Dome v. Abar Dome, (1888) 15 Cal 388, 400, it has been held that under Section 403 criminal misappropriation takes place even when the possession has been innocently come by, but where, by a subsequent change of intention or from the knowledge of some new fact which the party was not previously acquainted, the retaining become wrongful and fraudulent.

In Mohammad Ali v. State, 2006 CrLJ 1368 (MP), fifteen bundles of electric wire were seized from the appellant but none including electricity department claimed that wires were stolen property. Evidence on records showed that impugned electric wire was purchased by the applicant from scrap seller. Merely applicant not having any receipt for purchase of impugned wire cannot be said to be guilty of offence punishable under Section 403 of the Code. Order of framing charge was, therefore, quashed by the Supreme Court and the accused was not held guilty under section 403 of the Indian Penal Code, 1860.

In U. Dhar v. State of Jharkhand, (2003) 2 SCC 219, there were two contracts- one between the principal and contractor and another between contractor and sub-contractor. On completion of work sub-contractor demanded money for completion of work and on non-payment filed a criminal complaint alleging that contractor having received the payment from principal had misappropriated the money. The magistrate took cognizance of the case and High Court refused to quash the order of magistrate. On appeal to the Supreme Court, it was held that matter was of civil nature and criminal complaint was not maintainable and was liable to be quashed. The Supreme Court also observed that money paid by the principal to the contractor was not money belonging to the complainant, sub-contractor, hence there was no question of misappropriation.

Dishonest misappropriation of property possessed by deceased person at the time of his death (Section 315)

Whoever dishonestly misappropriates or converts to his own use any property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

The offence under this section consists in the pillaging of property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it.

CRIMINAL BREACH OF TRUST

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.

Explanation 1.—A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations.

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

The gist of the offence of criminal breach of trust as defined under section 316 of the Bharatiya Nyaya Sanhita, 2023 is 'dishonest misappropriation' or 'conversion to own use', another person's property.

Essential Ingredients of Criminal Breach of Trust

The essential ingredients of the offence of criminal breach of trust are as under:

1. The accused must be entrusted with the property or with dominion over it,

2. The person so entrusted must use that property, or;

3. The accused must dishonestly use or dispose of that property or wilfully suffer Any other person to do so in violation,

(i) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(ii) of any legal contract made touching the discharge of such trust.

CASE LAWS

The Supreme Court of India in V.R. Dalal v. Yugendra Naranji Thakkar, 2008 (15) SCC 625, has held that the first ingredient of criminal breach of trust is entrustment and where it is missing, the same would not constitute a criminal breach of trust. Breach of trust may be held to be a civil wrong but when mens-rea is involved it gives rise to criminal liability also. The expression 'direction of law' in the context of Section 405 would include not only legislations pure and simple but also directions, instruments and circulars issued by authority entitled therefor.

In a landmark judgment of Pratibha Rani v. Suraj Kumar, AIR 1985 SC 628, the appellant alleged that her stridhan property was entrusted to her in-laws which they dishonestly misappropriated for their own use. She made out a clear, specific and unambiguous case against in-laws. The accused were held guilty of this offence and she was held entitled to prove her case and no court would be justified in quashing her complaint.

The Supreme Court in Onkar Nath Mishra v. State (NCT of Delhi), 2008 CrLJ 1391 (SC), has held that in the commission of offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation an obligation in relation to property over which dominion or control is acquired by accused. The second is a misappropriation or dealing with property dishonestly and contrary to the terms of the obligation created. In another case, Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., 2008 (13) SCC 678, it was held that a cheque is property and if the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 of the Code may be found to have been made out.

In S.K. Alagh v. State of U.P.and others, 2008 (5) SCC 662, where demand drafts were drawn in the name of company for supply of goods and neither the goods were sent by the company nor the money was returned, the Managing Director of the company cannot be said to have committed the offence under Section 406 of Indian Penal Code. It was pointed out that in absence of any provision laid down under statute, a director of a company or an employer cannot be held vicariously liable for any offence committed by company itself.

Analysis of the cases

After analyzing all the cases, we may conclude that for an offence to fall under this section all the four requirements are essential to be fulfilled.

1. The person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them or to put him in position of trustee.

2. The accused must be in such a position where he could exercise his control over the property i.e; dominion over the property.

