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Criminal Investigation

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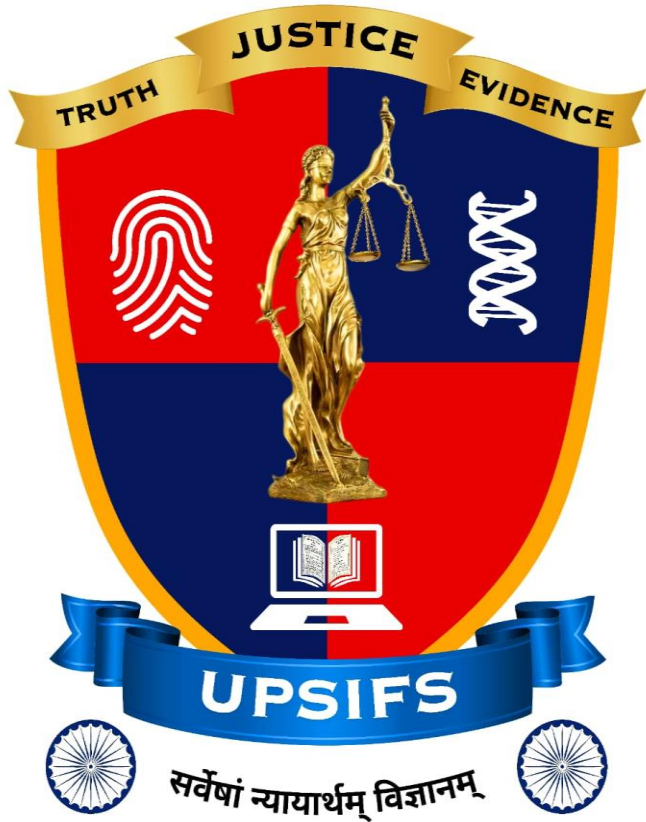
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SEE PROFILE



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Comparing New and Old Laws

CRIME INVESTIGATION
[From Crime Scene to Courtroom]

FAQs



What is correlation between FIR and Investigation?



Who is empowered for conducting investigation?



Crime scene management and challenges during investigation.



Provisions of arrest, medical, search and seizure, police custody remand etc.



Confession, forensic evidence and other issues



Post Investigation Procedure

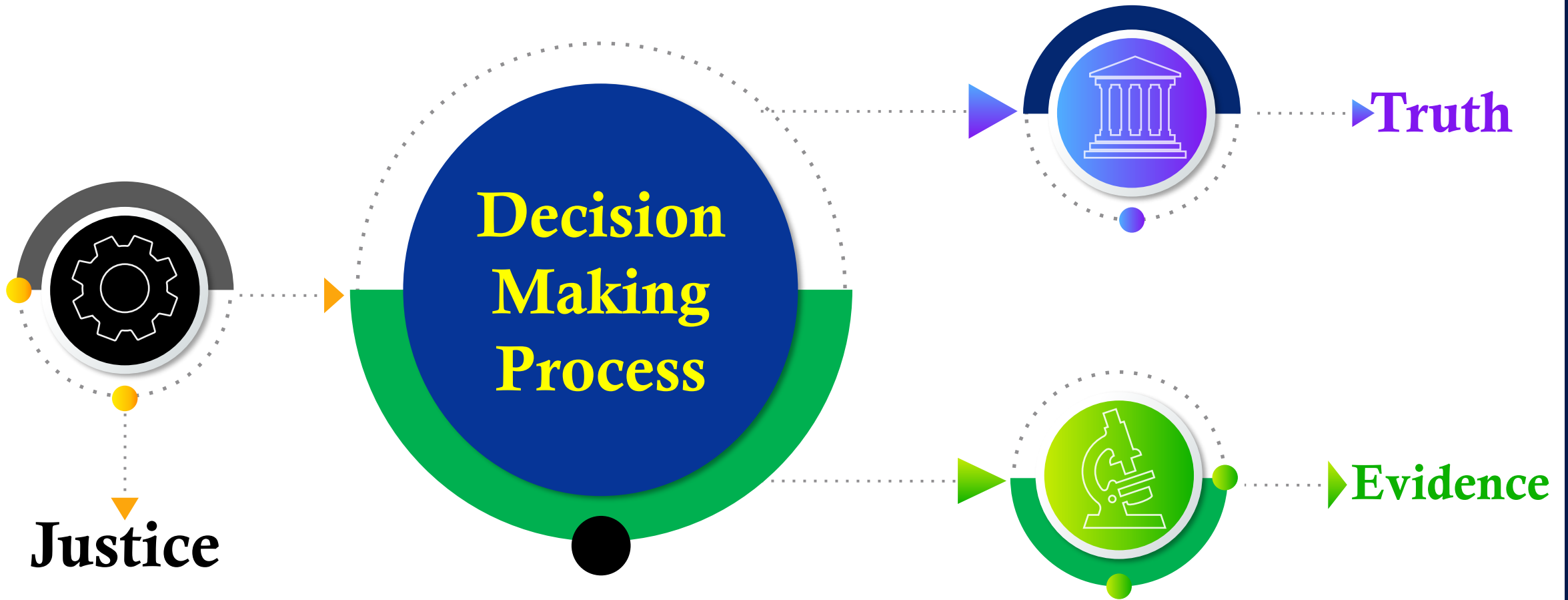


Difference between Fair investigation and Fair Trial



Let's discuss ...

