

Chapter 13

Bharatiya Nagarik Suraksha Sanhita, 2023



1.

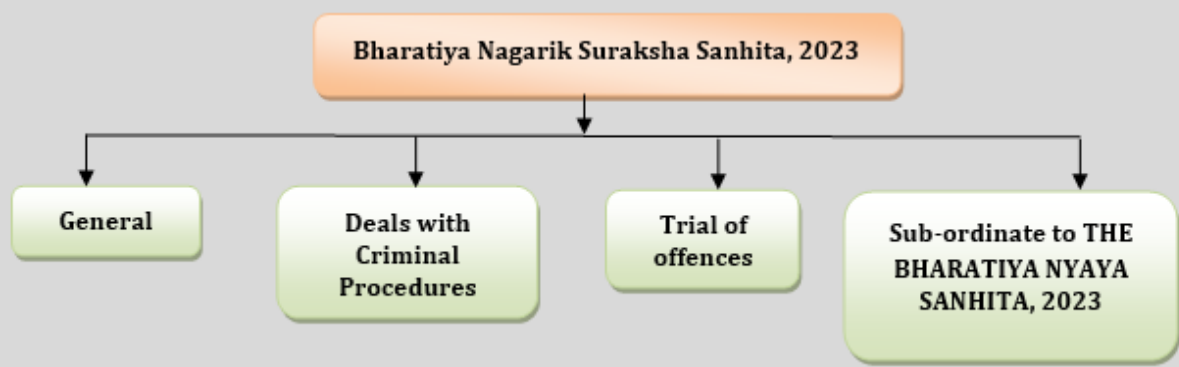
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2.	Introduction	

- The Bharatiya Nagarik Suraksha Sanhita, 2023 is the **general law** relating to criminal procedures.
- The Code prescribes the **procedure for the trial of offences** specified in the Bharatiya Nyaya Sanhita, 2023
- The main object of Bharatiya Nagarik Suraksha Sanhita, 2023 is to **supplement the substantive law contained in Indian Penal Code**, by prescribing the suitable procedure.



[Section 2(q)] Offence

Offence means any **act** or omission made **punishable** by any **law** for the time being in force.

In simple terms, an offence is a wrong committed by any individual in a society.

Following are the four elements which constitute the offence:—

- **A Human being**
- **Mens Rea** (guilty mind or intension).

Mens Rea is one of the principles of criminal law that a **crime is not committed** if the mind of the person doing the act in question is **innocent**.

It is said that “**ACTUS NON FACIT REAM NISI MENS SIT REA**” i.e., the intention and act must both concur to constitute the crime and that is why it is said that guilty mind is necessary for liability in Criminal law.

The general rule to be stated is “there must be a mind at fault before there can be a crime”.

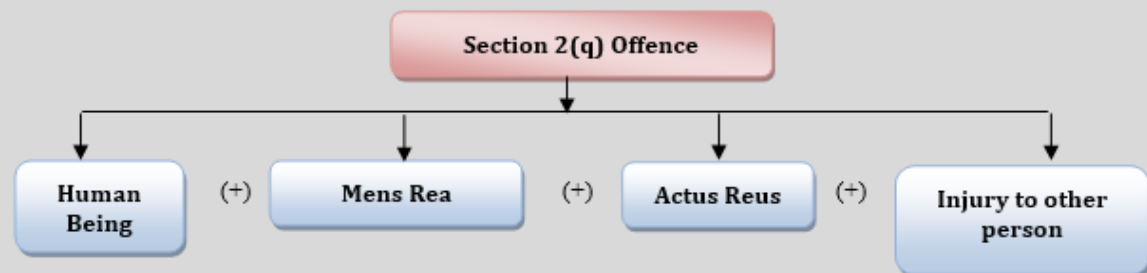
- **Illegal act i.e.; Actus Reas**

It means physical committing of an offence.

For e.g. If A kills B and A had an intension to kill B then it's a murder. If A had no intension to kill B it is not murder.

- **Injury to another person**

For e.g. If a person has an intension to kill B, but does not, then offence is not committed. So actus reas is also necessary for crime.



[Section 2(c)] Bailable and Non-Bailable Offence

- **Bailable** offence means an offence which is shown as **bailable in the first schedule** of the Bharatiya Nagarik Suraksha Sanhita, 2023.. **Non-bailable** offence is one which is **not bailable**.
- **Bailable** offences are **less serious** than non-bailable offences.

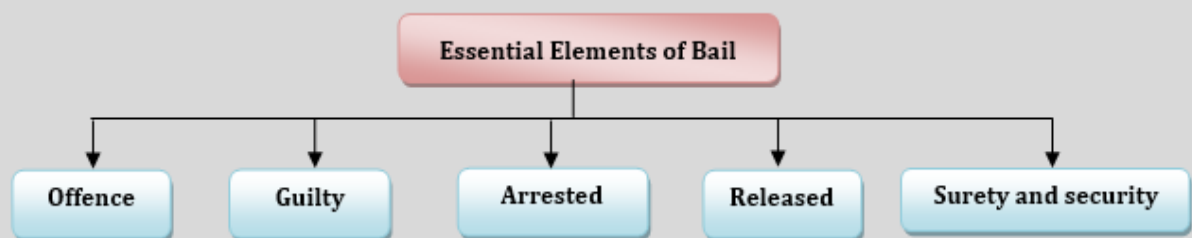
- A **Bail**, in the case of **bailable offence**, is a **matter of right** whereas a Bail, in case of **non-bailable offence**, depends upon the **discretion of the court**.

Section 478: Bail means the release of an accused from the custody of the officer of law and entrusting him to the private custody of person who become bound as surety to produce the accused to answer the charge at the stipulated time and date.

Following are the **Essential Elements of Bail:**

- An **offence** has been **committed**.
- A person is **guilty** of offence.
- The offender is **arrested**.
- The offender is **released** from the custody of the police.
- **Surety** and **security** are taken from the **offender**.

Bailable Offence	Non-Bailable offence
First schedule	Other than Bailable
Less serious	More Serious
Non cognizable	Cognizable
Bail is a right	Anticipatory bail at the discretion of court



[Section 482] Anticipatory Bail

- Anticipatory Bail is a bail which is granted to a person who **apprehends arrest but has not yet been arrested.**
- Where 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 Sessions** for a direction u/s 482.
- On such application, the Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

The **Court grants the anticipatory bail subject to the following conditions:**

- (1) **Nature** of offence (how big is the crime).
- (2) That the accused shall **make himself available for interrogation** by a police officer as and when required.
- (3) He shall **not threaten the witnesses** so as to make them hostile.
- (4) He shall **not leave India** without the prior permission of court.
- (5) He shall **not tamper with evidences.**
- (6) **Age and health** of accused.
- (7) The **past record** of accused/offender.

