BHARTIYA NAGARIK SURAKSHA SANHITA

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A. GENERAL PROVISIONS AS TO ENQUIRY AND TRIALS

ABSTRACT

The observant principle of jus naturale which is fundamental and substantial to the administration of a fair and conscionable justice system requires that no man shall be entitled to be one's own judge and that the end of an impartial justice can only be met after giving a fair privilege to the other person of being heard without prejudice or partiality. The provision pertaining to trial and inquiry is quite broad in nature and is integrated within chapter XXVI of India's Criminal Procedure law from sections 337 to 366. These provisions are of significant nature with respect to the above mentioned principle of Jus natural considering the scope of this chapter of the Sanhita not only corroborate but as well complements the foundational precepts of the said principle. The paper concerns with a brief assessment of lesser discussed provisions relating to inquiry and trial as is delineated in chapter XXVI of the Sanhita.

INTRODUCTION

Both, inquiry and trial being conducted by the court of law is of judicial nature and hence both are judicial proceeding presided by the prescribed judicial magistrate or judge. As defined under Section 2 (1) (K) of the present BNSS, 'Inquiry' can be concluded of being any judicial proceeding that is conducted by a magistrate or court of law and such an inquiry does not include a trial. There is no express definition concerning 'trial' in the present BNSS, however, it is well defined in the 1872 Code to be a type of proceeding undertaken by any court of law following the framing of charges and as well includes punishment of accused within its purview. The said definition of 1872 Code has been long discontinued since 1882 Code. However, after analysing various cases we may arrive at the consensus that 'trial is a judicial proceeding before the Court which ends in conviction or acquittal'. On one hand, inquiry may take place after the Magistrate has taken due cognizance following the filing of a chargesheet. On the other hand, Trial takes place following the framing of charges whereby the accused is called by the court and trial includes the determination of the substantial question of punishment of the accused person. In other words, the Proceedings leading up to the framing of charge is 'inquiry' and bears all the

incidents of an inquiry whereas proceedings after the framing of charge is 'trial' containing insignia of a trial.

Points of Distinction between Inquiry and Trial

INQUIRY	TRIAL
It is 2nd stage in Criminal Proceeding	It is last stage in Criminal Proceeding
It is expressly defined in Section 4(k) of 1973 Code.	It definition as was provided under 1872 Code has been discontinued in 1973 Code and hence there is no express definition.
It is preceded by Investigation	It is preceded by Inquiry
It may not necessarily presuppose commission of an offence.	It must necessarily presuppose commission of an offence.
It ends with either framing of charges or utmost with the discharge of the accused.	It ends with either convict or acquittal of the accused person.
Inquiry is done to find the truth or falsity of the information collected in an investigation, submitted by the police.	Trial is done in order to ascertain whether the accused is guilty or not of the offence that he is accused of by the complainant.

INQUIRY AND TRIAL RELATED PROVISIONS

Bar on trial for second time on same stated facts:

S. 337 denote the principle that a person should not be disturbed twice for the same issue. Further, it as well embodies the principle that a person who has been formerly either convicted or acquitted for committing an offence should not be again put through peril for the offence on same facts. This is well integrated in the Art. 20(2) as well which prohibits any possibility of double Jeopardy. Moreover, even well revered notion of res judicata provides impetus to the binding of the verdict of acquittal upon the parties and it cannot be a subject of dispute in any following proceeding, though the option of appeal against verdict is available to the parties.

Section 337 vis-à-vis Article 20(2) and issue-estoppel vis-à-vis double jeopardy:

S. 337 and Art.20(2) encompasses within its scope the fundamental principal that no person should be put through the same peril two fold time for committing the same offence. However, the point of distinction between the two is that Art.20(2) fundamentally concerns only with the fact that a person who has been already awarded a jail time for an offence cannot be subjected to the same punishment once again for the very same offence. Hence, under Art.20(2) a verdict of acquittal can set no bar to the accused being put through trial once again for the very same offence contested to be committed by him. The finding in favour of the accused that has been reached upon the trial of the offence on previous occasion will only function as estoppel against the prosecution instead of making the trial for the second time or the conviction for another offence to be completely barred.

The following illustration is illustrates the Sec.337 in brief.

A is the servant of B. Upon finding a piece of jewellery missing B assumes A of committing theft and files a complaint against him. After ascertainment of allegations brought up by A, charges are framed against B and he is tried. Following the trial, he was acquitted of the offence of theft.

As per section 337, A cannot be charged on the grounds of the same fact as long as the verdict of acquittal is operational.

However, if charges are brought for a different offence against A on the second trial, then such trial is not hindered by Section 337.

Right to be represented by Lawyer

Since an act of criminal culpability is a nature of wrong that is against the security and tranquillity of the society, the State being the ultimate representative of society takes upon itself to seek appropriate punishment to the culpable person who has been alleged to have committed a case of crime.

