

## **UNIT – IV (INTRODUCTION TO FORENSIC SCIENCE AND LAW)**

**Ashna Bhatia**  
**Ph.D. Scholar**  
**NFSU, Gandhinagar**

# WHAT IS LAW?

The term "**Law**" denotes different kinds of Rules and Principles.

Law is an instrument which regulates human conduct/behavior.

Law means Justice, Morality, Reason, Order, and Righteous from the view point of the society.

Law means Acts, Rules, Regulations, Orders, and Ordinances from point of view of legislature.

Law means Rules of court, Decrees, Judgment, Orders of courts, and Injunctions from the point of view of Judges.

Therefore, Law is a broader term which includes Acts, Rules, Regulations, Orders, Ordinances, Justice, Morality, Reason, Righteous, Rules of court, Decrees, Judgment, Orders of courts, Injunctions, Tort, Jurisprudence, Legal theory, etc.



# DEFINITION OF LAW



Although there is no general definition of Law that includes all the aspects of Law yet for a general understanding, some of the important definitions are as follows:

**Aristotle:** It (perfect law) is inherent like man/woman and can be discovered through reason. It is immutable, universal and capable of growth.

**Austin:** Austin says “Law is the command of the Sovereign.” Rules laid down by political superiors to political inferiors. In other words, the body of command by a sovereign (a monarch or a supreme ruler) member or members of an independent society wherein the author of law is supreme.

**Paton:** According to Paton “Law consists of a body of rules which are seen to operate as binding rules in the community using which sufficient compliance with the rules may be secured to enable the set of rules to be seen as binding.”

**A.V. Dicey:** In the words of A. V. Dicey, “Law is the reflection of Public opinion.”

# New Criminal Laws In India

# Three bills introduced in Lok Sabha

## Indian Penal Code (IPC), 1860

TO BE REPLACED BY

## Bharatiya Nyaya Sanhita Bill, 2023

- It will have **356 sections** (instead of 511 sections in IPC)
- 175 sections have been amended
- 8 sections have been added, and 22 sections have been repealed

## Indian Evidence Act, 1872

TO BE REPLACED BY

## Bharatiya Sakshya Bill, 2023

## Code of Criminal Procedure (CrPC), 1973

TO BE REPLACED BY

## Bharatiya Nagarik Suraksha Sanhita, 2023

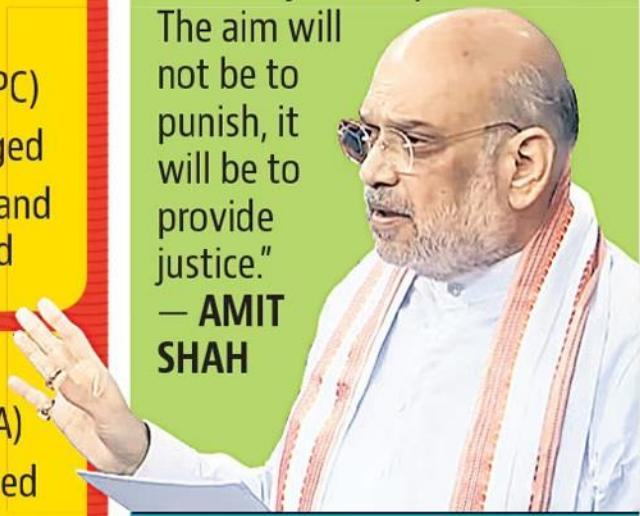
- It will have **533 sections** (instead of 478 sections in CrPC)
- 160 sections have been changed
- 9 sections have been added, and 9 sections have been repealed

- It will have **170 sections** (instead of 167 sections in IEA)
- 23 sections have been changed
- 1 section has been added, and 5 sections have been repealed



"From 1860 to 2023, the country's criminal justice system functioned as per the laws made by the British. I can assure the House that these bills will transform our criminal justice system. The aim will not be to punish, it will be to provide justice."

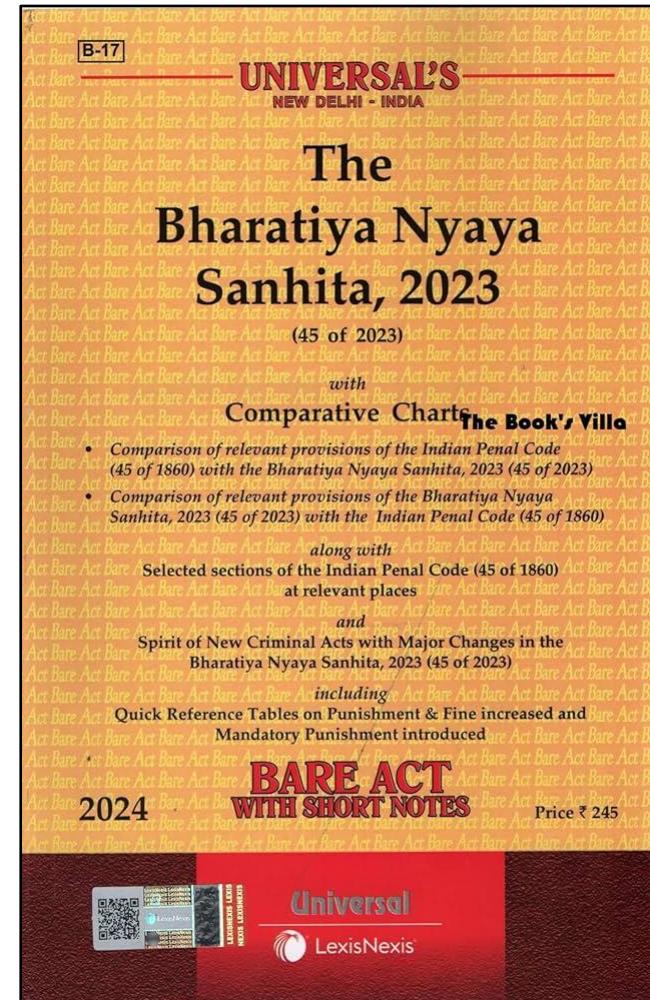
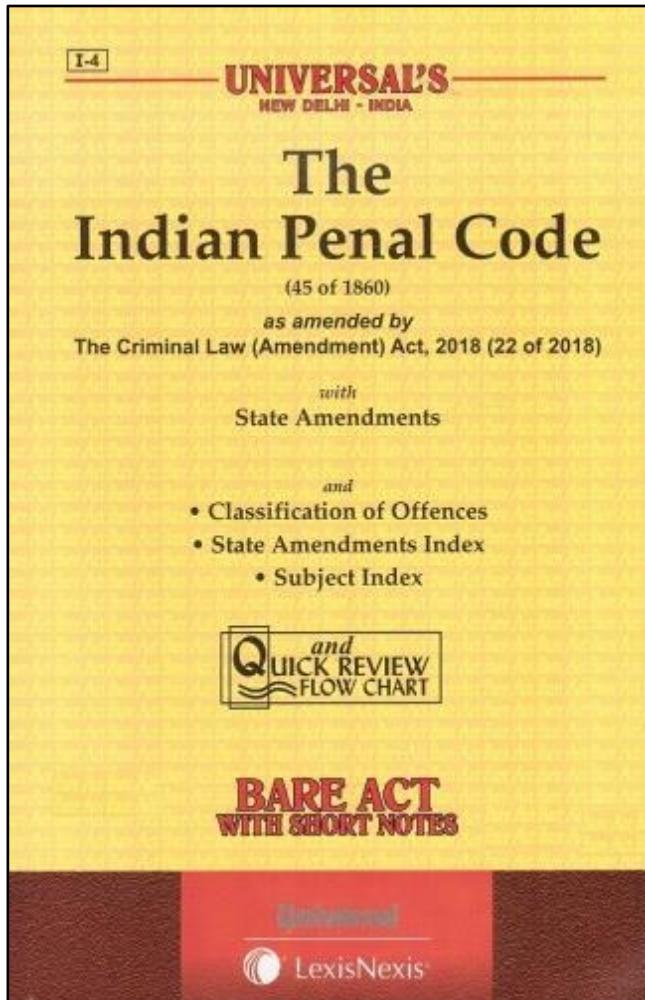
— AMIT SHAH



## WHAT NEXT

The three bills will be studied by the standing committee on home affairs, which is chaired by BJP MP Brijlal (who is a retd IPS officer).

# DIFFERENT LAWS IN INDIA



## A) Indian Penal Code (IPC), 1860

IPC, 1860 is replaced by – the BHARTIYA NYAYA SANHITA (BNS) BILL, 2023

- It deals with the substantial criminal law of India.
- It defines the offences and prescribes punishments.

