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SUPPLEMENT
EXECUTIVE PROGRAMME
(New Syllabus 2022)

for

June, 2025 Examination

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

GROUP 1

PAPER 1

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Important Note:

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

Lesson 2: Constitution of India

1. Satender Kumar Antil vs. Central Bureau of Investigation and Ors. (11.07.2022 - SC)

In this case, taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure ("the Code"), an endeavour was made by Supreme Court to categorize the types of offenses to be used as guidelines for the future.

The Supreme Court *inter alia* said that "The principle that bail is the Rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India."

Further, in this case, the Supreme Court issued certain directions, however they may be subject to State Amendments. These directions are meant for the investigating agencies and also for the courts. The directions are as under:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in *Arnesh Kumar (supra)*. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the Accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

e) There need not be any insistence of a bail application while considering the application Under Section 88, 170, 204 and 209 of the Code.

f) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth (supra).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

2. ***CBI vs. R. R. Kishore (Supreme Court on 11.09.2023)***

In this case*, the Supreme Court decided on the point that* whether declaration made in the case of *Subramanian Swamy vs. Director, Central Bureau of Investigation and another* (2014) 8 SCC 682, that Section 6A of the Delhi Special Police Establishment Act, 1942 being unconstitutional, can be applied retrospectively in context with Article 20 of the Constitution.

The Supreme Court has decided that it is crystal clear that once a law is declared to be unconstitutional, being violative of Part-III of the Constitution, then it would be held to be void *ab initio*, still born, unenforceable and *non est* in view of Article 13(2) of the Constitution and its interpretation by authoritative pronouncements. Thus, the declaration made by the Constitution Bench in the case of Subramanian Swamy will have retrospective operation. Section 6A of the DSPE Act is held to be not in force from the date of its insertion i.e. 11.09.2003.

3. ***PHR Invent Educational Society v. UCO Bank and Others decided by Supreme Court on 12.04.2024***

High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person. However, it is subject to certain exceptions

This case can be referred to for understanding and give more clarity of the law relating to entertaining writ petition by the High Courts under Article 226 of the Constitution of India.

In the instant case the Hon'ble Supreme Court has that it could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
(ii) it has acted in defiance of the fundamental principles of judicial procedure;
(iii) it has resorted to invoke the provisions which are repealed; and
(iv) when an order has been passed in total violation of the principles of natural justice

Further it was clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

Lesson 3: Interpretation of Statutes

1. The Authority for clarification and Advance Ruling & Anr. v. M/s. Aakavi Spinning Mills (P) Ltd. (Order dated 12.01.2022)

The Supreme Court in its order dated 22.01.2022 has *inter alia* said that when the Entry in question specifically provides for exemption to the goods described as "Hank Yarn" without any ambiguity or qualification, its import cannot be restricted by describing it as being available only for the hank form of one raw material like cotton nor could it be restricted with reference to its user industry.

The court in para 11 of the Order has mentioned that as noticed, the Entry in question, as inserted into the Fourth Schedule to the Act, is clear and specific that is, "Hank Yarn"; it carries neither any ambiguity nor any confusion. Undoubtably, the yarn in the hank form (which is a unit of measure), has come for exemption under the said Entry 44; and obviously, that exemption enures to the benefit of the handloom industry too. However, for that matter, if the benefit of this broad and unambiguous entry also goes to any other industry, there is absolutely no reason to deny such benefit. In other words, we find no reason to restrict the Entry in its operation to the handloom industry alone or to any particular class of hank yarn like "Cotton Hank Yarn" only. The exemption Entry being clear and unambiguous, no external aid for interpretation is called for, whether in the form of Budget speech or any other notification under any other enactment.

Lesson 6: Law relating to Civil Procedure

1. Yashpal Jain v. Sushila Devi & Others decided by Supreme Court on 20th October, 2023

In this case, in the preface of the Judgement, Hon'ble Supreme Court has stated that:

Even after 41 years, the parties to this *lis* are still groping in the dark and litigating as to who should be brought on record as legal representative of the sole plaintiff. This is a classic case and a mirror to the fact that litigant public may become disillusioned with judicial processes due to inordinate delay in the legal proceedings, not reaching its logical end, and moving at a snail's pace due to dilatory tactics adopted by one or the other party.

Further in this case, the Supreme Court has issued the following 12 directions for Speedy Trial of Civil Cases:

i. All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule (2) of CPC and same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.

ii. All courts at District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under *proviso* to sub-Rule (1) of Order VIII of CPC.

iii. All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and *the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89* and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.

iv. In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.

v. Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.

vi. Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.

vii. The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.
viii. The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).
ix. The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.
x. At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.
xi. The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same and forward it to the review committee constituted by the respective High Courts for enabling it to take further steps.
xii. The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.

2. Pathapati Subba Reddy (Died) by L.Rs. & Ors. v. The Special Deputy Collector (LA) decided by Supreme Court on 08.04.2024

Merits of the case are not required to be considered in condoning the delay. A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time

This case can be referred to understand the law relating to condonation of delay under the Limitation Act, 1963.

The present Special Leave Petition was filed challenging the judgment and order whereby the High Court has dismissed the application of the petitioners for condoning the delay of 5659 days in filing the proposed appeal.

The moot question before the Hon'ble Supreme court was whether in the facts and circumstances of the case, the High Court was justified in refusing to condone the delay in filing the proposed appeal and to dismiss it as barred by limitation.

The Supreme Court has said that on a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

Moreover, the High Court, in the facts of this case, has not found it fit to exercise its discretionary jurisdiction of condoning the delay. There is no occasion for us to interfere with the discretion so exercised by the High Court for the reasons recorded. First, the claimants were negligent in pursuing the reference and then in filing the proposed appeal. Secondly, most of the claimants have accepted the decision of the reference court. Thirdly, in the event the petitioners have not been substituted and made party to the reference before its decision, they could have applied for procedural review which they never did. Thus, there is apparently no due diligence on their part in pursuing the matter. Accordingly, in our opinion, High Court is justified in refusing to condone the delay in filing the appeal.

For details: https://main.sci.gov.in/supremecourt/2017/14596/14596_2017_15_1502_52056_Judgement_08-Apr-2024.pdf

3. Cause of Action

"Cause of action" means every fact that it would be necessary for the plaintiff to prove in order to support his right to the judgement of the Court. Under Order 2, Rule 2, of the Civil Procedure Code it means all the essential facts constituting the rights and its infringement. It means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement.

It may also be described as a bundle of essential facts which is necessary for the plaintiff to prove before he can succeed and is the foundation of suit.

Section 20 of CPC introduces the concept of cause of action. A cause of action in respect of a suit is essentially its *raison d'etre* – the factual circumstances which led to the dispute arising between the parties. Section 20(c) provides jurisdiction to the court which is located in the local limits of where the cause of action, "*wholly or in part*", arises. The phrase "*wholly or in part*" is an important qualifier. The Supreme Court, in *South East Asia Shipping v. Nav Bharat Enterprises*, has held that cause of action is essentially a bundle of facts which led to the genesis of the dispute, and to the plaintiff obtaining a right in law to approach the court for legal redress. The cause of action, therefore, necessarily includes an act of the defendant, in the absence of which the suit itself could not possibly exist. Mentioning the cause of action in pleadings is prerequisite under the CPC, with Order II Rule 2 and Order VII Rule 1.

4. *In National Institute of MH & NS v. C. Parameshwara AIR 2005 SC 242*, Supreme court stated- the fundamental test to attract section 10 is whether on final decision being reached in previous suit, such decision would operate as res judicata in subsequent suit.

5. 'Necessary party' and 'Proper party'

A "necessary party" is one whose presence is indispensable for proceeding with the suit and for final decision thereof, on the other hand "proper party" is one in whose absence an effective order can be passed, but whose presence is required for complete and final decision of the suit.

In case of *Hardeva v. Ismail, AIR 1970 Raj 167* two tests have been mentioned for determining the question whether a particular party is a necessary party to a proceeding:

(1) there must be a right to some relief against such party in respect of the matter involved in the proceeding in question; and
(2) it should not be possible to pass an effective decree in absence of such a party.
Order I, rule 8 provides that there are numerous persons having the same interest in one suit, one or more or such persons may with the permission of court sue on behalf of or for the benefit of all persons so interested.

There is essential distinction between 'Necessary Party' and 'Proper Party'. A 'Necessary Party' is one whose presence is indispensable or against whom relief is sought and without whom no effective order can be passed. A 'Proper Party is one in whose absence an effective order can be

passed but whose presence is necessary for complete and final decision on question involved in proceedings.

Order I, rule 9 of the Code of Civil Procedure, 1908 reads: No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.

Therefore, general rule is that no suit can be decided without necessary parties to it. However, rule 10 of Order I of the Code of Civil Procedure, 1908, provides for substitution or addition of parties to suit on either of the following two grounds:

(i) He ought to have been joined as plaintiff or defendant and is not so joined; or
(ii) without his presence, the question/issue involved in the suit cannot be completely decided.

Mis-joinder or non-joinder of parties (Order I, rule 9)

Order I, rule 9 says: "No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court in every suit may deal with the matter in controversy so far as the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.

So, where a person, who is necessary or proper party to a suit has not been joined as a party to the suit, it is a case of non-joinder. Conversely, if two or more persons are joined as plaintiffs or defendants in one suit in contravention of Order I, rules 1 and 3 respectively and they are neither necessary party nor proper party, it is a case of mis-joinder of the parties.

Order I, rule 13, provides that all the objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

Non-joinder (meaning) - Where a person who is a necessary party to a suit has not been joined as a party to the suit, it is a case of non-joinder. A suit should not be dismissed on the ground of non-joinder.

But if the decree cannot be effective without the absent parties, the suit is liable to be dismissed. In case where the joinder of a person as a party is only a matter of convenience, the absent party may be added or the suit may be tried without him.

Mis-joinder - Where there are more plaintiffs than one and they are joined together is one suit, but the right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions alleged to exist in such persons does not arise out of the same act, or transaction

and if separate suits were brought, no common question of law or fact would arise, it is case of mis-joinder of plaintiff. Misjoinder of defendants takes place in reverse position.

In case of *B.P. Rao v. State of Andhra Pradesh, 1985 Supp (1) SCC 432: AIR 1986 SC 210: 1985 (51) FLR 501: 1985 Lab IC 1555: (1985) 2 SCALE 256: (1985) Supp 2 SCR 573*, it was held by the Supreme Court that, where the affected persons had not been joined as parties to the petition, and some of them only were joined, the interests of the persons who were not joined as parties were identical with those persons who were before the court and were sufficiently and well represented, and therefore, the petition was not liable to be dismissed on that ground alone.

6. The Court cited *T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467* to reiterate that the answer to an irresponsible suit or litigation would be a vigilant judge and comment that "an onerous responsibility rests on the shoulders of the presiding officer of every court, who should be cautious and vigilant against such indolent acts and persons who attempt to thwart quick dispensation of justice. A response is expected from all parties involved, with a special emphasis on the presiding officer. The presiding officer must exercise due diligence to ensure that proceedings are conducted efficiently and without unnecessary delays." The Court also suggested members of the Bar to be circumspect in seeking adjournments, particularly regarding old matters or those pending for decades....

The Court issued following directions towards curbing judicial delay: All courts at district and taluka levels to ensure proper and time bound execution of the summons as per Order V Rule (2) of CPC; Principal District Judges to monitor the same, collate the statistics and forward them to committee constituted by High Court for consideration and monitoring. All courts at district and taluka levels to ensure filing of written statement within the time prescribed under Order VIII Rule 1, preferably within 30 days, assign reasons in case of extending the limit beyond 30 days as per Order VIII sub-Rule (1) of CPC. All courts at district and taluka levels to ensure that after completion of pleadings, parties are called upon to appear on the day fixed as per Order X, and record admissions/denials; to direct parties to either opt for mode of settlement outside the Court as per Section 89(1) and fix date for appearance before appropriate forum/authority and make it clear in the reference order the date fixed in case of failure of ADR. In case of parties not opting for ADR as per Section 89(1), the Court to frame issues for its determination within 1 week, preferably in open court. Fix date of trial in consultation with advocates appearing for the parties, enabling them to adjust their calendar, and proceed with trial on a day-to-day basis to the possible extent. Trial Judges of district and taluka courts to maintain diary to ensure that only such number of cases are handled on a given day for trial and complete recording of evidence to avoid overcrowding of cases which as a sequence would result in adjournment sought and preventing inconvenience to stakeholders. Counsels representing parties to be enlightened of provisions under Order XI and XII to narrow down the scope of dispute, also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses, preferably in virtual mode. Trial Courts to comply with Order XVII Rule 1 scrupulously, meticulously and without fail, and once commenced, trial to be proceeded with on a day-to-day basis as per Rule 2. Courts to give meaningful effect to effect to provisions for payment of cost to ensure no adjournment is sought for procrastination of litigation, and opposite party gets suitably compensated in case of adjournment so granted. On conclusion of trial, oral arguments to be heard immediately and continuously, and judgment to be pronounced within the period

stipulated under Order XX of CPC. Every presiding officer to forward statistics related to cases pending before each Court beyond 5 years to the Principal District Judge once in a month, who has to collate the data and forward it to review committee constituted by High Courts, enabling it to take further steps.

7. The Supreme Court in *Eldeco Housing and Industries Limited v. Ashok Vidyarthi and Others (Special Leave Petition (c) No. 19465 of 2021)* ruled that when invoking Order 7 Rule 11(d) of the CPC, the court cannot consider any evidence. The court also ruled that the issues of merit between the parties are not within the court's purview at that stage.