Quick Recap

Bail [Section 478]

After Arrest

Right

Non-Cognizable offences

Anticipatory Bail [Section 482]

Before Arrest

Discretion of court

Cognizable offences

By Any Court	By High Court or court of session
<div style="text-align: center;"> <p>Factors to be considered by Court while granting anticipatory bail</p> <pre> graph TD Root[Factors to be considered by Court while granting anticipatory bail] --> Offence Root --> Age Root --> Health Root --> PastRecord[Past Record] Root --> RunningAway[Running Away] Root --> Tempering[Tempering With evidences] Root --> Wining[Wining over witnesses] Root --> PublicStanding[Public Standing] Age --> OfAccused[Of Accused] Health --> OfAccused PastRecord --> OfAccused RunningAway --> Chances[Chances] Tempering --> Chances Wining --> Chances </pre> </div>	
CS-1	
<p>Mr. Sanjay Dutt moves an application before the Judicial Magistrate of First Class of the area for grant of anticipatory bail in connection with a bailable offence. Will the magistrate be competent to grant him anticipatory bail? Decide.</p>	
<p>Answer: If a person anticipates being arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the court of Session for obtaining a bail; and that court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.</p> <p>The Magistrate would be competent to grant him regular bail, but he does not have power in this case.</p> <p>Hence, the Magistrate is not competent to grant an anticipatory bail to Sanjay Dutt.</p>	
CS-2	
<p>Mr. Salman Khan moves an application for anticipatory bail before a judicial Magistrate (1st class) of the area, for a bailable offence. Can he get anticipatory</p>	

bail?

Answer: No, Mr. Salman Khan cannot get anticipatory bail from the judicial Magistrate (1st Class) of the area. Section 482, Bharatiya Nagarik Suraksha Sanhita, 2023 1973, provides that anticipatory bail can be granted in a non-bailable offence either by the High Court or the Court of Sessions.

[Section 2(g)] Cognizable Offence

- Cognizable offence means an offence in which a **person can be arrested** by a police officer **without warrant**.
- Cognizable offences are generally **more serious in nature** and **heavily punishable**.
- In such cases, the police have hardly any time to obtain a warrant of arrest from a court, as the offender may escape by the time warrant is obtained or he **may tamper with the material evidence**.
- Examples of cognizable offences are murder, dacoity, rape etc.

[Section 2(o)] Non-Cognizable Offence

- Non-Cognizable offence means an offence in which the **police can't arrest a person without warrant**.
- Non-Cognizable offences **are less serious in nature** as compared to cognizable offence.
- In case of these offences injury cause to the society is comparatively small. Examples of non-cognizable offences are **simple hurt, undue influence** at an election, accident etc.
- If accused is guilty of many offences and even one out of these offences is cognizable, then he can be arrested in all offences.

Note: Generally, non-cognizable offences are bailable and cognizable offences are non-bailable.

<i>Cognizable offence</i>	<i>Non-Cognizable offence</i>
<i>More Serious</i>	<i>Less Serious</i>
<i>Heavily punishable</i>	<i>Lightly punishable</i>
<i>Non Bailable</i>	<i>Bailable</i>
<i>Police may start investigation without warrant</i>	<i>Warrant is required</i>

[Section 2(h)] Complaint

Complaint means any allegation made orally or in writing to a Magistrate, that some person, whether known or unknown, has committed an offence. It may be noted that the term complaint doesn't include a police report.

Police report means a report forwarded by a police officer to a Magistrate.

Complaint has following essentials:

- It is an allegation.*
- It may be oral or written.*
- It pertains to an offence.*
- It is different from police report.*

	<div style="text-align: center;"> <p>Section 2(h) Complaint</p> <pre> graph TD A[Section 2(h) Complaint] --> B[Allegation] A --> C[Oral or written] A --> D[Offence] A --> E[Released] A --> F[Other than Police] A --> G[Mode to Magistrate] </pre> <p><i>Mohd. Yusuf v Afaq Jahan</i></p> <p>↓</p> <p>No prescribed format of Complaint</p> </div>
3.	Investigation, Inquiry and Trial
	[Section 2(i)] Investigation
	<ul style="list-style-type: none"> It means the proceedings where evidences are collected and offences are investigated. Investigation is done by police and after investigation a report is submitted to the court which carries out the inquiry. In general, investigation is a process of collecting evidences. Explanation.—Where any of the provisions of a special Act are inconsistent with the provisions of this Sanhita, the provisions of the special Act shall prevail;
	Investigation process consists of the following steps:-
(1)	Proceeding to the spot .
(2)	Ascertainment of facts and circumstances.
(3)	Discovery and arrest of the suspected person .
(4)	Objective is collection of evidence .

Quick Recap			
Basic	Investigation	Inquiry	Trial
Meaning	Process of collecting evidences by Police	Conducted by Magistrate	Process to question guilty or innocence
Stage	Primary stage	Subsequent stage	Last Stage
Objective	Discovery of fact by collecting evidences	Whether offence needs to be put upon trial or not	Whether an accused is guilty or not
Section of definition	Section 2(i)	Section 2(k)	Not defined under Bharatiya Nagarik Suraksha Sanhita, 2023
CS-2A			
Miss Radha Verma is missing for the last 5 days. Police doubts that either A has been murdered or kidnapped. But there is no F.I.R in this regard. Can the police start investigation in this respect without an F.I.R reasons.			
Answer: Yes the police can start investigation even without an F.I.R. Section 2 (I), which defines the term 'investigation', states that police or any other person (authorized by Magistrate) can conduct the investigation. But it does not state that it can be conducted only after an F.I.R lodged.			
Case Law :- State of Uttar Pradesh v Bhagwant Joshi			

The Supreme Court in *State of Uttar Pradesh v Bhagwant Joshi*, held that the F.I.R. is not an indispensable requisite for the investigation of an offence.

The investigation can be started even without F.I.R.

Therefore, when the police have doubt regarding murder or kidnapping of A, it can start investigation even without an F.I.R. in this regard.

[Section 2(k)] Inquiry

- According to Bharatiya Nagarik Suraksha Sanhita, 2023, inquiry is always **conducted by** the Magistrate or by the **court**.
- An inquiry before trial is to ascertain **whether** any **offence** has **been committed** and whether he should be **put upon the trial**.
- It always comes **after investigation**.

Trial

- The word 'trial' has **not** been **defined** under Bharatiya Nagarik Suraksha Sanhita, 2023.
- It means the judicial process in accordance with law, whereby the **question of guilt or innocence** of the person accused of an offence is **determined**.
- Thus a trial **ends** either in **conviction or acquittal**.