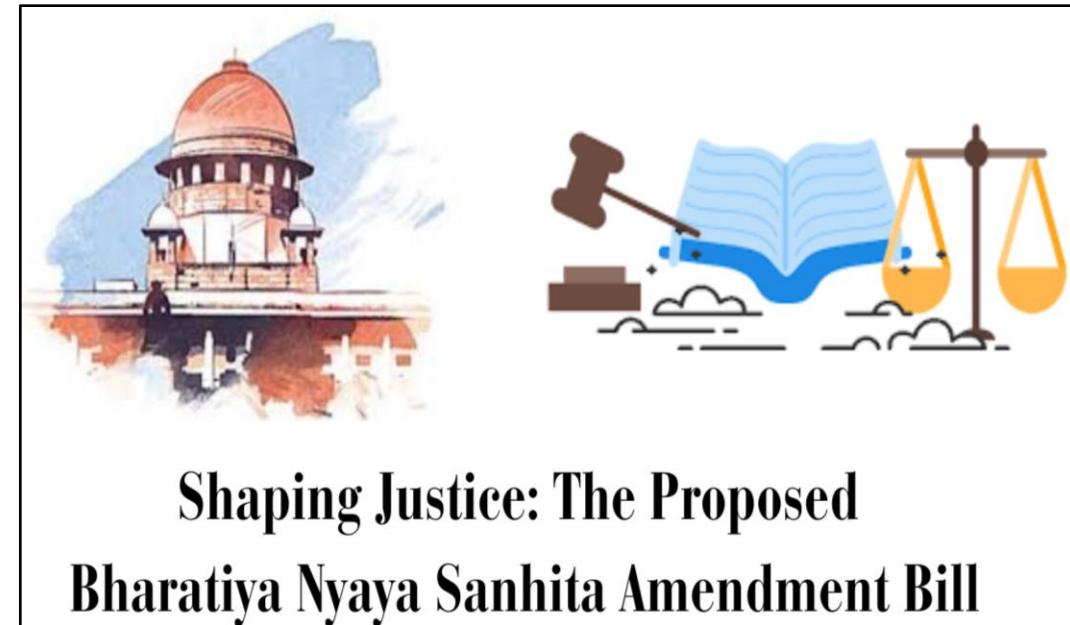
# BHARTIYA NYAYA SANHITA (BNS) BILL, 2023

The **BHARTIYA NYAYA SANHITA (BNS) BILL, 2023**, is the principal law of criminal law. It *replaces the Indian Penal Code (IPC)* and the Code of Criminal Procedure (CrPC). The BNS was *passed by Parliament in December 2023* and came into force on *July 1, 2024*.

Many changes have been made to BNS, some of which are:

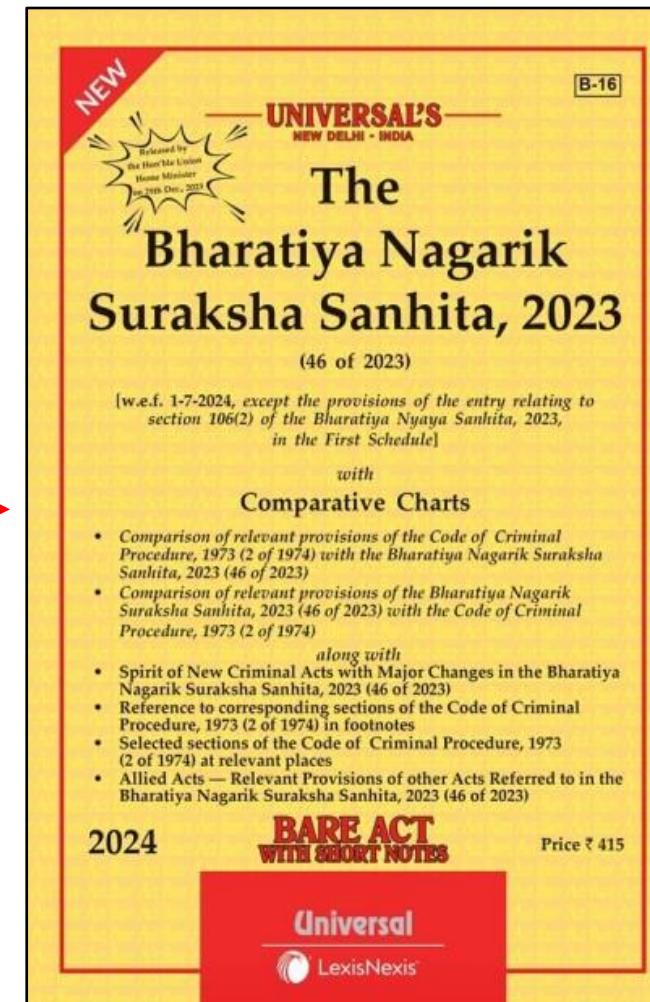
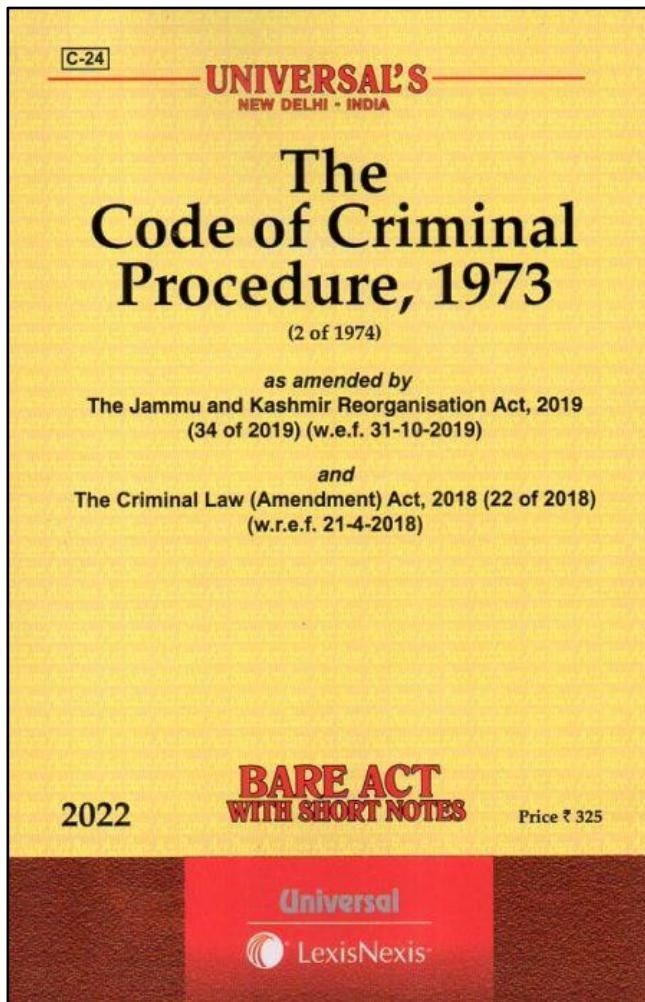
- Community service is included as a punishment in BNS.
- Incomplete offences are grouped in the same chapter.
- Terrorism has been included in the category of crime.
- The section related to treason (Section 124A of IPC) has been removed.
- Anyone who endangers the country's independence can be accused of treason.
- A new offence of snatching has been introduced.
- There is no section 377 of IPC in BNS.

BNS has a total of **358 sections in 20 chapters**.



**Shaping Justice: The Proposed  
Bharatiya Nyaya Sanhita Amendment Bill**

# DIFFERENT LAWS IN INDIA



## B) Criminal Procedure Code (CrPC), 1973



CrPC, 1973 is replaced by – the **BHARTIYA NAGARIK SURAKSHA SANHITA BILL (BNSS), 2023**

- It provides the mechanism for punishment of offences against substantive criminal law.
- It deals with police duties in arresting offenders, dealing with absconders, in the production of documents, etc. and in investigating offences.
- It deals with actual procedures in trials, appeals, references, revisions, and transfer of criminal cases.