More such inter-connected issues and queries....



Cognizable and Non-cognizable Offences

Offences:

s. 2(24) BNS, 2023 (s. 40 IPC): The act or omission which is punishable under the law.

Cognizable Offences:

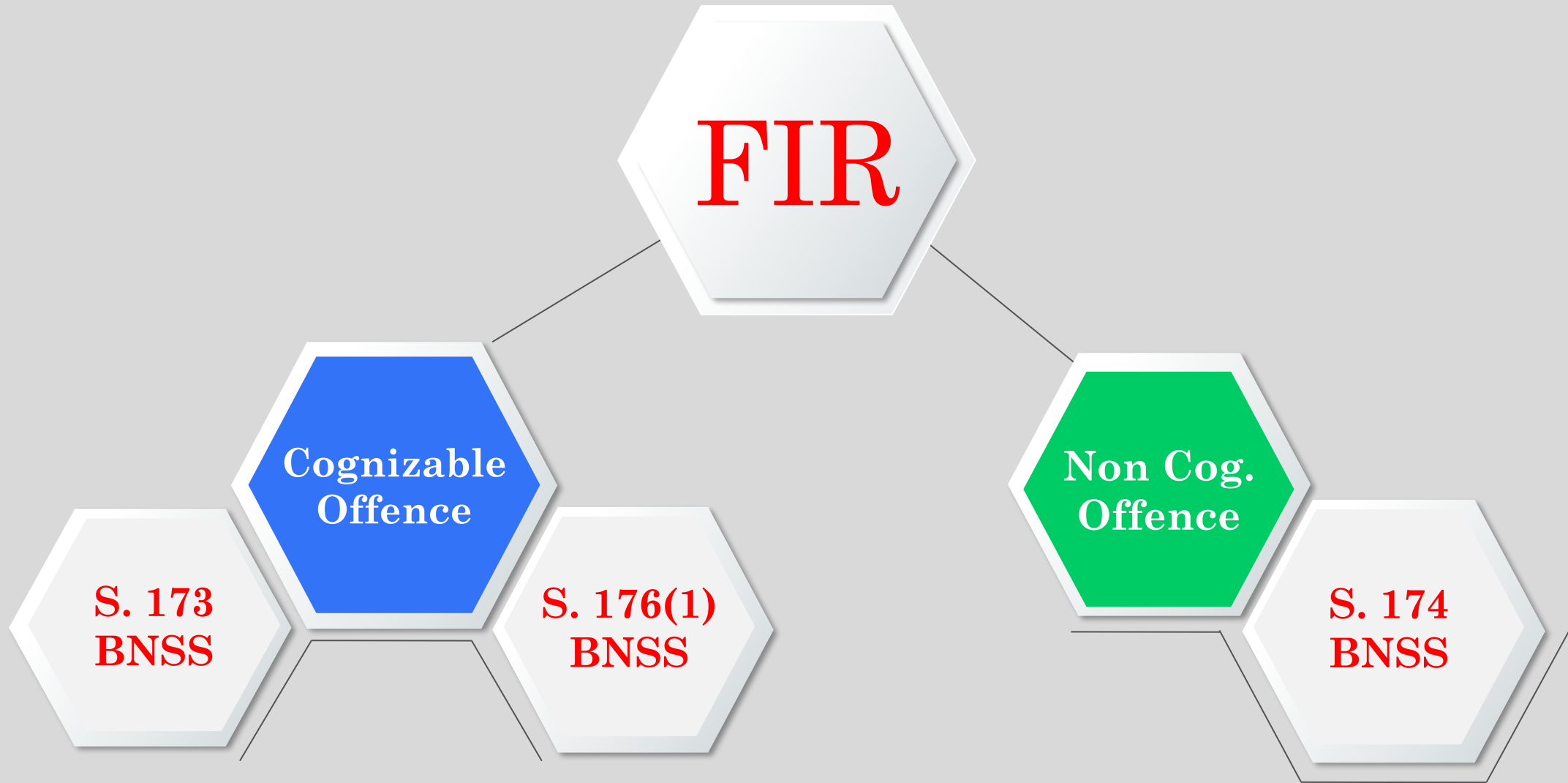
s. 2(g) BNSS [s.2(c) CrPC]: offence where police officer may arrest a person without warrant.

Non-cognizable Offences:

s. 2(o) BNSS [s. 2(l) CrPC]: offence where a police officer has no authority to arrest without warrant.

Investigation of Crime

Types of FIR



Prior Permission for FIR

Why special provisions:

- Protection for public servants against frivolous allegations of corruption

Section 17A of the Prevention of Corruption (Amendment) Act, 2018:

- To conduct enquiry, inquiry or investigation under the PC Act.
- S. 17A desires prior permission of competent authority.
- Competent authority: Who is empowered to remove public servant when at time of the alleged corruption.
- Timeline: within 03 months, which may, for reasons to be recorded in writing by authority may extend for one month - **otherwise deemed permission.**

Exceptions to prior permission:

- Trap cases
- Disproportionate Assets (DA) cases.