The 3 Stages

- The first stage is reached when a police officer either on his own or under orders of magistrate investigates into a case (section 202).
- If he finds that no offence is committed, he submits his report to the magistrate who will drop proceedings.
- But if he is of different opinion then begins the second stage.

	<ul style="list-style-type: none"> The second stage inquiry and third stage of trial. The magistrate may deal with a case himself either accuse the convict or discharge him.
4.	[Section 23] Power of a Criminal Court
	<ul style="list-style-type: none"> To punish by imprisonment. To impose fine.
	The powers vary according to the status of the court. The powers are as follows:
(1)	Power of Supreme and High Court
	These may impose fine or can award punishment including death sentence . The power of High and Supreme Court are exercisable in original and appellate jurisdiction .
(2)	Powers of District Session Court
	They may impose death sentence but subject to the confirmation by High Court .
(3)	Power of Chief Metropolitan Magistrate and Judicial Magistrate (CMM).
	A CMM may award any punishment prescribed by law upto 7 years .
(4)	Powers of Magistrate and Judicial Magistrate of 1st Class
	These may impose fine upto `50,000 or imprisonment upto 3 years , or of both, or of community service.
(5)	Metropolitan Magistrate and Judicial Magistrate of 2nd class
	They may award imprisonment upto 1 year or fine upto `10000, , 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.

Note:

Amended: But ICSI still prescribed ` 1000 for MM-2nd class and ` 5000 for MM-1st class.

Quick Recap

Court	Power
1. Supreme Court	Any fine or Any sentence
2. High Court	Any fine or Any Sentence
3. District Session court	Any fine but death sentence with confirmation by High Court
4. Chief Metropolitan Magistrate	Imprisonment upto 7 years
Chief Judicial Magistrate	Imprisonment upto 7 years
5. MM-1st Class	Fine upto `50000 or imprisonment upto 3 years , or of community service.
6. MM-2nd Class	Fine upto`10000 or imprisonment upto 1 years, or of community service.

Note: [Section 24] Punishment for non-payment of fine

If fine is imposed upon a person then if the person doesn't pay the fine then

imprisonment may be imposed upon the person for non-payment of fine.

However, this imprisonment can't exceed the limit of 1/4th of the total power of court as well as the total limit of imprisonment granted to such court.

It can also be stated as:

Where a fine has been imposed on an accused but the same has not been paid, then he can be imprisoned in lieu of fine. However, this imprisonment shall not exceed 1/4th of the period of imprisonment, which the Magistrate can award as maximum imprisonment.

Section 24 - Punishment in lieu of fine

Imprisonment in lieu of fine \leq 1/4th of total imprisonment i.e. Power of court

Imprisonment Original (+) Imprisonment for non payment of fine \leq Total Imprisonment power of court

CS-3A

Mr. Shiny Ahuja is convicted under THE BHARATIYA NYAYA SANHITA, 2023 for an offence punishable with imprisonment which may extend to three years. He is sentenced to undergo imprisonment for three years and to pay a fine of ` 10,000. In default of payment he is ordered to serve imprisonment for one year more. Mr. Shiny Ahuja wants to prefer an appeal against this judgment. Advise him.

Answer: Mr. Shiny Ahuja in this case, is sentenced to imprisonment of three years and is imposed a fine of rupees ten thousand for his offence. In case he

fails to pay the fine, he is sentenced to further imprisonment for a year he wishes to appeal against the judgment.

- This case is covered by **Section 24** of the Bharatiya Nagarik Suraksha Sanhita, 2023 which provides that the magistrate is entitled to award additional imprisonment in case of non-payment of fine. However, these powers are limited to certain extents.
- The magistrate cannot cross the limits regarding the period of imprisonment he can subject the accused to, provided in Section 23 of the Sanhita.
- Moreover, he cannot give such a punishment in excess of **one-fourth of the term of original punishment** of imprisonment decided by him.
- Hence, in this case, one-fourth of three years or thirty-six months would be nine months.
- Therefore, **Mr. Shiny Ahuja** can appeal against the magistrate's order.

CS-3B

Magistrate of the first class passes a sentence of imprisonment for a term of three years with a fine of ₹ 5,000 and in lieu of non-payment thereof, an additional imprisonment for another one year the convict feels aggrieved by the sentence,

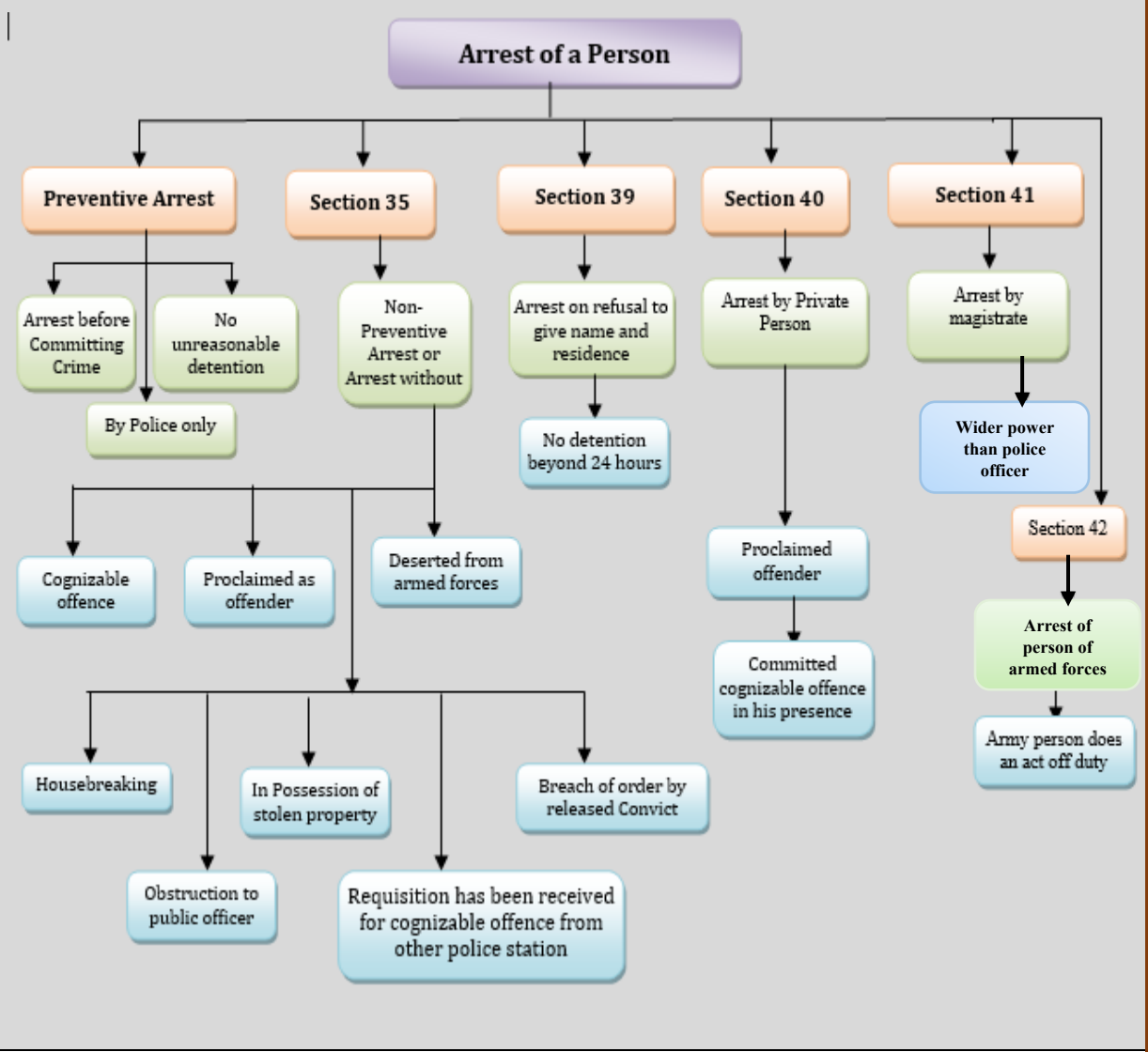
- Has the convict any right to appeal against this sentence?
- Will the situation change, if the sentence is passed by the court of a Chief Judicial Magistrate (CJM)? Give reasons in support of your answer.