8. In *Civil Appeal no. 2308-2309 of 2016 (Arising out of SLP(c) No. 8536-8537 of 2008) Vijay Prakash Jarath v. Tej Prakash Jarath* it was ruled that the cause of action in respect of which a counter claim can be filed, should accrue before the defendant has delivered his defence, namely, before the defendant has filed a written statement.

9. In *Civil Appeal no. 3190 OF 2016 (Arising out of S.L.P. (Civil) No. 6662 of 2016) Raghavendra Swamy Mutt v. Uttaradi Mutt*, it was stated that Appeal under Section 100 CPC is required to be admitted only on substantial question/questions of law. It cannot be formal admission like an appeal under Section 96 CPC. That is the fundamental imperative. It is peremptory in character, and that makes the principle absolutely cardinal.

10. In *Civil Appeal No. 4543 of 2016 (Arising out of S.L.P.(c) No. 538 of 2014) Rishabh Chand Jain & Another v. Ginesh Chandra Jain***,** it was stated that the impugned order dismissing the suit on the ground of Res Judicata does not cease to be a decree on account of a procedural irregularity of non-framing an issue. The court ought to treat the decree as if the same has been passed after framing the issue and on adjudication thereof, in such circumstances. What is to be seen is the effect and not the process. Even if there is a procedural irregularity in the process of passing such order, if the order passed is a decree under law, no revision lies under Section 115 of the Code in view of the specific bar under sub-Section (2) thereof. It is only appealable under section 96 read with Order XLI of the Code.

Lesson 7: Laws relating to Crime and its Procedure

KEY CONCEPTS

- Criminal Intention
- Search
- Abetting
- *Mens Rea*
- *Actus Reus*
- Congnizable Offence
- Non-Congnizable Offence
- Criminal conspiracy
- Misappropriation
- Criminal breach of Trust
- Accusation
- Defamation
- Grievous hurt
- Attempt
- Accomplishment
- Presumption of Innocence
- Burden of Proof
- Mutiny
- Personation

Learning Objectives

To understand:

- Ingredients of Crime and law dealing with the menace of Crime
- Structure of judicial system dealing with criminal cases
- The provisions relating to Bail
- Provisions relating to Compounding of Offences
- Offences relating to the property
- Criminal Breach of Trust
- Offences relating to documents and property marks
- Defamation
- Difference between fine and penalty

Lesson Outline

- Introduction
- The Stages of Crime
- Type of Punishments
- Difference between Fine and Penalty
- The Fundamental Elements of Crime
- Cognizable Offence and Non-cognizable Offence
- Classes of Criminal Courts
- Power of Courts
- Inherent Powers of the Court
- Arrest of Persons
- Summons and Warrants
- Proclamation and Attachment
- Summons to Produce
- Search Warrant
- Summary Trials
- Compounding of Offences
- Bail
- Limitation for Taking Cognizance of Certain Offences
- Offences against Property
- Criminal misappropriation of property (Section 314 and Section 315)
- Criminal breach of trust
- fraudulent deeds and dispositions of property
- Offences Relating to Documents and Property Marks
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- General Exceptions
- Lesson Round-Up
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- Test Yourself
- List of Further Readings and References

REGULATORY FRAMEWORK

- **THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023**
- **THE BHARATIYA NYAYA SANHITA, 2023**

INTRODUCTION

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:

1. Within the territory of India as defined in Article 1 of the Constitution of India.
2. Any place without and beyond India;
3. Any person on any ship or aircraft registered in India wherever it may be;
4. Any person in any place without and beyond India committing an offence targeting a computer resource located in India.

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:-

1. 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.
2. In accordance with well-recognized principles of international law, foreign sovereigns are exempt from criminal proceedings in India.
3. 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:

- 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.
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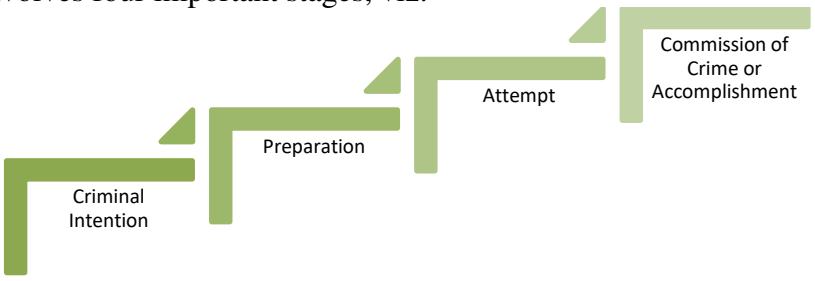
Changes between Section 4 of the IPC and Section 1(5) of the BNS:

- 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:

(i) Preparation to wage war against the Government (section 190).
(ii) Preparation for counterfeiting of coins or Government Stamps (sections 178 and181).
(iii) Possessing counterfeit coins, false weights or measurements and forged documents (section 180 and 339).
(iv) 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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

TYPE OF PUNISHMENT

Types of Punishments					
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**

1. 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.

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

3. Imprisonment: Imprisonment which is of two descriptions namely –
(i) Rigorous Imprisonment, that is hard labour;
(ii) Simple Imprisonment

4. 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.

5. 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.

6. 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

According to merriam-webster dictionary fine "a sum imposed as punishment for an offense".

Penalty

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."

Analysis

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 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*	*Actus reus*

1. *Human Being* – 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.

***2. Mens rea* –** 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*:

- Intention
- Negligence
- Recklessness

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*.

(i) 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.

(ii) 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*.

(iii) 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.

3. 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

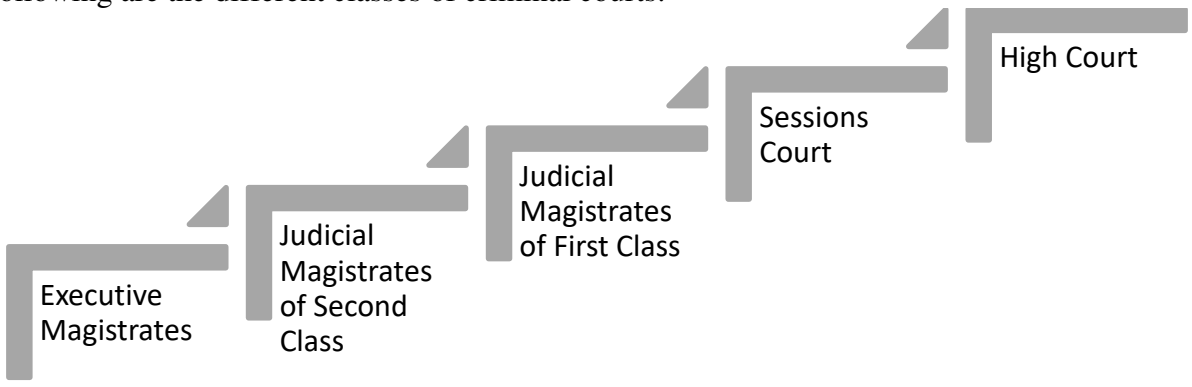
According to section 2(1)(g) of BNSS, "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

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:



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:

(a) those under the Bharatiya Nyaya Sanhita; and
(b) 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:

(i) 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.
(ii) 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.
(iii) The Court of Magistrate of the second class may pass a sentence of imprisonment for

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.

For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

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. ection 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.

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 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.

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,—

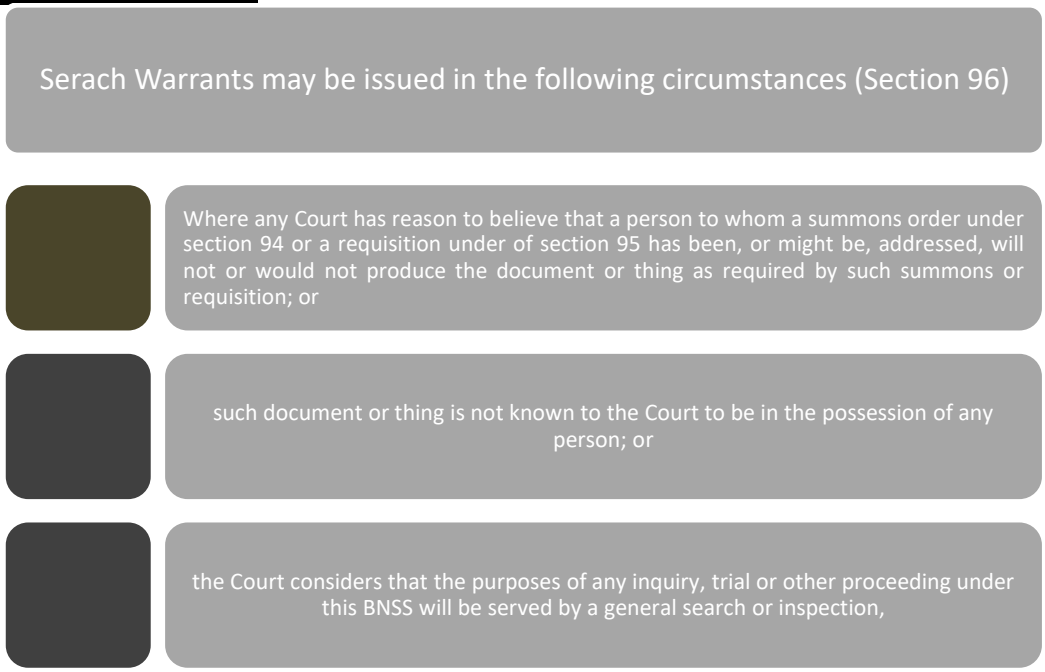
(a) is about to dispose of the whole or any part of his property; or
(*b*) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment of property simultaneously with the issue of the proclamation.

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



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.

(3) 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	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 after preparation made for causing death, 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 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, 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, 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 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 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 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 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, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to	shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

induce any other person to commit such offence	

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	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.

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)

(*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 commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating	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 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 with imprisonment of either description for a term which may extend to three years, and shall also 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 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.

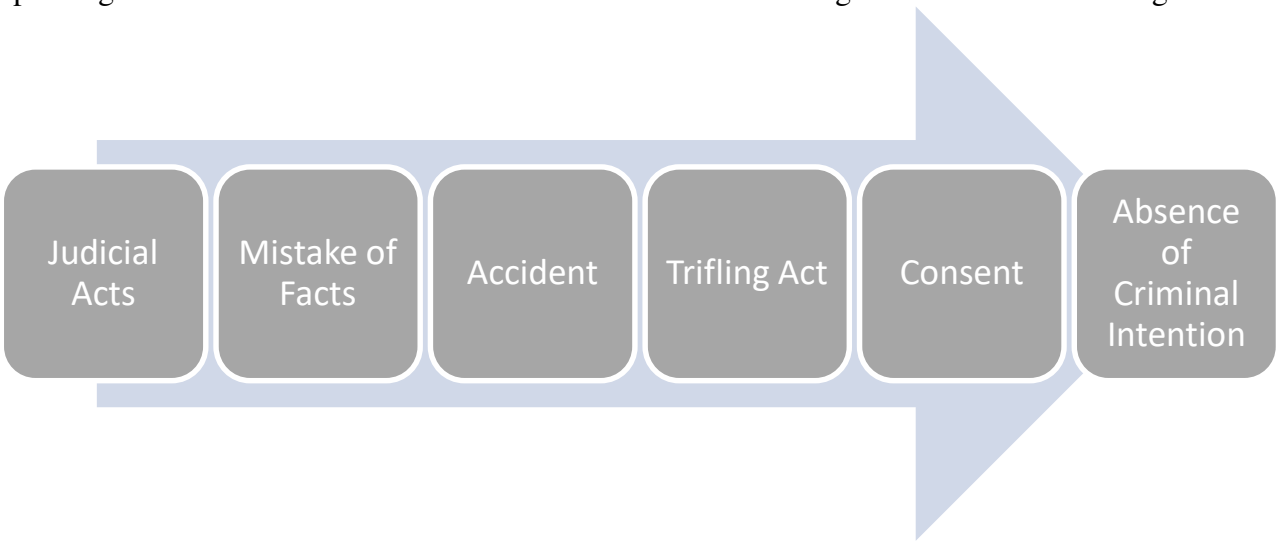
In slander it is made in spoken words or in some other transitory form, whether visible or audible, such as gestures or inarticulate but significant sounds.

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, **n**othing 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 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 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, **n**othing 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.

LESSON ROUND-UP

- The Bharatiya Nyaya Sanhita, 2023(BSA) 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.

- 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 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.
- 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, Preparation, Attempt and Commission of Crime or Accomplishment.
- There are a total 5 types of Punishments: Death, Imprisonment for life, Imprisonment, which is of two descriptions, namely: (1) Rigorous, that is, with hard labour; (2) Simple, Forfeiture of property, Fine and Community Services.
- 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: Human Being, *mens rea* and *actus rea*.
- 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.

- Section 528 of the BNSS is one of the most important section of Sanhita. It states that nothing in this Sanhita 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 this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.
- 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. ection 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.
- The general processes to compel appearance are: (1) Summons and (2) Warrants
  Where a warrant remains unexecuted, the Code of Procedure Code, 1973 provides for two remedies: (1) Issuing a proclamation and (2) Attachment and Sale of Property
- 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).
- 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 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.
- 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.
- In general, there is no limitation of time in filing complaints under the Sanhita 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 the Sanhita prescribing limitation period for taking cognizance of certain offences. (Sections 513 to 519).
- Chapter XVII (Section 303 to 334) of BNS, provides the provisions and law related to the offences against property.
- 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.

- 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 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.
- 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.
- 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.
- 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 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.
- 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.
- 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.
- 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.
- 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.