Section 17 of PC Act contd...

Who can investigate corruption cases?

Section 17 of the PC Act, 1988:

- Inspector rank police officer can conduct investigation under PC Act in CBI (the DSPE Act, 1946.
- Elsewhere either ACP (in metropolitan cities) or Dy SP rank officer.
- State may authorize by notification a police officer not below the rank of Inspector.
- Arrest only with arrest warrant

JURISPRUDENCE OF INVESTIGATION

Human Identification

1

Morphological features: Shared by Witnesses

2

Photography & sketch

3

Fingerprints

4

Serology : blood groups

5

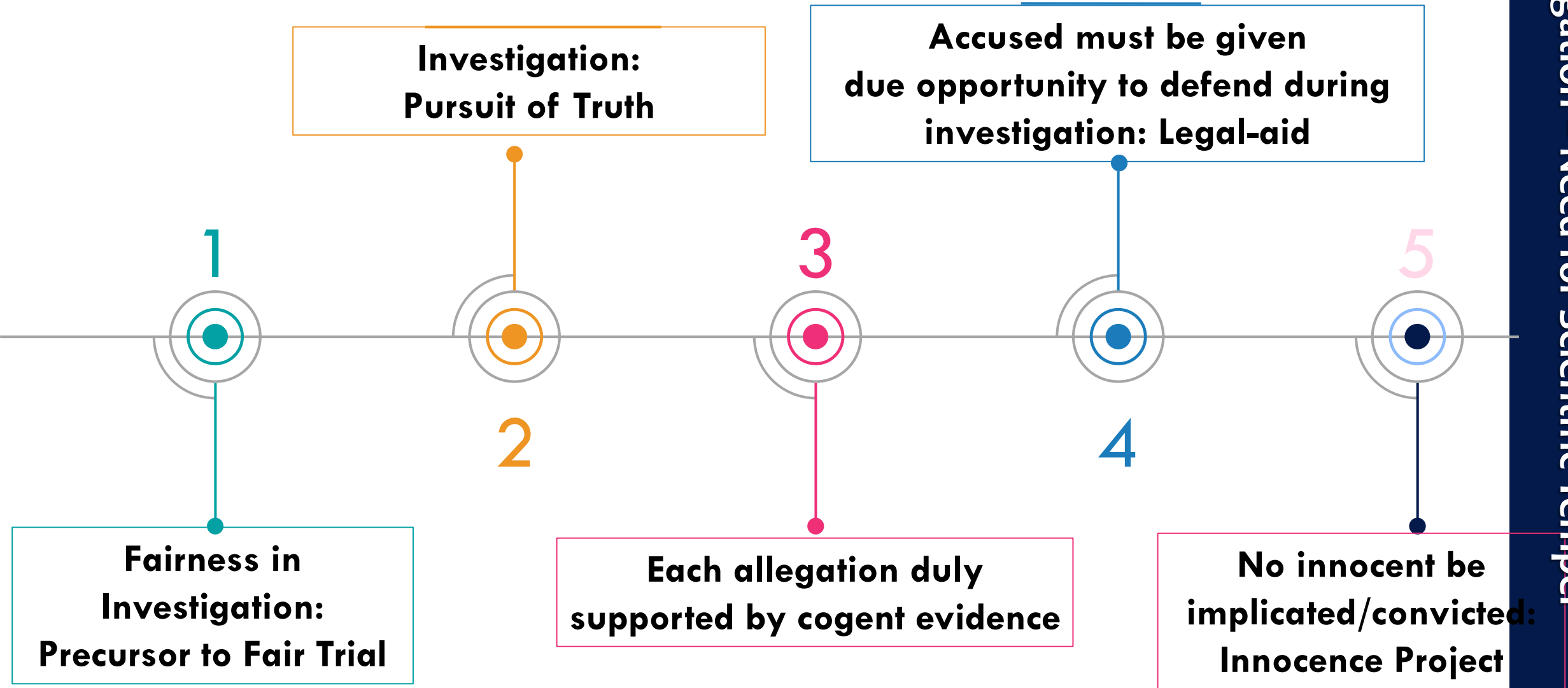
Voice sample

6

DNA Profiling

Amitbhai Anilchandra Shah v. Central Bureau of Investigation [(2013) 6 SCC 348]

Investigation – Need for Scientific Temper



Comparison – Old and New Laws

Criminal Procedure for CRIME INVESTIGATION

S.N.	CrPC, 1973	Titles	BNSS, 2023
	Sections		Sections
1.	156	Police officer's power to investigate cognizable cases	175
2.	157	Procedure for investigation	176
3.	158	Report how submitted	177
4.	159	Power to hold investigation or preliminary inquiry	178
5.	160	Police officers's power to require attendance of witness	179
6.	161	Examination of witness by police	180
7.	162	Statements to police not be signed (and use thereof)	181
8.	163	No inducement to be offered	182
9.	164	Recording of confession and statements	183
10.	168	Report of investigation by subordinate police officer	188

Comparison – Old and New Laws

Criminal Procedure - Post Investigation Activities

S.N.	CrPC, 1973	Titles	BNSS, 2023
	Sections		Sections
Release of the Accused			
1.	169	Release of accused when evidence deficient	189
Post Investigation Steps			
2.	170	Cases to be sent to Magistrate when evidence is sufficient	190
3.	171	Complainant and witnesses not to be required to accompany police officer and not be subjected to restraint	191
4.	172	Diary of proceedings in investigation	192
5.	173	Report of police officer on completion of investigation	193
6.	174	Police to enquire and report on suicide, etc.	194

VISIT TO CRIME SCENE

Crime Scene Management (CRM)

After receiving information of crime, police should visit crime scene without delay.