Answer: Under Section 23 of the Bharatiya Nagarik Suraksha Sanhita, 2023 a Magistrate of First class has the right to pass a sentence of imprisonment not exceeding a period of three years.

- Hence, in the first case, the convict has a right to appeal against the sentence, as the term of the sentence crosses this limit.

- However, had the sentence been passed by a Chief Judicial Magistrate (CJM) it would have been valid and the convict would have had no right to appeal against it, as the CJM has the right to pass a sentence of imprisonment not exceeding a period of seven years.

6. Arrest of a Person



(1) Preventive Arrest



- A person may be arrested even **before committing** a crime, it is known as preventive arrest.
- In this arrest the offender can be **arrested only by police** with a **lawful authority**.
- Hence the arrested person **can't be detained** for an **unreasonable long** time even by the police.

(2) [Section 35] Non-Preventive Arrest or Arrest without Warrant

Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 lays down the circumstances in which police officer may arrest a person without warrant.

As per this, following persons can be arrested by a Police Officer without warrant:

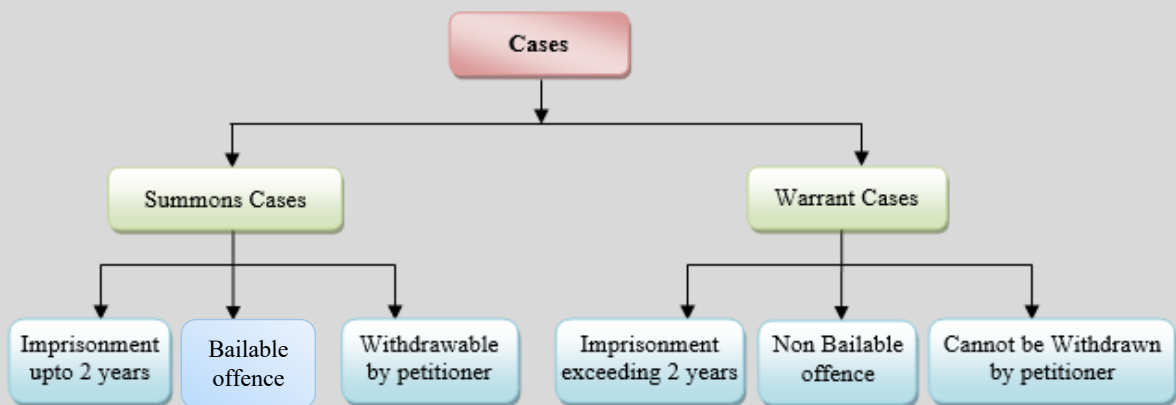
- Who has been **concerned in any cognizable offence**.
- Who has any implement of **housebreaking** without any excuse or justifications.
- Who has been **proclaimed as an offender** either under this sanhita or by order of the State Government.
- Who has committed any act at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is liable to be apprehended or detained in custody in India.**
- Who being a **released convict commits any breach** of any rule.
- In whose **possession** anything is found which may reasonably or suspected to be **stolen property**.
- Who **obstructs a police officer** while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody.

(h)	Who is suspected of being a <i>deserted from the Armed Forces</i> of the Union.
(i)	<i>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 causes for which the arrest is to be made it appears there from that the person might lawfully be arrested without a warrant by the officer who issues the requisition.</i>
	CS-4A
	A requisition is received by the sub-inspector of a police station from another police station to arrest Suman in connection with the commission of a non-cognizable offence. Can the sub-inspector arrest Suman?
	Answer: According to the Bharatiya Nagarik Suraksha Sanhita, 2023, Section 2(o), 'non-cognizable offence' is an offence for which the perpetrator (Committer, culprit, criminal, wrongdoer, offender) cannot be arrested without a warrant.
•	These are bailable as they are not of as serious a nature as the cognizable offences, an example of which is petty theft.
•	In this case, the requisition says that Suman is to be arrested for the commitment of a non-cognizable offence. Hence, the sub-inspector cannot arrest Suman.
	[Section 39] Arrest on Refusal to Give Name and Residence
	If any person who is <i>accused of committing a non-cognizable offence doesn't give his name</i> , residence or gives a name and residence which the police officer feels to be false, he <i>may be taken into custody</i> .
	However, <i>such person can't be detained beyond 24 hours if his true name and address cannot be ascertained</i> or fails to execute a bond or furnish sufficient sureties. In that event he shall be forwarded to the <i>nearest Magistrate having</i>

	<i>Jurisdiction.</i>
	<i>[Section 40] Arrest by a Private Person</i>
	<i>A private person may arrest or cause to be arrested any person who in his presence commits a non-bailable or cognizable offence or who is a proclaimed offender.</i>
	<i>[Section 41] Arrest by a Magistrate</i>
	<i>A magistrate may arrest or cause to be arrested any person who in his presence commits a non-bailable or cognizable offence or who is a proclaimed offender. The power of magistrate is wider than a police officer, so a magistrate may issue an arrest warrant against any person or arrest.</i>
	<i>[Section 42] Arrest of Person of Armed Forces</i>
	<i>A Magistrate can't issue an arrest warrant against a person of armed force who has committed any offence while discharging his official duties. So, if the armed person has committed any offence off duty then he can be arrested.</i>
	<i>These persons can be arrested for the offences committed on duty only if the approval from Central Government is taken.</i>
7.	<i>[Section 2(x) and 2(z)] Summons Cases and Warrant Cases with Section 280</i>
	<i>Warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding 2 years. Summons case means a case relating to an offence and not being a warrant case.</i>
	<i>Thus, it can be seen that the distinction between two terms is based on the quantum of the Punishment that can be awarded.</i>

In other words, *cases which are punishable with imprisonment up to 2 years are summons cases* and the rest are all warrant cases.