3. The term property includes both movable as well as immovable property within its ambit.

4. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

Punishments for the criminal breach of trust

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CASE LAWS

In Bagga Singh v. State of Punjab, the appellant was a taxation clerk in the Municipal Committee, Sangrur. He had collected arrears of tax from tax-payers but the sum was not deposited in the funds of the committee after collection but was deposited after about 5 months. He pleaded that money was deposited with the cashier Madan Lal, a co-accused, who had defaulted on the same but the cashier proved that he had not received any such sum and was acquitted by lower court. The mere fact that the co-accused cashier was acquitted was not sufficient to acquit accused in the absence of any proof that he had discharged the trust expected of him. As such the accused was liable under section 409 of Indian Penal Code, 1860.

In Bachchu Singh v. State of Haryana, AIR 1999 SC 2285, the appellant was working as 'Gram Sachiv' for eight gram panchayats. He collected a sum of Rs. 648 from thirty villagers towards the house tax and executed receipts for the same. As he was a public servant, and in that capacity he had collected money as house tax but did not remit the same, he was charged under Section 409 of Indian Penal Code, 1860. It was held that the appellant dishonestly misappropriated or converted the said amount for his own use and his conviction under section 409 of Indian Penal Code, 1860 was upheld by the Supreme Court.

In Girish Saini v. State of Rajasthan, a public servant was accused of neither depositing nor making entries of stationery required for official purpose. Accused public servant was in charge of the store in the concerned department at the time of commission of offence. Hence entrustment was proved. It was held accused could not take the benefit of misplacing of one of registers of company as he could not prove maintenance of two registers by department. Therefore, the accused was held guilty of committing criminal breach of trust.

Receiving Stolen Property (Section 317)

Property, the possession whereof has been transferred by theft or extortion or robbery or cheating, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as stolen property, whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India, but, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating (Section 318 and 319)

Sections 318 to 319 of BNS deal with the offence of cheating. In most of the offences relating to property the accused merely get possession of thing in question, but in case of cheating he obtains possession as well as the property in it.

Section 318 states that Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation.—

A dishonest concealment of facts is a deception within the meaning of this section.

(1) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(2) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(3) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(4) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

Main Ingredients of Cheating

The main ingredients of cheating are as under:

1. Deception of any person.

2. (a) Fraudulently or dishonestly inducing that person:

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

CASE LAWS

The Supreme Court in Iridium India Telecom Ltd. v. Motorola Incorporated and Ors., (2005) 2 SCC 145, has held that deception is necessary ingredient under both parts of section. Complainant must prove that inducement has been caused by deception exercised by the accused. It was held that non-disclosure of relevant information would also be treated a misrepresentation of facts leading to deception.

The Supreme Court in M.N. Ojha and others v. Alok Kumar Srivastav and anr, (2009) 9 SCC 682, has held that where the intention on the part of the accused is to retain wrongfully the excise duty which the State is empowered under law to recover from another person who has removed non-duty paid tobacco from one bonded warehouse to another, they are held guilty of cheating.

In T.R. Arya v. State of Punjab, 1987 CrLJ 222, it was held that negligence in duty without any dishonest intention cannot amount to cheating. A bank employee when on comparison of signature of drawer passes a cheque there may be negligence resulting in loss to bank, but it cannot be held to be cheating.

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to five

years, or with fine, or with both.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CASE LAWS

In Kuriachan Chacko v. State of Kerala, (2004) 12 SCC 269, the money circulation scheme was allegedly mathematical impossibility and promoters knew fully well that scheme was unworkable and false representations were being made to induce persons to part with their money. The Supreme Court held that it could be assumed and presumed that the accused had committed offence of cheating under section 420 of the IPC.

In Mohd. Ibrahim and others v. State of Bihar and another, (2009) 3 SCC (Cri) 929, the accused was alleged to have executed false sale deeds and a complaint was filed by real owner of property. The accused had a bonafide belief that the property belonged to him and purchaser also believed that suit property belongs to the accused. It was held that accused was not guilty of cheating as ingredients of cheating were not present.

In Shruti Enterprises v. State of Bihar and ors, 2006 CrLJ 1961, it was held that mere breach of contract cannot give rise to criminal prosecution under section 420 unless fraudulent or dishonest intention is shown right at the beginning of transaction when the offence is said to have been committed. If it is established that the intention of the accused was dishonest at the time of entering into the agreement then liability will be criminal and the accused will be guilty of offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept, criminal liability cannot be fastened on the accused and the only right which complainant acquires is to a decree of damages for breach of contract.

Cheating by personation (Section 319)

A person is said to cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is.