1. Preservation of crime scene – restricted entry – Use of technology
2. S. 176(3) BNSS: Mandatory visit of forensic expert to crime scene
3. Videography and photography
4. Preliminary survey
5. Processing the crime scene
6. Documentation - Crime scene map etc., seizures etc.
7. Systematic collection of evidence
8. Chain of custody of the samples
9. Release of crime scene
10. Training and experience – Professional approach

ARREST

Arrest

S.35 BNSS (S. 41 and 41A CrPC): A police officer may arrest without warrant

- Commission of cognizable offence
- Proclaimed offender
- Person found having possession of any stolen property
- Reasonable suspicion of having involvement in a crime
- Obstructing a police officer in discharging his official duty
- Escape from lawful custody

S. 38 BNSS (s. 41D CrPC): Rights of the arrestee to meet an advocate

S.39 BNSS (S. 42 CrPC): Arrest for refusing giving name and address

- If a person committed cognizable offence and refusing to give his details or giving wrong information of his name, address

Arrest contd...

S. 43 BNSS (S. 46 CrPC): How arrest is made

- Inform the grounds of arrest

S. 47 BNSS (S. 50 CrPC): Arrestee must know the reason for arrest and his right to bail.

S. 47 BNSS (S. 50A CrPC): Police officer must inform family member or friend about the arrest and place where the person is held

S. 49 BNSS (S. 51 CrPC): Search of the arrested person

S. 58 BNSS (S. 57 CrPC): Detention not more than 24 hours

S. 62 BNSS (S. 60A CrPC): Arrest to be made strictly accordingly to Sanhita

Important Judgements on Arrest

1. DK Basu v. State of West Bengal (1997) 1 SCC 416.

- Guidelines for police to prevent custodial violence,
- Maintain arrest records
- Inform family about arrest.

2. Joginder Singh v. State of UP (1994) 4 SCC 260.

- Arrest should not be mechanical, must be done with due caution.

3. Arnesh Kumar v. state of Bihar (2014) 8 SCC 273.

- Guidelines to arrest a person for offences punishable up to seven years

POLICE CUSTODY REMAND

Police Custody remand (PCR)

Within 24 hours from arrest, police may not be able to complete investigation, hence PCR.

S. 187 BNSS (s. 167 CrPC): Procedure when investigation cannot be completed in 24 hours.

- produce before Magistrate, irrespective of jurisdiction to try the case,

Within 90 days

- 187(3): Maximum period for detention up to 15 days as a whole, but if Magistrate satisfied:

- 90 days – in offence punishable with death, life or term ten years or more.

- 60 days- for other offences.

S. 187(4): At time of granting PCR, the detenue must be produced before the Magistrate.

Default or statutory or Compulsory Bail: S. 187(3): If the investigation is not completed within stipulated time, (90 or 60 days), then the accused is entitle to get default bail.

Default bail directly flows from Article 21 of the Indian Constitution

Important Judgements on PCR

1. **DK Basu v. State of West Bengal (1997) 1 SCC 416.**

- Guidelines for police to prevent custodial violence,
- Maintain arrest records
- Inform family about arrest.

2. **Ritu Chhabaria v. UoI (2023 SC)**

On default bail – It is a Fundamental Right says SC.

Default bail has history from section 167 of CrPC 1898.

3. **Satendar Kumar Antil vs CBI (2022) 10 SCC 51.**

Default bail has history from section 167 of CrPC 1898.

PROCLAMATION & ATTACHMENT

Proclamation and Attachment of Property

❖ S. 84 BNSS (S. 82 CrPC): Proclamation for person absconding

- By the court order, against whom warrant has been issued but not executed despite police efforts.
- Publication of written proclamation to appear before the court in 30 days

❖ S. 85 BNSS (S. 83 CrPC): Attachment of property of person absconding

- Court order – movable and immovable property
- Receiver of the property may also be appointed by the court

❖ S. 86 BNSS (S. --- CrPC): Identification of property

- With the help of the State authorities.

Power of Attachment in the PMLA, 2002

Enforcement Directorate (ED): Deals with two major Acts:

The PMLA, 2002:

- S. 5: Attachment of property involved in money laundering (power up to Deputy Director rank officer), provisional attachment up to 180 days
- S. 8 (adjudication), S. 17 (search and seizure), s. 18 (Search of a person), s. 20 (Retention of property), s. 24 (**Burden of proof on the accused**)

The FEMA, 1999: s. 37 (search and seizure), S. 16 (adjudication).