Further in a *summons case*, the court order is directly issued to a person to produce himself before the court, whereas in a *warrant case*, the court order is issued to the police to produce the person concerned before the court.



Who can withdraw the complaint and what is its effect?

Answer: The complainant can withdraw the complaint with the *permission of the magistrate only in summons- cases* and it results in the *acquittal of accused*. A complaint can be withdrawn only in summons-cases and not in warrant-case.

Section 280 of Bharatiya Nagarik Suraksha Sanhita, 2023 deals with withdrawal of complaint in a summon case.

According to the section, a complaint can be withdrawn by the complainant with the permission of court, *at any time before a final order is passed by the magistrate*.

Regarding the effect of withdrawal, the section further provides that if complaint is withdrawn, the magistrate shall/acquit the accused against whom the complaint is so withdrawn.

Therefore, a complaint can be withdrawn by complainant and the effect of such withdrawal results in 'acquittal' of the accused. (not discharge).

CS-6H

The information is given to the in-charge of police station against Rahul, a small trader, that he has committed a non-cognizable offence of fraudulent use of false weights and measures.

The in-charge of police Station, after entering the substance of the information in the Daily Diary kept at the police station, commences investigation without the order of the magistrate. Rahul objects to this action of the police. Will the objection of Rahul be sustained?

Answer: Yes Rahul's objection will be sustained, as under section 174 of the Code of Bharatiya Nagarik Suraksha Sanhita, 2023, if the police officer in Charge of a police Station receives information of the commission of a non-cognizable offence within the jurisdiction of such station, he can enter or cause to be entered the substance of the information in a register maintained by such officer and refer the information to the Magistrate. However, he cannot investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

CS-7A

A complainant seeks permission for the withdrawal of the complaint from the Magistrate u/s 280 of Bharatiya Nagarik Suraksha Sanhita, 2023 in a summon

case. Is the Magistrate bound to give such permission for such withdrawal? Give reasons.

Answer: No, the magistrate is not bound to give permission. Although Section 280, Bharatiya Nagarik Suraksha Sanhita, 2023 empowers a complainant to withdraw a complaint with the permission of the magistrate, yet the section itself further provides that the magistrate will grant permission for such withdrawal only when he is satisfied grounds for giving permission for such withdrawal.

Case Law :- Murray's case

In Murray's case, it was held by the courts that giving permission for withdrawal of case is discretionary and the magistrate can go ahead with the case despite complainant's petition to strike-off the case.

Thus, it can be said that the magistrate is not bound to give permission for the withdrawal of complaint, as the power to permit withdrawal is discretionary and he cannot grant permission unless he is satisfied that there are sufficient grounds for giving permission for such withdrawal.

CS-7B

In a summon case triable by magistrate, there are four accused persons. The complainant wants to withdraw the suit in respect of only one accused. Can magistrate allow him to do so? Give reasons.

Answer: Yes the magistrate can allow the complainant to do so, according to section 280, if the complainant satisfies the magistrate that there are sufficient grounds for withdrawal of complaint, then the magistrate can give permission to the complainant to withdraw the case in respect of even only one accused.

In the present case, there are four accused persons in a trial of a summons-case and the complainant wants to withdraw the case in respect of only one accused. Thus, in view of section 280 of Bharatiya Nagarik Suraksha Sanhita, 2023, Magistrate can allow him to do so.

CS-7C

In a summon-case triable by magistrate there are four accused persons namely A, B, C, and D. The Complainant wants to withdraw the case against all the four accused persons. Can he (Complainant) do so with the permission of Court? Give reason.

Answer: Yes, the complainant can withdraw the case in respect of all the accused persons. Section 280 of Bharatiya Nagarik Suraksha Sanhita, 2023 deals with "withdrawal of complaint" in a summon case. It provides that if the complainant satisfies the magistrate, trying the summons-case that there are sufficient grounds for withdrawing the case, the magistrate may grant permission regarding withdrawal in respect of all the accused persons or any of them.

In the present case, there are four accused persons namely A, B, C, and D.

The complainant wants to withdraw the case in respect of all the four. He can do so in view of section 280, with the permission of the court.

