



New

Criminal Laws

(Subjective Q&A for Mains)

Volume - 3

Bharatiya Nagarik Suraksha Sanhita, 2023



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SUBJECTIVE QUESTIONS AND ANSWERS

CHAPTER 1 PRELIMINARY & DEFINITIONS

[Section 1 – 5]

Que. Discuss the major changes brought by the Bharatiya Nagarik Suraksha Sanhita, 2023 in comparison to the Criminal Procedure Code, 1973.

Ans.

The **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** introduces significant reforms aimed at modernisation, expeditious trial, and victim-centric justice. The major changes are as follows:

1. Introduction of New Definitions

BNSS incorporates new definitions such as “Audio-video electronic means”, “Bail”, “Bail bond” and “Bond”. This brings clarity and aligns the law with contemporary practices.

2. Enhanced Powers of Magistrates

- Increased monetary limits of fines:
 - Judicial Magistrate First Class: up to ₹50,000
 - Judicial Magistrate Second Class: up to ₹10,000

3. Modified Concept of Proclaimed Offender

- it Broadened to include persons accused of offences punishable with **10 years or more, life imprisonment or death**, rather than specific offences.

4. Rights of Arrested Person

- Information of arrest can now be given to **any person named by the arrested person**, not limited to relatives or friends.

5. Time-bound Investigation and Trial

BNSS introduces strict timelines to ensure speedy justice, such as:

- FIR through electronic means to be signed within **3 days**
- Medical report in rape cases within **7 days**
- Supply of documents to accused within **14 days**
- Committal proceedings within **90–180 days**
- Judgment within **45 days**

6. Digitisation and Electronic Mode

- Introduction of **electronic filing, service of summons, and recording of evidence**
- Trials and proceedings may be conducted through **audio-video electronic means (Section 530)**
- Videography of search, seizure and statements

7. Concept of Zero FIR

- FIR can be registered at **any police station irrespective of territorial jurisdiction.**

8. Use of Forensic Evidence

- Mandatory visit of **forensic experts** in offences punishable with **7 years or more.**

9. Police Custody (Remand) Reform

- Police custody can now be granted **in parts within 40/60 days**, instead of only within first 15 days.

10. Increase in Joinder of Charges

- Up to **five offences of same kind within a year** can be tried together (earlier three).

11. Relief in Summons Cases

- Magistrate can **release accused in groundless cases**, which has effect of discharge.

12. Plea Bargaining

- Provision for **lesser punishment for first-time offenders.**

13. Restriction on Adjournments

- Adjournments limited to **two**, to prevent delay.

14. Use of Handcuffs

- Permitted in specified serious offences considering gravity and habitual nature.

15. New Provisions Introduced

Several new provisions not found in CrPC, including:

- Attachment of property of proclaimed offender
- Trial in absentia
- Witness protection scheme
- Mercy petition procedure
- Electronic trial system

Conclusion

BNSS represents a shift towards a **technology-driven, time-bound, and victim-oriented criminal justice system**, addressing delays and inefficiencies in the earlier CrPC framework while strengthening investigation and trial processes.

Que. Discuss the applicability of the Bharatiya Nagarik Suraksha Sanhita, 2023 to offences under Bharatiya Nyaya Sanhita and other laws.

Ans.

The applicability of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** is governed by **Sections 4 and 5**.

1. Applicability to offences under Bharatiya Nyaya Sanhita

- As per **Section 4 (1) BNSS**, all offences under the **Bharatiya Nyaya Sanhita, 2023 (BNS)** shall be **investigated, inquired into, and tried** in accordance with the provisions of BNSS.

2. Applicability to offences under other laws

- **Section 4 (2) BNSS** provides that offences under **any other law** shall also be investigated, inquired into, and tried according to BNSS.

Exception:

Where any special or local law provides a **specific procedure** regarding manner, place, or mode of investigation, inquiry or trial, then such **special procedure will prevail** over BNSS.

3. Saving of special laws (Section 5 BNSS)

Section 5 preserves provisions of **special or local laws, special jurisdiction or powers, and special forms of procedure** unless there is a specific provision to the contrary in BNSS.

4. Case

In **Kaushik Chatterjee v. State of Haryana (2020) 10 SCC 92**, the Supreme Court held:

- Where a **special law provides a specific court**, the offence must be tried by that court.
- If the special law is **silent**, the case will be tried as per the general provisions of the Code (now BNSS).

Conclusion

BNSS is the **general procedural law** governing criminal justice. It applies to offences under **BNS as well as other laws**, However, **special or local laws override BNSS** where they prescribe a different procedure.