- 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.
- 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.
- The Bharatiya Nyaya Sanhita, 2023 (BNS) also provides for general exceptions for a person accused of committing any offence under the Sanhita 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.

GLOSSARY

- **Mens rea:** Mens rea is the mental element necessary to constitute criminal liability.
- **Actus non facit reum, nisi mens sit rea:** The act alone does not amount to guilt; the act must be accompanied by a guilty mind.
- **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.
- **Recklessness:** Recklessness occurs when the actor does not desire the consequence, but foresees the possibility and consciously takes the risk.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

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.

LIST OF FURTHER READINGS
• Bare Act of the Bharatiya Nyaya Sanhita, 2023 • Bare Act on the Bharatiya Nagarik Suraksha Sanhita, 2023

OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)
• *https://www.indiacode.nic.in/bitstream/123456789/20062/1/a2023-45.pdf* • *https://www.indiacode.nic.in/bitstream/123456789/20099/3/A2023-46.pdf*

Lesson 8: Law relating to Evidence

Learning Objectives

To understand:

- Basic concepts under Law of Evidence
- The importance of relevancy of Evidence
- Need and importance of rules relating to admissibility of Evidence
- Facts in issue and related facts
- Admissions and Confessions
- Privileged Communications
- Provisions relating to Oral, Documentary and E-evidence

Key Concepts

- Oath
- Relevancy of Evidence
- Admissibility of Evidence
- Fact in Issue
- Admissions
- Confessions
- Dying Declaration
- Opinion of third persons

Law are not invented. They grow out of circumstances.

– Azarias

Lesson Outline

- Introduction
- Judicial Proceedings
- Few Important Terms
- Classification of Relevant Facts
- Fundamental Rules
- Closely Connected Facts
- Admissions and Confessions
- Opinion of Third Persons
- Facts of which evidence cannot be given (Privileged Communications)
- Oral, Documentary and Circumstantial Evidence
- Presumptions
- Estoppel
- Electronic Evidence (e-Evidence)
- Lesson Round Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (Including Websites / Video Links)

REGULATORY FRAMEWORK

The Bharatiya Sakshya Adhiniyam 2023

INTRODUCTION

The "Law of Evidence" may be defined as a system of rules for ascertaining controversial questions of fact in judicial inquiries. This system of ascertaining the facts, which are the essential elements of a right or liability and is the primary and perhaps the most difficult function of the Court, is regulated by a set of rules and principles known as "Law of Evidence". The Bharatiya Sakshya Adhiniyam 2023 an Act to consolidate and to provide for general rules and principles of evidence for fair trial.

JUDICIAL PROCEEDINGS

The Bharatiya Sakshya Adhiniyam, 2023 does not define the term "judicial proceedings" but it is inclusively defined under Section 2(1)(m) of the Bharatiya Nagarik Suraksha Sanhita, 2023 as "any proceeding in the course of which evidence is or may be legally taken on oath.

The word evidence in the Act signifies only the instruments by means of which relevant facts are brought before the Court, viz., witnesses and documents, and by means of which the court is convinced of these facts.

Evidence under Section 2 of the Bharatiya Sakshya Adhiniyam, 2023 may be either oral or personal (i.e. all statements which the Court permits or requires to be made before it by witnesses), and documentary (documents produced for the inspection of the court), which may be adduced in order to prove a certain fact (principal fact) which is in issue. There must be an open and visible connection between the principal fact and the evidentially facts. Facts are which form part of the same transaction, though not in issue, place or at different times and places.

In general the rules of evidence are same in civil and criminal proceedings but there is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability due regard being had to the burden of proof, is sufficient basis of a decision, but in the latter, specially when the offence charged amounts to felony or treason, a much higher degree of assurance is required. The persuasion of guilt must amount to a moral certainty such as to be beyond all reasonable doubt.

In civil cases, the principle "mere preponderance of probability" is sufficient basis of a decision. In criminal cases, the principle "beyond all reasonable doubt" is required for taking decision.

SCHEME OF THE ADHINIYAM

The Act is divided into four parts			
PART I: PRELIMINARY CHAPTER I - PRELIMINARY	PART II: RELEVANCY OF FACTS CHAPTER II: RELEVANCY OF FACTS	PART III: ON PROOF CHAPTER III: FACTS WHICH NEED NOT BE PROVED CHAPTER IV: OF ORAL EVIDENCE CHAPTER V: OF DOCUMENTARY EVIDENCE CHAPTER VI: OF THE EXCLUSION OF ORAL EVIDENCE BY DOCUMENTARY EVIDENCE	PART IV: PRODUCTION AND EFFECT OF EVIDENCE CHAPTER VII: OF THE BURDEN OF PROOF CHAPTER VIII: ESTOPPEL CHAPTER IX: OF WITNESSES CHAPTER X: OF EXAMINATION OF WITNESSES CHAPTER XI: OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE CHAPTER XII: REPEAL AND SAVINGS

Relevancy of Facts: Sections 3 to 50 of the Adhiniyam deal with relevancy of facts. A fact is also known as Factum Probans or a fact that proves. The question arises what then the term "fact" signifies?

According to section 2(1)(f), "fact" means and includes— (i) any thing, state of things, or relation of things, capable of being perceived by the senses; (ii) any mental condition of which any person is conscious.

Thus facts are classified into physical and psychological facts.

Illustrations.

(i) That there are certain objects arranged in a certain order in a certain place, is a fact.
(ii) That a person heard or saw something, is a fact.
(iii) That a person said certain words, is a fact.
(iv) That a person holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact;

Changes in BSA: Word "man" is replaced by the word "person" in illustrations and illustration (e)-"That a man has a certain reputation, is a fact" is now not the part of BSA.

Illustrations (i), (ii) and (iii), are the examples of physical facts whereas illustration (iv) are the examples of psychological facts.

Evidence may be given of facts in issue and relevant facts.

According to section 3 of BSA, evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter

declared to be relevant, and of no others.

Explanation to section 3, however, explains that section 3 shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to civil procedure.

Illustrations.

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death. At A's trial the following facts are in issue:—

- A's beating B with the club;
- A's causing B's death by such beating;
- A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure, 1908.

FEW IMPORTANT TERMS

To understand the relevancy it is necessary to know the meanings of the few terms. These are as follows:

Relevant Fact

Section 2(1)(k) of BSA provides the definition of "relevant" as: A fact is said to be relevant to another when it is connected with the other in any of the ways referred to in the provisions of this Adhiniyam relating to the relevancy of facts

Section 4 to 14 provides the provisions relating to closely connected facts.

Logical relevancy and legal relevancy

A fact is said to be logically relevant to another when it bears such casual relation with the other as to render probably the existence or non-existence of the latter. All facts logically relevant are not, however, legally relevant. Relevancy under the Adhiniyam is not a question of pure logic but of law, as no fact, however logically relevant, is receivable in evidence unless it is declared by the Act to be relevant. Of course every fact legally relevant will be found to be logically relevant; but every fact logically relevant is not necessarily relevant under the Adhiniyam as common sense or logical relevancy is wider than legal relevancy. A judge might in ordinary transaction, take one fact as evidence of another and act upon it himself, when in Court, he may rule that it was legally irrelevant. And he may exclude facts, although logically relevant, if they appear to him too remote to be really material to the issue.

Under Bharatiya Sakshya Adhiniyam, 2023, Legal relevancy is to be considered as against

logical relevancy.

Legal relevancy and admissibility

Relevancy and admissibility are not co-extensive or interchangeable terms. A fact may be legally relevant, yet its reception in evidence may be prohibited on the grounds of public policy, or on some other ground. Similarly every admissible facts not necessarily relevant. The tenth Chapter of the Adhiniyam makes a number of facts receivable in evidence, but these facts are not "relevant" under the second Chapter which alone defines relevancy.

Relevancy and admissibility are not co-extensive or interchangeable terms. A fact may be relevant yet not admissible.

Facts in Issue

According to section 2(1)(g) of BSA, "facts in issue" means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any suit or proceeding, necessarily follows. Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustration

A is accused of the murder of B. At his trial, the following facts may be in issue:—

(i) That A caused B's death.
(ii) That A intended to cause B's death.
(iii) That A had received grave and sudden provocation from B.
(iv) That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature;

A fact in issue is called as the principal fact to be proved or *factum probandum* and the relevant fact the evidentiary fact or *factum probans* from which the principal fact follows. The fact which constitute the right or liability called "fact in issue" and in a particular case the question of determining the "facts in issue" depends upon the rule of the substantive law which defines the rights and liabilities claimed.

Facts in issue and issues of fact

Under Civil Procedure Code, the Court has to frame issues on all disputed facts which are necessary in the case. These are called issues of fact but the subject matter of an issue of fact is always a fact in issue. Thus when described in the context of Civil Procedure Code, it is an 'issue of fact' and when described in the language of Evidence Act it is a 'fact in issue'. Thus as discussed above, distinction between facts in issue and relevant facts is of fundamental importance.

CLASSIFICATION OF RELEVANT FACTS

Principles of Sections relating to relevancy of facts are mere rules of logic.

Classification of relevant facts	
Details	**Sections**
Closely connected facts	Sections 4 to 14
Admissions	Sections 15 to 25
Statements by persons who cannot be called as witnesses	Sections 26 to 27
Statements made under special circumstances	Sections 28 to 32
How much of a statement is to be proved	Section 33
Judgments of Courts when relevant	Sections 34 to 38
Opinions of third persons, when relevant	Sections 39 to 45
Character when relevant	Sections 46 to 50

FUNDAMENTAL RULES

Fundamental Rules of Evidences	
1. No facts other than those having rational probative value should be admitted in evidence.	2. All facts having rational probative value are admissible in evidence unless excluded by a positive rule of paramount importance.

According to section 2(1)(h) of BSA, Whenever it is provided by this Adhiniyam that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.

For example: Section 88: Presumption as to certified copies of foreign judicial records, Section 89: Presumption as to books, maps and charts, Section 90: Presumption as to electronic messages, 92. Presumption as to documents thirty years old, etc.

According to section 2(1)(l) of BSA, whenever it is directed by this Adhiniyam that the Court

shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.
For example: Section 78: Presumption as to genuineness of certified copies, Section 79: Presumption as to documents produced as record of evidence, etc., Section 80: Presumption as to Gazettes, newspapers, and other documents; Presumption as to maps or plans made by authority of Government.

Presumption is an inference of the existence of some fact, which is drawn, without evidence, from some other fact already proved or assumed to exist (wills). Presumption is either of a fact or law. These presumptions which are inference are always rebuttable. Presumption of law is either conclusive or rebuttable.

The Adhiniyam also provides that when one fact is declared by this Adhiniyam to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CLOSELY CONNECTED FACTS

1. Relevancy of facts forming part of same transaction(Section 4): Facts which, though not in issue, are so connected with a fact in issue or a relevant fact as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and jails are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

2. Facts which are occasion, cause or effect of facts in issue or relevant facts (Section 5): Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Changes in BSA: Words "or relevant facts" added in heading.

Illustration: The question is, whether A robbed B. The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

3. Motive, preparation and previous or subsequent conduct (Section 6): Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Adhiniyam.

When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations

A sues B upon a bond for the payment of money. B denies the making of the bond. The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

The question is, whether A owes B ten thousand rupees. The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B ten thousand rupees", and that A went away without making any answer, are relevant facts.

Motive means which moves a person to act in a particular way. It is different from intention. The substantive law is rarely concerned with motive, but the existence of a motive, from the point of view of evidence would be a relevant fact, in every criminal case. That is the first step in every investigation. Motive is a psychological fact and the accused's motive, will have to be proved by circumstantial evidence. When the question is as to whether a person did a particular act, the fact that he made preparations to do it, would certainly be relevant for the purpose of showing that he did it.

The Section makes the conduct of certain persons relevant. Conduct means behaviour. The conduct of the parties is relevant. The conduct to be relevant must be closely connected with the suit, proceeding, a fact in issue or a relevant fact, i.e., if the Court believes such conduct to exist, it must assist the Court in coming to a conclusion on the matter in controversy. It must influence the decision. If these conditions are satisfied it is immaterial whether the conduct was previous to or subsequent to the happening of the fact in issue.

4. Facts necessary to explain or introduce fact in issue or relevant facts (Section 7): Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or a relevant fact, or which establish the identity of anything, or person whose identity, is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was

transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

The question is, whether a given document is the will of A. The state of A's property and of his family at the date of the alleged will may be relevant facts.
A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer". This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

5. Things said or done by conspirator in reference to common design(Section 8): Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the State.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Kolkata for a like object, D persuaded persons to join the conspiracy in Mumbai, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Singapore the money which C had collected at Kolkata, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

6. When facts not otherwise relevant become relevant(Section 9): Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustration

The question is, whether A committed a crime at Chennai on a certain day. The fact that, on that day, A was at Ladakh is relevant. The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

7. Facts tending to enable Court to determine amount are relevant in suits for damages (Section 10): In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

8. Facts relevant when right or custom is in question (Section 11): Where the question is as to the existence of any right or custom, the following facts are relevant—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was disputed, asserted or departed from.

9. Facts showing existence of state of mind, or of body or bodily feeling (Section 12): Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.
Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustration

A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss. The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

10. Facts bearing on question whether act was accidental or intentional(Section 13): When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustration

A is accused of fraudulently delivering to B a counterfeit currency. The question is, whether the delivery of the currency was accidental. The facts that, soon before or soon after the delivery to B, A delivered counterfeit currency to C, D and E are relevant, as showing that the delivery to B was not accidental.