# BHARTIYA NAGARIK SURAKSHA SANHITA BILL (BNSS), 2023

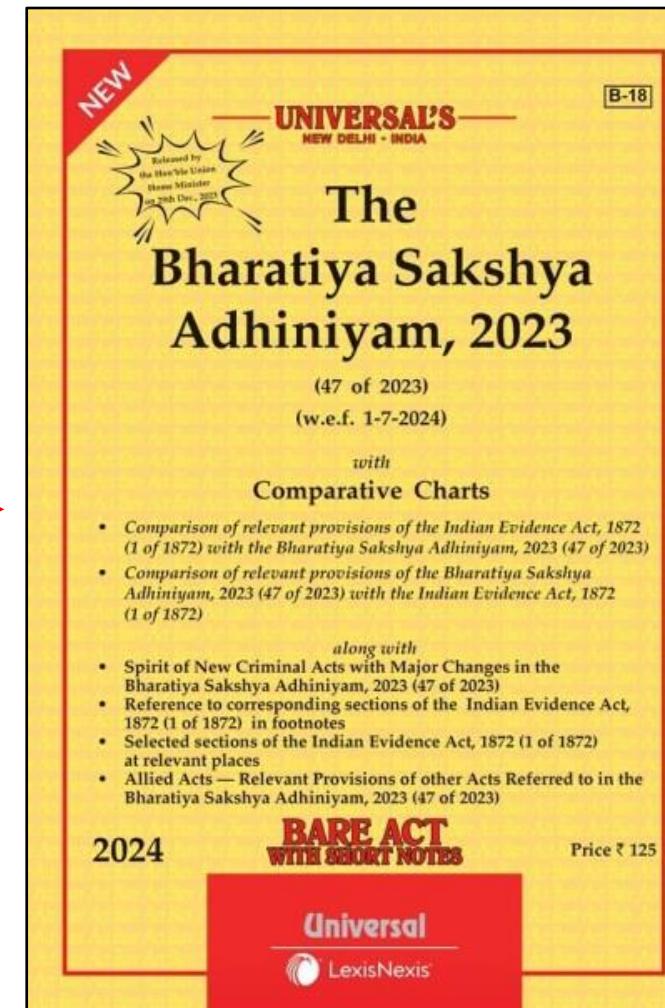
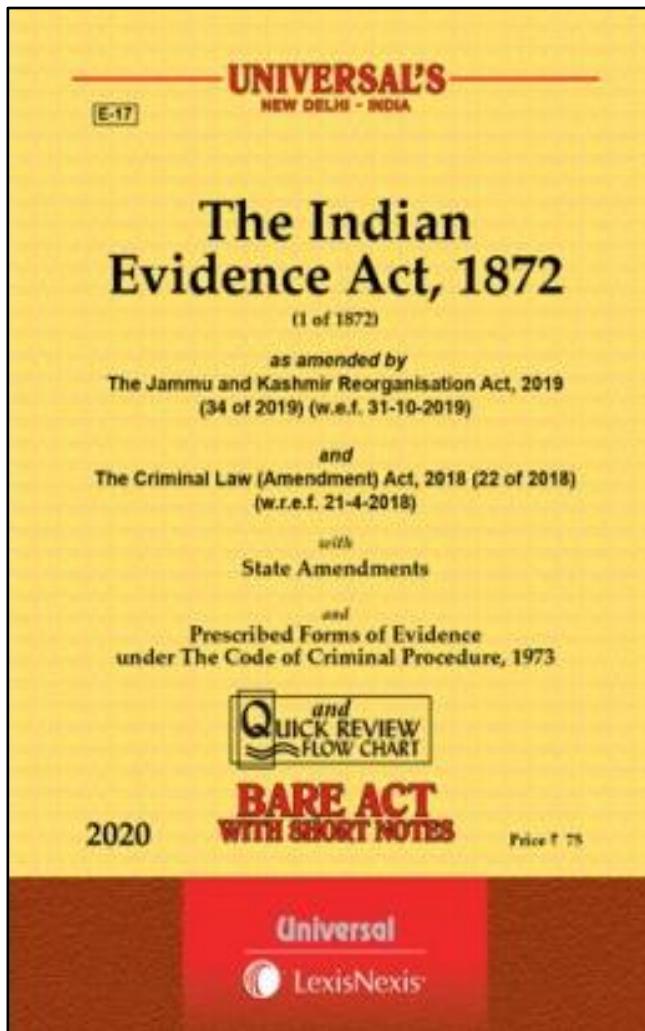
The **BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023** is a bill that aims to replace the Criminal Procedure Code (CrPC) of 1973. This bill was passed by Parliament during the winter session of 2023. It was approved by the Lok Sabha on **December 20, 2023**, and by the Rajya Sabha on **December 21, 2023**. The bill received presidential assent and was notified in the Gazette of India on **December 25, 2023**. The BNSS seeks to improve the criminal justice system by:

- *Simplifying the law:* The BNSS consolidates and amends the CrPC.
- *Strengthening the rights of the accused:* The BNSS provides safeguards such as the right to a lawyer of choice during interrogation and the right to a fair trial.
- *Improving efficiency:* The BNSS aims to reduce delays and streamline procedures.
- *Improving victim participation:* The BNSS mandates the provision of FIR copies and investigation updates digitally and ensures victim hearing in serious cases.
- *Using technology:* The BNSS allows for electronic communication for legal procedures and all trials, inquiries, and proceedings may be held in electronic mode.
- *Setting timelines:* The BNSS sets specific timelines for investigation, trial, and judgment.

Some other features of the BNSS include:

- Mandating forensic investigation for offences punishable with seven years of imprisonment or more.
- Allowing finger impressions and voice samples to be collected for investigation or proceedings.
- Limiting plea bargaining to sentence bargaining, and requiring the accused to apply to plea bargaining within 30 days.

# DIFFERENT LAWS IN INDIA



## C) Indian Evidence Act (IEA), 1872



IEA, 1872 is replaced by – the BHARTIYA SAKSHYA ADHINIYAM (BSA) BILL, 2023

- It deals with the law of evidence (different categories of evidence, the procedure of collection, preservation and use of different evidence) and applies to all judicial proceedings in any court.
- It is common to both civil and criminal procedures.

# BHARTIYA BILL, 2023

# SAKSHYA

# ADHINIYAM (BSA)

The **BHARATIYA SAKSHYA BILL (BSB), 2023** is a bill that aims to modernize India's justice delivery system by replacing the Indian Evidence Act, 1872 (IEA). The BSB was introduced in the Lok Sabha on August 11, 2023, and was passed by both the Lok Sabha and the Rajya Sabha in December 2023. It received presidential assent on December 25, 2023.

The BSB's key features include:

- ❖ *Electronic records:* The BSB classifies electronic records as primary evidence, while the IEA categorized them as secondary evidence. The BSB expands the definition of electronic records to include information stored in communication devices and semiconductor memory.
- ❖ *Secondary evidence:* The BSB adds that secondary evidence may be required if the genuineness of the document is in question.
- ❖ *Joint trials:* The BSB adds an explanation to the IEA's provision on joint trials. It states that a trial of multiple people will be treated as a joint trial if an accused has absconded or has not responded to an arrest warrant.

The BSB retains most of the provisions of the IEA, including those on: confessions, relevancy of facts, and burden of proof.

## New Lady Justice Statue In The Supreme Court

The Supreme Court of India changed the Lady Justice Statute to reflect a shift in the country's legal system and a more modern interpretation of justice:

