

## BNSS Tender of pardon to an accomplice - 344-345

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is a landmark legislation in India that replaces the colonial-era Code of Criminal Procedure, 1973 (CrPC). Among its many provisions, Sections 344 and 345 of the BNSS deal with the tender of pardon to an accomplice and the consequences of non-compliance with the conditions of such a pardon. These provisions are critical in the Indian criminal justice system, as they facilitate the prosecution of complex cases, particularly those involving organized crime, financial fraud, or conspiracies, by incentivizing accomplices to provide truthful testimony against co-accused persons. This essay provides a comprehensive explanation of Sections 344 and 345 of the BNSS, including their legal framework, objectives, procedural aspects, safeguards, practical implications, and comparisons with the corresponding provisions of the CrPC. It also examines relevant case law, scenarios, and the broader significance of these provisions in ensuring justice.

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### Legal Framework and Objectives

Sections 344 and 345 of the BNSS are procedural provisions designed to aid the prosecution in securing evidence in cases where direct evidence may be scarce or difficult to obtain. These sections are rooted in the principle that an accomplice, being privy to the details of a crime, can provide valuable testimony to unravel the truth, provided they are offered immunity from prosecution in exchange for full and truthful cooperation. The tender of pardon is a strategic tool used by the state to dismantle criminal networks by encouraging one of the involved parties to turn approver (a term used for an accomplice who accepts a pardon and testifies for the prosecution).

#### Section 344: Power to Direct Tender of Pardon

Section 344 of the BNSS empowers a court to which a case has been committed to tender a pardon to any person supposed to have been directly or indirectly involved in or privy to an offence. The key features of this section are:

1. **Timing of the Pardon:** The court may tender a pardon at any time **after the case has been committed but before the judgment is passed**. This ensures that the pardon is offered at a stage where the trial is underway, and the court has sufficient information to assess the necessity of such a measure.
2. **Objective:** The primary purpose is to obtain the evidence of the accomplice at the trial. By granting immunity from prosecution, the court incentivizes the accomplice to disclose critical details about the offence, including the roles of other accused persons.

3. **Conditions of Pardon:** The pardon is conditional upon the accomplice providing full and truthful disclosure. The accomplice must testify honestly and not conceal any essential facts related to the offence. Failure to comply with these conditions can lead to the revocation of the pardon, as outlined in Section 345.
4. **Judicial Discretion:** The decision to tender a pardon lies with the court, which exercises its discretion based on the facts and circumstances of the case. The court must be satisfied that the accomplice's testimony is essential to secure a conviction against the principal offenders.

### **Section 345: Trial of Person Not Complying with Conditions of Pardon**

Section 345 outlines the consequences for an accomplice who accepts a pardon but fails to comply with its conditions. Its key provisions include:

1. **Certification by Public Prosecutor:** If the Public Prosecutor certifies that the accomplice has willfully concealed essential information or given false evidence, the pardon may be revoked. The certification is a formal declaration that the accomplice has breached the conditions of the pardon.
  2. **Trial for Original and Related Offences:** Upon revocation of the pardon, the accomplice may be tried for:
    - The original offence for which the pardon was tendered.
    - Any other offence they appear to have committed in connection with the same matter.
    - The offence of giving false evidence, if applicable.
  3. **Safeguards:**
    - The accomplice cannot be tried jointly with other accused persons, ensuring a separate and fair trial.
    - Prosecution for the offence of giving false evidence requires the sanction of the High Court, adding a layer of judicial oversight.
    - Provisions under Sections 215 (effect of errors in charge) and 379 (appeal against conviction by High Court in certain cases) of the BNSS do not apply to the offence of giving false evidence under this section.
  4. **Plea of Compliance:** Before the trial, the court must ask the accomplice whether they plead that they have complied with the conditions of the pardon. If the accomplice claims compliance, the court records the plea and proceeds with the trial. The prosecution must then prove non-compliance. If the court finds that the accomplice has complied with the conditions, it must acquit them, regardless of other provisions in the BNSS.
  5. **Evidentiary Value of Statements:** Any statement made by the accomplice while accepting the pardon, recorded by a Magistrate under Section 183 or by a court under Section 343(4), can be used as evidence against them in the trial for non-compliance.
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## Comparison with the CrPC

Sections 344 and 345 of the BNSS correspond to Sections 307 and 308 of the CrPC, respectively. While the core principles remain the same, the BNSS introduces certain refinements to align with modern criminal justice requirements. Key differences include:

1. **Terminology:** The BNSS uses the term “tender of pardon” consistently, whereas the CrPC refers to both “tender” and “grant” of pardon. The BNSS’s terminology emphasizes the conditional nature of the offer.
  2. **Electronic Proceedings:** The BNSS, reflecting technological advancements, allows trials and proceedings, including those under Sections 344 and 345, to be conducted in electronic mode (Section 530, BNSS). This is a departure from the CrPC, which did not explicitly provide for virtual hearings.
  3. **Safeguards for False Evidence:** Both the BNSS and CrPC require High Court sanction for prosecuting an accomplice for giving false evidence. However, the BNSS explicitly excludes the applicability of Sections 215 (effect of errors or omissions in the charge) and 379 (appeals against convictions by the High Court in specific situations), reinforcing the distinct nature of this offence.
  4. **Forensic Investigation:** The BNSS mandates forensic investigation for offences punishable with seven years or more (Section 176, BNSS). This provision indirectly supports Sections 344 and 345 by ensuring that accomplice testimony is corroborated with forensic evidence, reducing reliance on potentially unreliable statements.
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## Procedural Aspects