In furtherance to this, Public Prosecutor is supposed to step in and represent the cause of the State in High Court and the Assistant Public Prosecutor is supposed to be the State representative

in Court of the Magistrate. In both the cases, neither type of such appointed Prosecutor requires any vakalatnama to plead before any Hon'ble Court.

The Public Prosecutor also have the option to seek to any necessary assistance of the counsel employed by a private individual, but the counsel so engaged, is permitted only to act under the given directions of the public prosecution.

In case, of unavailability of a public prosecutor the inquiring magistrate is empowered to allow the matter of Prosecution to be presented by any person who is neither the investigating officer of the case nor the police officer holding any rank lower to the rank of an Inspector. (S. 339)

The accused is entitled by virtue of section 340 to be defended against the Prosecution by any legal representative of his discretion. The right pertaining to consultation with a lawyer commences right from the arrest itself. This particular right of engaging a defence council is provided in view of the constitutionally mandated right envisioned under Art. 22(1). When an indigent person is unable to bring in a counsel for the purpose of his defence then it becomes a necessary duty of state to ensure that the much needed legal aid and services is available by virtue of Art.39-A even when the state has no obligation with respect to appointment of the counsel for the reason of defending the defenceless accused. Further, in when a case triable in nature in Sessions Court, then the accused by reason of his indigence has the right to free legal assistance provided by the State at State's own expense.

Tendering of Pardon

By reason of S.343, a person who is alleged to be involved in the commission of any offence, be it directly or indirectly, can be tendered pardon with the object that such tendering would persuade the person so tendered with pardon to disclose the relevant information or evidence that are in his knowledge with regards to offence and other alleged offenders. Such tendering can categorically be only done by CJM, or a MM, or a JMFC. When, S.343 is read along with Sec.344 then it becomes imperatively evident of Magistrate being bound by virtue of his duty to grant the pardon tender even when a case is triable by either special Judge or by Session Court. Since such power is of substantial nature it cannot be exercised without the concerned reason being duly recorded. Further, tendering of such pardon to the approver could be not just during

the period of trial but as well during the period preceding the trial as can be inferred from S.344. The vested under S.344 extends even to Session Court and Special Judge. The revisional court is empowered with the jurisdiction to consider upon question pertaining to the legality of any pardon order tendered by a court.

Effect of Tendered Pardon:

The person who is so tendered-

1. is to be protected from the very moment of acceptance of pardon against the following:
2. prosecution for committing the alleged offence
3. Prosecution for another offence in connection with the same issue for which he seems not to be innocent of.
4. The person who is so tendered discontinues being in the trial of the co-accused.
5. Additionally, the approver is treated as a witness.

Consequence of non-compliance of pardon conditions:

As is laid in S.345, when the approver is in defiance with the conditions on which basis of which pardon is granted, he is subjected to trial. Any concealment or fabrication of fact or evidence by the approver by his willingness is sufficient of ground for the approver to be tried with respect to the offence for which he was so pardoned. It is the Public Prosecutor who is to certify the approver of defying the conditions and hence, a certificate is an important prerequisite. Furthermore, the scope of S. 345 prevails upto the extent of only those cases in which pardon is explicitly accepted by the approver and he has been thoroughly examined as a competent witness.

Examining of the Accused:

A direct dialogue is intended to be established between the Court of law and the accused through the conduction of examination of accused. The Section concerning it is S.351 and this section based on the ethos of natural justice, whereby a person should be held guilty without having a chance of rightfully heard of. The S.351 manifestly intends to put forth an opportunity before the

accused to explain the events that surfaced to be against him in the evidence. The court is bound by virtue of the duty reposed in it by law to put the accused through fair questioning. Such examination by the court do not amount to cross-examination but rather a direct dialogue to ensure that the accused to imparted with a sound opportunity of being heard. The court may exercise its power to examine at point of inquiry and as well as trial without any prior notice.

The result of such an examination could either end up being advantageous to the accused or detrimental to his interests. Hence, such examination cannot be dismissed as mere formality. Though the court is bound to put forth relevant questions which is substantial to interest of fair trial, the accused is not bound to be answerable to all or any of it. Since he is not bound to be answerable, he is neither administered any oath preceding his examination nor liable to any kind of punishment.

The constitutionality of this section does not extend towards conversion of the accused into a witness.

Accused as Witness:

S. 353 provides that when a case brought under S, 101 or 126-129 then even an accused may act as a competent witness. For the purpose of defence, an accused may provide evidence, acting as a witness, after taking oath to disproof the standing of the prosecution. The accused being a witness on its own accord is as well subjected to cross-examination and the evidence drawn with in such an examination can be employed his any of his co-accused.

However, an accused is not under possible obligation to make an admission which may be detrimental his benefit. Under S.354, he can neither be induced not be influenced to reveal anything that maybe within his knowledge except when he is subjected to S. 343 and 344.