Judgements: Mohan Lal vs. Director of Enforcement (2011), Ratilal Bhanji Mithani v. State of Maharashtra (2012), and Rama Raju v. Union of India (2011)

Important Judgements on Proclamation and Attachment

- ❖ State of Madhya Pradesh v. Paltan Mallah (2005) 3 SCC 169.
- ❖ Kesar Devi v. Union of India, 2003 Cri LJ 2179 (Del).
- ❖ Yogesh v. State of Maharashtra, 2006 Cri LJ 3428 (Bom)
- ❖ P. Saroja v. State of Tamil Nadu, 2012 SCC OnLine Mad 5707
- ❖ Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1

Key Takeaways:

- Strict compliance with the procedures
- Publication of Proclamation
- Sufficient time for compliance
- Attachment as a last resort

Declaration of Award on Proclaimed Offender

- ❖ No specific legal provision, only an administrative decision
- ❖ **Purpose:** to facilitate the arrest by motivating people to share intelligence
- ❖ **Procedure:** After the attachment of property under BNSS, the reward may also be declared by the competent State authorities.
- ❖ There are various levels to declare the quantum of rewards
- ❖ Public Notification of the rewards - Media, Newspaper
- ❖ **Precautions:**
 - The confidentiality of the informant
 - Protection, if needed
 - Disbursement

MEDICAL EXAMINATION

Search and Seizure

Criminal Procedure for Medical Examinations			
S.N .	CrPC, 1973	Titles	BNSS, 2023
	Sections		Sections
Victim			
1.	164-A	Medical examination of the victim of rape	184
2.	Section 27 of the POCSO Act, 2012		
Accused			
3.	53-A	Examination of person accused of rape by medical examiner	52
Testimony of Medical Expert			
4.	291	Deposition of Medical	326

- ❖ State of Karnataka v. Manjanna [(2000) 6 SCC 188]
- ❖ Lillu @ Rajesh v. State of Haryana [(2013) 14 SCC 643]: The SC proscribed Two-finger test (Virginity Test) of the rape victim – declared unconstitutional. Also see: State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai (2004).
- ❖ Guidelines from the Indian Council of Medical Research (ICMR) on medical exam.

STATEMENTS & CONFESSION

Recording Statement during Investigation

Criminal Procedure for Recording Statements

S.N.	CrPC, 1973	Titles	BNSS, 2023
	Sections		
			Sections
1.	160	Police officers's power to require attendance of witness	179
2.	161	Examination of witness by police	180
3.	162	Statements to police not be signed	181
4.	163	No inducement to be offered	182
5.	164	Recording of confession and statements	183

- 1. Article 20(3): Right against self-incrimination: - Testimonial compulsion.
- 2. Right to be silent – Nandini Satpathi v. State of Orissa (1978 SC)
- 3. Custodial violence:
 - State of Maharashtra v. Kathi Kalu Oghad (1961 SC)

Recording Confessional Statement

Evidence Act & BSA			
S.N.	IEA, 1872	Titles	BSA, 2023
	Sections		Sections
1.	21	Proof of admissions against a person making them, and by or on their behalf	19
2.	24	Confession caused by inducement, threat or promise, when irrelevant in criminal proceedings	22
3.	25	Confession to police officer not to be proved	23(1)
4.	26	Confession by accused while in police custody not to be proved against him	23(2)
5.	27	How much of information received from accused may be proved	23 Proviso
6.	28	Confession made after removal of impression caused by inducement, threat, coercion or promise, relevant	22 Proviso
7.	29	Confession otherwise relevant not to become irrelevant because of promise of secrecy etc.	22 Proviso
8.	30	Consideration of proved confession affecting person making it and others jointly under trial for same offence	24

Statement before the Magistrate during Investigation

Criminal Procedure for recording confessional statement			
S.N.	CrPC, 1973	Titles	BNSS, 2023
	Sections		Sections
1.	164 (1-6)	Recording of confessions and statements	183 (1-7)
2.	281 (1-6)	Record of examination of accused	316 (1-5)
3.	316	No influence to be used to induce disclosure	354
4.	463	Non-compliance with provisions of sections 164 or 281 of IEA / Sections 183 or 316 of BNSS	509

History: Confession before the Magistrate trace back to s. 164 of CrPC, 1898.

S. 183(1) BNSS: Any magistrate, irrespective of jurisdiction, may record confession, - to be recorded on audio-video electronic means.

S. 183(2) BNSS: Magistrate shall, before recording confession, explain to person that: (i) he is not bound to make a confession; (ii) if he does so, it may be used as an evidence against him; and (iii) Magistrate will ensure that confession is voluntary.

S. 183(4) BNSS: The person may express unwillingness at any point of time while recording confession.

Miranda Warnings

- ❖ Confession before Police in US is admissible. Right to self-determination
- ❖ **Other jurisdictions:** Canada, UK, Germany, Japan, France, Germany, Australia.
- ❖ **Conditions:** lawful, voluntary, without duress, and informed.
- ❖ Warnings to confessor before recording confession:

- In Miranda v. Arizona [384 U.S. 436 (1966)],

Under the 5th and 6th Amendment of the US Constitution, the US Supreme Court direct Police to warn the person before recording confession:

- (i) Right to be silent on incriminating questions
 - (ii) No compulsion for confession – only with volition
 - (iii) If confess, will be considered adverse against you during trial
 - (iv) Right to consult attorney, if needed provide legal-aid

Exception: Admissibility of Confession in India

Confession before police is not admissible in India.