CS-7D

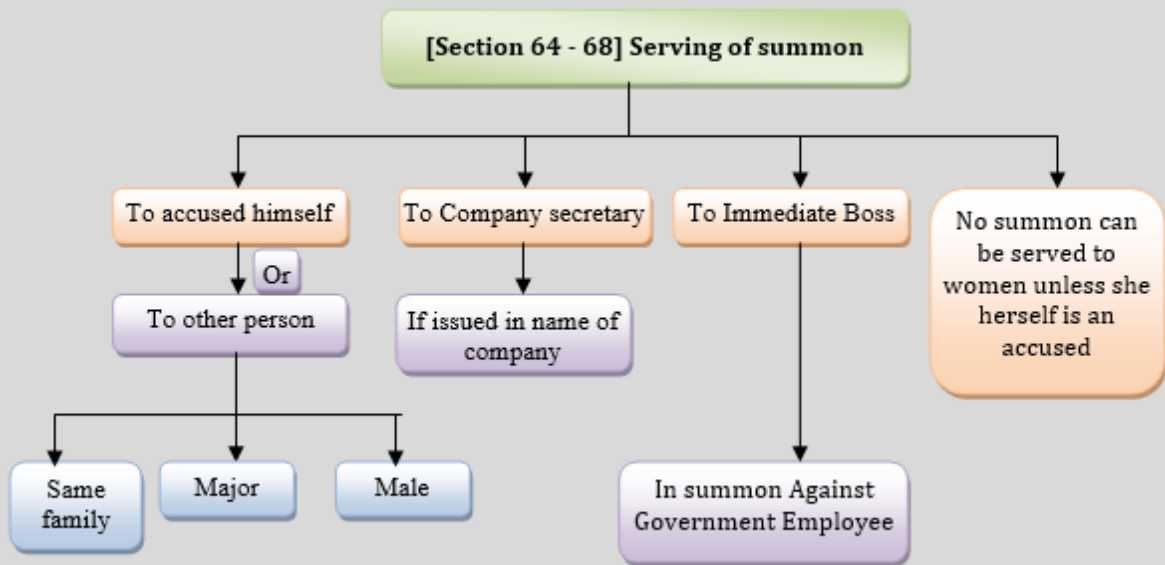
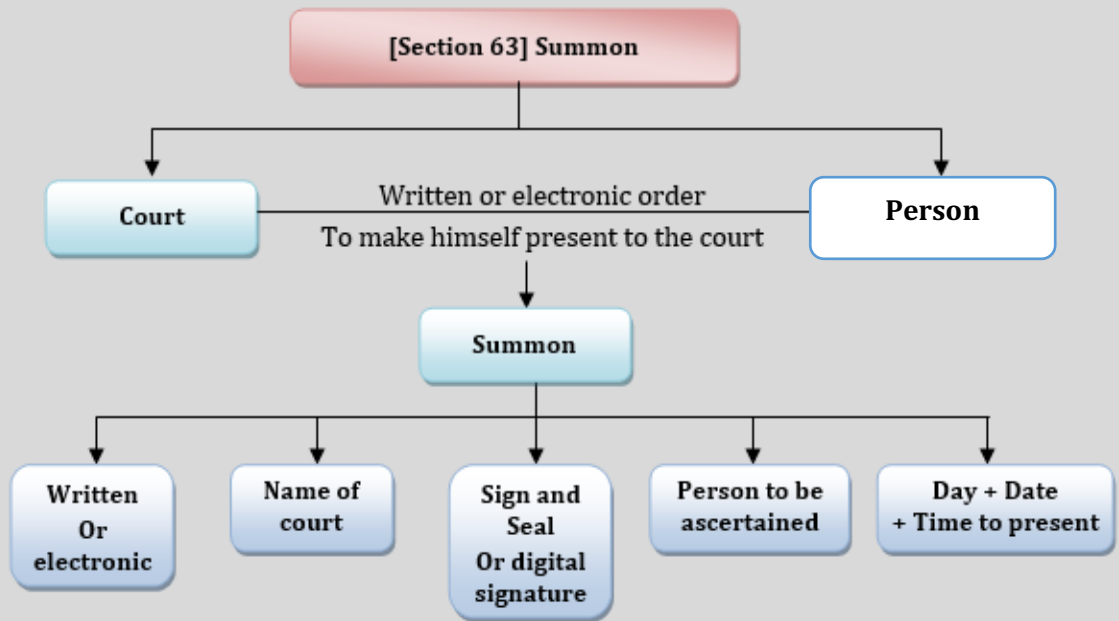
A, a complainant wants to withdraw a complaint, filed against the accused B in case of 'warrant' trial. Can A do so? Give reasons.

Answer: No, A cannot withdraw the complaint in a warrant-case. The Bharatiya Nagarik Suraksha Sanhita, 2023 does not made any provision for the withdrawal of complaint in a warrant-case.

- Section 280 of Bharatiya Nagarik Suraksha Sanhita, 2023 deals with withdrawal

	of complaint.
•	It applies only in summons trial and not in warrant trial.
•	In the present case A wants to withdraw the complaint filed against B in a warrant case and not in a summons case. So it is clear that he cannot do so.
8.	Different Types of Documents Issued by the Court
	[Section 63] Summon
	It is a written order of the court requiring the attendance of the person. It requires a person to be present in court or produce some documents. or
	Is in an encrypted or any other form of electronic communication and shall bear the image of the seal of the Court or digital signature
	Essentials of Valid Summon
(1)	It must be in writing.
(2)	It must mention the name of issuing court.
(3)	It must bear the signature and seal of court.
(4)	The person to whom it is issued must be ascertained.
(5)	It must mention day, date, time when the person must be present.
(6)	If in an encrypted or any other form of electronic communication and shall bear the image of the seal of the Court or digital signature
	Serving of Summon
•	Summons are sent to person by police officer or officer of court.
	Provided that the police station or the registrar in the Court shall maintain a register to enter the address, email address, phone number and such other details as the State Government may, by rules, provide

- It may also be served by **fixing it outside the wall of the residence** of the person.
Provided that summons bearing the image of Court's seal may also be served by electronic communication in such form and in such manner, as the State Government may, by rules, provide
- It may be served by any other manner directed by the court.



[Section 72] Arrest Warrant

Arrest warrant is **served against the person by a competent court**. It must fulfill all the essentials of a summon.

CS-6A

A, an accused is arrested by a police officer B in execution of a warrant issued against him. The police officer, executing the warrant of arrest, keeps the accused A in his custody for 26 hours after such arrest on the basis of warrant. Is the detention of an accused after arrest in compliance of the warrant, legal? Give reasons.

Answer: No, the detention of accused after arrest, even with warrant, is not legal. According to section 78 of the Bharatiya Nagarik Suraksha Sanhita, 2023, an accused, even if arrested with a warrant, must be **produced before the concerned court within the period of 24 hours**.

In the present case, A has been arrested by B (police officer) and was not produced before the concerned court within 24 hours of his arrest in contravention of the mandatory provision laid down in section 78. Thus, the detention of A in the custody of police officer (B) is illegal, even though the accused was arrested in execution of the warrant issued against him (A).

[Section 148] Unlawful Assembly

- If a group of persons is formed for an unlawful purpose, then an executive magistrate or a police officer of the rank of **S.I** or above may **order** the assembly to **disperse**.
- Unlawful assembly means **five or more persons** who are likely to cause some offence or public disturbance.

[Section 168] Information to the Police

- If the information is received by police officer that an offence is likely to be committed then he must inform his superior and proceed to the place of offence to stop offence.
- The police officer may arrest any person with or without warrant.

Section 173

- Any person aware of any **cognizable offence** may give information by orally or electronic communication to an officer in charge of a police station.
- The information so received shall be recorded in the manner prescribed under this Sanhita.
- The information so recorded u/s 173 is known as First Information Report (FIR).

Refusal by Police Officer

Where the concerned Police Officer doesn't record the aforesaid information (FIR), then the person giving the information can do the following:-

- Inform the **Superintendent of Police** regarding the refusal of the concerned police officer. In such a case, the Superintendent of Police himself shall record the information and investigate the matter.
- Inform the concerned **Magistrate** which, in turn, will take the action against

the concerned Police officer.