Accused and Criminal Proceeding:

The court is conferred with right to mete out with the attendance of the accused and advance further ahead with inquiry or with trial in the absence of him under S. 355. This an exception to the accepted general rule of any inquiry/trial to be mandatory conducted in presence of accused.

Further, when an accused due to the reason of his impairment or lack of sound understanding and comprehension of language, but not by reason unsoundness of mind, is unable to understand the nature of the proceeding then the court trying the case is required to pass on the proceeding to the High Court if the trial ends in conviction of the accused (S.357). It is then upto the High Court to pass a reasonable sentence after a thorough evaluation of the circumstances of the case. The High Court may as well provide required directions to the concerned trial court for ensuring a just trial. The object of S.357 lies within the view that High Court would hold a reasonable stand point that could ensure a fair trial to the accused. By virtue of S. 358, a court may proceed against such person who was seemingly involved in the offence but are neither shown or mentioned of as accused. A warrant or summon is issued against such person incase of their non-attendance but in case of their attendance, they may be detained with the object of trial or inquiry with respect of the offence.

The list of offences as mentioned in the table of S. 359 can be compounded by the parties of the case. Such compounding to referred to be a particular kind of arrangement where the both parties of the case come in terms with each other and resolves their differences and comes to a compromise. The court is under no obligation to put forth any term of compromise as it is of sole prerogative of the parties. The court can only decide upon the merits of the case.

CONCLUSION

The procedural law concerning criminal justice aims at securing the objectives of criminal law of a country. This specific aim can only be achieved expeditiously if a profound integration and understanding of standing of law regarding inquiry and trial can be well-elaborated and established. The Indian law put forth a well-designed set of general laws pertaining specifically to inquiry and trial. Though the ornately woven set of laws specify the possible routes that may be taken by both accused and the person aggrieved in course of seeking valid justice but the complexities in various stages involving inquiry and trial may make attainment of justice unfeasible to some. Hence, judicious amendment aiming towards simplification of laws concerned with various stages of inquiry and trial would not only result in improved accessibility of justice but as well led to increased confidence of people in justice system.

B. PROVISIONS REGARDING ACCUSED PERSON OF UNSOUND MIND

The meaning of the phrase 'unsound mind' has been debated by scholars in the context of S.84 of the erstwhile Indian Penal CodE ('**IPC**'), now S.22 of the Bharatiya Nyaya Sanhita ('**BNS**'). The same phrase has been used in Chapter XXVII of the Bharatiya Nagarik Suraksha Sanhita ('**BNSS**'). Yet, its meaning is not the same across both statutes. In this essay, I explore what "unsound mind" refers to in the BNSS. My central argument is that though the legislature employs unsound mind in the BNSS, the standard consistently applied has been primarily (and often wholly) medical, often alluding to the definition of "mental illness" as under the Mental Healthcare Act, 2017 ('**MHA**'). In other words, though the courts and legislative intent assert that there is a difference between the phrases "unsound mind" and "mental illness," they end up alluding to the mental illness in effect.

First, I lay out the schema of the Chapter XXVII of the BNSS and briefly explain them. *Second,* I examine judicial pronouncements as to the meaning of "unsound mind" in the BNSS, revealing the ambiguity in Indian jurisprudence surrounding the same. *Thus,* I argue that it may be time to use "mental illness" in place of "unsound mind" in the BNSS as well, given that judicial pronouncements consistently employ the former standard, leaving the notion of "unsound mind" undealt with.

Case law relating to the IPC and Code of Criminal Procedure ("**CrPC**") is applied to the BNS and BNSS respectively, as there is little substantive difference between them.

General Framework

Chapter XXVII of the BNSS deals with provisions for an accused of unsound mind, who is entitled to special privileges in the criminal justice system. According to §367 and §368 of the BNSS, if a magistrate or court has "reason to believe" that an accused is of "unsound mind", he must direct an examination of the accused to determine his unsoundness of mind (or, if the accused has an intellectual disability). If they do have such "reason to believe", it is mandatory for them to follow the scheme provided for under these sections (*Gurjit Singh v The State of Punjab*. This

means that the manner in which the accused behaves must raise a *reasonable doubt* as to the soundness of their mind, warranting further examination. A medical inquiry is unnecessary if the accused does not seem unsound on examination and production of evidence (*I.V. Shivaswamy v State of Mysore*,), which may include an examination of his demeanour, medical reports produced by the parties, etc. (*Sunil Tejbahadur Singh v State of Gujarat*,).

If not, the procedure continues as per the other sections of the BNSS. If the accused is intellectually disabled, they are discharged. If they are found to be of unsound mind, an inquiry is then undertaken as to whether the accused is "incapable of making their defence". If so, and if there is no *prima facie* case made out against the accused, they are discharged and dealt with as per S.369. However, if there is a *prima facie* case, the proceedings are merely postponed until the accused can be treated under S.369.