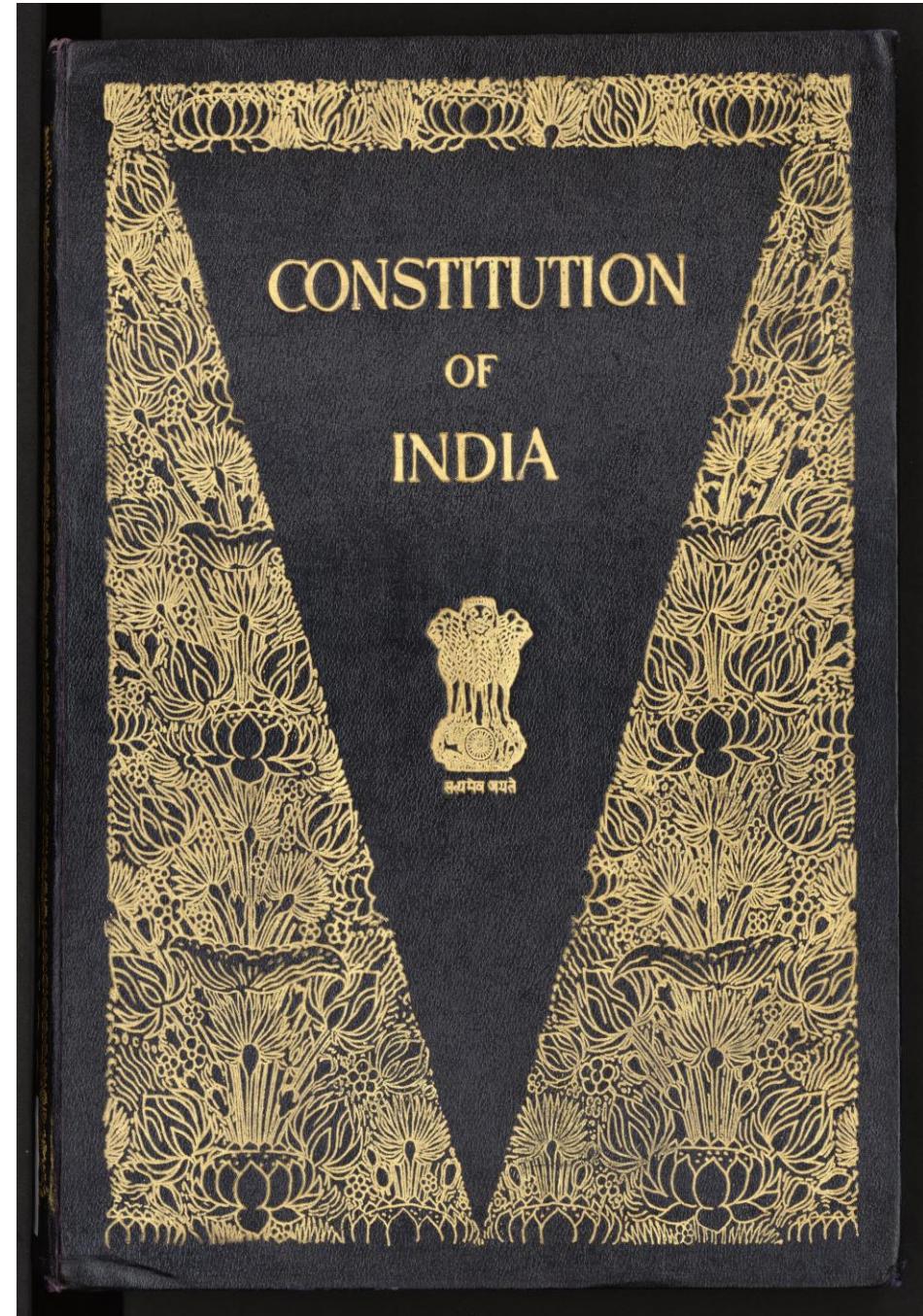
- **Decolonization:** The new statue is an attempt to distance itself from colonial symbols and embrace a more authentically Indian identity. The statue's saree replaces Western attire, and the removal of the blindfold and open eyes convey that the law is not blind and treats everyone equally.
- **Constitutional Supremacy:** The sword is replaced with the Constitution to symbolize the supremacy of the Constitution and its value in the justice system. The Constitution is a symbol of rights, equality, and fairness, while the sword has been associated with violence and disciplinary action.
- **Balance of Justice:** The scales of justice are retained to symbolize that courts weigh both sides of an argument before delivering a judgment.
- **Humaneness:** The changes to the statute reflect a shift towards a more representative and humane legal system.

The changes to the Lady Justice statue are part of a larger effort to reform India's legal system and update its image.



# CONSTITUTION

- The Constitution of India *lays down an important framework that demarcates the structure of the political system, powers, and duties of government institutions and gives the people their fundamental rights and duties towards the country.*
- Main Aim of the Constitution – is **to protect the fundamental rights of the people.**
- On 26 November 1949, the constitution was adopted by the Constituent Assembly of India. Although it came into effect on 26 January 1950.
- Since the constitution was created by the constituent assembly, it *communicates constitutional supremacy rather than parliamentary supremacy*. The *Constitution of India from start to end is made by the Indians only*. It replaces the Government of India Act, 1935 and functions as the country's fundamental governing document.
- The constitution **declares India a sovereign, socialist, secular, and democratic republic.**
- It **ensures that all the citizens of this country will get equality, liberty and justice.**



# FORMATION OF THE CONSTITUTION

- The *Constituent Assembly was formed in 1946* and consisted of members of the provincial assemblies. In total there were **299** members. The **President of this Assembly was Dr. Rajendra Prasad**.
- To *design the constitution*, a *Drafting Committee* was *formed*. **Dr B. R. Ambedkar** who is *regarded as the 'Father of the Constitution of India'* was the **chairman of the Drafting Committee**.
- It took the committee **three years to draft the constitution**, holding **eleven sessions over 165 days**. This is because India is a big country with so many cultures and religions. The committee wanted to make sure that they make a constitution that leads the country to success.

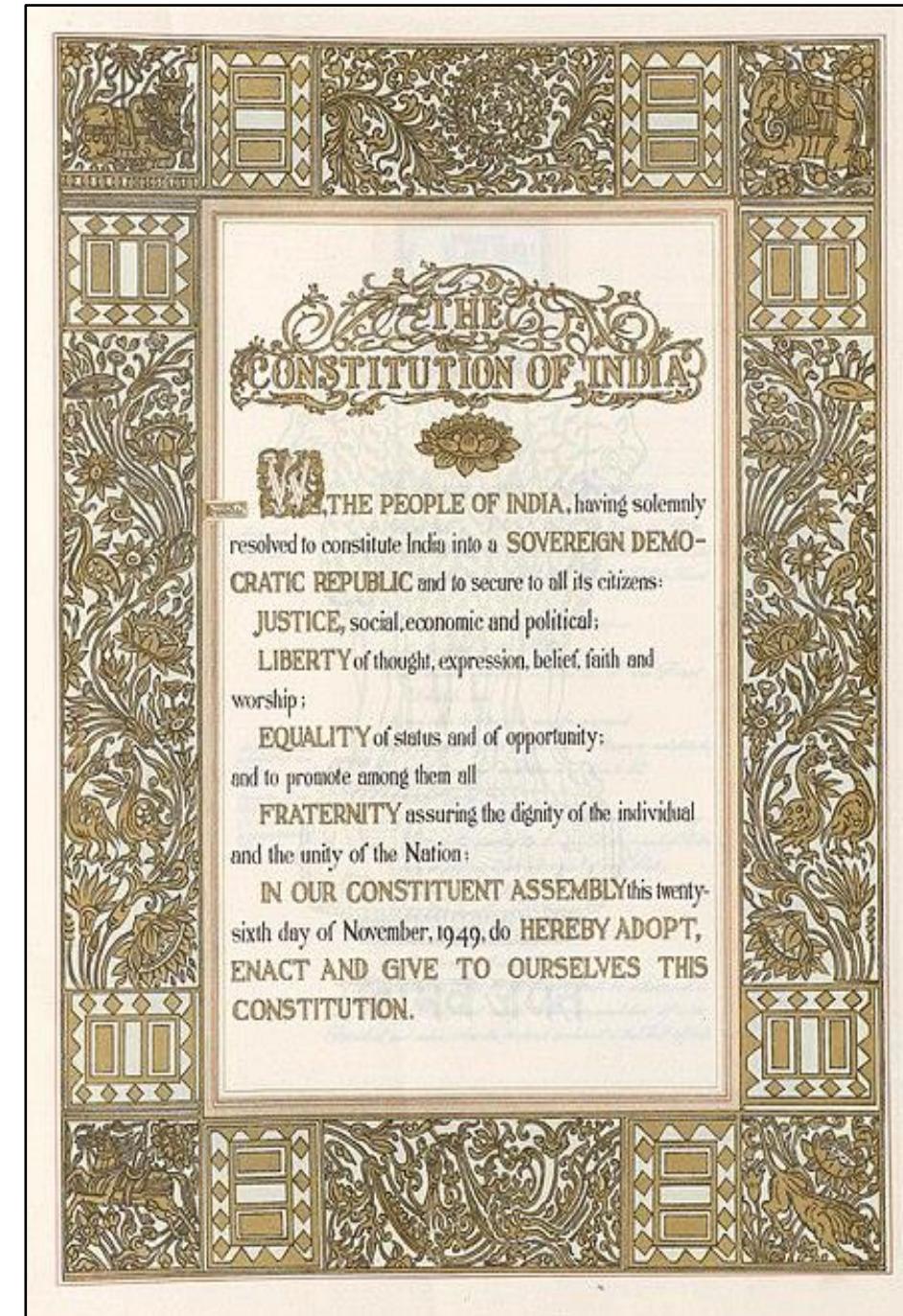
## COMPONENTS OF THE INDIAN CONSTITUTION

The Indian constitution is the **longest in the world**.