The process of tendering a pardon and handling non-compliance under Sections 344 and 345 involves several steps:

1. **Identification of Accomplice:** The prosecution identifies a person who was directly or indirectly involved in the offence and whose testimony could be pivotal. This is often someone with insider knowledge of the crime, such as a co-conspirator or subordinate member of a criminal enterprise.
2. **Application for Pardon:** The Public Prosecutor, in consultation with the investigating agency, may approach the court to request a pardon for the accomplice. The court evaluates the necessity and potential impact of the accomplice’s testimony.
3. **Tender and Acceptance:** The court formally tenders the pardon, specifying the conditions (full disclosure and truthful testimony). The accomplice must accept the pardon, typically in writing, and their statement is recorded by a Magistrate or court.

4. **Testimony in Trial:** The accomplice testifies as a prosecution witness, subject to cross-examination by the defense. Their testimony is expected to provide critical evidence against the co-accused.
  5. **Monitoring Compliance:** The Public Prosecutor monitors the accomplice's testimony for truthfulness and completeness. If discrepancies or deliberate concealment are detected, the Prosecutor may certify non-compliance.
  6. **Revocation and Trial:** Upon certification of non-compliance, the court revokes the pardon and initiates a separate trial against the accomplice. The accomplice is given an opportunity to plead compliance, and the prosecution must prove the breach.
  7. **Judicial Determination:** The court determines whether the accomplice complied with the conditions. If compliance is established, the accomplice is acquitted. If not, they face conviction for the original offence and potentially other charges.
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## Safeguards and Fairness

Sections 344 and 345 incorporate several safeguards to balance the interests of justice and the rights of the accomplice:

1. **Judicial Oversight:** The court's discretion in tendering a pardon ensures that the process is not misused by the prosecution. Similarly, the requirement of High Court sanction for prosecuting false evidence prevents arbitrary charges.
  2. **Separate Trial:** By mandating a separate trial for the accomplice, the BNSS ensures that their case is not prejudiced by the proceedings against other accused persons.
  3. **Right to Plead Compliance:** The accomplice's right to plead compliance places the burden on the prosecution to prove non-compliance, upholding the principle of fair trial.
  4. **Evidentiary Protections:** The use of recorded statements as evidence is limited to those made during the acceptance of the pardon, preventing misuse of other statements made by the accomplice.
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## Practical Implications

The tender of pardon is particularly significant in cases involving organized crime, terrorism, financial fraud, and drug trafficking, where evidence is often circumstantial or controlled by insiders. For example:

- **Organized Crime:** In a case involving a criminal syndicate, a lower-level member may be offered a pardon to testify against the syndicate's leaders, providing details of operations, funding, and networks.

- **Financial Fraud:** In complex fraud cases, an accomplice with knowledge of financial transactions or forged documents can help unravel the scheme.
- **Terrorism:** In terrorism cases, an accomplice's testimony can reveal planning, recruitment, and execution details, aiding convictions of key perpetrators.

However, the system is not without challenges:

1. **Reliability of Testimony:** Accomplices may have incentives to exaggerate or fabricate evidence to secure their pardon, necessitating corroboration with other evidence.
  2. **Risk of Coercion:** There is a risk that accomplices may feel coerced into accepting a pardon, especially if they face severe penalties otherwise.
  3. **Non-Compliance Issues:** Determining whether an accomplice has willfully concealed information or given false evidence can be subjective, requiring careful judicial scrutiny.
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## Case Law and Scenarios

While the BNSS is relatively new, its provisions are derived from the CrPC, and case law under the CrPC provides valuable insights. Some notable cases include:

1. **State of Maharashtra v. Abu Salem Abdul Kayyum Ansari (2010):** The Supreme Court emphasized that the tender of pardon must be exercised cautiously, ensuring that the accomplice's testimony is essential and reliable. The court also highlighted the need for corroboration of approver testimony.
  2. **Suresh Chandra Bahri v. State of Bihar (1994):** The Supreme Court held that an approver's testimony must be scrutinized carefully, and convictions based solely on such testimony are permissible only if it is trustworthy and corroborated by independent evidence.
  3. **Scenario-Based Illustration** (Inspired by Web ID: 12):
    - **Case:** Ravi, involved in a financial fraud, is offered a pardon under Section 343 to testify against the main culprits. He accepts but conceals critical details during his testimony.
    - **Outcome:** The Public Prosecutor certifies non-compliance, and Ravi is tried for the original fraud and giving false evidence. He pleads compliance, but the prosecution proves his concealment, leading to his conviction.
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## Broader Significance

Sections 344 and 345 reflect a pragmatic approach to criminal justice, recognizing that securing convictions in complex cases often requires leveraging insider knowledge. By offering immunity, the state balances the need for justice with the practical realities of evidence collection. These provisions also align with international practices, such as plea bargaining in the United States, where defendants may receive reduced sentences for cooperation.