Under S.369, an accused who is of unsound mind and who cannot make his own defence or who is intellectually disabled can be released on bail, irrespective of whether the offence is bailable or not, based on whether they require in-patient treatment (i.e. admission to a psychiatric institution for treatment) and if a friend or relative undertakes to obtain regular out-patient treatment as well gives security that he will prevent the accused from causing injury to himself or another.

S.369(3) prescribes that the nature of the act alleged to be committed and the extent of his unsoundness must influence the decision to grant bail. Given this, the accused must be detained somewhere where he may receive regular treatment if he cannot be released on bail. In the meantime, the trial stands postponed–it may be resumed when the accused becomes of sound mind *and* then is capable of making his defence.

The rationale behind these provisions is to protect the interests of an accused who is "incapable of making his defence" and hence unable to stand trial. In other words, as noted in the 154th Law Commission ("**LC**") Report of India, it is believed that an accused who is of unsound mind and incapable of defending himself cannot be guaranteed a fair trial in the first place. Hence, trying persons of unsound mind in

the same manner as others of sound mind is inherently unfair. The process violates his right to a fair trial under Article 21, as he cannot understand the charges levelled against him or consult adequately with his counsel.

The above is also why, unlike in the BNS, unsoundness of mind does not need to be a defence to be raised by the accused/their counsel. It may be raised as a plea by the defence counsel, as noted in *Gurjit Singh*. However, in *Pandit v State of Maharashtra* (2021), it was held that the magistrate/court must be vigilant of the state of mind of the accused as well. In either case, the defence and the prosecution are both free to bring evidence (*Gurjit Singh*,).

What is Unsoundness?

The phrase "unsound mind" is perhaps most popularly dealt with under S.22 of the BNS (erstwhile S.84 of the IPC). There, unsound mind refers to *legal* insanity wherein the accused pleads unsoundness as a defence by arguing that they did not understand the nature of the act they committed (*Prakash Nayi v State of Goa*,. In the BNSS, however, "unsound mind" has a different connotation (*Sunil Tejbahadur Singh*,). In the rest of this section, I explore the contours of what it means.

Legislative intent shows that unsoundness was not intended to be equated to mental illness evidenced by their choice not to use the phrase "mental illness" in place of unsound mind in the context of the BNSS. This was seen in S.22 of the BNS as well, wherein "unsound mind" was preferred over "mental illness",as per its definition under S. 2(s) of the MHA:

"'mental illness' means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;"

Mental illness was noted to be overbroad in including disorders such as depression, noted to be outside the ambit of the criminal codes.(Report on the first iteration of the BNS. The Standing Committee also noted that prosecutors may abuse this

provision, claiming protection under this section for all offences by asserting that their client is mentally ill. This may be one possible justification for using "unsound mind" and not "mental illness" in both codes (S. 22 of the BNS as well as Chapter XXVII of the BNSS).

S. 3(5) of the MHA also posits that no one shall be held to be of unsound mind (undefined under the MHA/any statute) merely due to a mental illness (defined under S. 2(s)), providing another instance of a distinction between the two terms. The same distinction can be seen in S. 368(1) of the BNSS, stating that the court must determine the unsoundness of an accused by considering "*medical* ***and other evidence produced before him****"* (emphasis supplied). If unsoundness was intended to be an entirely medical consideration by the legislature, there would be no need to specify that 'other evidence' could also be produced before it.

The Supreme Court ("**SC**") too recently observed that unsoundness is a question of legal insanity and *not* medical insanity (due to mental illness), for the purposes of both the IPC and CrPC (now, the BNS and BNSS) (*Prakash Nayi v State of Goa*). Along these lines, the Punjab & Haryana High Court ("**HC**") too has noted that unsoundness of mind is distinct from a psychotic disorder.

However, I shall demonstrate that this does not truly apply to the BNSS–legislative intent as well as courts have erred in separating the two. In other words, despite the legislature and courts attempting to draw a distinction between mental illness and unsoundness of mind, I argue that in effect, unsoundness of mind specifically under the BNSS becomes a question of mental illness under the MHA

Medical reports are the primary (and often only) evidence referred to, by the SC as well as various HCs. Thus, there seems to be a very thin line dividing the two. In *Prem Singh v State of Punjab*, the court observed that "*[the accused] was never found* ***suffering from any mental illness so as to be regarded as a person of unsound mind****"*(emphasis supplied). However, if the two were to be distinct (as envisioned above), then mental illness would never be sufficient by itself to construe the accused as being of unsound mind.

As per *Kamal Bhardwaj v State (NCT of Delhi)* , while considering medical evidence is necessary , courts must also look at the “manners” and “actions” of the accused , which is ambiguous. Hence, so far, unsoundness under the BNSS seems to be equivalent to mental illness in addition to the “manners”/“actions” of an accused during trial.