The offence is committed whether the individual personated is a real or imaginary person.

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Illustrations

(1) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(2) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY

Fraudulent Deeds and Dispositions of Property are covered under section 320 to 323 of BNS.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors (Section 320)

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to two years, or with fine, or with both.

Example

A is the Debtor and B is the creditor. A has to pay INR 1 crore to B. Now, A has certain movable and immovable property. A does not wants to pay back INR 1 crore to B. For that, A transferred the properties to X just to prevent the distribution of his properties to B. A is liable under section 320.

CASE LAW

Guwahati High Court in Ramautar Chaukhany v. Hari Ram Todi & Anr, 1982 CrLJ 2266, held that an offence under this section has following essential ingredients:

a. That the accused removed, concealed or delivered the property or that he transferred, it caused it to be transferred to someone;

b. That such a transfer was without adequate consideration;

c. That the accused thereby intended to prevent or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person;

d. That he acted dishonestly and fraudulently. This section specifically refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It applies to movable as well as immovable properties. In view of this section, the property of a debtor cannot be distributed according to law except after the provisions of the relevant enactments have been complied with.

Dishonestly or fraudulently preventing debt being available for creditors (Section 321)

Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Example

A is the Debtor and B is the creditor. A has to pay Rs. 1 crore to B. But A do not have any money. But X, a person, who has to pay INR 1 crore to A. If X pays back his money to A, A can pay back that money to B. But A does not want to make the payment to B and informs X not to pay any amount to B. This is clearly a fraudulent intention and A is liable under section 321.

This section, like the preceding section 320, is intended to prevent the defrauding of creditors by masking property.

The expression 'debt' has not been defined in the BNS or in the General Clauses Act but there are judicial pronouncements on the same.

CASE LAWS

In Commissioner of Wealth Tax v G.D. Naidu, AIR 1966 Mad 74, it was held that the essential requisites of debt are-

(1) ascertained or ascertainable,

(2) an absolute liability, in present or future, and

(3) an obligation which has already accrued and is subsisting. All debts are liabilities but all liabilities are not debt.

The Supreme Court in Mangoo Singh v. Election Tribunal, AIR 1957 SC 871, has laid down that the word 'demand' ordinarily means something more than what is due; it means something which has been demanded, called for or asked for, but the meaning of the word must take colour from the context and so 'demand' may also mean arrears or dues.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration (Section 322)

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Example

While making agreement of lease, the actual amount should be entered is INR 5 crore but parties made the lease agreement for only INR 4 crore just to avoid stamp duty and other taxes. The parties are liable under section 322.

This section deals with fraudulent and fictitious conveyances and transfers. The essential ingredient of an offence under section 423 is that the sale deed or a deed subjecting a property to a charge must contain a false statement relating to the consideration or relating to the person for whose use or benefit it is intended to operate.

Though dishonest execution of a benami deed is covered under this section, the section stands superseded by The Prohibition of Benami Properties Transactions Act, 1988 because the latter covers a wider field, encompassing the field covered by this section.

Dishonest or fraudulent removal or concealment of property (Section 323)

Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

OFFENCES RELATING TO DOCUMENTS AND PROPERTY MARKS

Forgery

According to section 336, whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Punishment for Forgery

Description	Punishment
Whoever commits forgery	shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Whoever[1] commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating	shall be punished with imprisonment[2] of either description for a term which may extend to seven years, and shall[3] also be liable to fine.
Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose	shall be punished[4] with imprisonment of either description for a term which may extend to three years, and shall also[5] be liable to fine.

Further, the provisions relating to forgery in different circumstances has inter alia also been provided under 337 to 341 of BNS.

CASE LAWS

The Supreme Court in Ramchandran v. State, AIR 2010 SC 1922, has held that to constitute an offence of forgery document must be made with dishonest or fraudulent intention. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The Supreme Court in Parminder Kaur v. State of UP, has held that mere alteration of document does not make it a forged document. Alteration must be made for some gain or for some objective.

Similarly, in Balbir Kaur v. State of Punjab, 2011 CrLJ 1546 (P&H), the allegation against the accused was that she furnished a certificate to get employment as ETT teacher which was found to be bogus and forged in as much as school was not recognized for period given in certificate. However the certificate did not anywhere say that school was recognized. It was held that merely indicating teaching experience of the accused, per se, cannot be said to indicate wrong facts. So the direction which was issued for prosecution is liable to be quashed.