Only exception: Recovery of facts.

S. 23(2) proviso of BSA (s. 27 of IEA):

- Any fact discovered as a consequence of information received from the accused.
- The fact may be tangible or intangible items.

Case laws:

- Prabhoo v. State of UP (1963 SC); Ramanand v. State of HP (1981 SC)

Key Principles:

- Custodial requirement
- Direct link and distinct relevance of information leading to discovery
- Limited scope in admissibility unless procedural fairness is proved.

SEARCH & SEIZURES

Search and Seizures

Criminal Procedure for Search and Seizure			
S.N.	CrPC, 1973	Titles	BNSS, 2023
	Sections		Sections
1.	47	Search of place where person sought to be arrested	44
2.	51	Search of arrested person	49
3.	65	Search by police officer	67
4	93	Search-warrant when issued by the court	96
5.	94	Search of place suspected to have stolen property etc.	97
6.	97	Search for persons wrongly confined	100
7.	100	Person in charge of closed place to allow search	103
8.	102	Power of police to seize certain property	106
9.	165	Search by police officer	185
10.	166	When officer in charge of police station may require another to issue search warrant	186

Precautions during Search & Seizure

Legal and Procedural Requirements:

- ❖ Obtaining a warrant for search from competent court.
- ❖ Presence of independent witnesses (*panchas*) - transparency and credibility.
- ❖ Recording reasons.
- ❖ Respect privacy and confidentiality – fair treatment
- ❖ Chain of custody
- ❖ Inventory Acknowledgement by getting signed by the owner and witnesses.

Precautions during Search & Seizure

Post-seizure Precautions:

- ❖ Preservation of seized items - tamper resistant packaging material – secured storage, access control,
- ❖ Documentation and reporting – any moment of sample must be recorded with proper chain of custody
- ❖ Judicial submission



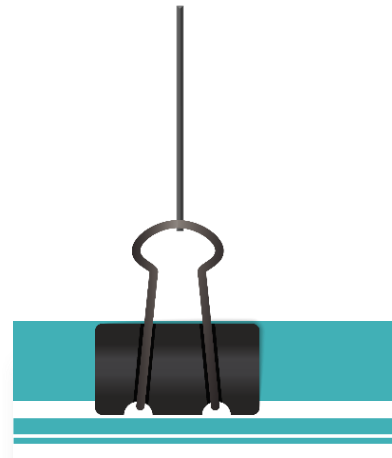
★ No. of Witness

To prove/
disprove a fact
How many? –
s. 134 of the
IE Act, 1872



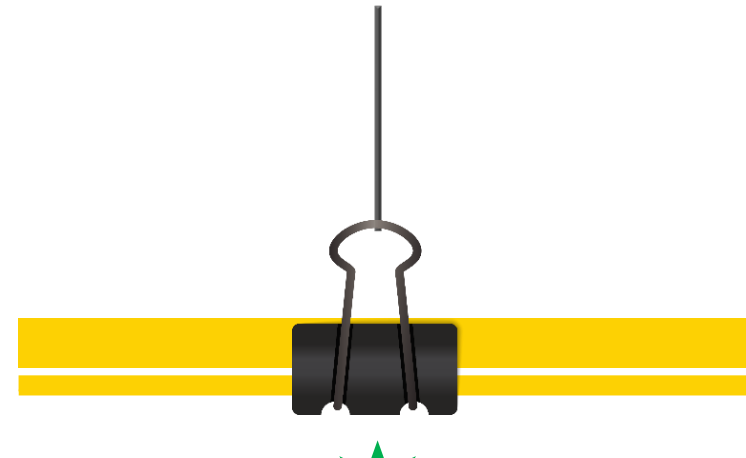
● Eye Witness

‘Sterling’ witness
- May not always
available e.g. Rape
- Planted or
interested
- Memory and
other issues



☁ Oral Witness

Oral Witness:
susceptible for
Personal
vendetta,
hostility, duress,
intimidation
other constraints



☀ CORROBORATION

FORENSIC EVIDENCE

Forensic Science

Science blend with Law



CRIMINALISTICS

1

Baseline for Scientific Investigation

2

Enhance probity of evidence

3

Marching towards PERFECT JUSTICE

Forensic Evidence Collection

Where to get forensic (trace) evidence?

Victim

Accused

Place of
occurrence

Other
places or
persons:
sec. 27 of
the IE Act



Locard's Exchange Principle

Dr. Edmond Locard (1877-1966): “Every contact leaves a trace”

Probable Scientific Evidence

Forensic Footprints



Medico-legal report: Bite marks etc.



Documents - writing, signature - GEQD opinion, Fingerprints, footprints, tyre marks etc. Cyber evidence, Ballistics, acoustics etc.