Que. Discuss the object and reason behind passing of Bharatiya Nagarik Suraksha Sanhita, 2023.

Ans.

Bharatiya Nagarik Suraksha Sanhita, 2023 consolidate and amend the law relating to criminal procedure. The object and reason behind passing BNSS can be summarised as follows -

1. It provides for the use of technology and forensics sciences in the investigation of crime and furnishing and lodging of information, service of summons, etc., through electronic communication for ensuring conviction rates and to promote the sufficient use of technology in legal system.
2. Specific time lines have been prescribed for time bound investigation, inquiry and trial for speedy justice and reducing the delay in delivery of justice.
3. Citizen centric approach has been adopted for supply of FIR to the victim and to inform them about the progress of investigation, including by digital means to make the law easily accessible to citizens.
4. In cases, where punishment is 7 years or more, the victim has been given an opportunity of being heard before withdrawal of the case by Government to ensure fair hearing to all.
5. Summary trial has been made mandatory for petty and less serious cases to reduce the pendency of cases in courts.
6. The magisterial system has been streamlined.

Que. Write a note on Warrant Case and Summons Case.

Ans.

The **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** classifies criminal cases into **summons cases** and **warrant cases** based on the **gravity of offence**, as defined under **Section 2 (1) (x)** and **Section 2 (1) (z)** respectively.

1. Warrant Case

A **warrant case** means a case relating to an offence punishable with **death**, **imprisonment for life**, or **imprisonment for a term exceeding two years**. These are **serious offences** requiring a more elaborate procedure.

2. Summons Case

A **summons case** means a case relating to an offence **not being a warrant case**, i.e., punishable with **imprisonment up to two years or fine**. These involve **less serious offences** and follow a simpler procedure.

3. Distinction between Summons Case and Warrant Case

Basis	Summons Case	Warrant Case
Nature of offence	Less serious	Serious and grave
Punishment	Up to 2 years or fine	Death, life imprisonment, or >2 years
Process issued	Summons generally issued	Summons or warrant may be issued
Trial procedure	Simple and summary	Formal and elaborate
Framing of charge	No formal charge; particulars stated	Formal charge must be framed
Discharge	No provision for discharge	Accused may be discharged
Recording of evidence	Summary manner	Detailed recording
Conversion	Cannot be converted into warrant case	May be converted into summons case in appropriate cases
Withdrawal	Easier withdrawal by complainant	Withdrawal only with court's consent through Public Prosecutor
Stoppage of proceedings	Magistrate may stop proceedings	No such provision

Conclusion

The distinction between summons and warrant cases under BNSS is based on the **severity of punishment** and ensures a balance between **procedural efficiency** and **fair trial safeguards**.

Que. What is meant by “audio-video electronic”? Explain its legal significance.

Ans.

As per section 2 (2) (a) “Audio-video electronic” refers to the use of communication devices for purposes such as video conferencing, recording of identification processes, search and seizure, recording of evidence, and transmission of electronic communication. The scope of its use may be further expanded by rules framed by the State Government.

Its legal significance lies in enhancing transparency, efficiency, and reliability in investigation and trial proceedings. Audio-video recording minimizes the chances of tampering and provides accurate and authentic evidence before the court. It also promotes the digitalization of the justice system.

Thus, it plays an important role in ensuring fair trial, accountability, and modernization of the criminal justice system.

Que. What is meant by “bail”? Explain its essential elements.

Ans.

As per Section 2 (1) (b) “Bail” means the release of a person accused of or suspected of committing an offence from the custody of law, subject to certain conditions imposed by a Court or a police officer. Such release is granted upon the execution of a bond or bail bond by the accused.

The essential elements of bail are:

1. There must be an accusation or suspicion of an offence.
2. The person is in legal custody.
3. Release is subject to conditions imposed by the authority.
4. Execution of a bond or bail bond ensuring appearance and compliance.

Thus, bail ensures a balance between the personal liberty of the accused and the interests of justice.

Que. Distinguish between Cognizable and Non-Cognizable Offences.

Ans.