Offences relating to Property Mark (Section 345)

A mark used for denoting that movable property belongs to a particular person is called a property mark.

Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

DEFAMATION

(1) Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. — It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. — It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

Exception 1.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Exception 2.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Exception 3.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration. - It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Exception 4.—It is not defamation to publish substantially true report of the proceedings of a Court, or of the result of any such proceedings.

Explanation.—A Magistrate or other officer holding an inquiry in open Court preliminary to a trial in a Court, is a Court within the meaning of the above section.

Exception 5.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Exception 6.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Exception 7.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a school master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier are within this exception.

Exception 8.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father, A is within this exception.

Exception 9.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Exception 10.—It is not defamation to convey a caution, in good faith, to one X person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Punishment for defamation

Section 356(2): Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, or with community service.

Section 356 (3): Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 356(4): Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Kinds of Defamation

The wrong of defamation is of two kinds- ***libel and slander.***

In libel, the defamatory statement is made in some permanent and visible form, such as writing, printing or pictures.

In slander it is made in spoken words or in some other transitory form, whether visible or audible, such as gestures or inarticulate but significant sounds.

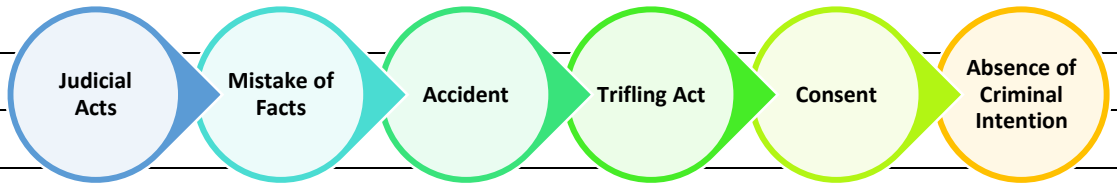
The ambit of 'publish' is very wide. The publication of defamatory matter means that it is communicated to some person other than the person about whom it is addressed.

CASE LAWS

In Sankaran v. Ramkrishna Pillai, AIR 1960 Ker 141, the defamatory matter was printed in Malayalam and the accused did not know the language, his mens rea was absent and he was not guilty.

GENERAL EXCEPTIONS

The Bharatiya Nyaya Sanhita, 2023 (BNS) also provides for general exceptions for a person accused of committing any offence under BNS to plead in his defense. General defences or exceptions are contained in sections 14 to 44 of the BNS (Chapter III). In general exceptions to criminal liability there will be absence of mens rea (guilty mind) on the part of the wrong-doer. If there is any general defense of the accused in a criminal case, the burden of proving lies on him under section 108 of the Bhartiya Sakshya Adhiniyam 2023. The exceptions strictly speaking came within the following six categories.



1. Act done by a person bound, or by mistake of fact believing himself bound, by law:

According to section 14, nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

The mistake or ignorance must be of fact, but not of law. Mistake of fact, is a general defence based on the Common Law maxim –ignorantia facit excusat; igoranita juris non excusat- (Ignorance of fact excuses; Ignorance of law does not excuse).

2. Act of Judge when acting judicially: According to section 15, nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

3. Act done pursuant to judgment or order of Court: According to section 16, nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Words "Court of Justice" is replaced by "Court" in the BNS.

Section 15 protects judges from any criminal liability for their judicial acts. Section 16 extends this protection to ministerial and other staff, who may be required to execute orders of the court. If such immunity was not extended, then executing or implementing court orders would become impossible.

4. Act done by a person justified, or by mistake of fact believing himself justified, by law: According to section 17, nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

5. Accident in doing a lawful act: According to section 18, nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

6. Act likely to cause harm, but done without criminal intent, and to prevent other harm: According to section 19, nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

7. Act of a child under seven years of age: According to section 20, nothing is an offence which is done by a child under seven years of age.

8. Act of a child above seven and under twelve years of age of immature understanding: According to section 21, nothing is an offence which is done by a child above seven years of age and under twelve years of age, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

9. Act of a person of unsound mind: According to section 22, nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

10. Act of a person incapable of judgment by reason of intoxication caused against his will: According to section 23, nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

11. Offence requiring a particular intent or knowledge committed by one who is intoxicated: According to section 24, in cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

12. Act not intended and not known to be likely to cause death or grievous hurt, done by consent: According to section 25, nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

This section is based on the principle of legal maxim 'volenti-non-fit injuria' which means he who consents suffers no injury. The policy behind this section is that everyone is the best judge of his own interest and no one consents to that which he considers injurious to his own interest.