Courts also weigh the inability of the accused to understand the consequences of his actions, though they confusingly factor this in as a part of “mental illness.” This was recently the case in *Shobhit Suman v CBI* (2024), in the Jharkhand HC. Here, it was held that unsoundness must be such that the person has “become incapable of understanding his own business and of forming a rational judgment as to its effect upon his interest”. It may be noted that, *first*, this fits the S. 22 standard (under the BNS) better than it does the BNSS standard. *Second,*. as per the definition of mental illness under S. 2(s),

Being unable to understand the consequences of your actions is a part of mental illness under the MHA. Hence, the court in *Shobhit* seems to be alluding to mental illness. This does connect with the rationale of this chapter of the BNSS as well. Being unable to make a rational judgement and understand the consequences of your actions can lead to an inability to understand the trial, charges levelled against yourself as the accused, etc. This in turn can amount to a violation of one’s right to fair trial under Article 21, as explained in Section-I.

However, this seems to be in direct contravention of legislative intent and earlier pronouncements, which assert a distinction between unsoundness and mental illness. Yet, in effect, the courts either rely exclusively or mostly on medical evidence (*see* endnote), effectively allude to the definition of mental illness under the MHA (as in *Shobhit*), or at best, move past mental illness by looking at the “manners” and “actions” of the accused (as in *Kamal Bhardwaj*). However, it may be argued that even such manners and actions could be considered as a form of determining whether one is “mentally ill” in the sense of the extent to which they are in touch with reality (under S. 2(s) of the MHA). Hence, based on all of the above, I argue that perhaps the BNSS has wrongly retained the phrase “unsound

mind", when every pronouncement seems to point towards mental illness (in a clinical sense) being the metric instead.

Additionally, the legislature's concern that "mental illness" is overbroad and affords protection to those with illnesses such as depression may not be entirely valid either. The BNSS explicitly prescribes that the protection of these sections is only afforded to those who are of unsound mind *and incapable of making their defence*. Thus, if mental illness was used in place of unsoundness of mind, those who fall within "mentally ill" are circumscribed and reduced to those who are *consequently also* "incapable of making their defence." The problem of mental illness being overbroad does not arise then, as judicial determinations (reliant on medical evidence) continue to determine who is and is not capable of making their defence.

So, for instance, suffering from clinical depression may not lead to one being incapable of making their defence in terms of being *unable* (and not *unwilling*) to understand the charges levelled against them, being unable to consult with counsel, a lack of a reasonable understanding of the charges levelled against them, etc. However, being afflicted with schizophrenia may. In fact, in *Upen Basumatary v State of Assam,* the Gauhati HC relied on *Prem Singh* to hold that a person with schizophrenia suffers from an "overpowering mental illness" that renders them unable to stand trial because they are not in a fit state of mind to stand trial. Hence, the requirement of there being a causal relation between being mentally ill and being incapable of defending themselves solves the concern of mental illness being overbroad.

On a more humorous note, the Calcutta HC has created further confusion in *Mrinmoy Chandan Dutta v State of West Bengal* (2024) by employing phrases such as "unsound mind illness".

Most recently, the Kerala HC in *V.I. Thankappan v State of Kerala* (2024) adjudicated on whether severe dementia would fall under its ambit. Noting the schema under these provisions, with particular reference to the BNSS as well, the court held that dementia caused due to Alzheimer's, when severe enough, would fall under the ambit of "intellectual disability" under the BNSS, a term noted to be

wider than “mental retardation” in the CrPC. This would extend retrospectively as well, to ensure the fair trial of various accused under Article 21. The court also noted that affording greater protection to those subjected to the criminal justice system after the enactment of the Sanhita than those subjected prior would also violate Article 14. Thus, in including severe dementia (something that makes an accused incapable of defending themselves) within “intellectual disability” under the BNSS, the protections of these provisions have been extended to a wider set of accused. Yet, unfortunately, despite numerous references to the definition of mental illness under the MHA, the court does not delve into the significant overlap noted between mental illness and unsoundness of mind.

CONCLUSION

Hence, the BNSS has retained the phrase “unsound mind” as against “mental illness.” The legislature had justified this by stating that mental illness is too broad in its ambit. Judicial pronouncements assert the same, claiming that the two terms are not synonymous. Yet, the provisions themselves are ambiguous as to what is subsumed under the term “unsound mind.”

Critically analysing them reveals that the breadth of mental illness is circumscribed by the immediate condition i.e. not only must the accused be mentally ill to gain the protection of these provisions, but as a *consequence* of such mental illness, they must also be *incapable of making their defence* in trial. Additionally, regardless, judicial pronouncements almost exclusively rely on medical evidence in determining such “unsoundness of mind,” and effectively adhere to the definition of mental illness under the MHA. *Thus*, I argue that the BNSS has overlooked an opportunity to employ “mental illness” as against “unsound mind”, when judicial understandings of the latter in fact reference the former and the code itself does not define the term.

C. OFFENCES AFFECTING ADMINISTRATION OF JUSTICE

Every sovereign state is duty-bound to protect its external borders and maintain internal peace, therefore the two main functions of the state are war and justice. i.e., to wage a war against any country that threatens peace and provide justice to every person whose rights are violated and maintain internal peace in the state.