11. Existence of course of business when relevant(Section 14): When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

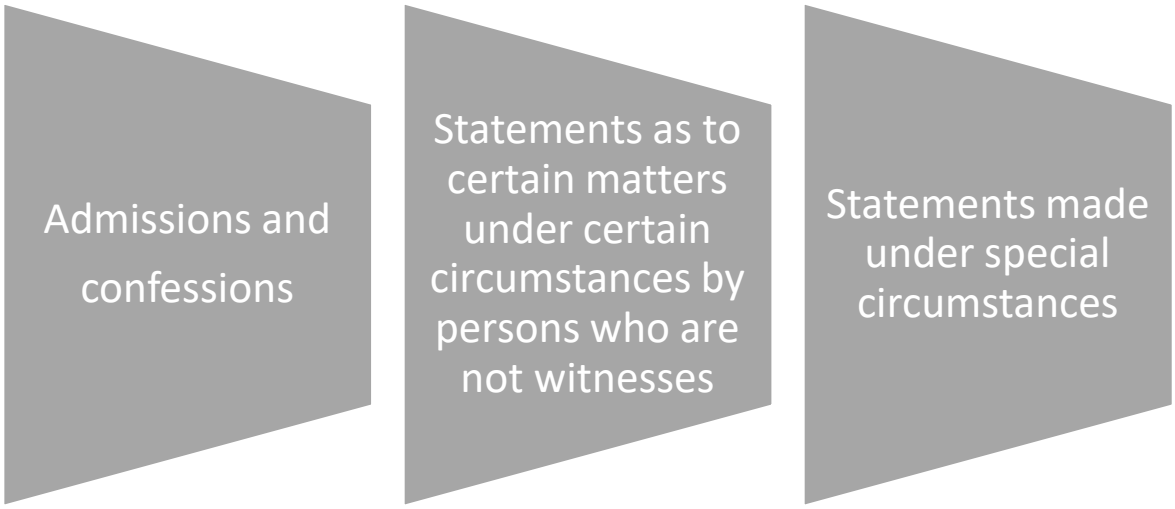
Illustration

(a) The question is, whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Return Letter Office, are relevant.

ADMISSIONS AND CONFESSIONS

The general rule known as the hearsay rule is that what is stated about the fact in question is irrelevant. To this general rule there are three exceptions which are:



(i) Admissions and Confessions

Sections 15 to 25 lay down the exceptions to the general rule known as "admissions" and "confessions".

Admissions

An admission is defined in Section 15 as a statement, oral or documentary or *contained in electronic form* which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances mentioned under Sections 16 to 18. Thus, whether a statement amounts to an admission or not depends upon the question whether it was made by any of the persons and in any of the circumstances described in Sections 16 to 18 and whether it suggests an inference as to a fact in issue or a relevant fact in the case. Thus admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc.

(However, the word 'statement' has not been defined in the Act. Therefore the ordinary

dictionary meaning is to be followed which is "something that is stated.")

An admission may be made by a party, by the agent or predecessor-in-interest of a party, by a person having joint propriety of pecuniary interest in the subject matter (Section 16) or by a "reference" (Section 18).

An admission is the best evidence against the party making the same unless it is untrue and made under the circumstances which does not make it binding on him.

An admission by the Government is merely relevant and non-conclusive, unless the party to whom they are made has acted upon and thus altered his detriment.

An admission must be clear, precise, not vague or ambiguous. In *Basant Singh* v. *Janky Singh*, (1967) 1 SCR 1, The Supreme Court held:

"(1) Section 15 of the Indian Evidence Act, 1872, makes no distinction between an admission made by a party in a pleading and other admission. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. However, this admission cannot be regarded as conclusive and it is open to the party to show that it is not true.
(2) All the statements made in the plaint are admissible as evidence. The Court is, however, not bound to accept all the statements as correct. The Court may accept some of the statements and reject the rest."

Admission means conceding something against the person making the admission. That is why it is stated as a general rule (the exceptions are in Section 17), that admissions must be self-harming; and because a person is unlikely to make a statement which is self-harming unless it is true evidence of such admissions as received in Court.

These Sections deal only with admissions oral and written. Admissions by conduct are not covered by these sections. The relevancy of such admissions by conduct depends upon Section 6 and its explanations.

Oral admissions as to the contents of electronic records are not relevant unless the genuineness of the record produced is in question. (Section 20)

Confessions

Sections 22 to 24 deal with confessions. However, the Adhiniyam does not define a confession but includes in it admissions of which it is a species. Thus confessions are special form of admissions. Whereas every confession must be an admission but every admission may not amount to a confession. Proviso to section 23 and section 24 deal with confessions which the Court will take into account. A confession is relevant as an admission unless it is made.

Person in Authority by inducement, threat or promise	(i) to a person in authority in consequence of some inducement, threat or promise held out by him in reference to the charge against the accused; or
Police Officer	(ii) to a Police Officer; or
In custody of police officer without the presence of magistrate	(iii) to any one at a time when the accused is in the custody of a Police Officer and no Magistrate is present.

Changes made by BSA:

In section 22 [24 of IEA] - The word "coercion" has been added in 22. Section 28 IEA and Section 29 IEA are given as provisos to Section 22 of the BSA. Heading is dropped as sections are included as provisos.

In section 23(2) [26 of IEA] - Heading is dropped as the section is included as a subsection. Word "whilst" is replaced by "while" and words "such person" are replaced by "him".

In section 24 [30 of IEA] - A new explanation II is added, mentioning that "A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be deemed to be a joint trial for the purpose of this section."

Thus, a statement made by an accused person if it is an admission, is admissible in evidence. The confession is evidence only against its maker and against another person who is being jointly tried with him for an offence.

Section 24 is an exception to the general rule that confession is only an evidence against the confessor and not against the others.

The confession made in front of magistrate recorded is admissible against its maker is also admissible against co-accused under Section 24.

The Privy Council in *Pakala Narayanaswami v. Emperor, (1929) PC 47*, observed that:

No statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. All confessions are admissions but not *vice versa.*

A confession must, either admit, in terms the offence, or substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, is not of itself a confession. For example, an admission that the accused was the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession of the knife or revolver. A confession cannot be construed as meaning a statement by the accused suggesting the inference that he committed the crime.

According to Section 22(1), confession caused by inducement, threat, coercion or promise is irrelevant. To attract the prohibition contained in Section 22 of BSA the following six facts must be established:

(i) that the statement in question is a confession;
(ii) that such confession has been made by an accused person;
(iii) that it has been made to a person in authority;
(iv) that the confession has been obtained by reason of any inducement, threat, coercion or promise proceeded from a person in authority;
(v) such inducement, threat, coercion or promise, must have reference to the charge against the accused person;
(vi) the inducement, threat or promise must in the opinion of the Court be sufficient to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

To exclude the confession it is not always necessary to prove that it was the result of inducement, threat, coercion or promise. It is sufficient if a legitimate doubt is created in the mind of the Court or it appears to the Court that the confession was not voluntary. It is however for the accused to create this doubt and not for the prosecution to prove that it was voluntarily made. A confession if voluntary and truthfully made is an efficacious proof of guilt.

Confessions vs. Admissions

A confession, however, is received in evidence for the same reason as an admission, and like an admission it must be considered as a whole. Further, there can be an admission either in a civil or a criminal proceedings, whereas there can be a confession only in criminal proceedings. An admission need not be voluntary to be relevant, though it may affect its weight; but a confession to be relevant, must be voluntary. There can be relevant admission made by an agent or even a stranger, but, a confession to be relevant must be made by the accused himself. A confession of a co-accused is not strictly relevant, though it may be taken into consideration, under Section 24 in special circumstances.

Confessions are classified as:

(a) judicial, and
(b) extra-judicial

Judicial confessions are those made before a Court or recorded by a Magistrate under *Section 183 of BNSS 2023* after following the prescribed procedure such as warning the accused that he need not to make the confession and that if he made it, it would be used against him. Extra-judicial confessions are those which are made either to the police or to any person other than Judges and Magistrates as such.

An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidences. It will have to be proved just like any other fact. The value of the evidence depends upon the truthfulness of the witness to whom it is made.

In *Ram Khilari v. State of Rajasthan, AIR 1999 SC 1002*, the Supreme Court held that where an extra-judicial confession was made before a witness who was a close relative of the accused and the testimony of said witness was reliable and truthful, the conviction on the basis of extra judicial confession is proper.

In another case, the Supreme Court has further held that the law does not require that the evidence of an extra judicial confession should be corroborated in all cases. When such confession was proved by an independent witness who was a responsible officer and one who bore no animus against the accused, there is hardly any justification to disbelieve it. Also, where the Court finds that the confession made by the accused to his friend was unambiguous and unmistakably conveyed that the accused was the perpetrator of the crime and the testimony of the friend was truthful, reliable and trustworthy, a conviction based on such extra-judicial confession is proper and no corroboration is necessary. Much importance could not be given to minor discrepancies and technical errors (*Vinayak Shivajirao Pol* v. *State of Maharashtra,* 1998 (1) Scale 159).

Illustrations

1. A undertakes to collect rents for B. B sues A for not collecting rent due from C to B. A denies that rent was due from C to B. A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.
2. The question is, whether a horse sold by A to B is sound. A says to B— "Go and ask C, C knows all about it". C's statement is an admission.
3. The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged. A may prove a statement by B that the deed is genuine, and B may prove a statement by A that deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.
4. A, the captain of a ship, is tried for casting her away. Evidence is given to show that the ship was taken out of her proper course. A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under clause (b) of section 26.
5. A is accused of a crime committed by him at Kolkata. He produces a letter written by himself and dated at Chennai on that day, and bearing the Chennai post-mark of that day. The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under clause (b) of section 26.
6. A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value. A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.
7. A is accused of fraudulently having in his possession counterfeit currency which he knew to be counterfeit. He offers to prove that he asked a skilful person to examine the currency as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine. A may prove these facts.
8. A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C". The Court may consider the effect of this confession as against B.

9. A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said— "A and I murdered C". This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

(ii) Statements by persons who cannot be called as witnesses

Statements (written or verbal) of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases, namely:

1. Statements relating to cause of death: When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

2. Statement relating to Course of Business: When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

3. Statement against interest: When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

4. Statement relating to the opinion as to existence of Public Right, Custom or matter of Public or General Interest: when the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

5. Statement relating to the existence of any relationship: When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

6. Statement relating to the existence of any relationship with deceased: When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

7. Statement in any deed, will or other document relating to right or custom: When the statement is contained in any deed, will or other document which relates to any such transaction as is specified in clause (*a*) of section 11 *i.e*. any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence.

8. Statement relating to expression feelings or Impression: when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations

(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was raped. The question is whether she was raped by B; or the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.
(b) The question is as to the date of A's birth. An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.
(c) The question is, whether A was in Nagpur on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Nagpur, for the purpose of conferring with him upon specified business, is a relevant fact.
(d) The question is, whether a ship sailed from Mumbai harbour on a given day. A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in Chennai, to whom the cargo was consigned, stating that the ship sailed on a given day from Mumbai port, is a relevant fact.
(e) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders is a relevant fact.
(f) The question is, whether A and B were legally married. The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.
(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.
(h) The question is, what was the cause of the wreck of a ship. A protest made by the captain, whose attendance cannot be procured, is a relevant fact.
(i) The question is, whether a given road is a public way. A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.
(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased business person in the ordinary course of his business, is a relevant fact.
(k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.
(m) The question is, whether, and when, A and B were married. An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.
(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

(iii) Statements made under special circumstances:

The following statements become relevant on account of their having been made under special circumstances:

(a) Entries in the books of account, including those maintained in an electronic form, regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

(b) An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record, is kept, is itself a relevant fact.

(c) Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

(d) When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Central Act or State Act or in a Central Government or State Government notification appearing in the respective Official Gazette or in any printed paper or in electronic or digital form purporting to be such Gazette, is a relevant fact.

(e) When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published including in electronic or digital form under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book including in electronic or digital form purporting to be a report of such rulings, is relevant.

When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made. (Section 33)

OPINION OF THIRD PERSONS

Generally opinion of third persons is irrelevant. However, in the below mentioned cases, opinion of third person may be treated as relevant:

1. Opinions of experts (Section 39): When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.

Illustration: The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

Further, when in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact.

2. Facts bearing upon opinions of experts (Section 40): acts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustration: The question is, whether an obstruction to a harbour is caused by a certain sea-wall. The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

3. Opinion as to handwriting and signature, when relevant (Section 41): When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.
A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

4. Opinion as to existence of general custom or right, when relevant (Section 42): When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

The expression "general custom or right" includes customs or rights common to any considerable class of persons.

5. Opinion as to usages, tenets, etc., when relevant (Section 43): When the Court has to form an opinion as to—
(*i*) the usages and tenets of any body of men or family;
(ii) the constitution and governance of any religious or charitable foundation; or
(*iii*) the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

6. Opinion on relationship, when relevant (Section 44): When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

However, such opinion shall not be sufficient to prove a marriage in proceedings under the Divorce Act, 1869, or in prosecution under sections 82 and 84 of the Bharatiya Nyaya Sanhita, 2023.

7. Grounds of opinion, when relevant (Section 45): Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

FACTS OF WHICH EVIDENCE CANNOT BE GIVEN (PRIVILEGED COMMUNICATIONS)

There are some facts of which evidence cannot be given though they are relevant, such as facts are mainly covered under Sections 127 to 134 of the BSA, where evidence is prohibited under those Sections. They are also referred to as 'privileged communications'.

