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Study Notes

Bhartiya Nagarik Suraksha Sanhita 2023 Part 1

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INTRODUCTION

A Bill to consolidate and amend the law relating to Criminal Procedure, this Bill was introduced in the Lok Sabha on August 11, 2023 along with the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Sakshya Bill, 2023. The President gave assent on 25-12-2023 to the new criminal laws.

- **Background**
 - ✓ The Ministry of Home Affairs in 2020 had constituted a committee headed by Prof. (Dr.) Ranbir Singh, former Vice Chancellor of National Law University (NLU), Delhi to review the three codes of criminal law.
 - ✓ The mandate of the committee was to 'recommend reforms in the criminal laws of the country in a principled, effective and efficient manner –
 - **which ensures the safety and security of the individual, the community and the nation; and**
 - **which prioritises the constitutional values of justice, dignity and the inherent worth of the individual.**
 - ✓ In February the committee submitted its recommendations on the criminal law amendments.
- **Objectives of Criminal Law reform**
 - ✓ The three new bills seek to establish a justice system based on Indian thinking, coming out of the Colonial mindset.
 - ✓ All the provisions which have now become obsolete have been removed.
 - ✓ New provisions have been added considering the need of the hour. For ex, Electronic communication related provisions have been incorporated in Bhartiya Nagarik Suraksha Sanhita and Bhartiya Sakshya Bill.
 - ✓ Offences like Seditious have been removed and Organized crime has been defined in the Bhartiya Nyaya Sanhita.
 - ✓ All the three Laws are based on -A person's freedom, human rights and impartiality".

The Act has 533 sections, 2 Schedules and 38 Chapters.

Note: The provisions marked in maroon are newly added provisions.

SOME IMPORTANT DEFINITIONS CHAPTER I- PRELIMINARY S. 1-5 (1-5)

- S. 2 provides for Definitions-

(b) bailable offence	means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;
(c) charge	includes any head of charge when the charge contains more heads than one;
(d) cognizable offence	means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;
(e) complaint	means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report. A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;
(f) electronic Communication"	means the communication of any written, verbal, pictorial information or video content transmitted (whether from one person to another, from one device to another or from a person to a device or from a device to a person) by means of an electronic device including but not limited to a telephone, a mobile or cellular phone, or other wireless telecommunication device, or a computer, or audio-video players and cameras or any other electronic device or electronic form as may be by the Central Government.
(i) inquiry	means every inquiry, other than a trial, conducted under this Sanhita by a Magistrate or Court;
(j) investigation	<ul style="list-style-type: none"> ○ all the proceedings under this Sanhita for the collection of evidence conducted by a police officer

	<p>or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.</p> <ul style="list-style-type: none"> ○ 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.
(m) non-cognizable offence	means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;
(o) offence	means any act or omission made punishable by any law for the time being in force.
(s) police report	means a report forwarded by a police officer to a Magistrate under sub-section (1) of section 176;
(w) summons-case	means a case relating to an offence, and not being a warrant-case;
(x) victim	means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and includes the guardian or legal heir of such victim;
(y) warrant-case	means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

CHAPTER II- CONSTITUTION OF CRIMINAL COURTS AND OFFICES S.6-20 (6-25A)

- **S. 6. Besides the High Courts and the Courts constituted under any law, other than this Sanhita, there shall be, in every State, the following classes of Criminal Courts, namely:—**

- ✓ Courts of Session;
- ✓ Judicial Magistrates of the first class;
- ✓ Judicial Magistrates of the second class; and
- ✓ Executive Magistrates.

- The division of Metropolitan areas and Subordination of Assistant Session Judges has been removed which was present in the Criminal Procedure Code.
- The Courts of Metropolitan Magistrates, Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate, Special Metropolitan Magistrates and Subordination of Metropolitan Magistrates has been removed which was present in the Criminal Procedure Code.

CHAPTER III- POWER OF COURTS S. 21-29 (26-35)

- Jurisdiction in case of Juveniles has also been changed with a new provision in BNSS.
 - **S. 27. Jurisdiction in the case of juveniles.—**
 - ✓ person who at the date when he appears or is brought before the Court is under the age of sixteen years is a Juvenile and if he commits-
 - ✓ offence ***not punishable with death or imprisonment for life***, may be tried by the **Court of a Chief Judicial Magistrate, or by any Court specially empowered** under the Children Act, 1960, or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

New provision

CHAPTER IV- POWERS OF SUPERIOR OFFICERS OF POLICE AND AID TO THE MAGISTRATES AND THE POLICE S. 30-34 (36-40 in CrPC)

- The provisions remain same with only change of section numbers in BNSS.