Administration of justice simply means 'By Law'. It is a process by which a government is executed by a legal system. In our country, the whole procedure of administration of criminal justice is divided into three sets, mainly being, 'investigation, inquiry and trial'. For every offense under Indian Penal Code, the process of investigation, inquiry, and trial is followed by The Criminal Procedural Code, 1973.

Chapter XXVI of the Sanhita lays down the provisions affecting the administration of justice under Sections 379 to 391. The main purpose behind the Sanhita is to maintain effective administration that is adopted by both executive and judiciary in order to dispose of criminal cases. Offenses against the administration of justice are specific types of violations of the law. Sections 379 to 391the of the Sanhita specifically deal with offenses against the administration of justice.

1. ***Punishment under Section 379 of the Sanhita***

Overview of Section 379

Section 379 of the Code of Criminal Procedure (CrPC) provides a mechanism for courts to initiate proceedings for certain offences that affect the administration of justice, specifically those mentioned in Section 215. This section allows a court to make a complaint in writing to a Magistrate if it believes that an inquiry into an offence is expedient in the interests of justice.

Key Provisions

- **Inquiry Requirement**: The court must first determine whether it is expedient to conduct an inquiry into the alleged offence before making a complaint Anitha VS Bava - Kerala (1992).
- **Types of Offences**: The offences covered under Section 340 include perjury, forgery, and other offences affecting public justice as specified in Section 195(1)(b) Jagdish Prasad VS Goma - Madhya Pradesh (2016).
- **Procedure**: After a preliminary inquiry, the court may:
- Record a finding that an inquiry is warranted.
- Make a written complaint to a Magistrate of the first class.

- Ensure the accused"s appearance before the Magistrate, either by taking security or sending them in custody if the offence is non-bailable K. J. Wadhan VS Dilar Singh - Punjab and Haryana (2005).

Punishment for Offences under Section 379
While Section 379 itself does not prescribe specific punishments, it facilitates the prosecution of offences that are punishable under the BNS. The following points summarize the implications:

- **Nature of Offences**: The offences referred to in Section 379, such as perjury (Section 229 BNS) and forgery (Sections 336-340 BNS), carry their own penalties as defined in the IPC.
- **Potential Penalties**:
- **Perjury**: Punishable with imprisonment for a term that may extend to seven years, and shall also be liable to fine
- **Forgery**: Punishable with imprisonment for a term that may extend to seven years, or with fine, or with both

Considerations for Prosecution

- **Discretion of the Court**: The court has discretion in deciding whether to initiate proceedings under Section 379. It must consider whether it is expedient in the interests of justice to do so Mahadev Savla Patil VS Village Development Officer - Bombay (2015).
- **Judicial Oversight**: Courts are required to exercise this discretion judiciously, ensuring that the initiation of prosecution is not based on frivolous or vexatious grounds Jari Mari Coop. Hsg. Soc. Ltd VS Shamshad Begum Abdul - Bombay (2007).

Conclusion
Section 379 of the CrPC serves as a procedural framework for addressing offences that undermine the integrity of judicial proceedings. While it does not impose direct penalties, it enables the prosecution of serious offences like perjury and forgery, which carry significant penalties under the IPC. Courts must carefully evaluate the necessity of initiating such proceedings to uphold the interests of justice.

OVERVIEW OF SECTION 380 BNSS

Section 380 of the BNSS, provides a mechanism for appealing against orders made under Section 379, which deals with the procedure for making complaints regarding offenses affecting the administration of justice. Specifically, it allows a person whose application under Section 340 has been rejected, or against whom a complaint has been made, to appeal to a superior court.

Summary of Findings

- **Appeal Mechanism**: Section 380 provides a clear pathway for appealing decisions made under Section 379, but it is limited to specific circumstances.
- **Procedural Rigor**: Courts have consistently emphasized the need for compliance with procedural norms when filing applications and appeals under these sections.
- **Limitation Issues**: Appeals under Section 380 are subject to the Limitation Act, and failure to adhere to these timelines can result in dismissal.
- **Scope of Review**: The scope of review in appeals under Section 380 is narrower compared to regular criminal appeals, focusing on procedural correctness rather than substantive merits.

SECTION 381

Section 381 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) deals with the "Power to order costs" in relation to applications for filing complaints under section 379 or appeals under section 380.

SECTION 382

Section 382 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, outlines the procedure for a Magistrate taking cognizance of an offense, particularly in cases related to complaints made under sections 379 or 380, and mandates that the Magistrate proceed as if the case was instituted by the police. This section specifically addresses the procedure when a Magistrate receives a complaint under sections 379 or 380 of the BNSS.

The Magistrate, upon receiving such a complaint, is required to proceed with the case as if it were instituted by the police, regardless of any provisions in Chapter XVI of the BNSS. Chapter XIV contains general provisions regarding the procedure for police investigations and institution of cases. The purpose of this section is to ensure a streamlined and efficient process for handling cases where a complaint is made directly to a Magistrate, rather than through a police investigation.