Types of privileged communications	
(i) Evidence of a Judge or Magistrate in regard to certain matters (Section 127)	(iv) Official communications (Section 130)
(ii) Communications during marriage; (Section 128)	(v) Source of information of a Magistrate or Police officer or Revenue officer as to commission of an offence or crime (Section 131)
(iii) Evidence as to Affairs of State; (Section 129)	(vi) Professional communication between a client and his barrister, attorney or other professional or legal advisor (Sections 132(1) &(2) and 134).

Changes in Section 132(1) &(2) BSA [126 of IEA]: The words "barrister, attorney, pleader or vakil" are replaced by "advocate". Word "employment" is replaced by "service".

A witness though compellable to give evidence is privileged in respect of particular matters within the limits of which he is not bound to answer questions while giving evidence. These are based on public policy.

Evidence of Judges and Magistrates

Under Section 127 of BSA, no Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate;

He may be examined as to other matters which occurred in his presence whilst he was so acting.

Communications during marriage

Under Section 128 of BSA, communication between the husband and the wife during marriage is privileged and its disclosure cannot be enforced. This provision is based on the principle of domestic peace and confidence between the married couple. The Section contains two parts; the first part deals with the privilege of the witness while the second part of the Section deals with the privilege of the husband or wife of the witness.

Evidence as to affairs of State

Section 129 of the BSA applies only to evidence derived from unpublished official record relating to affairs of State. According to Section 129, no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Professional communications

Section 132 of BSA deal with the professional communications between an advocate and a client, which are protected from disclosure. A client cannot be compelled and an advocate cannot be allowed without the express consent of his client to disclose oral or documentary communications passing between them in professional confidence. The rule is founded on the impossibility of conducting legal business without professional assistance and securing full and unreserved communication between the two. Under these sections neither an advocate nor his interpreter, clerk or employees can be permitted to disclose any communication made to him in the course and for the purpose of professional employment of such advocate or to state the contents or condition of any document with which any such person has become acquainted in the course and for the purpose of such employment.

Further, under section 134, no one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Changes in Section 132 of BSA [126 of IEA]: The words "barrister, attorney, pleader or vakil" are replaced by "advocate". Word "servant" is replaced by "employee".

ORAL, DOCUMENTARY AND CIRCUMSTANTIAL EVIDENCE

Oral Evidences

All facts, except the contents of documents may be proved by oral evidence (Section 54). The contents of documents may be proved either by primary or by secondary evidence (Section 55). Thus, the two broad rules regarding oral evidence are:

(i) All facts except the contents of documents may be proved by oral evidence;
(ii) Oral evidence must in all cases be “direct”.

Oral evidence means statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry. But, if a witness is unable to speak he may give his evidence in any manner in which he can make it intelligible as by writing or by signs. (Section 125)

Direct Evidence

In Section 55 of the BSA, expression “oral evidence” has an altogether different meaning. It is used in the sense of “original evidence” as distinguished from “hearsay” evidence and it is not used in contradiction to “circumstantial” or “presumptive evidence”. According to Section 55 oral evidence must in all cases whatever, be direct; that is to say:

— if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; — if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
— if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;
— if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

However, the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

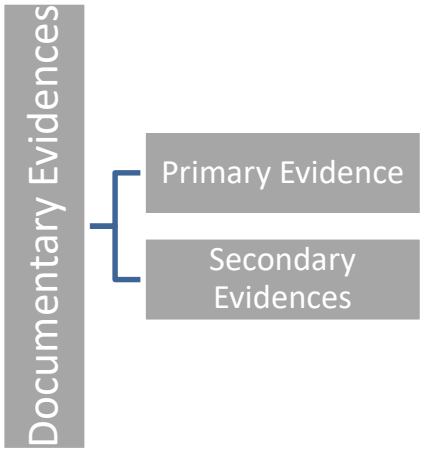
Further, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

Documentary Evidences

According to section 2(1)(*d*) "document" means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records.

And according to section 56, the contents of documents may be proved either by primary or by secondary evidence.

So, the documentary evidences can further be classified in two ways i.e. Primary or Secondary.



Primary evidence

"*Primary evidence*" means the document itself produced for the inspection of the Court (Section 57). The rule that the best evidence must be given of which the nature of the case permits has often been regarded as expressing the great fundamental principles upon which the law of evidence depends. The general rule requiring primary evidence of producing documents is commonly said to be based on the best evidence principle and to be supported by the so called presumption that if inferior evidence is produced where better might be given, the latter would tell against the withholder.

Secondary evidence

Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Section 58 defines the kind of secondary evidence permitted by the Sanhita. According to Section 58, "secondary evidence" means and includes:

(i) certified copies given under the provisions after section 58;
(*ii*) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
(*iii*) copies made from or compared with the original;
(iv) counterparts of documents as against the parties who did not execute them;
(*v*) oral accounts of the contents of a document given by some person who has himself seen it;
(vi) oral admissions;
(*vii*) written admissions;
(*viii*) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.

Illustrations

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.
(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.
(*c*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.
(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Further, section 60 provides the Cases in which secondary evidence relating to documents may be given. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases, namely:

(*a*) when the original is shown or appears to be in the possession or power—
(i) of the person against whom the document is sought to be proved; or
(ii) of any person out of reach of, or not subject to, the process of the Court; or
(*iii*) of any person legally bound to produce it,
and when, after the notice mentioned in section 64 such person does not produce it;
(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
(*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
(*d*) when the original is of such a nature as not to be easily movable;
(e) when the original is a public document within the meaning of section 74;
(*f*) when the original is a document of which a certified copy is permitted by this Adhiniyam, or by any other law in force in India to be given in evidence;

(*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

Explanation.—For the purposes of—
(*i*) clauses (*a*), (*c*) and (*d*), any secondary evidence of the contents of the document is admissible;
(*ii*) clause (*b*), the written admission is admissible;
(*iii*) clause (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible;
(*iv*) clause (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such document.

Section 62 provides that the contents of electronic records may be proved in accordance with the provisions of Section 63.

Section 63 is non-obstante clause which provides that any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

In English law the expression direct evidence is used to signify evidence relating to the 'fact in issue' (*factum probandum*) whereas the terms circumstantial evidence, presumptive evidence and indirect evidence are used to signify evidence which relates only to "relevant fact" (*facta probandum*). However, under Section 55 of the BSA, the expression "direct evidence" has altogether a different meaning and it is not intended to exclude circumstantial evidence of things which could be seen, heard or felt. Thus, evidence whether direct or circumstantial under English law is "direct" evidence under Section 55. Before acting on circumstances put forward are satisfactorily proved and whether the proved circumstances are sufficient to bring the guilt to the accused the Court should not view in isolation the circumstantial evidence but it must take an overall view of the matter.

PRESUMPTIONS

The Sanhita recognises some rules as to presumptions. Rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts and circumstances. A presumption is not in itself an evidence but only makes a *prima facie* case for the party in whose favour it exists. A presumption is a rule of law that courts or juries shall or may draw a particular inference from a particular fact or from particular evidence unless and until the truth of such inference is disproved.

Three Categories of Presumptions		
(i) Presumptions of law, It is a rule of law that a particular inference shall be drawn by a court from particular circumstances.	(ii) Presumptions of fact, it is a rule of law that a fact otherwise doubtful may be inferred from a fact which is proved.	(iii) Mixed presumptions, they consider mainly certain inferences between the presumptions of law and presumptions of fact.

The terms presumption of law and presumption of fact are not defined by the Sanhita. Section 2(1)(b), (h) and (l) only refers to the terms "conclusive proof", "shall presume" and "may presume". The term "conclusive proof" specifies those presumptions which in English Law are called irrebuttable presumptions of law; the term "shall presume" indicates rebuttable presumptions of law; the term "may presume" indicates presumptions of fact.

ESTOPPEL

When we see a man knocked down by a speeding car and a few yards away, there is a car going, there is a presumption of fact that the car has knocked down the man.

The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing (Section 121). However, there is no estoppel against the Statute. Where the Statute prescribes a particular way of doing something, it has to be done in that manner only.

Sections 122 and 123 are also other important sections relating to Estoppel of tenant and of licensee of person in possession and Estoppel of acceptor of bill of exchange, bailee or licensee.

Principle of Estoppel

Estoppel is based on the maxim *'allegans contratia non est audiendus'* i.e. a person alleging contrary facts should not be heard. The principles of estoppel covers one kind of facts. It says that man cannot approbate and reprobate, or that a man cannot blow hot and cold, or that a man shall not say one thing at one time and later on say a different thing.

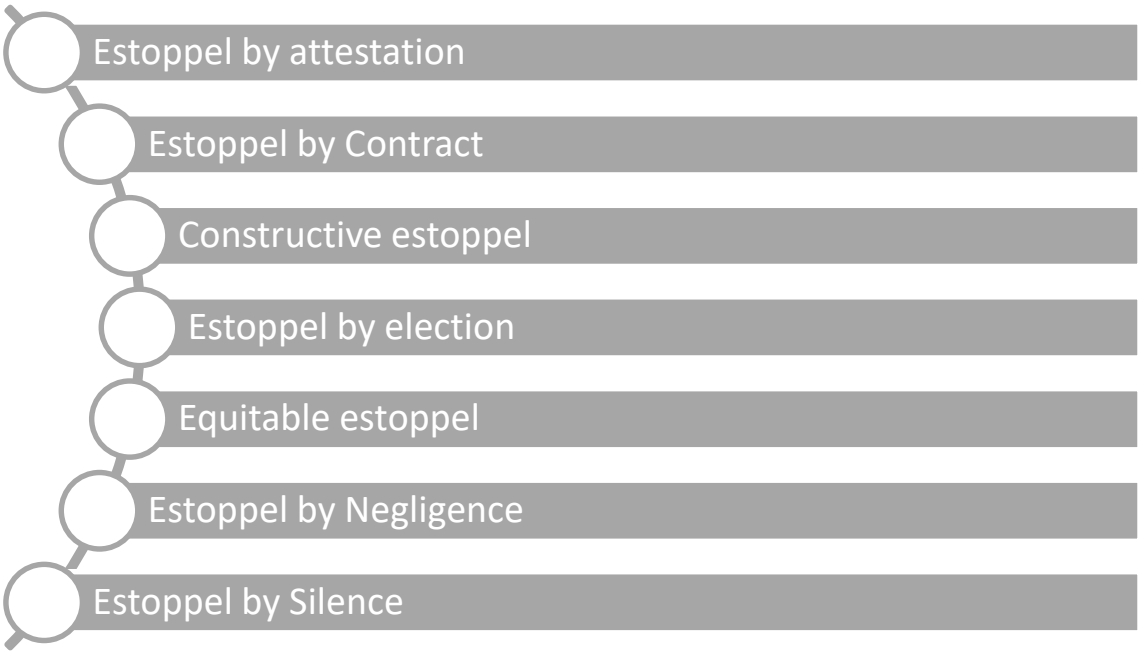
The doctrine of estoppel is based on the principle that it would be most inequitable and unjust that if one person, by a representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the

representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it (*Sorat Chunder* v. *Gopal Chunder*).

Estoppel is a rule of evidence and does not give rise to a cause of action. Estoppel by record results from the judgement of a competent Court. It was laid down by the Privy Council in *Mohori Bibee v. Dharmodas Ghosh, (1930) 30 Cal. 530 PC*, that the rule of estoppel does not apply where the statement is made to a person who knows the real facts represented and is not accordingly misled by it. The principle is that in such a case the conduct of the person seeking to invoke rule of estoppel is in no sense the effect of the representation made to him. The main determining element is not the effect of his representation or conduct as having induced another to act on the faith of such representation or conduct.

In *Biju Patnaik University of Tech. Orissa v. Sairam College, AIR 2010 (NOC) 691 (Orissa)*, one private university permitted to conduct special examination of students pursuing studies under one time approval policy. After inspection, 67 students were permitted to appear in the examination and their results declared. However, university declined to issue degree certificates to the students on the ground that they had to appear for further examination for another condensed course as per syllabus of university. It was held that once students appeared in an examination and their results declared, the university is estopped from taking decision withholding degree certificate after declaration of results.

Different kinds of Estoppel



ELECTRONIC EVIDENCE (E-EVIDENCE)

The contents of electronic records may be proved in accordance with the provisions of section 63 of BSA.

Admissibility of electronic records

According to section 63, notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

As per section 63(2), the conditions in respect of a computer output are as follows:

(a) the computer output containing the information was produced by the computer or communication device during the period over which the computer or Communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;
(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or Communication device in the ordinary course of the said activities;
(c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or Communication device in the ordinary course of the said activities.

Treatment of activity regularly carried on over a period by means of one or more computers or communication

Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in section 63(2)(a) was regularly performed by means of one or more computers or communication device, whether—

(a) in standalone mode; or
(b) on a computer system; or
(c) on a computer network; or

(*d*) on a computer resource enabling information creation or providing information processing and storage; or
(e) through an intermediary,

all the computers or communication devices used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer or communication device; and references in this section to a computer or communication device shall be construed accordingly.

Submission of certificate along with the electronic record

In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely:

(*a*) identifying the electronic record containing the statement and describing the manner in which it was produced;

(*b*) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (*a*) to (*e*) of sub-section (*3*);

(*c*) dealing with any of the matters to which the conditions mentioned in sub-section (*2*) relate,

and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

Further, as per section 66 of BSA, except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record, the fact that such electronic signature is the electronic signature of the subscriber must be proved.