However, the provisions must be implemented with caution to prevent abuse. Courts must ensure that pardons are not offered indiscriminately and that accomplices are not coerced or incentivized to provide false testimony. The requirement of judicial oversight and High Court sanction serves as a check against such misuse.

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## **Conclusion**

Sections 344 and 345 of the BNSS are pivotal in the Indian criminal justice system, enabling the prosecution to secure critical evidence through the tender of pardon to accomplices. Section 344 empowers courts to offer conditional immunity, while Section 345 ensures accountability by outlining the consequences of non-compliance. Together, these provisions strike a balance between incentivizing truthful testimony and safeguarding the rights of the accomplice and the integrity of the trial process. By incorporating judicial discretion, evidentiary safeguards, and procedural fairness, the BNSS strengthens the framework for handling accomplice testimony, making it a vital tool in combating serious crimes. As the BNSS continues to shape India's criminal justice landscape, Sections 344 and 345 will play a crucial role in ensuring that justice is served efficiently and equitably.

## **SUMMARY**

### **Tender of pardon to an accomplice - 344-345 (BNSS)**

- The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replaces the Code of Criminal Procedure, 1973 (CrPC).
- Sections 344 and 345 of the BNSS deal with the tender of pardon to an accomplice.
- These provisions aid in prosecuting complex cases by incentivizing accomplices to provide testimony.

### **Legal Framework and Objectives**

- Sections 344 and 345 are procedural provisions to secure evidence where direct evidence is scarce.
- Accomplice testimony can be valuable in unraveling the truth.
- Tender of pardon is used to dismantle criminal networks.

### **Section 344: Power to Direct Tender of Pardon**

- **Timing of the Pardon:** Offered after committal but before judgment.
- **Objective:** To obtain the accomplice's evidence at the trial.
- **Conditions of Pardon:** Full and truthful disclosure.
- **Judicial Discretion:** Court decides based on case facts and circumstances.

### Section 345: Trial of Person Not Complying with Conditions of Pardon

- **Certification by Public Prosecutor:** If the accomplice withholds information or gives false evidence.
- **Trial for Original and Related Offences:**
  - Original offence.
  - Other related offenses.
  - Giving false evidence.
- **Safeguards:**
  - Separate trial for the accomplice.
  - High Court sanction for prosecuting false evidence.
  - Specific sections of BNSS do not apply.
- **Plea of Compliance:** Accomplice can plead compliance; prosecution must prove non-compliance.
- **Evidentiary Value of Statements:** Statements made during pardon acceptance can be used as evidence.

### Comparison with the CrPC

- Sections 344 & 345 (BNSS) correspond to Sections 307 & 308 (CrPC).
- **Terminology:** BNSS uses "tender of pardon" consistently.
- **Electronic Proceedings:** BNSS allows electronic mode for proceedings.
- **Safeguards for False Evidence:** Both require High Court sanction, but BNSS excludes certain sections.
- **Forensic Investigation:** BNSS mandates forensic investigation, supporting the provisions.

### Procedural Aspects

- **Identification of Accomplice**
- **Application for Pardon**
- **Tender and Acceptance:** Includes recording of statement.
- **Testimony in Trial:** Subject to cross-examination.
- **Monitoring Compliance:** By the Public Prosecutor.
- **Revocation and Trial:** For non-compliance.
- **Judicial Determination:** Whether compliance was met.

### Safeguards and Fairness

- **Judicial Oversight:** Court discretion and High Court sanction.
- **Separate Trial:** Ensures fairness for the accomplice.
- **Right to Plead Compliance:** Burden of proof on the prosecution.
- **Evidentiary Protections:** Limited use of recorded statements.

### Practical Implications

- Significant in cases like organized crime, terrorism, and financial fraud.
- **Organized Crime:** Lower-level members may testify against leaders.
- **Financial Fraud:** Accomplices with financial knowledge can help.
- **Terrorism:** Testimony can reveal planning and execution details.
- **Challenges:**
  - Reliability of Testimony.
  - Risk of Coercion.
  - Non-Compliance Issues.

### Case Law and Scenarios

- **State of Maharashtra v. Abu Salem Abdul Kayyum Ansari (2010):** Caution and reliability of testimony emphasized.
- **Suresh Chandra Bahri v. State of Bihar (1994):** Scrutiny and corroboration of approver's testimony needed.
- **Scenario-Based Illustration:** Example of Ravi concealing details and facing consequences.

### Broader Significance

- Pragmatic approach to criminal justice.
- Balances justice with evidence collection.
- Alignment with international practices (e.g., plea bargaining).
- Must be implemented with caution to prevent abuse.

### Conclusion

- Sections 344 and 345 are pivotal for securing evidence.
- Section 344 enables conditional immunity, and Section 345 outlines consequences of non-compliance.
- Balances incentivizing testimony with safeguarding rights.
- Strengthens the framework for handling accomplice testimony.
- Ensures justice is served efficiently and equitably.