SECTION 382

Section 383 of the Bharatiya Nagarik Suraksha Sanhita, 2023, outlines the summary procedure for trials involving witnesses who give false evidence. It allows a Court of Session or a Magistrate to take cognizance of the offence if a witness is found to have knowingly provided false evidence or fabricated evidence. The section stipulates that the court can impose a summary trial and sentence the offender to imprisonment of up to three months, a fine of up to one thousand rupees, or both. The court must follow the prescribed procedure for summary trials, and the section also clarifies that the court retains the right to make a complaint under section 379 if it chooses not to proceed under this section.

What does Section 383 of the Bharatiya Nagarik Suraksha Sanhita, 2023 address?

It addresses the summary procedure for trials involving witnesses who give false evidence.

What can a court do if it finds a witness has given false evidence?

The court can take cognizance of the offence and try the witness summarily.

What penalties can be imposed on a witness found guilty of giving false evidence?

The witness can be sentenced to imprisonment for up to three months, a fine of up to one thousand rupees, or both.

What must the court follow during such trials?

The court must follow the procedure prescribed for summary trials.

Can the court initiate a complaint under section 379?

Yes, the court can make a complaint under section 379 if it chooses not to proceed under this section.

What happens if an appeal is filed against the judgment in which false evidence was identified?

The court must stay further proceedings of the trial until the appeal or application for revision is disposed of.

Section 384 of the Bharatiya Nagarik Suraksha Sanhita, 2023, outlines the procedure for handling contempt offences committed in the presence of a Civil, Criminal, or Revenue Court. If an offence described in specific sections of the Bharatiya Nyaya Sanhita is witnessed by the court, it can detain the offender and take cognizance of the offence on the same day. The court has the authority to impose a fine of up to one thousand rupees, with the alternative of simple imprisonment for up to one month if the fine is not paid. The court is required to document the offence, any statements made by the offender, and the findings and sentence issued. Additionally, specific requirements are outlined for offences under section 265 regarding the nature of the judicial proceeding and the interruption or insult.

What does Section 384 of the Bharatiya Nagarik Suraksha Sanhita, 2023 address?

It addresses the procedure for dealing with contempt offences committed in the presence of a court.

What can a court do if it finds an offence described in certain sections is committed in its presence?

The court may detain the offender and take cognizance of the offence on the same day.

What penalties can the court impose for contempt?

The court can impose a fine not exceeding one thousand rupees or, in default of payment, simple imprisonment for up to one month.

What must the court record in cases of contempt?

The court must record the fact constituting the offence, any statements made by the offender, and the findings and sentence.

What additional information must be recorded if the offence is under section 265?

The record must show the nature and stage of the judicial proceeding in which the court was sitting and the nature of the interruption or insult.

Section 385 of the Bharatiya Nagarik Suraksha Sanhita, 2023, outlines the procedure for cases where a court determines that an accused person, charged with an offence under section 384,

should not be dealt with in the summary manner prescribed in that section. If the court believes that imprisonment (other than for non-payment of a fine) or a fine exceeding two hundred rupees is warranted, it can forward the case to a Magistrate with appropriate jurisdiction. The court must record the offence's details and the accused's statement before doing so. The Magistrate will then handle the case as if it originated from a police report.

What does Section 385 of the Bharatiya Nagarik Suraksha Sanhita, 2023 address?

It addresses the procedure for cases where the court believes the accused should not be dealt with under section 384.

What can the court do if it thinks a fine exceeding two hundred rupees is necessary?

The court can forward the case to a Magistrate and require security for the accused's appearance.

What must the court do before forwarding the case to a Magistrate?

The court must record the facts constituting the offence and the statement of the accused.

How will the Magistrate treat the forwarded case?

The Magistrate will deal with the case as if it were instituted on a police report.

What happens if sufficient security is not given for the accused's appearance?

The court must forward the accused in custody to the Magistrate.

Section 386 of the Bharatiya Nagarik Suraksha Sanhita, 2023, specifies that a Registrar or Sub-Registrar, appointed under the Registration Act of 1908, can be considered a Civil Court when directed by the State Government. This designation allows these officials to operate under the legal framework applicable to civil courts, particularly concerning sections 384 and 385.

What does Section 386 of the Bharatiya Nagarik Suraksha Sanhita, 2023 address?

It addresses the circumstances under which a Registrar or Sub-Registrar is deemed a Civil Court.

Who has the authority to direct that a Registrar or Sub-Registrar be deemed a Civil Court?

The State Government has the authority to make this designation.

Under which Act are the Registrars and Sub-Registrars appointed?

They are appointed under the Registration Act, 1908.

Which sections of the Bharatiya Nagarik Suraksha Sanhita are referenced in this section?

Sections 384 and 385 are referenced.

What implication does this section have for Registrars and Sub-Registrars?