CS-6C

Akshay went to a police station to lodge a first information report (FIR) against John for cognizable offence but the officer in charge of police station refused to record the FIR. What is your advice to Akshay for further action?

Answer: Under Section 173 of the of the Bharatiya Nagarik Suraksha Sanhita, 2023, a police officer that receives information from a person regarding the committing of a cognizable offence has to take it in writing and get it signed by giving that information or by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it

This is known as the FIR (First information Report).

If an officer refuses to record an FIR, the person giving that information can send it to the Superintendent of Police (SP) directly.

The SP, in turn, can either direct the officer responsible for it to take action or he can proceed with the case himself.

CS-6D

A police officer has come to know that certain persons sitting in a house equipped with arms are planning to commit a dacoit. The police officer approaches the house and arrests all the persons without getting any order from the magistrate and without any warrant. Examine the validity of their arrest.

Answer: Under Section 170 of the Bharatiya Nagarik Suraksha Sanhita, 2023, if a police officer comes to know of a person's intention to commit a cognizable offence, he can arrest such person or party without a warrant or order issued

by the Magistrate.

However, it has to appear from the state of things that no other action is possible in the situation to prevent the offence from happening. Such a person needs to be presented before the Magistrate in twenty-four hours or less time. Hence, in this case, the police officer can validly arrest the persons equipped with arms sitting inside the house.

CS-6E

A voluntarily causes hurt to B. B goes to police station to lodge F.I.R.. Shall the police officer record the F.I.R.? Give reasons for your answer.

Answer: No, the police officer should not record the F.I.R. Section 173 of Bharatiya Nagarik Suraksha Sanhita, 2023 deals with the Provision of F.I.R. According to this section, an F.I.R. can be lodged only in respect of a cognizable offence. Voluntarily causing hurt, which is punishable under Bhartiya Nyaya Sanhita, 2023 is a non-cognizable offence. Thus the police officer should not record the F.I.R. in this case.

In this case the remedy available to B is to file a **complaint** case against A before the concerned **Judicial Magistrate or SP**.

CS-6F

A is alleged to have committed the murder of B. The F.I.R. was lodged after two days. The police station was one mile away from the place of occurrence. The trial court convicted A relying on F.I.R., as the witnesses have supported the prosecution case mentioned in the F.I.R. is the conviction of a valid? Give reasons in support of your answer.

Answer: No, the conviction of A is not valid. Delay in lodging the F.I.R. makes

an F.I.R. unreliable and there is probability of false implication of accused persons by concocting or fabricating untrue story through witnesses who have not actually seen the occurrence.

Case Law :- Thulia Kali. v State of Tamil Nadu

The Supreme court in *Thulia Kali. v State of Tamil Nadu* Considered F.I.R. to be unreliable as it was lodged after delay of 20 hours when the police station was only about 1 mile away from the place where the offence of murder took place. In this case, the Supreme Court while acquitting the appellant (accused) also observed that delay of 20 hours in lodging the F.I.R. when the place of occurrence is only about 2 miles from the police station, would tend to show that none of the witnesses have witnessed the occurrence. It makes the F.I.R. doubtful.

Thus, in the present problem, the conviction of A is not valid, even though the witnesses have supported the prosecution case as the F.I.R. was lodged after inordinate delay of two days when the police station was only one mile away from the place of occurrence.

This makes the prosecution story given in F.I.R. doubtful and the chances of introducing false witnesses, most probable. Benefit of doubt must go to the accused A.

Section 174

If any person gives information to an Officer-in-Charge of the concerned police station of the commission of a **non-cognizable offence**, the Officer shall enter the substance of such information in a particular book prescribed by the State Government. The Officer, thereafter, shall refer the information to the

Magistrate for appropriate direction and forward the daily diary report of all such cases fortnightly to the Magistrate.

Section 174(2) Provides that no Police Officer shall investigate a non-cognizable case without the order of Magistrate having the power to try such offence.

Section 174(4) Provides that where a case relates to **two or more offences and one of them is cognizable, the case shall be deemed to be a cognizable offence irrespective of the fact that other offences are non-cognizable.**

CS-6G

A first information report is lodged against Stela for committing one cognizable and three non-cognizable offences, can the police conduct investigation in respect of all the four offences without an order from the magistrate?

Answer: Yes, the police can conduct an investigation for all the four offences without an order from the magistrate. According to Section 174(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which provides that if even one of the offences were a cognizable offence, all the other offences being considered with it would be treated as the same, even though they might be non-cognizable.

CS-6H

The information is given to the in-charge of police station against Rahul, a small trader, that he has committed a non-cognizable offence of fraudulent use of false weights and measures.

The in-charge of police Station, after entering the substance of the information

in the Daily Diary kept at the police station, commences investigation without the order of the magistrate. Rahul objects to this action of the police. Will the objection of Rahul be sustained?

Answer: Yes Rahul's objection will be sustained, as under Section 174 of the Bharatiya Nagarik Suraksha Sanhita, 2023, if the police officer in Charge of a police Station receives information of the commission of a non-cognizable offence within the jurisdiction of such station, he can enter or cause to be entered the substance of the information in a register maintained by such officer and refer the information to the Magistrate. However, he cannot investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

9. [Section 283] Summary Trial

Summary trial means speedy disposal of cases.

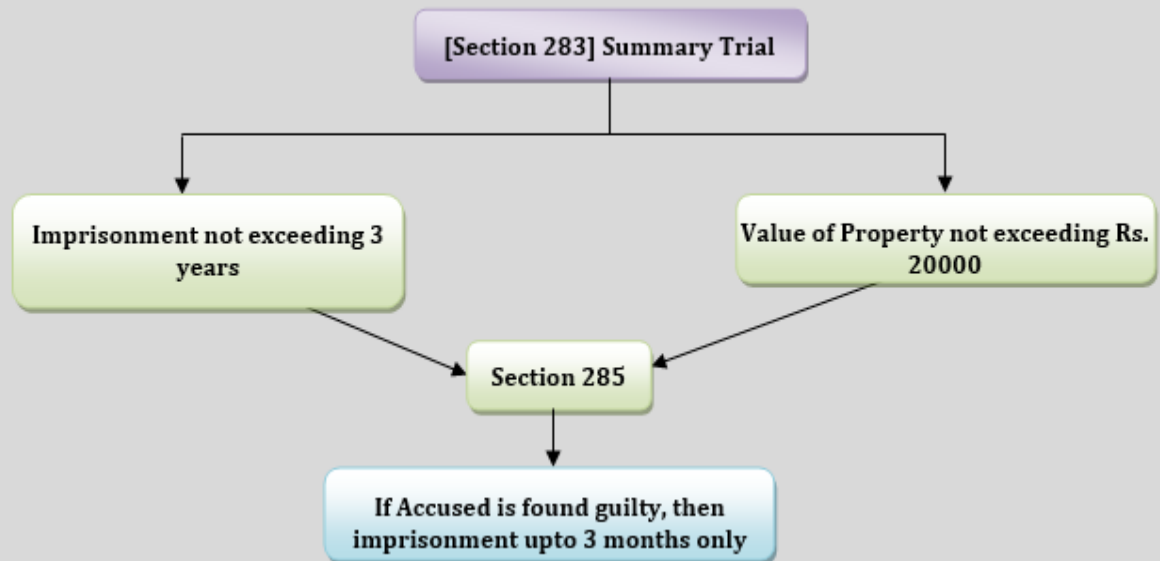
Section 283 provides that summary trial can be conducted in respect of those offences which are **not punishable** with death or imprisonment for life or imprisonment **exceeding 3 years**.