It *consists of a preamble* and **470 articles** which are *categorized into 25 parts*. This is not the end, it also has **12 schedules and 5 appendices**. Even after its enactment, the **constitution has been amended 104 times**, the *latest one came on 25 January 2020*.

# THE PREAMBLE

- **The Preamble is the heart of the constitution** (because it beautifully lays down the country's core values and what it stands for). Originally it was not a part of the constitution but was added much later on.
- The Preamble *promotes justice, liberty, and equality for every Indian*. It wants *to maintain the unity and integrity of the country*.
- The Preamble *declares India 'sovereign'* which means the **country is an independent authority and it is not a dominion of any other external power**.
- It also says that *India is 'secular'* which means that **all the citizens have the right to practice their religion**.
- It provides every Indian with *equality of status and opportunity*.
- According to the Preamble, *every citizen must promote harmony and the spirit of common brotherhood*. Most importantly, it states that the country is '**democratic**' which means that the **citizens have the right to choose the members of the government**.



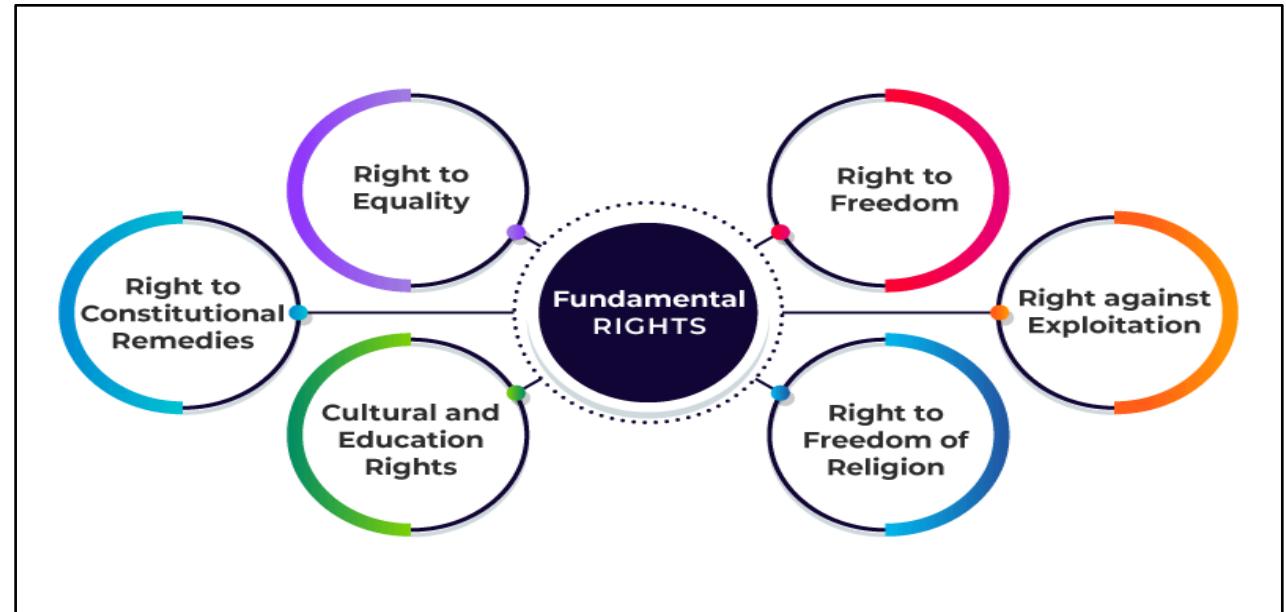
# FUNDAMENTAL RIGHTS

The constitution gives every citizen **6 fundamental rights**. These are as follows:

**1. Right to Equality** – Right to equality means *every citizen will get equal rights in every field irrespective of their colour, caste, religion and gender*. It ensures that everyone will get equal job opportunities and citizens shouldn't follow orthodox practices such as untouchability and give equal respect to everyone.

**2. Right to Freedom** – India is a *democratic country where the constitution guarantees freedom to every Indian*. Under this several rights are given such as:

- Freedom of speech
- Freedom of expression
- Freedom to reside in any part of the country
- Freedom of association
- Freedom of assembly without arms
- Freedom to practice any profession



# FUNDAMENTAL RIGHTS

3. Right Against Exploitation – This right **prohibits child labour, and human trafficking** and **states that forcing children to work under the age of 14 in factories, mines or under any hazardous conditions is strictly not allowed**. This right also states that the **government does not have the power to discriminate against anyone based on caste, religion, gender or colour**.

4. Right to Freedom of Religion – This right implies that **India is a secular country where the citizens can fearlessly follow their religion or culture**.

5. Cultural and Educational Rights – **All religions, cultures and linguistic minorities have the right to preserve their heritage and culture**. The **State has no official religion**. The **government does not have the right to discriminate against any educational institution just because a minority group is operating it**.

6. Right to Constitutional Remedies – This right **ensures that the government cannot violate anyone's rights**. If citizens feel that their right is taken away then they can go to the court and demand justice.

# COURTS AND THEIR TYPES

A **court** is *an institution that the government sets up to settle disputes through a legal process.*

There are two types of courts in India –

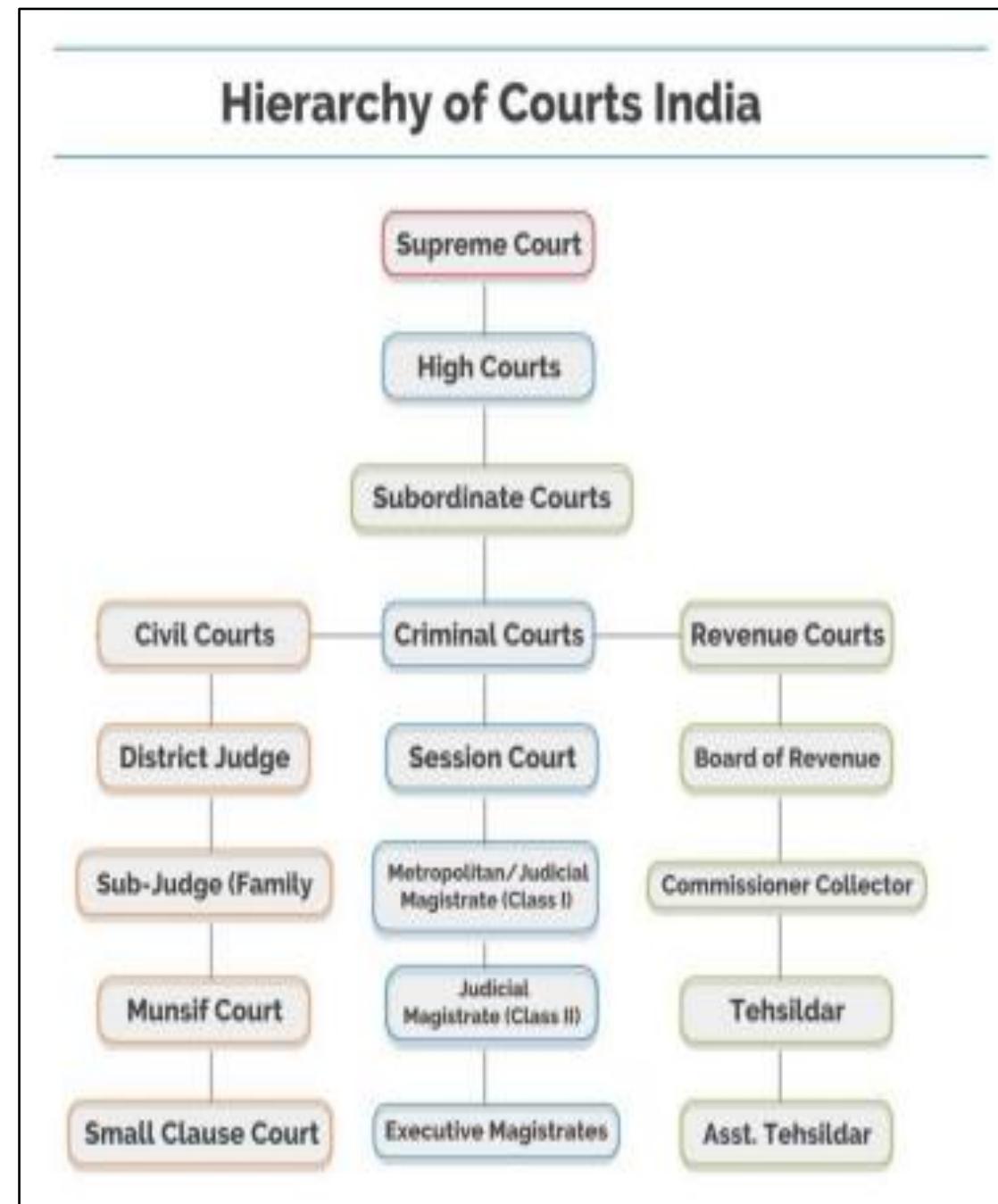
- a) *Civil Courts*
- b) *Criminal Courts*

**Civil Courts** in India deal with *cases related to disputes between two parties* related to the cases mentioned below – Money/Debt, Property, Housing, Marriage and Children – such as divorce, child custody, child support, or guardianship.