Basis of Distinction	Cognizable Offences	Non-Cognizable Offences
Statutory Definition	Defined under Section 2 (1) (c), BNSS, 2023	Defined under Section 2 (1) (l), BNSS, 2023

Meaning	Offences where police may arrest without warrant and start investigation without court permission	Offences where police cannot arrest without warrant and require prior permission of Magistrate for investigation
Nature of Offence	Serious and grave offences affecting society at large	Less serious offences affecting individuals
Power to Arrest	Arrest without warrant (Section 35, BNSS)	Arrest only with warrant
Registration of FIR	Mandatory registration of FIR	FIR not mandatory; only Non-Cognizable Report (NCR) is recorded
Power to Investigate	Police can investigate without prior permission of Magistrate (Section 176, BNSS)	Police can investigate only with Magistrate's permission (Section 175, BNSS)
Commencement of Proceedings	Police can act Suo motu	Requires complaint before Magistrate
Examples	Murder, rape, robbery, kidnapping	Defamation, simple hurt, public nuisance

Conclusion

The distinction is based on the **seriousness of the offence and extent of police powers**—cognizable offences permit immediate police action, while non-cognizable offences ensure **greater judicial supervision**.

Que. Distinguish between Bailable and Non-Bailable Offences.

Ans.

Basis of Distinction	Bailable Offences	Non-Bailable Offences
Statutory Definition	Defined under Section 2 (1) (b), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)	Defined under Section 2 (1) (g), BNSS, 2023

Meaning	Offences in which bail is a matter of right	Offences in which bail is not a matter of right but subject to judicial discretion
Nature of Offence	Less serious offences	Grave and serious offences
Right to Bail	Accused has an absolute and indefeasible right to be released on bail	Bail is discretionary and depends on judicial evaluation of facts
Authority to Grant Bail	Police officer or Magistrate is competent to grant bail	Bail is ordinarily granted by Magistrate or competent Court
Grounds for Refusal	Bail cannot ordinarily be refused if statutory conditions are satisfied	Bail may be refused considering gravity of offence, likelihood of absconding, and possibility of tampering with evidence
Examples	Defamation, simple hurt, wrongful restraint	Murder, rape, dowry death, attempt to murder
Relevant Provisions	Section 478, BNSS (Bail in bailable offences)	Section 480, BNSS (Bail in non-bailable offences)
Judicial Principle	Bail is the rule	Jail is an exception (applied cautiously in serious offences)

Conclusion

The distinction is rooted in the **degree of seriousness of the offence and extent of judicial discretion**—while bailable offences uphold **personal liberty as a matter of right**, non-bailable offences ensure that such liberty is balanced against the **interests of justice and societal protection**.

Que. Distinguish between Inquiry, Investigation and Trial.

Ans.

Basis of Distinction	Investigation	Inquiry	Trial
Statutory Definition	Defined under Section 2 (1) (h), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)	Defined under Section 2 (1) (j), BNSS, 2023	Not expressly defined; understood through procedural provisions of BNSS

Meaning	Process conducted by police to collect evidence relating to commission of an offence	Judicial process to ascertain truth or falsity of allegations prior to trial	Judicial adjudication to determine guilt or innocence of the accused
Authority Conducting	Police officer or authorised agency	Magistrate or Court	Magistrate or Court
Stage	Preliminary stage (before filing of charge-sheet)	Intermediate stage (after filing of case but before trial)	Final stage of criminal proceeding
Object	To gather evidence and identify offender	To decide whether there is sufficient ground to proceed	To determine guilt and pass judgment
Nature of Proceedings	Executive function	Judicial function (but not full-fledged trial)	Strictly judicial proceeding
Outcome	Submission of police report/charge-sheet (Section 193 BNSS)	Discharge or framing of charge	Conviction or acquittal
Power to Take Evidence	Limited (statements, searches, seizures)	May record evidence in limited manner	Full-fledged examination and cross-examination of witnesses
Examples	Recording FIR, arrest, search, seizure	Inquiry into complaint case by Magistrate	Sessions trial, warrant trial, summons trial

Conclusion

The three stages represent a **progressive flow of criminal justice**—investigation (fact-finding), inquiry (judicial scrutiny), and trial (final adjudication), each serving a distinct but complementary role in ensuring justice.

Que. What is meant by “electronic communication”? Explain its scope.

Ans.

As per Section 2 (1) (i) “Electronic communication” means the transmission or transfer of written, verbal, pictorial, or video information through electronic devices.

Such communication may occur between persons, devices, or between a person and a device. It includes communication through telephones, mobile phones, computers, audio-video players, cameras, and other electronic devices as may be specified by the Central Government.

The scope of electronic communication is very wide, as it covers all forms of digital interaction, including calls, messages, emails, images, and video transmission.

It plays a significant role in modern legal systems by facilitating efficient communication, digital evidence, and technological advancement in investigation and trial.

Thus, it ensures speed, accessibility, and modernization in the administration of justice.