CHAPTER V- ARREST OF PERSONS S. 35-62 (41-60 A in CrPC)

- This Chapter majorly remains same except few structural changes like change in section numbers.
- S. 41A. Notice of appearance before police officer has been deleted as an independent provision and incorporated in S. 35 of BNSS-
- **S. 35. When police may arrest without warrant.**
 - ✓ Any police officer may without an order from a Magistrate and without a warrant, arrest any person—
 - (a) who commits, in the presence of a police officer, a cognizable offence;
 - (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine.
 - ✓ It is the duty of the police officer to record his reasons in writing while making an arrest and where the arrest is not required record reasons for the same.
 - **Notice provision incorporated in S.35-**
 - ✓ **The police officer shall if the arrest of a person is not required under subsection issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.**
 - ✓ **it shall be the duty of that person to comply with the terms of the notice. If such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded.**
 - ✓ **If such person fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to orders passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.**
 - ✓ No arrest shall be made without prior permission of the officer not below the rank of **Deputy Superintendent of Police-**
 - in case of an offence which is punishable for less than three years and
 - such person is infirm or is above sixty years of age.

Modified provision

Some important provisions of this chapter:

- **S. 40 Arrest by private person and procedure on such arrest**
 - ✓ Any private person may carry out arrest of any person who-
 - ✓ in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and
 - ✓ without unnecessary delay, within six hours from such arrest hand over the arrested person to police officer of nearest police station.
 - ✓ If there is reason to believe that he has committed a non-cognizable offence, and he refuses to give his name and residence, or gives false information .

- **S. 41 Arrest by Magistrate**
 - ✓ If offence is committed in the presence of a Magistrate
 - ✓ Carries out by Judicial or Executive Magistrate within his local jurisdiction.

- **S. 48 Obligation of person making arrest to inform about the arrest, etc., to relative or friend.**
 - ✓ Every police officer or other person making any arrest under this Sanhita shall give **the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends** and
 - ✓ also to the designated police officer in the district.
 - ✓ The police officer shall inform the arrested person of his rights.

- **S. 54 Identification of person arrested— (recommended section of study S. 9 of Indian Evidence Act now S. 7 of Bhartiya Sakshya)**
 - ✓ Where a person is arrested on a charge of committing an offence and his
 - ✓ identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit:
 - ✓ If the person identifying the person arrested is mentally or physically disabled, the process shall take place under the supervision of a Judicial Magistrate and the identification process ***shall be recorded by any audio-video electronic means.***

CHAPTER VI-PROCESSES TO COMPEL APPEARANCE & CHAPTER VII PROCESS TO COMPELL PRODUCTION OF THINGS

CrPC	Chapter VI	S. 61-90
BNSS	Chapter VI	S. 63-93
CrPC	Chapter VII	S. 91-105
BNSS	Chapter VII	S. 94-110

- In Chapters VI and VII majorly the provisions remain same, there is change in section numbers as mentioned above and addition of 2 new provisions as follows-

- **S. 105 Recording of search and seizure through audio-video electronic means**

New provision

- ✓ The process of conducting search of a place or taking possession of any property, article including preparation of the list of all things seized in the course of such search and seizure and signing of such list by witnesses all shall be recorded through any audio-video electronic means.
- ✓ The recording preferably done through cell phone and police officer shall without delay forward such recording to the ***District Magistrate, Sub-divisional Magistrate or Judicial Magistrate of the first class.***

- **S. 107. Attachment, forfeiture or restoration of property.**

New provision

- ✓ If any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, police officer may, with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Judicial Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.
- ✓ If the Court or the Judicial Magistrate has reasons to believe that it is so, before or after taking evidence, that all or any of such properties are proceeds of crime,
- ✓ **the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.**
- ✓ if such person does not appear within a period of fourteen days specified in the show-cause notice, the Court or the Judicial Magistrate may proceed to pass the ***ex-parte order.***
- ✓ if the Court or the Judicial Magistrate is of the opinion that issuance of notice under the said sub-section would defeat the object of attachment or seizure, an interim order can be passed ex-parte directing attachment or seizure of such property.
- ✓ If the Court or the Judicial Magistrate finds the attached or seized properties to be

the proceeds of crime, they shall direct the District Magistrate to ratably distribute such proceeds of crime to the persons who are affected by such crime.