**Criminal Courts** are established to solve serious crimes such as assault, robbery, murder, arson, rape and other kinds of crimes. Criminal Courts are established to impart justice to people and punish the offenders that go against the law. There are three stages with respect to criminal court working in India. These include *inception, trial and punishment*. In India, the most authoritative criminal court is the Supreme Court of India. It is followed by the High Court, Sessions Court and finally the Judicial and Executive Magistrates.

# **THE HIERARCHY OF COURTS IN INDIA**

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graph TD; A[Supreme Court of India (The apex court)] --> B[High Court (Highest court at the state level)]; B --> C[Sessions/District Court]; C --> D[Judicial Magistrates of the First Class/Metropolitan Magistrate's Court]; D --> E[Court of the Judicial Magistrates of the Second Class]; E --> F[Executive Magistrates]
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# TYPES OF COURTS IN INDIA

## A) SUPREME COURT:

- The Supreme Court (SC) of India located in Delhi is the **highest or the apex judicial forum and final court of appeal.**
- Primarily, it is an **appellate court** that takes up appeals against judgements of the High Courts of the states and territories.
- The SC comprises the **Chief Justice** and **20 other Judges.**
- Every judge of SC shall be appointed by the President.
- The SC can pass any punishment from simple imprisonment to a death sentence.

**Latest Updates related to the Indian Supreme Court:** On November 11, 2024: Justice Sanjiv Khanna took an oath as the **51<sup>st</sup> Chief Justice of India (CJI)** at a ceremony at Rashtrapati Bhavan.



## B) HIGH COURT:

- **High Courts** are situated and are the Highest Courts at every State and Union Territories Level.
- According to **Article 214**, “*each state of India shall have a High Court*”. However, **Article 231**, also mentions that *there can be a common High Court for two or more States or for two or more states and a union territory*.
- There are **25 High Courts in India**, six having control over more than one State/UT. **Delhi has a High Court of its own among the Union Territories.**
- Judges in High Court are appointed by the President of India in consultation with the Chief Justice of India and the Governor of the State.
- High Courts are headed by a Chief Justice.
- A High Court can *pass punishment ranging from simple imprisonment to a death sentence.*

## C) DISTRICT AND SESSIONS COURT:

- The **highest court in each district** is that of the *District and Sessions Judge*.
- Generally, each state is divided into judicial districts presided over by a ‘District and Sessions Judge’, who has the highest judicial authority at the district level and is appointed by the State Governor on the advice of the State Chief Justice.
- In a **Civil Case**, the Judge is known as a District Judge and the trial is held in a District Court whereas, in a **Criminal Case**, the Judge is known as a Session Judge and the court is a Session Court.
- They *can pass punishments from simple imprisonment to death, but must be approved first by the High Court.*

#### **D) COURTS OF JUDICIAL MAGISTRATES:**

- It is a **Subordinate Court** presiding on criminal matters and are known as Criminal Courts.

- It includes:

- I) Courts of Judicial Magistrate of First Class** – These are at the second lowest level of the Criminal Court Structure in India. A Judicial Magistrate of First Class is under the general control of the Sessions Judge and is subordinate to the Chief Judicial Magistrate. They may pass a sentence of imprisonment for a term not exceeding 3 years, or of fine not exceeding Rs. 5000, or of both.

- II) Courts of Judicial Magistrate of Second Class** – These are at the lowest hierarchy of the Criminal Court Structure in India. They may pass a sentence of imprisonment for a term not exceeding 1 year, or of fine not exceeding Rs. 5000, or of both.

- III) Courts of Metropolitan Magistrates** – These are the second lowest level of the Criminal Court Structure in India. A Metropolitan Magistrate is a first class magistrate under the general control of the Sessions Judge and is subordinate to the Chief Metropolitan Magistrate. They may pass a sentence of imprisonment for a term not exceeding 3 years, or of fine not exceeding Rs. 10,000.

#### **Hierarchy of Judges in India.**

Chief Justice of India

(Supreme Court)



Chief Justice of High Courts



District Judge/ Sessions Judge



Civil Court

Criminal Court

(Senior Civil Judge)

(Chief Judicial Magistrate /  
Metropolitan Judge)



Principal Junior Civil Judge

Judicial Magistrate II Class /  
Metropolitan Magistrate I class



Junior Civil Judge/Munsif Court

**Note: Role of Judge in Criminal Trial and their Main Powers**

The role of a judge in a criminal trial is critical to ensure fairness, justice, and the application of law. Judges serve as impartial decision-makers, ensuring that the trial proceeds in accordance with the rules of law and that both the prosecution and the defense are given a fair chance to present their case. Their responsibilities extend beyond merely overseeing the proceedings to making decisions on the law, evidence, and the final judgment.

**Role of a Judge in a Criminal Trial:**

1. *Ensuring Fair Trial:* A judge ensures that the trial is conducted fairly by protecting the rights of both the prosecution and the defense. This includes ensuring that the accused is presumed innocent until proven guilty, allowing both sides to present their evidence, and making sure that there is no bias or undue influence.
2. *Interpretation and Application of Law:* A judge interprets and applies the law to the facts of the case. They decide which laws are relevant to the case and guide the jury (in jury trials) or make rulings themselves (in bench trials) on matters of law.
3. *Overseeing Evidence and Procedure:* A judge controls the flow of the trial, ensuring that only relevant and admissible evidence is presented. They rule on the admissibility of evidence, including objections from both parties, and may exclude evidence that violates legal rules, such as hearsay or illegally obtained material.
4. *Issuing Rulings on Motions:* The judge decides on motions submitted by either the defense or the prosecution, including motions to dismiss, motions for bail, or motions to exclude evidence.
5. *Directing the Jury (in jury trials):* In jurisdictions with jury trials, the judge instructs the jury on legal principles, standards of proof, and how to apply the law to the facts of the case. They ensure that the jury understands their role and duties.
6. *Sentencing:* After the trial and if the defendant is found guilty, the judge is responsible for sentencing the accused. The judge determines the appropriate penalty based on the facts of the case, statutory guidelines, and sentencing laws. In certain cases, the judge may have discretion in imposing a sentence.
7. *Ensuring Compliance with Legal Procedures:* The judge ensures that the trial follows due process and is conducted according to the procedural law, which includes protecting the rights of the accused, ensuring a fair opportunity for the defense, and preventing abuses during the trial process.
8. *Maintaining Order in the Courtroom:* A judge has the authority to maintain order in the courtroom, ensuring that the proceedings are respectful, orderly, and free from disruptions. This includes controlling the behavior of witnesses, attorneys, and others involved in the trial.
9. *Making Legal Decisions:* In bench trials (where no jury is involved), the judge not only oversees the trial but also acts as the fact-finder. The judge evaluates all the evidence and delivers a verdict based on the law and facts of the case.

**Note: Role of Judge in Criminal Trial and their Main Powers****Main Powers of a Judge in a Criminal Trial:**

1. *Power to Decide on the Admissibility of Evidence:* The judge has the discretion to determine which evidence is admissible in court, and can exclude evidence if it is deemed irrelevant or improperly obtained (e.g., through coercion or unlawful search).
2. *Power to Impose Bail or Deny Bail:* The judge has the authority to decide whether the accused should be granted bail or remanded in custody before trial, based on the nature of the offense, the likelihood of the defendant fleeing, and the potential danger to the public.
3. *Power to Issue Warrants:* A judge can issue search warrants or arrest warrants upon request from law enforcement, based on probable cause or evidence that supports the necessity of such warrants.
4. *Power to Control the Trial Process:* The judge has the power to control the order of the trial, rule on objections, and ensure that all parties respect the rules of evidence and procedure.
5. *Power to Give Instructions to the Jury:* In cases involving a jury, the judge instructs the jury on the relevant law and legal standards that should guide their deliberations, including the burden of proof and the elements of the crime.
6. *Power to Decide on Motions:* The judge has the authority to rule on various motions filed by the defense or prosecution, such as motions for a directed verdict, motions to suppress evidence, or motions to dismiss charges.
7. *Power to Decide the Verdict in Bench Trials:* In a bench trial, the judge not only oversees the trial but also serves as the fact-finder, deciding the verdict based on the evidence presented.
8. *Power to Pass Sentences:* After a conviction, the judge has the power to impose a sentence, which can range from fines and probation to imprisonment or even the death penalty, depending on the crime committed and the sentencing guidelines.
9. *Power to Grant or Deny Requests for Appeals:* A judge may decide whether an appeal should proceed and, in some cases, may rule on procedural issues that affect the outcome of an appeal.
10. *Power to Dismiss the Case:* A judge has the authority to dismiss the case if they believe that there is insufficient evidence to support the charges or if they find that the prosecution has not proved the case beyond a reasonable doubt.