LESSON ROUND-UP

- The law of Evidence may be defined as a system of rules for ascertaining controverted questions of fact in judicial inquiries. This system of ascertaining the facts, which are the essential elements of a right or liability and is the primary and perhaps the most difficult function of the court, is regulated by a set of rules and principles known as "law of Evidence".
- The word evidence in the Sanhita signifies only the instruments by means of which relevant facts are brought before the court, viz., witnesses and documents, and by means of which the court is convinced of these facts.
- Evidence under the Sanhita may be either oral or personal (i.e. all statements which the court permits or requires to be made before it by witnesses), and documentary (documents produced for the inspection of the court), which may be adduced in order to prove a certain fact (principal fact) which is in issue.

- The general rule known as the hearsay rule is that what is stated about the fact in question is irrelevant. To this general rule there are three exceptions which are: (i) Admissions and confessions; (ii) Statements as to certain matters under certain circumstances by persons who are not witnesses; and (iii) Statements made under special circumstances.
- All facts which are neither admitted nor are subject to judicial notice must be proved. The Sanhita divides the subject of proof into two parts: (i) proof of facts other than the contents of documents; (ii) proof of documents including proof of execution of documents and proof of existence, condition and contents of documents.
- A presumption is a rule of law that courts or juries shall or may draw a particular inference from a particular fact or from particular evidence unless and until the truth of such inference is disproved. There are three categories of presumptions:(i) presumptions of law, which is a rule of law that a particular inference shall be drawn by a court from particular circumstances; (ii) presumptions of fact, it is a rule of law that a fact otherwise doubtful may be inferred from a fact which is proved; (iii) mixed presumptions, they consider mainly certain inferences between the presumptions of law and presumptions of fact.
- The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.
- According to section 63, notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible

GLOSSARY

- **Judicial Proceedings:** According to Section 2(1)(m) of the BNSS as "a proceeding in the course of which evidence is or may be legally taken on oath".
- **Documentary Evidence:** All documents including electronic records produced for the inspection of the Court are called documentary evidence.
- **Fact in Issue:** facts in issue means and includes-any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows.
- ***Res gestae:*** Facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction.
- **Confessions:** The confession is an admission, which is evidence only against its maker and against another person who is being jointly tried with him for an offence. A confession must, either admit, in terms the offence, or substantially all the facts which constitute the offence.

- **Judicial Confessions:** Judicial confessions are those made before a Court or recorded by a Magistrate under the BNSS after following the prescribed procedure.
- **Extra Judicial Confessions:** Extra-judicial confessions are those which are made either to the police or to any person other than Judges and Magistrates as such.
- **Privileged Communication:** There are some facts of which evidence cannot be given under Bharatiya Sakshya Adhiniyam, 2023 though they are relevant. They are referred to as 'privileged communications'
- **Primary Evidence:** Primary evidence means the document itself produced for the inspection of the Court.
- **Estoppel:** Estoppel is based on the maxim '*allegans contratia non est audiendus*' i.e. a person alleging contrary facts should not be heard.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What is oral, documentary and circumstantial evidence?
2. Differentiate between Primary Evidence and Secondary Evidence.
3. Explain in Brief Principal of Estoppel.
4. Write a short note on Admissions and Confession.
5. State the cases in which opinion of expert is relevant.
6. Write a short note on admissibility of electronic evidence.

LIST OF FURTHER READINGS

- Bare Act of Bharatiya Sakshya Adhiniyam, 2023
- "Relevancy, Proof and Evaluation of Evidence in Criminal Cases" authored by Mr. Justice U.L.Bhat
- Vepa P. Sarathi, Law of Evidence, 6th Edition.

OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)

- *https://www.mha.gov.in/sites/default/files/250882_english_01042024.pdf*

Lesson 9: Law relating to Specific Relief

Munishamappa v. M. Rama Reddy & Ors decided by Supreme Court on 02.11.2023

In this case, the appeal decided the correctness of the judgment, passed by High Court in which the Second Appeal preferred by the defendant-respondent was allowed, and the suit for specific performance of contract filed by the appellant was dismissed.

An important question in this case decided by the Hon'ble Supreme Court was relating to distinguishment between Sale Deed and Agreement to Sell.

In the Judgement, the Apex Court has stated that the Agreement to Sell is not a conveyance; it does not transfer ownership rights or confers any title.

Lesson 10: Law relating to Limitation

1. Ajay Dabra vs. Pyare Ram and Ors. (31.01.2023 - SC)

In this case the impugned order of High Court of Himachal Pradesh dismissed the delay condonation applications filed Under Section 5 of the Limitation Act, 1963, declining to condone a delay of 254 days, because the reasons assigned for the condonation were not sufficient reasons for condonation of the delay. This was not found to be a sufficient reason for the condonation of delay as the Appellant was an affluent businessman and a hotelier.

The Supreme Court has said that we do not have a case at hand where the Appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the Appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the Appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the Appellant filed an appeal in terms of Section 149 Code of Civil Procedure and thereafter removed the defects by paying deficit court fees. This has evidently not been done.

2. A. Valliammai vs. K.P. Murali and Others decided by Supreme Court on 11th September, 2023

In this case the Supreme Court has referred to the provisions of Article 54 of Part II of the Schedule to the Limitation Act, 1963 which stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused.

The Supreme Court referred to the case earlier decided in *Pachanan Dhara and Others v. Monmatha Nath Maity (2006) 5 SCC 340*. The Supreme Court in referred case had held that for determining applicability of the first or the second part, the court will have to see whether any time was fixed for performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period, unless a case for extension of time or performance was pleaded or established. However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on part of the defendant to perform the contract.

3. Purni Devi & Anr. V. Babu Ram & Anr. decided by Supreme Court on 02.04.2024

In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant should be excluded

Facts

The genesis of the case at hand dates back to 01.06.1984, wherein the predecessors in interest of the Appellant ("Plaintiff") filed a suit for possession against the Respondents ("Defendants") herein. On 10.12.1986, this suit was decreed by learned Munsiff, First Class Hiranagar, in favour of the Plaintiff, and the Defendants were directed to deliver vacant and peaceful possession of the property to the Plaintiff. This decree was challenged by the Respondents before the learned District Judge, Kathua, in First Appeal, which came to be dismissed on 09.02.1990. Thereafter, the Respondents preferred a Second Appeal before the High Court of Jammu and Kashmir which came to be dismissed *vide* Order dated 09.11.2000. No further appeal was preferred. Therefore, the decree of the learned Munsiff Court attained finality on 09.11.2000.

The present *lis* arises from the application for execution filed by the predecessor in interest of the Plaintiff, before the learned Tehsildar (Settlement), Hiranagar on 18.12.2000. This application came to be rejected on 29.01.2005, whereby the learned Tehsildar observed that the Plaintiff had not applied before the Court with appropriate jurisdiction.

The Plaintiff thereafter, on 03.10.2005 preferred a fresh application for execution before the Court of Munsiff, Hiranagar. This application resulted in the order dated 28.11.2007, whereby, the learned Munsiff Court dismissed the application as being barred by limitation, which has come to be confirmed vide the impugned order.

Issue

Whether the time spent in wrong forum be excluded from the Period of Limitation?

Decision

The principles pertaining to applicability of Section 14, were extensively discussed and summarised by Supreme Court in Consolidated Engg. Enterprises (Supra), wherein while holding the exclusion of time period under Section 14 of the Limitation Act to a petition under Section 34 of the Arbitration Act it was observed:-

"Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

> *(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*

(2) The prior proceeding had been prosecuted with due diligence and in good faith;
(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and
(5) Both the proceedings are in a court."

This Court in Consolidated Engg. Enterprises (Supra) further expounded that the provisions of this Section, must be interpreted and applied in a manner that furthers the cause of justice, rather than aborts the proceedings at hand and the time taken diligently pursuing a remedy, in a wrong Court, should be excluded.

In the present case, it is not in dispute that:-

(i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest.
(ii) The failure of the execution proceedings was due to a defect of jurisdiction.
(iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000.
(iv) Both the proceedings are in a court.

More recently, in Laxmi Srinivasa R and P Boiled Rice Mill v. State of Andhra Pradesh and Anr.6 (2-Judge Bench), Supreme Court followed the dictum in Consolidated Engg. Enterprises (Supra) and M.P. Steel (Supra) to exclude the time period undertaken by the Plaintiff therein in pursuing remedy under Writ Jurisdiction, in the absence of challenge to the bona fides of the Plaintiff, in view of Section 14.

The Hon'ble Supreme Court has said that we do not find the reasoning given by the learned High Court in paragraph 9 while rejecting the plea for exclusion of time to be sustainable. On a perusal of the record, it is apparent that the Plaintiff has pursued the matter bonafidely and diligently and in good faith before what it believed to be the appropriate forum and, therefore, such time period is bound to be excluded when computing limitation before the Court having competent jurisdiction. All conditions stipulated for invocation of Section 14 of the Limitation Act are fulfilled.

For details: https://www.sci.gov.in/wp-admin/admin-ajax.php?action=get_judgements_pdf&diary_no=244892018&type=j&order_date=2024-04-02

4. ***Pathapati Subba Reddy (Died) by L.Rs. & Ors. v. The Special Deputy Collector (LA) decided by Supreme Court on 08.04.2024***

Merits of the case are not required to be considered in condoning the delay. A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time

This case can be referred to understand the law relating to condonation of delay under the Limitation Act, 1963.

The present Special Leave Petition was filed challenging the judgment and order whereby the High Court has dismissed the application of the petitioners for condoning the delay of 5659 days in filing the proposed appeal.

The moot question before the Hon'ble Supreme court was whether in the facts and circumstances of the case, the High Court was justified in refusing to condone the delay in filing the proposed appeal and to dismiss it as barred by limitation.

The Supreme Court has laid down that on a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

Moreover, the High Court, in the facts of this case, has not found it fit to exercise its discretionary jurisdiction of condoning the delay. There is no occasion for us to interfere with the discretion so exercised by the High Court for the reasons recorded. First, the claimants were negligent in pursuing the reference and then in filing the proposed appeal. Secondly, most of the

claimants have accepted the decision of the reference court. Thirdly, in the event the petitioners have not been substituted and made party to the reference before its decision, they could have applied for procedural review which they never did. Thus, there is apparently no due diligence on their part in pursuing the matter. Accordingly, in our opinion, High Court is justified in refusing to condone the delay in filing the appeal.

Lesson 11 - Law relating to Arbitration, Mediation and Conciliation

1. *Chennai Metro Rail Limited Administrative Building v. M/s Transtonnelstroy Afcons (JV) & Anr. decided by Supreme Court on 19th October, 2023*

In this case, Chennai Metro Rail Limited("Chennai Metro"), a joint venture between the Central Government and the Government of Tamil Nadu, had awarded the contract to the respondent ("Afcons").

The tribunal recorded the agreement of parties, that the hearing fee for each arbitrator was fixed at ₹ 1,00,000/- per session of hearing date. A member of tribunal was substituted. Further, in the 10th Meeting, the tribunal sought to revise the fee payable from ₹ 1,00,000/- to ₹ 2,00,000/. Chennai Metro objected to this revision and Afcons requested the tribunal to keep its direction for modification of fee, in abeyance till the decision of this court.

Later, Afcons informed Chennai Metro that it had paid the revised fee for five hearings but Chennai Metro filed an application before the Madras High Court. In this proceeding under Section 14, the relief sought was a declaration that the mandate of the tribunal was terminated in respect of the disputes referred to them.

All three members of the tribunal filed affidavits, in response to the Section 14 petition acknowledging that Supreme Court's judgment in *ONGC v. AFCONS Gunasa JV2* (hereafter "ONGC") had decided the issue and thus members of the tribunal decided to revert back to the originally agreed fee i.e., ₹1,00,000.

Initially, the High Court granted an interim order, staying the proceedings. However, after hearing counsel for the parties, and considering the materials on the record, the court dismissed the application, filed by Chennai Metro through the impugned judgment.

In the present SLP filed before Hon'ble Supreme Court, it was decided that the attempt by Chennai Metro to say that the concept of *de jure* ineligibility because of existence of justifiable doubts about impartiality or independence of the tribunal on unenumerated grounds [or other than those outlined as statutory ineligibility conditions in terms of Sections 12 (5)], therefore cannot be sustained. We can hardly conceive of grounds other than those mentioned in the said schedule, occasioning an application in terms of Section 12(3). In case, this court were in fact make an exception to uphold Chennai Metro's plea, the consequences could well be an explosion in the court docket and other unforeseen results. Skipping the statutory route carefully devised by Parliament can cast yet more spells of uncertainty upon the arbitration process….

2. Mediation Act, 2023

Mediation Act, 2023 has received the assent of the Hon'ble President of India on the 14th September, 2023. The object of this law *inter alia* is to promote and facilitate mediation, resolution of disputes, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as

acceptable and cost effective process. The provisions of this law will come into force on such date(s) as the Central Government will notify. The following sections of the Mediation Act, 2013 has come into force w.e.f. 9th October, 2023.

These sections are as follows:

Section 1: Short title, extent and commencement

This Act may be called the Mediation Act, 2023. It shall extend to the whole of India. It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Section 3: Definitions

The important definitions provided in section 3 *inter alia* is as under:

(a) "commercial dispute" means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015;

(b) "community mediator" means a mediator for the purposes of conduct of community mediation under Chapter X;

(c) "Council" means the Mediation Council of India established under section 31;

(e) "court-annexed mediation" means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal;

(f) "institutional mediation" means mediation conducted under the aegis of a mediation service provider;

(g) "international mediation" means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is-

(i) an individual who is a national of, or habitually resides in, any country other than India; or

(ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or

(iii) an association or body of individuals whose place of business is outside India; or

(iv) the Government of a foreign country;

(h) "mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute;

(i) "mediator" means a person who is appointed to be a mediator, by the parties or by a mediation service provider, to undertake mediation, and includes a person registered as mediator with the Council. Explanation.—Where more than one mediator is appointed for a mediation, reference to a mediator under this Act shall be a reference to all the mediators;

(j) "mediation agreement" means a mediation agreement referred to in sub-section (1) of section 4;

(k) "mediation communication" means communication made, whether in electronic form or otherwise, through—

(i) anything said or done;

(ii) any document; or

(iii) any information provided,

for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;

(l) "mediation institute" means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act;

(m) "mediation service provider" means a mediation service provider referred to in sub-section (1) of section 40;

(n) "mediated settlement agreement" means mediated settlement agreement referred to in sub-section (1) of section 19;

(q) "online mediation" means online mediation referred to in section 30;

(u) "pre-litigation mediation" means a process of undertaking mediation, as provided under section 5, for settlement of disputes prior to the filing of a suit or proceeding of civil or commercial nature in respect thereof, before a court or notified tribunal under sub-section (2) of section 5;

(y) "specified" means specified by regulations made by the Council under this Act.