- ✓ If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government.

➤ **Some important provisions of this chapter:**

- **S. 65 Service of summons on corporate bodies, firms, and societies**

Summons for-	Served on-
Service of a summons on a company or corporation	Director, Manager, Secretary of Company
Service of a summons on a firm or other association of individuals	Any partner of such firm or association,

- **S. 66 Service when persons summoned cannot be found**

Summons for-	Served on-
Person summoned cannot, by the exercise of due diligence, be found,	summons may be served by leaving one of the duplicates for him with some adult member of his family residing with him

- ✓ **The explanation clauses appended to this section says that a servant is not a member of the family within the meaning of this section.**

- **S. 67 Procedure when service cannot be effected as before provided**

- ✓ If as provided in section 64, section 65 or section 66,
- ✓ **the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.**

- **S. 84 Proclamation for person absconding**

- ✓ If any Court has reason to believe (whether after taking evidence or not) that **any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed,**

- ✓ Court may publish a written proclamation requiring him to appear at a specified place and at a specified time **not less than thirty days from the date of publishing** such proclamation.
- ✓ Proclamation shall be published in conspicuous part of the house where the person ordinarily resides and Court house.
- ✓ When the proclamation is in respect of a person accused of an offence which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, and such person fails to appear Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.
- **S. 85 Attachment of property of person absconding**
- ✓ The Court which has issued a proclamation may, for reasons to be recorded in writing, **at any time after the issue of the proclamation**, order –
 - attachment of any property, movable or immovable, or both, belonging to the proclaimed person
 - The Court shall be satisfied that offender is about to dispose of the whole or any part of his property; or is about to remove the whole or any part of his property from the local jurisdiction of the Court,**it may order the attachment of property simultaneously with the issue of the proclamation.**
- ✓ **If said property is a debt or other movable property**, the attachment under this section shall be made—
 - (a) by seizure; or
 - (b) by the appointment of a receiver; or
 - (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or
 - (d) by all or any two of such methods, as the Court thinks fit.
- ✓ If said **property is immovable**, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situated, and
- ✓ in all other cases—
 - (a) by taking possession; or
 - (b) by the appointment of a receiver; or
 - (c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or
 - (d) by all or any two of such methods, as the Court thinks fit.

- ✓ **If said property consists of live-stock or is of a perishable nature**, the Court may, if it thinks it expedient, order immediate sale. Receiver may be appointed having powers and duties as provided in CPC.

CHAPTER VIII- RECIPROCAL ARRANGEMENTS FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND FORFEITURE OF PROPERTY
S.111-124 (105 A- L)

- The provisions are same except change in section numbers as mentioned above.

CHAPTER IX- SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR 125 - 143 (106-124)

- The provisions are same except change in section numbers as mentioned above.

CHAPTER X- ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS
S. 144-147 (S. 125-128)

- The provisions are same except change in section numbers as mentioned above.
- The landmark provision of Maintenance is now changed in Section number as follows-

CrPC- S.125	Order for maintenance of wives, children and parents
BNSS S. 144	Order for maintenance of wives, children and parents

- **S. 144. Order for maintenance of wives, children and parents.**
 - ✓ If any person having sufficient means neglects or refuses to maintain—
 - (a) his wife**, unable to maintain herself, or
 - (b) his legitimate or illegitimate minor child**, whether married or not, **unable to maintain itself**, or
 - (c) his legitimate or illegitimate child (not being a married daughter)** who has attained majority, where such child is, by reason of any **physical or mental abnormality or injury unable to maintain itself**, or
 - (d) his father or mother, unable to maintain himself or herself**,
 a Judicial Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child,

father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

- ✓ Please take note that as per the Explanation clause (b) "wife" includes- a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.
- ✓ On failure to comply with the order, Magistrate may –
 - issue a warrant for levying the amount and
 - may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding
 - still if the amount is unpaid after the execution of the warrant, award imprisonment for a term which may extend to one month or if payment is made earlier.
- ✓ Wife not entitled maintenance or expenses of proceeding-
 - if she is living in adultery,
 - or if, without any sufficient reason, she refuses to live with her husband,
 - or if they are living separately by mutual consent.