# FIRST INFORMATION REPORT (FIR)

- It is a **written document, which is made by the police, when they receive any information about the commission of a cognizable offence.**
- It is **a report of information that reaches to the police first in point of time and that is why it is called FIR.**
- It is not necessary that only the victim of the crime should file the FIR. Anyone who has the knowledge or witnessed the crime the commission of the cognizable offence can file FIR (This could be a friend or a relative). Even the police who came to know about the commission of the crime can file a FIR himself.

## What is a Cognizable Offence? (A Non-Bailable Offence)

It is a type of crime in which the police can arrest a person without the warrant. He is authorized to start investigation in such an offence. For Example – Rape, Murder, Robbery, etc.

# PROCEDURE OF FILING AN FIR

- 1) The procedure of filing a FIR is prescribed in Section 14 of CrPC (Criminal Procedure Code, 1973).
- 2) When an information about the commission of cognizable offence is given orally, the police must write it down.
- 3) Such written statement must be read out to them (the complainant) by the police and then it has to be signed.
- 4) Once the information has been recorded by the police, it must be signed by the individual.
- 5) Copy of the FIR has to be collected free of cost by the individual.
- 6) People who cannot read and write must report their thumb impression in that statement.

## SIGNIFICANCE OF FIR

FIR is an important aspect of criminal investigation. FIR is necessary to start investigation in any cognizable crime or offence. As soon as FIR is filed, the actual process of investigation of crime starts.



# TYPES OF FIR

In India, the First Information Report (FIR) is a crucial document that sets the criminal justice process in motion. There are different types of FIRs, each serving a specific purpose within the legal framework.

## 1) Regular FIR

- *Definition:* A Regular FIR is the standard type of FIR registered under Section 154 of the Code of Criminal Procedure (CrPC), 1973, when the police receive information about the commission of a cognizable offense.
- *Purpose:* It begins an official investigation into the alleged crime.
- *Process:* Once the FIR is registered, the police begin the investigation, which may include arresting the accused, collecting evidence, and preparing a charge sheet.

## 2) Zero FIR

- *Definition:* A Zero FIR can be registered at any police station, irrespective of the jurisdiction where the crime occurred. It is called Zero FIR because it is registered without a serial number, which is assigned later when it is transferred to the police station with proper jurisdiction.
- *Purpose:* It ensures that a complaint is registered immediately, without delay, especially in cases where jurisdictional issues could impede the filing process.
- *Examples:* Cases of sexual assault, road accidents, or any other crime where immediate registration is crucial.

### 3) Non-Cognizable Report (NCR)

- *Definition:* An NCR is registered when the information pertains to a non-cognizable offense—one where the police cannot arrest the accused without a warrant and cannot start an investigation without the court's permission.
- *Purpose:* It documents the complaint, but further action requires a court order.
- *Examples:* Cases involving minor offenses like defamation, public nuisance, or simple hurt.

### 4) Counter FIR

- *Definition:* A Counter FIR is filed in response to an FIR already lodged, typically by the opposite party in a dispute. It often involves cases where both parties accuse each other of wrongdoing.
- *Purpose:* It provides an official platform for the opposite party to present their version of the events.
- *Examples:* Disputes involving physical altercations, property conflicts, or personal enmity.

### 5) Cross FIR

- *Definition:* Cross FIRs occur when two FIRs are registered by opposite parties in connection with the same incident, often leading to parallel investigations.
- *Purpose:* To ensure that both sides of the incident are investigated.
- *Examples:* Incidents of group clashes or road rage where both parties claim to be victims.

## 6) False FIR

- *Definition:* A False FIR is one that is registered based on incorrect or misleading information, often with malicious intent.
- *Purpose:* While it is illegal to file a False FIR, such cases occur and can lead to legal consequences for the person who filed it.
- *Consequences:* If proven false, the person who filed the FIR can be charged with offenses like giving false information to a public servant or defamation.

## 7) Online FIR

- *Definition:* In some states, police departments offer the facility to register FIRs online, particularly for non-emergency cases.
- *Purpose:* It provides a convenient method for citizens to report crimes, especially in areas with well-established digital infrastructure.
- *Examples:* Online FIRs can be filed for theft, lost property, or minor offenses.

The FIR is a fundamental part of the criminal justice system in India, and understanding the different types of FIRs helps in navigating the legal processes more effectively. Each type serves a specific purpose and is designed to ensure that justice is served promptly and fairly.

# **DIFFERENCE BETWEEN CIVIL AND CRIMINAL JUSTICE**

CIVIL JUSTICE	CRIMINAL JUSTICE
Goal is to hold the defendant accountable to the victim.	Goal is to hold the defendant accountable to the state.
Victim initiates and controls the case.	State prosecutes and controls the case.
Victim is a party and is entitled to all important information relating to the case, and can make decisions about the direction of the case such as settlement of the claim.	Victim is a witness and does not have the right to direct the prosecution of the case or to veto the prosecutor's decisions.
Victim must prove that it is more likely than not that the perpetrator is liable.	State must prove that the perpetrator is guilty "beyond a reasonable doubt."
Victim and perpetrator appear as equals.	Perpetrator is presumed innocent until proven guilty.
If the perpetrator is found liable he/she owes an obligation to the victim, such as money to compensate for medical and therapy expenses, psychological damage, damage to family relationships, and lost wages. The court can order the perpetrator to pay for non-economic damages, such as pain and suffering and punitive damages.	If perpetrator is found guilty he/she is subject to punishment such as probation or jail, and is held accountable to the state. The victim will not obtain money unless the court orders the defendant to pay restitution for the victim's out-of-pocket expenses. The court cannot order restitution for non-economic damages.
The victim can sue the perpetrator in civil court regardless of whether the perpetrator has been found guilty in a criminal prosecution.	If the perpetrator is found not guilty, the state cannot initiate a second prosecution.

# PUNISHMENT

## WHAT IS PUNISHMENT?

- Punishment is the “*imposition of an undesirable outcome on a group or individual*”.
- The practice of the punishment of crimes is known as **penology**.
- Punishment will be carried out formally under a law system or informally in other social settings such as within a family.
- Reason for punishment includes – **deterrence, rehabilitation, incapacitation, etc.**
- Punishment can be harmful as well as positive.
  - a) The depletion of behavior via the application of an unpleasant stimulus is known as ***positive punishment***.
  - b) Removing a peaceful stimulus is known as ***negative punishment***.



# OBJECT OF PUNISHMENT



The main or the principal object of punishment is the **Prevention of Crime/Offence**.