Deception Detection Techniques (DDTs)



Biological content - serology, chemistry, Dental Analysis
DNA analysis

DDT

Narco-analysis
Polygraph (Lie detector)
Brain Mapping (P-300)

Comparison of Procedural Law on Forensic Evidence

The Evidence Act, 1872 and The BSA, 2023

S.N.	IEA, 1872	Titles	BSA, 2023
	Sections		Sections
1.	45	Opinion of Experts	39 (1)
2.	45-A	Opinion of Examiner of Electronic Evidence	39 (2)
3.	46	Facts bearing upon opinion of experts	40
4.	47	Opinion as to hand-writing and signature, when relevant	41 (1)
5.	47-A	Opinion as to digital signature, when relevant	41 (2)
6.	48	Opinion as to existence of right or custom, when relevant	42
7.	49	Opinion as to usage, tenets etc., when relevant	43
8.	50	Opinion on relationship, when relevant	44
9.	51	Grounds of opinion, when relevant	45

Note: IEA = The Indian Evidence Act : BSA = Bharatiya Sakshya Adhiniyam (47 of 2023)

The Criminal Procedure Code, 1973 and The BNSS, 2023

S.N.	CrPC, 1973	Titles	BNSS, 2023
	Sections		Sections
1.	53-A	Examination of person accused of rape by medical practitioner	52
2.	54	Examination of arrested person by medical officer	53
3.	54-A	Identification of person arrested	54
4.	164-A	Medical examination of victim of rape	184
5.	291	Deposition of medical witness	326
6.	291-A	Identification report of Magistrate	327
7.	292	Evidence of Officer of Mint.	328
8.	293	Reports of certain government scientific experts	329
9.	311A	Power of Magistrate to order a person to give specimen samples of handwriting or signature of	349
10.	No provision	Visit of forensic expert to the crime scene for collection of forensic evidence	176(3)

CrPC = Criminal Procedure Code : BNSS = Bharatiya Nagarik Suraksha Sanhita (46 of 2023)

Expert Opinion

Section 45 of Indian Evidence Act, 1872

When the Court has to form an opinion upon a point of

- ❖ foreign law or of science, or art, or as to identity of handwriting, or finger impressions,
- ❖ the opinions upon that point of persons **specially skilled** in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts.

Most Significant Development for OUR CONCERN

Bhartiya Nagarik Suraksha Samhita, 2023 – s. 176(3):
Mandating compulsory forensic investigation – No discretion to investigating agencies.

Who is an Expert?

State of H.P. v. Jai Lal [(1999) 7 SCC 280]

Legal Question: Whether Shri PC Pawar, District Horticulture officer was an expert?

- ✓ **Special Skilled:** (i) education + (ii) Experience
- ✓ Procedure adopted: Accreditation
- ✓ Basis of Conclusion (Meta data – Hand notes)

Remember:

- ❖ An expert is not a witness of fact. (Witness of Fact versus Expert Witness)
- ❖ It must be intangible, convincing and tested

Relevant Case Law: *Hazi Mohamaad Ekramul Haq v. State of WB* [AIR 1959 SC 488]

DIGITAL EVIDENCE

Digital or Electronic Evidence

Nature: Potent tool of investigation

- Invisible, fragile, susceptible to tamper,
- Highly reliable

Legal Framework in India:

- Information Technology Act, 2000

- S. 66, 66A to D deal with various cyber crimes – hacking, identity theft etc.
S. 66A was struck down by SC in Shreya Singhal v. UoI (2015 SC)

- Bharatiya Sakhya Adhiniyam, 2023

- S. 2 (e)(ii) dealw with electronic evidence (S. 3 of the IEA, 1872)
- S. 62 Certificate (S. 65- A of IEA) – Special provision for electronic evidence
- S. 63 Certificate (S. 65-B of IEA) – Necessary for admissibility

- BNNS, 2023

- S. 94 (s. 91 of CrPC) – summon to produce documents or other things

Electronic Evidence cont..

1. Search and Seizure

- warrant from competent court
- Search and seizure of electronic device by trained experts observing SoP.
- Maintenance of Chain of custody
- Open Source Intelligence

2. Imaging and cloning of data

- Imaging of digital data must adhere to protocol without data integrity.
- Tools: FTK (Forensic Tool Kit), EnCase etc.

3. Extraction and Analysis

- Data Recovery: Techniques to recover deleted files, hidden or encrypted data
- Analysis: Log examination, emails, social media interactions, browsing history, financial transactions

Electronic Evidence cont..

4. Documentation

- Chain of Custody: document every moment of the sample docket.
- Certification: S. 63 Certificate (S. 65-B of IEA) – Necessary for admissibility
- Maintenance of Chain of custody
- Open Source Intelligence

5. Admissibility

- S. 63 Certificate (S. 65-B of IEA) – Necessary for admissibility
- Chain of Custody

6. Judicial pronouncements

- Tomaso Bruno v. State of UP (2015 SC) – Importance of digital evidence
- Anvar P.V. v. P.K. Basheer (2014 SC) – Necessity of s. 65B Certificate
- Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020 SC)
- Justice Puttaswami J. v. UOI (2027 and 2028 SC) – Right to Privacy and data Protection

7. Personal data Protection Act, 2023

- Protection of individual privacy and balance between personal and public interest – Consent

FORENSIC AUDITING

Forensic Auditing

- ❖ Combination of application of financial auditing and investigating skills to connect financial transactions with crime.
- ❖ **Forensic Auditing** = Auditing + Accounting + Investigating skills
- ❖ Money Trails expose financial crimes (frauds, embezzlement and the role of money in crime).
- ❖ Concrete evidence – unalterable – no time limit to get Bank data
- ❖ **Companies Act, 2013:**
 - s. 143(2): Audit report for alleged fraud.
 - s. 211: Establishment of Serious Fraud Investigation Office (SFIO)
 - S. 447: Defines fraud and prescribes sever penalties and fines.
- ❖ BNS, 2023: Several sections (Chapter XVII) – S. 320 to 323 etc.
- ❖ PMLA, 2002
- ❖ IT Act, 1961: ss. 132, 133A etc.