Section 31 to Section 38 relating to Mediation Council of India

The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act. The composition of Council shall be in accordance with provisions provided under section 32 of the Mediation Act, 2023. Other provisions inter alia relates to Vacancies, etc., not to invalidate proceedings of Council, Resignation, Removal, Appointment of experts and constitution of Committees, Secretariat and Chief Executive Officer of Council and Duties and functions of Council.

Section 45 to 47 relating to Mediation Fund, Accounts and Audits & Power of Central Government to issue directions

Section 45 provides for creation of "Mediation Fund" and prescribes the amounts that may be credited to this fund.

Further, the accounts of the Council are to be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

In exercise of its powers or the performance of its functions under this Act, the Council shall be bound by directions on questions of policy as the Central Government may give in writing to it and the decision of the Central Government whether a question is one of policy or not shall be final.

Section 50 to 54 relating to certain Protection, power of making rules, regulations and power of removal of difficulties

Section 50 provides that no suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under Mediation Act, 2023 or the rules or regulations made thereunder. This provision can aid and promote the effective implementation of this Law.

The power of making the rules has been given to the Central Government and the regulations can be made by the Mediation Council. Notification, Rules and Regulation made under this law is to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be issued or made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, rule or regulation.

If case of any difficulty, the Central Government may make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty. However, no such order shall be made under this section after the expiry of a period of five years from the date of commencement of this Act.

Section 56 and 57 dealing with effect of this law on pending proceedings and transitory provisions

This Act does not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act. The rules in force governing the conduct of court-annexed mediation shall continue to apply until regulations are made under section 15(1). However, the rules shall continue to apply in all court-annexed mediation pending as on the date of coming into force of the regulations.

3. ***NBCC (India) Limited versus Zillion Infra Projects Pvt. Ltd. decided by Supreme Court on 19.03.2024***

Reference in one contract to the terms and conditions of the other contract would not ipso facto make the arbitration clause applicable unless there is a specific mention/reference thereto

Facts

The appellant, NBCC (India) Limited is a Government of India undertaking, engaged in construction of power plants and other infrastructure projects. The respondent, M/s Zillion Infraprojects Pvt. Ltd. is engaged in the construction and infrastructure sector. The appellant issued an Invitation to tender majorly for Construction of the Weir. The Respondent submitted the bid and appellant awarded the contract for Construction of the Weir to the respondent. A dispute arose and the respondent issued a notice invoking arbitration and further seeking consent for the appointment of a former Judge of a High Court, as Sole Arbitrator. The appellant did not respond so the respondent filed an application at the High Court under Section 11(6) of the Arbitration Act. The High Court confirmed the proposed appointment of the former Judge of the Delhi High Court, as the Sole Arbitrator. Aggrieved by the orders, the appellant filed the appeals before Supreme Court.

Issue

Learned Senior Counsel *inter alia* submitted before the Supreme Court that a mere reference to the terms and conditions without there being an incorporation in the L.O.I. would not make the *lis* between the parties amenable to the arbitration proceedings. Relying on the judgment of Supreme Court in the case of *M.R. Engineers and Contractors Private Limited vs. Som Datt Builders Limited*, he submitted that unless the L.O.I. specifically provides for incorporation of the arbitration clause, a reference to the arbitration proceedings would not be permitted in view of the provisions of sub-section (5) of Section 7 of the Arbitration Act.

Decision

The Hon'ble Supreme Court held that:

"when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention/reference thereto.

We are of the considered view that the present case is not a case of 'incorporation' but a case of 'reference'. As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the L.O.I., which is also a part of the agreement, makes it amply clear that the redressal of the dispute between the NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone."

For details: *https://www.sci.gov.in/wp-admin/admin-ajax.php?action=get_judgements_pdf&diary_no=127472021&type=j&order_date=2024-03-19*

4. Cox & Kings Ltd. V. SAP India Pvt. Ltd. & Anr, 2024 INSC 670, decided by Supreme Court on 09.09.2024

Jurisdiction of the Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 is limited to examining whether an arbitration agreement exists between the parties. Section 16 empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement.

This case can be referred to *inter alia* understand the issues relating to the scope of powers of the referral court and scope of enquiry at the referral stage.

The Apex Court said that having heard the learned counsel appearing for the parties and having gone through the materials on record, the short question that falls for our consideration is whether the application of the petitioner for the appointment of an arbitrator deserves to be allowed.

On the scope of powers of the referral court at the stage of Section 11(6), it was observed by the Supreme Court in *Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd.* reported in 2023 INSC 976 as follows:

"26. Taking cognizance of the legislative change, this Court in Duro Felguera, S.A. v. Gangavaram Port Ltd. [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , noted that post 2015 Amendment, the jurisdiction of the Court under Section 11(6) of the 1996 Act is limited to examining whether an arbitration agreement exists between the parties — "nothing more, nothing less."

In a recent decision in *SBI General Insurance Co. Ltd. v. Krish Spinning reported in 2024 INSC 532*, it was observed by us that the arbitral tribunal is the preferred first authority to look into the questions of arbitrability and jurisdiction, and the courts at the referral stage should not venture into contested questions involving complex facts.

Further, on the scope of enquiry at the referral stage for the determination of whether a non-signatory can be impleaded as a party in the arbitration proceedings, it was observed by the Constitution Bench in Cox and Kings, 2023 INSC 1051 as follows:

"158. Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. [*Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570*] The doctrine of competence-competence is intended to minimise judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.

Also, the Apex Court has laid down that Once the arbitral tribunal is constituted, it shall be open for the respondents to raise all the available objections in law, and it is only after (and if) the preliminary objections are considered and rejected by the tribunal that it shall proceed to adjudicate the claims of the petitioner.

5. Ajay Madhusudan Patel & Ors. V. Jyotrindra S. Patel & Ors., 2024 INSC 710, decided by Supreme Court on 20.09.2024

Facts of the Case/Background

This petition has been filed under Section 11(6) read with Section 11(9) of the Arbitration and Conciliation Act, 1996 ("the Act, 1996") seeking appointment of a Sole Arbitrator under an Agreement entered into between the petitioner AMP Group and respondent JRS Group.

Key Issue/Allegations

Whether the SRG Group, being a non-signatory to the FAA, should also be referred to arbitration along with the AMP and JRS Groups?

Decision

The Hon'ble Apex Court in Cox and Kings held that the definition of "parties" under Section 2(1)(h) read with Section 7 of the Act, 1996 includes both the signatory as well as non-signatory parties. Persons or entities who have not formally signed the arbitration agreement or the underlying contract containing the arbitration agreement may also intend to be bound by the terms of the agreement. Further, the requirement of a written agreement under Section 7 of the Act, 1996 does not exclude the possibility of binding non-signatory parties if there is a defined legal relationship between the signatory and non-signatory parties. Therefore, the issue as to who is a "party" to an arbitration agreement is primarily an issue of consent. Actions or conduct could be an indicator of the consent of a party to be bound by the arbitration agreement. This aspect is also evident from a reading of Section 7(4)(b) which emphasises on the manifestation of the consent of persons or entities through actions of exchanging documents.

It is evident that the intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such an agreement. Further, when the conduct of the non-signatory is in harmony with the conduct of the others, it might lead the other party or parties to legitimately believe that the non-signatory was a veritable party to the contract containing the arbitration agreement. However, in order to infer consent of the non-signatory party, their involvement in the negotiation or performance of the contract must be positive, direct and substantial and not be merely incidental. Thus, the conduct of the non-signatory party along with the other attending circumstances may lead the referral court to draw a legitimate inference that it is a veritable party to the arbitration agreement.

Therefore, considering the complexity involved in the determination of the question whether the SRG Group is a veritable party to the arbitration agreement or not, we are of the view that it

would be appropriate for the arbitral tribunal to take a call on the question after taking into consideration the evidence that may be adduced by the parties before it and the application of the legal doctrine as elaborated in the decision in Cox and Kings.

6. R.P. Garg v. The Chief General Manager, Telecom Department & Ors., 2024 INSC 743 decided by Supreme Court on 10.09.2024

Facts of the Case/Background

The Arbitrator denied payment of such interest under a misplaced impression that the contract between the parties prohibited it. The executing Court affirmed the finding of the Arbitrator and rejected the prayer. However, allowing the appeal, the District Court held that the appellant will be entitled to post award interest. By the order impugned before Hon'ble Apex Court, the High Court allowed the revision and set aside the District Court order while holding that the contract between the parties did not permit grant of post award interest.

Key Issue/Allegations

Whether the appellant is entitled to post award interest on the sum awarded by the Arbitrator.

Decision

For the reasons to follow, while allowing the appeal the Apex Court have held that as this is a case arising out of the Arbitration and Conciliation Act, 1996, by operation of Section 31(7)(b), the sum directed to be paid under the Arbitral Award shall carry interest. This is a first principle. A sum directed to be paid by an Arbitral Award must carry interest. In this view of the matter, we have restored the judgment of the District Court granting 18% interest from the date of the award to its realization.

The interest granted by the First Appellate Court only related to post award period, and therefore, for this period, the agreement between the parties has no bearing. Section 31(7)(b) deals with grant of interest for post award period i.e., from the date of the award till its realization. The statutory scheme relating to grant of interest provided in Section 31(7) creates a distinction between interest payable before and after the award. So far as the interest before the passing of the award is concerned, it is regulated by Section 31(7)(a) of the Act which provides that the grant of interest shall be subject to the agreement between the parties. This is evident from the specific expression at the commencement of the sub-section which says "unless otherwise agreed by the parties".

So far as the entitlement of the post-award interest is concerned, sub-Section (b) of Section 31(7) provides that the sum directed to be paid by the Arbitral Tribunal shall carry interest. The rate of interest can be provided by the Arbitrator and in default the statutory prescription will apply. Clause (b) of Section 31(7) is therefore in contrast with clause (a) and is not subject to party autonomy. In other words, clause (b) does not give the parties the right to "contract out" interest for the post-award period. The expression 'unless the award otherwise directs' in Section 31(7)(b) relates to rate of interest and not entitlement of interest. The only distinction made by Section 31(7)(b) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate.

Lesson 12: Indian Stamp Law

Life Insurance Corporation of India v. The State of Rajasthan and Ors., 2024 INSC 358, Supreme Court on 30.04.2024

The issue for consideration in this case was whether the state of Rajasthan has the power and jurisdiction to levy and collect stamp duty on policies of insurance issued within the state.
The Hon'ble Supreme Court rejected the contention of the Life Insurance Corporation, the appellant, regarding the lack of legislative competence of the state and have also affirmed the power to levy and collect stamp duty under the Rajasthan Stamp Law Adaptation) Act, 1952 and the rules made thereunder. While dismissing the appeal, the Apex court however set aside certain findings of the High Court and granted relief to the appellant in the facts and circumstances of the case.

The Supreme Court *inter alia* held that:
I. The preliminary issue relating to the applicability of the relevant state law, i.e., the 1952 Act or the 1998 Act, is answered by holding that the Rajasthan Stamp Law (Adaption) Act, 1952 applies to the present case.
II. We hold that the state legislature has the legislative competence to impose and collect stamp duty on policies of insurance under Entry 44 of List III, as per the rate prescribed by the Parliament under Entry 91 of List I.
III. We hold that for the execution of insurance policies within the state of Rajasthan, the appellant is bound to purchase India Insurance Stamps and pay the stamp duty to the state of Rajasthan.

Lesson 14: Right to Information Law

Central Information Commission v. D.D.A. & Anr. 2024 INSC 513 decided by Supreme Court on 10.07.2024

The principle of purposive interpretation supports the view that the CIC's powers under Section 12(4) of the RTI Act include all necessary measures to manage and direct the Commission's affairs effectively.

Facts of the Case/Background

The present appeal challenges the judgment and order, passed by the High Court of Delhi. The High Court, by the impugned order, quashed the Central Information Commission (Management) Regulations, 2007 framed by the Chief Information Commissioner and held that the CIC has no power to constitute Benches of the Commission. This appeal is confined to the issue of the validity of the Regulations and the powers of the CIC under Section 12(4) of the Right to Information Act, 2005.

Legal Issue

Whether the CIC, under the provisions of Section 12(4) of the Right to Information Act, 2005 has the authority to constitute benches of the CIC and frame Regulations for the effective management and allocation of work within the Commission, including the issuance of orders and the formation of committees?

Observations, Findings and Decision

In the present case, the RTI Act should be interpreted purposively, taking into account the broader objectives of the legislation. The purpose of the RTI Act is to promote transparency and accountability in the functioning of public authorities, ensuring citizens' right to information. To achieve these objectives effectively, it is essential that the Central Information Commission operates efficiently and without undue procedural constraints. The principle of purposive interpretation supports the view that the CIC's powers under Section 12(4) of the RTI Act include all necessary measures to manage and direct the Commission's affairs effectively. This includes the ability to form benches to handle the increasing volume of cases. The formation of Benches allows for the efficient allocation of work and ensures the timely disposal of cases, which is crucial for upholding the right to information.