In simple words, we can say Summary Trial can be conducted only in respect of those offences which are punishable with imprisonment for a term not exceeding three years.

Further, summary trials can be conducted only in respect of those offences in which the **value of property does not exceed `20000/-**.

It may be noted that Summary Trial can be conducted only by a **Chief Judicial Magistrate and Magistrate of the first class**.

Section 285 provides that if in a summary trial the accused is found to be guilty, he shall **not** be sentenced to **imprisonment** for a period **exceeding 3 months**.

**CS8B**

Abhishek is tried summarily by the chief judicial magistrate for the charge of committing theft and is sentenced to undergo imprisonment for six months.

Can Abhishek challenge this decision and, if so how?

Answer: Section 285 of the Bharatiya Nagarik Suraksha Sanhita, 2023 says that in case of a summary trial, the magistrate can punish the accused by ordering imprisonment upto three months and not more.

Since, in this case Abhishek, in a summary trial, is sentenced to undergo imprisonment for six months. He can challenge this decision in the next higher court.

CS-8C

Mr. A commits the offence of theft by stealing property of Mr. B worth ` 50000.
Can this offence be tried summarily by the Chief Judicial Magistrate?

Answer: No the offence of theft committed by Mr. A stealing property of Mr. B worth ` 50000 cannot be tried summarily by the Chief Judicial Magistrate.

Section 283 of Bharatiya Nagarik Suraksha Sanhita, 2023 empowers a chief judicial Magistrate, if he thinks fit, to try in a summary, the offence of theft, where the value of the property stolen does not exceed ` 20000.

CS-9A

A marries again during the life time of his wife. A is prosecuted. Can the offence be compounded? Whose permission is necessary?

Answer: Yes, the offence can be compounded by the wife of A with the leave (Permission) of court where prosecution is pending. **Section 359** of Bharatiya Nagarik Suraksha Sanhita, 2023 deals with the law relating to compounding of offences.

- Section 359 (1) provides a 'table' which provides the list of offences which can be compounded without the permission of court.
- But there are certain offences which can be compounded only with the permission of court. The 'table' given in section 359(2) provides the list of offences which can be compounded only with the permission of the court where the case is pending.
- According to the 'table' given in section 359 (2) the offence of 'marrying again during the lifetime of a husband or wife' (section 82(1) of Bhartiya Nyaya Sanhita, 2023) can be compounded by the husband or wife of the person so marrying (as the case may be), with the permission of court.
- Thus, in the present case, the offence punishable under section 82(1) of Bhartiya Nyaya Sanhita, 2023 can be compounded by the wife with the permission of court.

CS10A

Trial of an offence is held in a wrong district. State, with reasons, whether trial is vitiated in this case or not?

Answer: No, trial will not be vitiated, unless it appears that such error has in fact occasioned a failure of Justice. **Section 508**, states that no finding of any criminal court shall be set aside merely on the ground that a trial has taken place in a wrong sessions division/ district (unless it appears that error regarding trial in wrong place has in fact occasioned a failure of justice). Thus, in the present case, the trial of an offence held in wrong district is not vitiated unless it is shown that error regarding trial in wrong district has in fact caused injustice to the accused.

[Section 516] Limitation Period

In calculating the limitation period, the following period shall be excluded:

- The period during which the offender has been absent from India.
- The period during which the offender has avoided arrest by absconding.

10. Miscellaneous Case Studies**CS-11A**

Mr. A committed an offence punishable with imprisonment up to three years in 1990. -Immediately thereafter he went to USA and returned to India in 1999. The Police arrested Mr. A and submitted a challan against him before a magistrate in 2000. Can the magistrate now take cognizance in the matter?

Answer: The magistrate can now take cognizance of the offence, as time span from 1990 to 1999 is not to be included in the computation of period of

limitation. Section 516 provides that in computing the period of limitation, the time during which the offender was outside India is to be disregarded.

Section 514 provides that the period of limitation for taking cognizance is 3 years, if the offence is punishable with imprisonment for a term not exceeding 3 years.

Mr. A has committed an offence punishable with imprisonment up to 3 years. Thus, cognizance of the offence can be taken before expiry of period of 3 years.

CS-11B

Bunty committed an offence punishable with imprisonment which may extend to two years. On the date when the period of limitation ended. The Court was closed. When the court was opened, prosecution was started against him. Bunty Contended that the prosecution cannot be maintained as the period of limitation already expired. Will the court take the cognizance?

Answer: Section 517 of the Bharatiya Nagarik Suraksha Sanhita, 2023 provides that where the period of limitation expires on a day when the court is closed, the court may take cognizance on the day when the court re-opens.

In the given problem, Bunty committed an offence punishable with imprisonment which may extend to two years. On the date when the period of limitation ended, the Court was closed.

When the court was opened, prosecution was started against him.

In terms of the aforesaid provision, the court can take cognizance of the case

when it re-opens.

CS-11C

A commits the murder of B at Bangalore. B is a resident of Chennai. A is arrested at Madurai. At what place or places the trial may take place? Can the offender A be tried at Chennai, of which the B was resident or at Madurai where A was arrested?

Answer: A can be tried only at Bangalore, and neither at Chennai nor at Madurai. **Section 197** of Bharatiya Nagarik Suraksha Sanhita, 2023, which deals with "ordinary place of inquiry and trial".

It reads as follows: "Every offence shall ordinarily be inquired into or tried by a court within whose local jurisdiction it was committed". In the present case, A commits the murder of B at Bangalore.

Thus, in view of section 197 he can be tried in the court at Bangalore only, within whose local jurisdiction the offence of murder was committed.

For the purpose of territorial jurisdiction of a criminal case, the residence of victim is immaterial, and as a general rule, it is also immaterial where the Madurai. **He can be tried at Bangalore only.**