Forensic Auditing contd...

❖ Steps for Forensic Auditing:

- Planning and Identification: Defining scope and objective of audit
Identification of hot-spots.
- Gathering evidence: collection of financial documents relevant data
- Data Analysis
- Reporting: Detailed explanatory report
- Legal proceedings: testimony of expert etc.

Landmark Judgments:

- Satyam Scandal (2009)
- Reebok India Fraud Case (2012)
- PNB Scam (2018)

INVESTIGATION ABORAD

Investigation Abroad

Criminal Procedure for Investigation Abroad

S.N.	CrPC, 1973	Titles	BNSS, 2023
	Sections		Sections
1.	166-A	Letter of request to competent authority for investigation in country or place outside India	112
2.	166-B	Letter of request from a country or place outside India to a court or an authority for investigation in India	113

Police officer has territorial jurisdiction. A police officer is not entitled to investigation abroad.

Interpol also help for investigation abroad.

Investigation Abroad

- ❖ **The Extradition Act, 1962:** Extradition from and to India

- ❖ **Letter Rogatory (LR):** (Court to Court Request)

A formal request sent by court to obtain evidence from another country or to execute search and seizures.

LR also help for services of processes like to serve summons or subpoenas to person located abroad.

Enforcement of judgment

- ❖ **Treaties:** Mutual cooperation - Bilateral Treaties, Multilateral Treaties (MLATs), International Conventions,

- ❖ **Key consideration:** Jurisdiction of the court, compliance of legal standards and the procedures of complying country, Privacy and rights

- ❖ **UoI v. WN Chadha (1993 SC):** Landmark case on LRs.

- ❖ **Abu Salem Abdul Qayoom Ansari v. State of Maharashtra (2011 SC)**

Investigation Abroad

- ❖ **Interpol:** 1923, HQ: Lyon, France, 195 Countries, International Police Organisation, Cooperation and Coordination, Secure platform to share information,

Notices:

Red Notice: location and arrest of a wanted person.

Blue Notice: Information about a person, etc.;

Green Notice, Yellow Notice, Black Notice etc.

Thrust Areas: Cybercrime, Counter terrorism, Drug and Human Trafficking.

- ❖ United nations Convention against Transnational Organized Crime (UNTOC), and United nations Convention against Corruption (UNCAC) – 2011.

ANALYSIS OF EVIDENCE

Evidence Analysis

❖ Analysis of evidence:

- Establish facts
- Content analysis
- Corroboration – connecting crime with criminal
- Prove guilty (conviction) and protect the innocent (exoneration)

Challenges:

- Data Overload
- Technical complexities – Financial Trails etc.
- Reliability of witnesses
- Biases: Cognitive, confirmatory
- Public and media and other extraneous pressures

Ethical Consideration

- Objectivity and transparency
- Respect for self esteem

SANCTION FOR PROSECUTION

Sanction for Prosecution

❖ Why Sanction for Prosecution needed?

- Article 311 of the Indian Constitution – safeguards to civil servants
- Shield against frivolous prosecution – only for discharge of public duties
- Performing public duty without fear
- Screening of unfounded allegations by the parent department.

Case Laws:

- **RR Chari v. State of Uttar Pradesh** (1951 SC): necessity of prosecution sanction.
- **In B. Saha v. MS Kochar** (1979 SC): Explained the distinction between the act performed in the discharge of official duties and those outside the scope of official duties.
- **Vineet Narayan v. UoI** (1997 SC) – landmark judgment – Appointment of CBI Director, Administrative control of CBI, Role of CVC,

Sanction for Prosecution

❖ Legal Provisions

- Section 218 of BNSS (S.197 of CrPC.)
- Section 19 of the Prevention of Corruption Act, 1988
 - Sanction is mandatory even to retired public servant (Amendment, 2018)
- Competent authority – who has power to remove at time of alleged act.

Procedure

- Application of mind by the competent authority
- Neutrality in decision making
- Deemed prosecution

FATE OF INVESTIGATION

Post investigation procedures

❖ Conclusion of Investigation

S. 193 BNSS (s.173 CrPC): Report of Police Officer after completion of investigation (Police Report)

- (i) Charge-sheet (*Challan*)
- (ii) Closure Report (Final report)
- (iii) Further Investigation u/s. 193(9) BNSS [s. 173(8) CrPC]

❖ Submission of the Police Report to the Court

- Cognizance by the Magistrate – to evaluate prima facie evidence
- magistrate has power to summon or warrant police or accused to his court

❖ Judicial Proceedings



THANK YOU

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