Que. Distinguish between Investigation and Trial.

Ans.

Basis of Distinction	Investigation	Trial
Statutory Definition	Defined under Section 2 (1) (h), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)	Not expressly defined; governed by procedural provisions of BNSS
Authority Conducting	Conducted by police officer or any person authorised by law	Conducted by a competent Court
Purpose	Collection of evidence relating to commission of offence	Determination of guilt or innocence of the accused
Nature of Proceeding	Executive and non-judicial in nature	Strictly judicial proceeding
Stage	Preliminary stage (before filing of charge-sheet)	Final stage of criminal proceedings
Commencement	Begins with registration of FIR	Begins after cognizance and framing of charge
Outcome	Submission of police report/charge-sheet (Section 193 BNSS)	Conviction or acquittal
Power to Record Evidence	Limited to statements, search, seizure, etc.	Full-fledged examination and cross-examination of witnesses
Object	To discover facts and collect material evidence	To adjudicate upon evidence and deliver judgment

Conclusion

Investigation and trial are distinct stages of criminal procedure—the former is **fact-finding by police**, while the latter is **judicial determination of guilt**, ensuring fairness and due process in administration of justice.

Que. Distinguish between Inquiry and Trial.

Ans.

Basis of Distinction	Inquiry	Trial
Statutory Definition	Defined under Section 2 (1) (j), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)	Not expressly defined; governed by trial provisions under BNSS
Meaning	All proceedings before a Magistrate or Court prior to framing of charge	Proceedings conducted after framing of charge (or stating substance of accusation in summons cases)
Stage	Intermediate stage (before trial)	Final stage of criminal proceedings
Purpose	To ascertain truth or falsity of allegations and decide further course of action	To determine guilt or innocence of the accused
Nature of Proceedings	Judicial but not a full-fledged adjudication	Full-fledged judicial adjudication
Outcome	May result in dismissal of complaint, discharge, or committal (e.g., Section 226 BNSS)	Results in conviction or acquittal
Scope	May relate to matters other than offence also	Always relates to determination of an offence
Commencement	Begins after cognizance is taken by Magistrate	Begins after framing of charge or stating substance of accusation (e.g., Section 274 BNSS)
Object	To test whether there is sufficient ground to proceed	To finally adjudicate upon evidence and deliver judgment

Conclusion

Inquiry and trial are distinct judicial stages—**inquiry is preliminary scrutiny**, whereas **trial is final adjudication** determining criminal liability.

Que. Distinguish between Complaint and Police Report.

Ans.

Basis of Distinction	Complaint	Police Report
Statutory Definition	Defined under Section 2 (1) (f), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)	Defined under Section 2 (1) (t), BNSS
Meaning	Allegation made to a Magistrate that a person has committed an offence	Report forwarded by police to Magistrate after investigation under Section 193 (3), BNSS
Person Making	Can be made by any person (including victim or informant)	Submitted by officer-in-charge of a police station
Form	May be oral or written	Always in writing in prescribed form
Nature	Mere allegation of commission of offence	Contains facts, evidence and Conclusions drawn after investigation
Stage	Initial stage; before taking cognizance	After completion of investigation
Requirement of Investigation	No prior investigation required	Based on police investigation
Contents	Contains basic facts of offence alleged	Contains details of parties, evidence, witnesses, and opinion of police
Outcome	May lead to taking cognizance by Magistrate under complaint procedure	May result in charge-sheet or final report

Conclusion

A complaint is a **preliminary allegation initiating judicial process**, whereas a police report is the **result of a formal investigation**, forming the basis for further judicial proceedings.

Que. 'A', an Inspector General of Police is alleged to have committed the murder of 'B'. 'C' (father of 'B'), being the informant, applies to the Chief Judicial Magistrate expressing apprehension that police will not conduct a fair investigation as the accused is a high-ranking police officer. The Chief Judicial Magistrate authorizes a First-Class Magistrate to conduct the investigation. Is the order valid in the eyes of law? Give reasons.

Ans.

Facts: 'A', an I.G. of Police, is accused of murder. 'C', the informant, apprehends bias in police investigation and moves an application before the Chief Judicial Magistrate (CJM). The CJM authorizes a First-Class Magistrate to conduct investigation.

Issue:

Whether a Magistrate can be authorized to conduct investigation under the BNSS, 2023?

Rule:

Section 2 (1) (h) of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** defines *investigation* as including all proceedings for collection of evidence conducted by a **police officer or by any person (other than a Magistrate) authorized by a Magistrate**.