It allows them to operate with the powers and responsibilities of a Civil Court.

Section 387 of the Bharatiya Nagarik Suraksha Sanhita, 2023, provides courts with the discretion to discharge an offender or remit their punishment if the offender submits to the court's order or makes a satisfactory apology. This section applies when a court has previously adjudged the offender to punishment under ***section 384*** or has forwarded the case to a Magistrate under ***section 385*** for specific offences such as refusing a lawful requirement or causing intentional insults or interruptions.

What does Section 387 of the Bharatiya Nagarik Suraksha Sanhita, 2023 address?

It addresses the conditions under which a court can discharge an offender or remit their punishment upon submission of an apology.

Under which circumstances can a court discharge an offender according to this section?

The court can discharge an offender if they have been punished under section 384 or forwarded to a Magistrate under section 385.

What must the offender do to be discharged from punishment?

The offender must submit to the court's order or make a satisfactory apology.

What types of actions can lead to punishment under sections 384 or 385?

Actions include refusing or omitting to do something lawfully required or making intentional insults or interruptions.

Is the court required to accept the apology?

No, the court has the discretion to determine whether the apology is satisfactory.

Section 388 of the Bharatiya Nagarik Suraksha Sanhita, 2023, outlines the consequences for a witness or person who refuses to answer questions or produce documents required by a Criminal Court. If such refusal occurs without a reasonable excuse after being given an opportunity to comply, the court may impose a sentence of simple imprisonment or commit the person to custody for up to seven days. If the individual continues to refuse, they may face further actions under sections 384 or 385.

What does Section 388 address?

It addresses the imprisonment or committal of a person who refuses to answer questions or produce documents in a Criminal Court.

What happens if a person refuses to comply with a court order?

The court may sentence them to simple imprisonment or commit them to custody for a term not exceeding seven days.

What must the court do before imposing a sentence?

The court must record the reasons for the sentence in writing.

How long can a person be committed to custody under this section?

The term can be up to seven days.

What options does the person have to avoid imprisonment?

The person can consent to be examined, answer questions, or produce the required document or thing.

What happens if the person continues to refuse?

They may be dealt with according to the provisions of sections 384 or 385.

Section 389 of the Bharatiya Nagarik Suraksha Sanhita, 2023, outlines the procedure for dealing with a witness who fails to attend a Criminal Court as summoned. If a witness neglects or refuses to appear without a just excuse, the Court may summarily try the case and impose a fine of up to five hundred rupees. The section emphasizes the importance of ensuring that witnesses comply with court summons to maintain the integrity of judicial proceedings.

Question & Answers

What does Section 389 address?

It addresses the punishment for witnesses who fail to attend a Criminal Court as summoned.

What happens if a witness does not attend court?

If a witness neglects or refuses to attend without just excuse, the Court may take cognizance of the offence and impose a fine.

What is the maximum fine that can be imposed on a witness for nonattendance?

The maximum fine is five hundred rupees.

What must the Court do before imposing a fine?

The Court must give the offender an opportunity to show cause why they should not be punished.

What procedure must the Court follow in these cases?

The Court must follow the procedure prescribed for summary trials as closely as possible.

Section 390 of the Bharatiya Nagarik Suraksha Sanhita, 2023, provides a framework for appealing convictions made under sections 383, 384, 388, and 389. This section outlines the rights of individuals sentenced by lower courts to appeal their convictions to higher courts. It specifies which courts are appropriate for appeals depending on the type of sentencing court involved.

Question & Answers

What does Section 390 address?

It addresses the appeals process for convictions under sections 383, 384, 388, and 389.

Who can appeal under this section?

Any person sentenced by a Court other than a High Court under the specified sections may appeal.

To which court can an appeal be made?

An appeal can be made to the Court to which decrees or orders from the sentencing court are ordinarily appealable.

What provisions apply to these appeals?

The provisions of Chapter XXXI apply to appeals under this section.

Can the Appellate Court change the original conviction?

Yes, the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

Where does an appeal from a Court of Small Causes lie?

It lies to the Court of Session for the sessions division within which the Court of Small Causes is situated.

Where does an appeal from a Registrar or Sub-Registrar lie?

It lies to the Court of Session for the sessions division within which the office of the Registrar or Sub-Registrar is situated.

This section outlines that certain Judges and Magistrates are prohibited from trying offences committed in their presence or in contempt of their authority. This applies specifically to offences mentioned in section 215, except in cases defined in sections 383, 384, 388, and 389.

Question & Answers

What does Section 391 of the Bharatiya Nagarik Suraksha Sanhita address?

It addresses the prohibition for certain Judges and Magistrates to try specific offences committed in their presence or in contempt of their authority.

Which Judges are excluded from this provision?

Judges of a High Court are excluded from this provision.

Are there any exceptions to this rule?

Yes, exceptions are provided in sections 383, 384, 388, and 389.

What type of offences are mentioned in Section 391?

Offences referred to in section 215.