CHAPTER XI- MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY

S. 148-167 (S. 129-148)

- The provision providing power of District Magistrate to prohibit carrying of arms in procession or mass drill or training has been removed now from BNSS. It was an amended provision added by an Amendment Act in 2005.

S.144A.	Power to prohibit carrying arms in procession or mass drill or mass training with arms.	REMOVED IN BNSS
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CHAPTER XII- PREVENTIVE ACTION OF THE POLICE S. 168-172 (149-153)

- The provision which gives power to the police officer in charge of a police station to enter any place without warrant for inspection of weights and measures, has been now removed from the BNSS.

s. 153.	Inspection of weights and measures	REMOVED IN BNSS
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CHAPTER XIII- INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE
S. 173-196 (S. 154-176)

- There are no major changes in this chapter, structural changes like change in section numbers and some points have been added in between the sections.
- 2 provisions relating to “Letter of request” have been removed from BNSS which are as follows-

S. 166A	Letter of request to competent authority for investigation in a country or place outside India.	REMOVED IN BNSS
S. 166B	Letter of request from a country or place outside India to a Court or an authority for investigation in India.	REMOVED IN BNSS

- **Some landmark sections have been changed accordingly-**

CrPC	BNSS
S. 154 Information in cognizable cases	S. 173 Information in cognizable cases
S.155 Information as to non-cognizable cases and investigation of such cases	S. 174. Information as to non-cognizable cases and investigation of such cases
S.156 Police officer’s power to investigate cognizable cases	S. 175. Police officer’s power to investigate cognizable case
S. 173 Report of police officer on completion of investigation	S. 193. Report of police officer on completion of investigation

- There are some changes made in the section as marked in maroon accordingly-
- **S. 173. Information in cognizable cases.**
 - ✓ Every information relating to the commission of a cognizable offence,
 - ✓ **given orally or by electronic communication and if given to an officer in charge of a police station orally, it shall be reduced to writing and read over to the informant; and shall be signed by the person giving it.**

Modified provision

If the information is given by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

- ✓ if the information shall be recorded, by a woman police officer or any woman officer if given by a victim of offence under section 64, section 66, section 67, section 68, section 70, section 73, section 74, section 75, section 76, section 77, section 78 or section 122 of the Bhartiya Nyaya Sanhita, 2023.

Magistrate under clause (a) of sub-section (6) of section 183 as soon as possible. A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, **to the informant or the victim.**

If information of cognizable offence, punishable for three years or more but less than seven years, the officer in-charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence, conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days or proceed with investigation when there exists a prima facie case.

- ✓ Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, **in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which he may make an application under sub-section (3) of section 175 to the Magistrate.**

- **S. 174. Information as to non- cognizable cases and investigation of such cases**

- ✓ When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer as prescribed by State Government.
No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

Modified
provision

- ✓ Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.
- ✓ If a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case.
- **S. 175. Police officer's power to investigate cognizable case**
 - ✓ Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case.
 - ✓ **Provided that considering the nature and gravity of the offence, the Superintendent of Police may either himself investigate or require the Deputy Superintendent of Police to investigate the offence.**
 - ✓ No proceeding of a police officer in any such case shall at any stage be called in question on the ground of his power to investigate.
 - ✓ **Two clauses have been added to this provision for the procedure and power of Judicial magistrate on investigating a complaint against public servant. He shall order the police officer to investigate a cognizable case after the procedure has been followed.**
- **S. 180. Examination of witnesses by Police.**
 - ✓ Any police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
 - ✓ Witnesses shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
 - ✓ The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records:
 - ✓ Statement made under this sub-section may also be recorded by audio-video electronic means.
 - ✓ Statement of a woman against whom an offence under section 64, section 66, section 67, section 68, section 70, section 71, section 73, section 74, has been committed or alleged, **shall be recorded by a woman police/ or woman officer.**
- S. 181. Statements to the police and the use thereof**
 - ✓ Statement made under aforesaid section, if reduced to writing shall not be signed by the person making it
 - ✓ If the statement is in a police diary or otherwise, or any part of such statement or record, shall not be used for any purpose, other than as hereinafter provided, at any

inquiry or trial in respect of any offence under investigation at the time when such statement was made.

- ✓ The explanation clause appended to this section states that an omission may amount to contradiction if the same appears to be significant and relevant to the context. The omission is a contradiction to the context or not is a question of fact.