Illustration: A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

13. Act not intended to cause death, done by consent in good faith for person's benefit: According to section 26, nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

14. Act done in good faith for benefit of child or person of unsound mind, by, or by consent of guardian: According to section 27, nothing which is done in good faith for the benefit of a person under twelve years of age, or person of unsound mind, by, or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of anyharm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:

However, this exception shall not extend to—

(a) the intentional causing of death, or to the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

(d) the abetment of any offence, to the committing of which offence it would not extend.

Words "insane person" are replaced with "person of unsound mind" in the BNS.

15. Consent known to be given under fear or misconception: According to section 28, a consent is not such a consent as is intended by any section of BNS,—

(a) if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

(b) if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

(c) unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

16. Exclusion of acts which are offences independently of harm caused: According to section 29, the exceptions in sections 25, 26 and 27 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration: Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

17. Act done in good faith for benefit of a person without consent: According to section 30, nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

However, this exception shall not extend to—

(a) the intentional causing of death, or the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

(d) the abetment of any offence, to the committing of which offence it would not extend.

18. Communication made in good faith: According to section 31, no communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

19. Act to which a person is compelled by threats: According to section 32, except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence:

However, the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

20. Act causing slight harm: Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Right of Private Defence

Right of Private defence is also part of Chapter III under the BNS. 11 sections deals with Right to Private Defence. These defences are as follows:

1. Things done in private defence: According to section 34, nothing is an offence which is done in the exercise of the right of private defence.

2. Right of private defence of body and of property: According to section 35, every person has a right, subject to the restrictions contained in section 37, to defend—

(a) his own body, and the body of any other person, against any offence affecting the human body;

(b) the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

3. Right of private defence against act of a person of unsound mind, etc.: According to section 36, when an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

4. Acts against which there is no right of private defence: According to section 37(1), There is no right of private defence,-

(a) against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law;

(b) against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law;

(c) in cases in which there is time to have recourse to the protection of the public authorities.

According to sub-section 2, the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

5. When right of private defence of body extends to causing death: According to section 38, the right of private defence of the body extends, under the restrictions specified in section 37, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

(a) such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

(b) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

(c) an assault with the intention of committing rape;

(d) an assault with the intention of gratifying unnatural lust;

(e) an assault with the intention of kidnapping or abducting;

(f) an assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release;

(g) an act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.

6. When such right extends to causing any harm other than death: According to section 39, if the offence be not of any of the descriptions specified in section 38, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions specified in section 37, to the voluntary causing to the assailant of any harm other than death.

7. Commencement and continuance of right of private defence of body: According to section 40, the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

8. When right of private defence of property extends to causing death: According to section 41, the right of private defence of property extends, under the restrictions specified in section 37, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely: —

(a) robbery;
(b) house-breaking after sunset and before sunrise;
(c) mischief by fire or any explosive substance committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;
(d) theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the

consequence, if such right of private defence is not exercised.

9. When such right extends to causing any harm other than death: According to section 42, If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions specified in section 41, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions specified in section 37, to the voluntary causing to the wrong-doer of any harm other than death.

10. Commencement and continuance of right of private defence of property: According to section 43, the right of private defence of property,—

(a) commences when a reasonable apprehension of danger to the property commences;

(b) against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered;

(c) against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues;

(d) against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief;

(e) against house-breaking after sunset and before sunrise continues as long as the house trespass which has been begun by such house-breaking continues.

11. Right of private defence against deadly assault when there is risk of harm to innocent person: According to section 44, If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

SOLVE FOR PRACTICE

1. What are the fundamental elements of a criminal act?
2. Is the Bharatiya Nagarik Suraksha Sanhita a substantive or an adjective law, or both?
3. Distinguish between:

(a) Cognizable and Non-cognizable offences

(b) Inquiry, Investigation and Trial

(c) Bailable and Non-bailable offences

(d) F.I.R. and Complaint.

4. What are the various classes of Criminal Courts? Discuss their powers.
5. How can arrest be affected by the police? When can police arrest without warrant? Can a private person cause arrest without warrant?
6. State the cases in which mens rea is not required in criminal law.
7. Write a short note on:

(i) Forgery

(ii) Defamation.

8. Enumerate the general exceptions for a person accused of committing any offence under the Bharatiya Nyaya Sanhita to plead his defense.

SELF NOTES -

"The best preparation for tomorrow is doing your best today." – ANKITA JHA