Thus, Investigation is primarily the function of **police or authorized persons**, **Magistrate is expressly excluded** from conducting investigation

Further, under Section 176 BNSS, a Magistrate may **order investigation**, but cannot **himself undertake it**.

Analysis:

In the present case, the CJM has authorized a **First-Class Magistrate** to conduct investigation. This is contrary to the statutory mandate because:

- A Magistrate **cannot conduct investigation himself**, even if directed by a superior Magistrate
- The law clearly restricts investigation to **police or other authorized persons (excluding Magistrates)**
- Judicial authority must remain **separate from investigative functions** to preserve fairness and impartiality

However, the Magistrate could have Directed investigation by another police agency, or ordered further investigation or monitored investigation. But **cannot delegate investigation to another Magistrate.**

Conclusion:

The order of the Chief Judicial Magistrate authorizing a First-Class Magistrate to conduct investigation is **illegal and invalid in the eyes of law**, as it violates the express provision of Section 2 (1) (h) BNSS.

Que. Define Police Report.

Ans.

Police Report:

Section 2 (1) (t) of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** defines a *police report* as a **report forwarded by a police officer to a Magistrate under Section 193 (3) BNSS.**

Essentials of Police Report (Section 193 (3), BNSS):

After completion of investigation, the officer-in-charge of a police station shall forward a report to the Magistrate containing:

- Names of the **parties and informant**
- Nature of the **information**
- Names of **persons acquainted with facts**
- Details of **offence committed (if any) and by whom**
- **Sequence of custody** in case of electronic devices
- Any other **relevant particulars of the case**

Types of Police Report:

1. **Final Report (Closure Report):**
2. Where **no offence is disclosed** upon investigation.
3. **Charge-sheet:**
4. Where **offence appears to have been committed** and sufficient evidence exists against the accused.

Conclusion

A police report is the **culmination of investigation**, forming the basis for the Magistrate to take cognizance and proceed further in accordance with law.

Que. Define Judicial Proceeding.

Ans.

Judicial Proceeding:

Section 2 (1) (m) of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** defines *judicial proceeding* as **any proceeding in the course of which evidence is or may be legally taken on oath.**

Essential Features:

- It involves a **Court or Magistrate acting in a judicial capacity**
- Evidence is **legally taken or capable of being taken on oath**
- The object is to **determine legal (jural) rights and liabilities** of parties

Illustrations:

- Proceedings for **maintenance under Section 144, BNSS**
- Inquiry conducted by a Magistrate under **Section 163, BNSS**

Conclusion

A judicial proceeding is characterized by the **authority of law, recording of evidence on oath, and determination of rights**, thereby distinguishing it from administrative or executive actions.

Que. Distinguish between Compoundable and Non-Compoundable Offences.

Ans.

Basis of Distinction	Compoundable Offences	Non-Compoundable Offences
Statutory Provision	Classified under Section 359, Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)	Not included in the list under Section 359 BNSS
Meaning	Offences which can be compromised/settled between victim and accused	Offences which cannot be compromised
Nature of Offence	Less serious	Serious and grave
Effect on Society	Primarily affects private individuals	Affects society at large

Permission of Court	May be compounded without permission [Section 359 (1)] or with permission of Court [Section 359 (2)]	Cannot be compounded even with permission of Court
Stage of Compounding	Can be compounded at any stage before judgment	No compounding permissible
Outcome	Results in acquittal of accused [Section 359 (8)]	Requires full trial , leading to acquittal or conviction
Examples	Defamation, simple hurt	Murder, rape, dacoity

Conclusion

Compoundable offences recognize **private rights and settlement**, whereas non-compoundable offences protect **public interest and societal order**, thereby prohibiting compromise.

Que. Distinguish between Discharge and Acquittal.

Ans.

Basis of Distinction	Discharge	Acquittal
Meaning	Discharge implies that there is no sufficient ground or prima facie case to proceed against the accused	Acquittal is a judicial determination after trial declaring the accused not guilty
Stage	Occurs at a pre-trial stage (before framing of charge)	Occurs after full trial
Nature of Decision	Based on lack of prima facie evidence	Based on evaluation of evidence on merits
Statutory Reference	Governed by provisions relating to discharge (e.g., Sections 250, 262 BNSS depending on type of trial)	Effect governed by Section 337 BNSS (principle of autrefois acquit)
Effect on Fresh Proceedings	Does not bar fresh proceedings if new evidence emerges	Bars second trial for same offence on same facts
Re-arrest	Accused may be re-arrested upon fresh evidence	Accused cannot be re-arrested for same offence after acquittal