Lesson 15 - Law relating to Information Technology

1. Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

Data privacy and protection in today's world has become a matter of Individual rights. The right to privacy is recognized as a fundamental right under Article 21 of the Indian constitution which was held in the historic verdict by the Supreme Court in the case of Justice *KS Puttaswamy v. Union of India*. India's digital transformation requires the law to transform as well. Information Technology Act, 2000 ('the IT Act') and Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, commonly known as SPDI Rules, is one of the key legislations in this area.

Under Section 87(2) read with Section 43 – A of the IT Act, "SPDI Rules" were issued on 13th of April 2011 which govern the Sensitive Personal Data or information and apply to body corporate or any person located in India.

The rules define sensitive personal data under the Rule 3 that the following types of data or information shall be considered as personal and sensitive:

- o Passwords,
- o Bank Account details,
- o Credit/debit card details,
- o Present and past health records,
- o Sexual orientation,
- o Biometric data.

An information provider is a person who provides information to the body corporate and under these rules, he has certain rights over the sensitive personal information, this information cannot be collected without the providers' consent and he or she has the right to abstain from giving consent and can withdraw the consent by writing to the body corporate.

i. Privacy Policy

Rule 4 requires a body corporate to provide a privacy policy on their website, which is easily accessible, provides for the type and purpose of personal, sensitive personal information collected and used, and Reasonable security practices and procedures.

ii. Consent

Rule 5 requires that prior to the collection of sensitive personal data, the body corporate must obtain consent, either in writing or through fax regarding the purpose of usage before collection of such information.

iii. Collection Limitation

Rule 5 (2) requires that a body corporate should only collect sensitive personal data if it is connected to a lawful purpose and is considered necessary for that purpose.

iv. Notice

Rule 5(3) requires that while collecting information directly from an individual, the body corporate must provide the following information:

- The fact that information is being collected
- The purpose for which the information is being collected
- The intended recipients of the information
- The name and address of the agency that is collecting the information
- The name and address of the agency that will retain the information.

v. Retention Limitation

Rule 5(4) requires that body corporate must retain sensitive personal data only for as long as it takes to fulfil the stated purpose or otherwise required under law.

vi. Purpose Limitation

Rule 5(5) requires that information must be used for the purpose that it was collected for.

vii. Right to Access and Correct:

Rule 5(6) requires a body corporate to provide individuals with the ability to review the information they have provided and access and correct their personal or sensitive personal information.

viii. Right to 'Opt Out' and Withdraw Consent

Rule 5(7) requires that the individual must be provided with the option of 'opting out' of providing data or information sought by the body corporate. Also, they must have the right to withdraw consent at any point of time.

ix. Grievance Officer

Rule 5(9) requires that body corporate must designate a grievance officer for redressal of grievances, details of which must be posted on the body corporate's website and grievances must be addressed within a month of receipt.

x. Disclosure with Consent, Prohibition on Publishing and Further Disclosure

Rule 6 requires that body corporate must have consent before disclosing sensitive personal data to any third person or party, except in the case with Government agencies for the purpose of verification of identity, prevention, detection, investigation, on receipt of a written request. Also, the body corporate or any person on its behalf shall not publish the sensitive personal information and the third party receiving the sensitive personal information from body corporate or any person on its behalf shall not disclose it further.

xi. Requirements for Transfer of Sensitive Personal Data

Rule 7 requires that body corporate may transfer sensitive personal data into another jurisdiction only if the country ensures the same level of protection and may be allowed only if it is necessary for the performance of the lawful contract between the body corporate or any person on its behalf and provider of information or where such person has consented to data transfer.

xii. Security of Information

Rule 8 requires that the body corporate must secure information in accordance with the ISO 27001 standard or any other best practices notified by Central Government, which must be audited annually or when the body corporate undertakes a significant up gradation of its process and computer resource.

2. Google India Private Limited vs. Visakha Industries and Ors. (10.12.2019 - SC)

In this case the Supreme Court decided that Section 79 of Information Technology Act, 2000 as originally enacted, did not deal with the effect of other laws.

The Supreme Court *inter alia* decided that the finding by the High Court that in the case on hand, in spite of the complainant issuing notice, bringing it to the notice of the Appellant about the dissemination of defamatory matter on the part of the first Accused through the medium of Appellant, Appellant did not move its little finger to block the said material to stop dissemination and, therefore, cannot claim exemption Under Section 79 of the Act, as it originally stood, is afflicted with two flaws. In the first place, the High Court itself has found that Section 79, as it originally was enacted, had nothing to do with offences with laws other than the Act. We have also found that Section 79, as originally enacted, did not deal with the effect of other laws. In short, since defamation is an offence Under Section 499 of the Indian Penal Code, Section 79, as it stood before substitution, had nothing to do with freeing of the Appellant from liability under the said provision…..

3. Law of Personal Data Protection

Digital Personal Data Protection Act, 2023 has got the assent of the Hon'ble President of India on 11th August, 2023. This law will be supplemented by delegated Legislation by way of rules to be made by Central Government.

The purpose of this law is to provide the law relating to the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.

Important Definitions

- "Board" means the Data Protection Board of India established by the Central Government.

- "Data" means a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated means;

- "Data Principal" means the individual to whom the personal data relates and where such individual is—

  (*i*) a child, includes the parents or lawful guardian of such a child;

  (*ii*) a person with disability, includes her lawful guardian, acting on her behalf;

- "Data Processor" means any person who processes personal data on behalf of a Data Fiduciary.

- "Personal data" means any data about an individual who is identifiable by or I n relation to such data;

- "Personal data breach" means any unauthorised processing of personal data or accidental disclosure, acquisition, sharing, use, alteration, destruction or loss of access to personal data, that compromises the confidentiality, integrity or availability of personal data;

- "Processing" in relation to personal data, means a wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organisation, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction;

- "Data Fiduciary" means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data; and "person" includes—

  (i) an individual;
  (ii) a Hindu undivided family;
  (iii) a company;
  (iv) a firm;

(v) an association of persons or a body of individuals, whether incorporated or not;
(vi) the State; and
(vii) every artificial juristic person, not falling within any of the preceding sub-clauses

Application of the Act

According to section 3, subject to the provisions of this Act, it shall-
(a) apply to the processing of digital personal data within the territory of India where the personal data is collected—
(i) in digital form; or
(ii) in non-digital form and digitised subsequently;
(b) also apply to processing of digital personal data outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India;
(c) not apply to—
(i) personal data processed by an individual for any personal or domestic purpose; and
(ii) personal data that is made or caused to be made publicly available by—
(A) the Data Principal to whom such personal data relates; or
(B) any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available.

Illustration. X, an individual, while blogging her views, has publicly made available her personal data on social media. In such case, the provisions of this Act shall not apply.
Digital Data Protection Act, 2023 will come into force only after notification in the Official Gazette by the Central Government which is yet to be notified.

4. Impact of Jan Vishwas (Amendment of Provisions) Act, 2023 on Information Technology Act, 2000

The Jan Vishwas (Amendment of Provisions) Act, 2023 has amended section 33, 44, 45, 46, 67C, 68, 69B, 70B, 72 and 72A of the Information Technology Act, 2000(the Act). Further section 66A has also been omitted. These amended sections have come into effect from 30th November, 2023.

Few important sections are discussed hereunder:

Penalty for failure to furnish information, return, etc. (Section 44)

If any person who is required under this Act or any rules or regulations made thereunder to–

(a) furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to a penalty not exceeding fifteen lakh rupees for each such failure;

(b) file any return or furnish any information, books or other documents within the time specified therefor in the regulations fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding fifty thousand rupees for every day during which such failure continues;

(c) maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding one lakh rupees for every day during which the failure continues.

Residuary penalty (Section 45)

Whoever contravenes any rules, regulations, directions or orders made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a penalty not exceeding one lakh rupees, in addition to compensation to the person affected by such contravention not exceeding—

(a) ten lakh rupees, by an intermediary, company or body corporate; or

(b) one lakh rupees, by any other person.

Power to adjudicate (Section 46)

(1) For the purpose of adjudging under this Act whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder which renders him liable to pay penalty or compensation, the Central Government shall, subject to the provisions of sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

(1A) The adjudicating officer appointed under sub-section (1) shall exercise jurisdiction to adjudicate matters in which the claim for damage does not exceed rupees five crore:

Provided that the jurisdiction in respect of the claim for damage exceeding rupees five crores shall vest with the competent court.

(2) The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section.

(3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.

(4) Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.

(5) Every adjudicating officer shall have the powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 58, and–

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;
(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973;
(c) shall be deemed to be a civil court for purposes of Order XXI of the Civil Procedure Code, 1908.

Further, students are advised to read entry 32(Page no. 60-62) with reference to the amendments in Information Technology Act, 2000 by virtue of The Jan Vishwas (Amendment of Provisions) Act, 2023 from the link mentioned below.

For details: https://egazette.gov.in/WriteReadData/2023/248047.pdf

Lesson 16: Contract Law

Maharashtra State Electricity Distribution Company Limited v. Ratnagiri Gas and Power Private Limited & Ors. decided by Supreme Court on 09th November, 2023

In this case, in order to resolve the issue of non-payment of fixed charges, the first respondent filed a petition under Section 79 of the Electricity Act 2003 *inter alia* seeking the resolution of the issue of shortfall of domestic gas. Central Electricity Regulatory Commission (CERC) allowed the above petition and held the appellant liable to pay fixed capacity charges. CERC's decision was upheld by (Appellate Tribunal For Electricity)APTEL. Later, the appeal was filed before the Hon'ble Supreme Court.

The issue arose before the Supreme Court for consideration was whether the CERC and APTEL were justified in affixing liability to pay fixed charges on the appellant. The dispute primarily turns on the terms of the Power Purchase Agreement (PPA). For the reasons stated hereafter, the court answered the issue in the affirmative.

The Apex Court said that a commercial document cannot be interpreted in a manner that is at odds with the original purpose and intendment of the parties to the document. A deviation from the plain terms of the contract is warranted only when it serves business efficacy better. The appellant's arguments would entail reading in implied terms contrary to the contractual provisions which are otherwise clear. Such a reading of implied conditions is permissible only in a narrow set of circumstances.

Lesson 18 - Law relating to Negotiable Instruments

1. Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & Ors. **decided by Supreme Court on 04th September, 2023**

The appellants in these two appeals were the accused before the learned Judicial Magistrate who tried them on a complaint filed by the respondent No. 1 under Section 138 of the Negotiable Instruments Act, 1881 ("N.I. Act"). The learned Magistrate convicted the appellants and directed them to pay the cheque amount with interest thereon @ 9% per annum. An appeal was preferred by the appellants before the Sessions Court. Relying upon Section 148 of the N.I. Act, the Sessions Court granted relief under Section 389 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") subject to condition of appellants depositing 20% of the amount of compensation.

High Court also confirmed the order of the Sessions Court.

In appeal, the Supreme Court held that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount….

2. Susela Padmavathy Amma v. M/s Bharti Airtel Limited, 2024 INSC 206 decided by Supreme Court on 15.03.2024

In this case the, Hon'ble Apex Court has laid down that in the case of S.M.S. Pharmaceuticals Ltd., this Court was considering the question as to whether it was sufficient to make the person liable for being a director of a company under Section 141 of the Negotiable Instruments Act, 1881. This Court considered the definition of the word "director" as defined in Section 2(13) of the Companies Act, 1956. This Court observed thus:

"8. ……. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about the day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are matters which form part of resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a

particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company. ....."

It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-today functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

…. clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not ipso facto make the director vicariously liable.

3. Rakesh Ranjan Shrivastava v. The State of Jharkhand & Anr. 2024 INSC 205 decided by Supreme Court on 15.03.2024

*In this case the Hon'ble Supreme Court has laid down t*he broad parameters for exercising the discretion under Section 143A of the Negotiable Instruments Act, 1881. These are as follows:

i. The Court will have to *prima facie* evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.
ii. A direction to pay interim compensation can be issued, only if the complainant makes out a *prima facie* case.
iii. If the defence of the accused is found to be *prima facie* plausible, the Court may exercise discretion in refusing to grant interim compensation.
iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.
v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

4. Payment of Cheques/Drafts/Pay Orders/Banker's Cheques (November 4, 2011)

In India, it has been the usual practice among bankers to make payment of only such cheques and drafts as are presented for payment within a period of six months from the date of the instrument.

Further, It was brought to the notice of Reserve Bank by Government of India that some persons are taking undue advantage of the said practice of banks of making payment of cheques/drafts/pay orders/banker's cheques presented within a period of six months from the date of the instrument as these instruments are being circulated in the market like cash for six months. Reserve Bank is satisfied that in public interest and in the interest of banking policy it is

necessary to reduce the period within which cheques/drafts/pay orders/banker's cheques are presented for payment from six months to three months from the date of such instrument. Accordingly, in exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949, Reserve Bank hereby directs that with effect from April 1, 2012, banks should not make payment of cheques/drafts/pay orders/banker's cheques bearing that date or any subsequent date, if they are presented beyond the period of three months from the date of such instrument.

For details:
https://www.rbi.org.in/commonman/Upload/English/Notification/PDFs/CVC041111.pdf

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Note: Students appearing in June, 2025 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by ICSI, MCA, SEBI, RBI, Central Government and other regulatory bodies upto 30th November, 2024.