A **National Penal Policy of the State** should *aim to protect the society and reclaim the criminal by evolving measures to prevent people from committing crimes.*

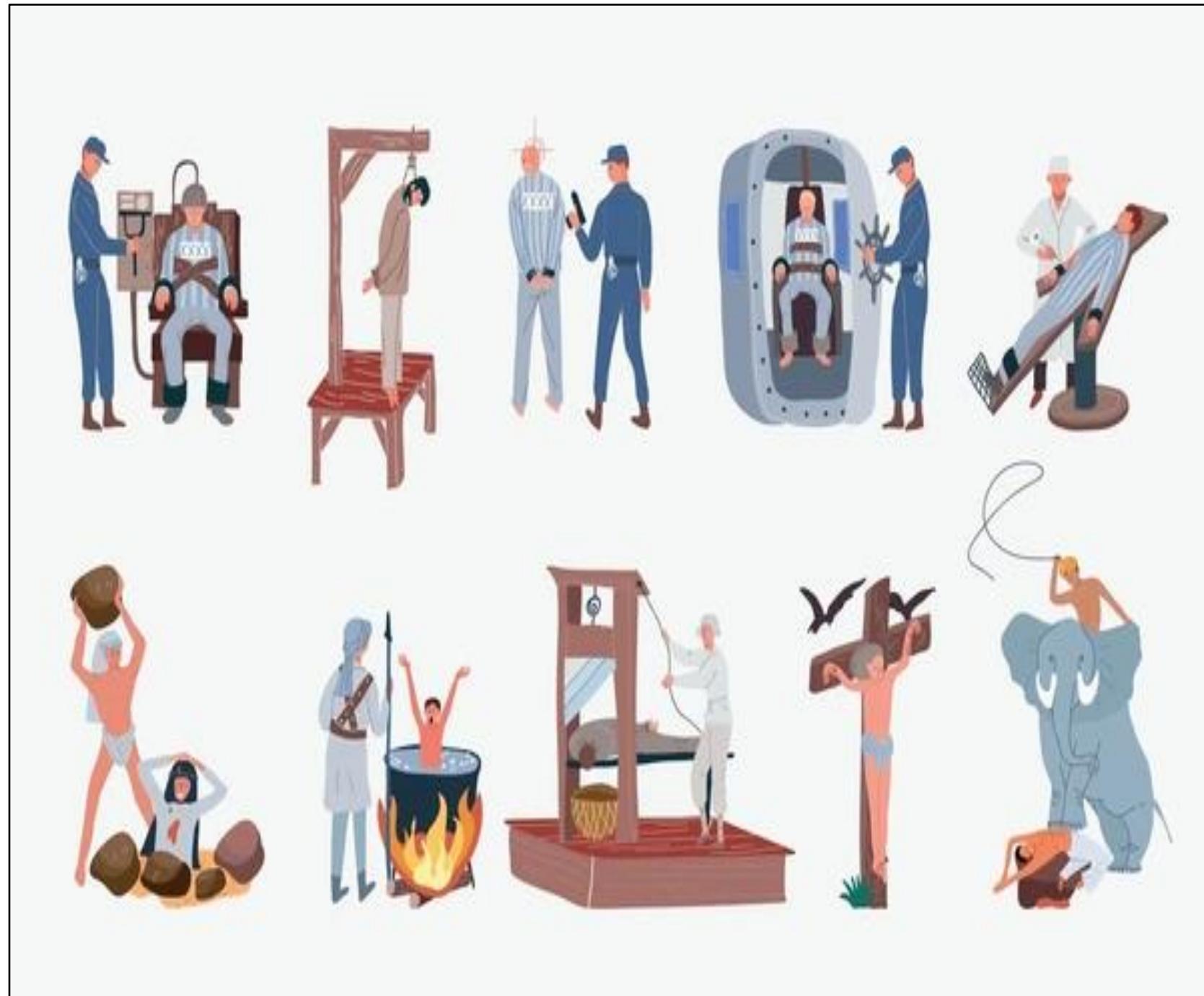
Every punishment is intended to have a double effect, viz. :

1. To prevent the person who has committed a crime from repeating the act or omission.
2. To prevent other members of the society from committing similar crimes.

There are four different theories of punishment, viz., - **Deterrent, Preventive, Retributive and Reformatory**.

1. **Deterrent:** The object of criminal justice in awarding punishment, according to this theory is *to deter people from committing a crime*. The infliction of punishment serves as a check on others who are evil-minded. But this theory is not absolutely correct for a hardened criminal, because he/she becomes accustomed to the severity of punishment and no amount of deterrence prevents him from indulging in crime.
  2. **Preventive:** It aims *to prevent a repetition to the offence by the offender by giving penalties such as imprisonment, death and exile*. This form of punishment also fails to achieve the desired end. Persons who visit jail once are habituated to it.
  3. **Retributive:** According to this, *the offender should be made to suffer in proportion to the injury caused to the victim, viz., and a tooth for a tooth or an eye for an eye*. It is a brutal form of punishment and betrays an utter ignorance of the causes that lead to crime.
  4. **Reformative:** The object of the punishment must not be to cause vengeance but so *to reform the criminal as to prevent him from further crime*.

# KINDS OF PUNISHMENT

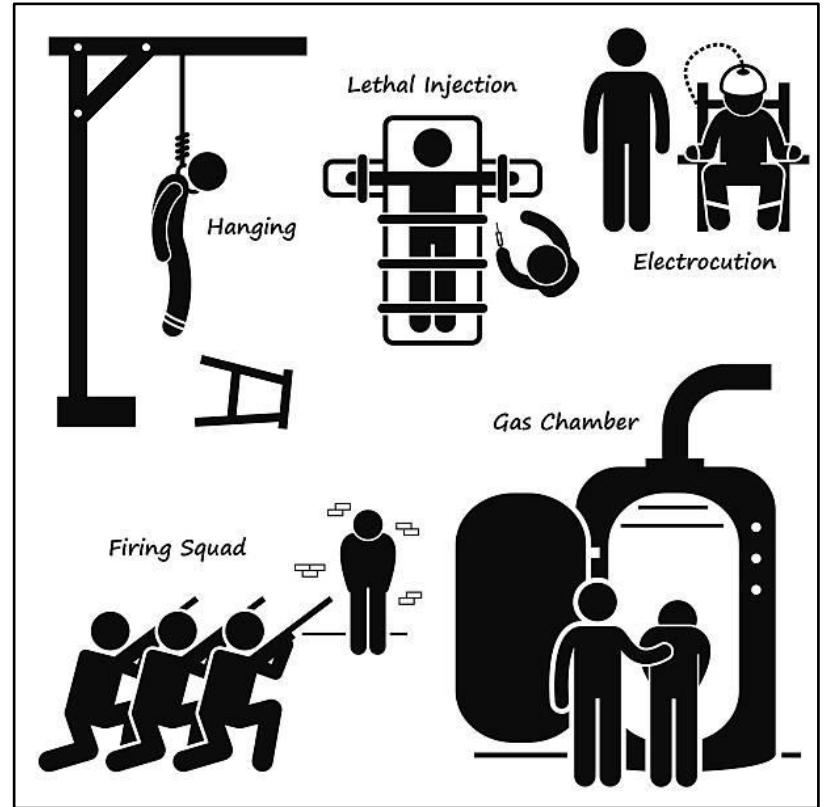


# KINDS OF PUNISHMENT

Section 53 of the IPC, 1860 (now in Section 4 of BNS, 2023) mentions *five kinds of punishments*:

**a) Death Penalty –**

- It is capital punishment, as the criminal hangs until death. This type of punishment is rare.
- Death punishment can be provided for offences under sections 121, 132, etc.



**b) Life Imprisonment –**

- Imprisonment for life means being in jail for the whole of the remaining life period of the criminal's natural life.
- As per section 57 of IPC, life imprisonment is 20 years. Imprisonment for life cannot be simple; it is always rigorous.
- The supreme court of India defined imprisonment for life as imprisonment for the remainder of the natural energy of the criminal.

Continued....

c) **Imprisonment –**

- This punishment removes all the convict's freedom and puts him in jail.
- There are *two kinds of imprisonment* –

i) **Rigorous:** In rigorous imprisonment, the convict works hard as a laborer. They are assigned tasks like cutting wood, digging, etc.

ii) **Simple:** Imprisonment where an accused convicted of a crime is kept in prison without any labor or hard work.



d) **Forfeiture of Property –**

- Under this punishment, the government seizes all the property or assets of the convicted.
- The seized property or asset may be movable or immovable.
- Forfeiture of property as punishment is for offences under section 126 and section 127.





**e) Fine –**

- It is a kind of **monetary punishment**.
- The convict has to pay the fine as a punishment for the offence.
- According to section 64 of the Indian Penal Code, if anyone fails to pay a fine, the court can issue orders for imprisonment.

**f) Community Service –**

- Community service is a form of punishment that requires offenders to perform unpaid work for the benefit of the community.
- It is a non-custodial punishment that is often given to first-time offenders or those convicted of less severe offenses.
- In India, community service was introduced as a punishment under the Bharatiya Nyaya Sanhita (BNS) in 2023. It is now an option for minor offenses such as: Petty theft, Public nuisance, False defamation complaints, and Non-appearance in court.
- The type of community service assigned to an offender is based on their skills and suitability. For example, a software programmer might be assigned to develop a website for a non-profit organization, or an accountant might be assigned to offer financial advice to low-income families.

# PRIMARY AND SANCTIONING RIGHTS

## Primary Rights

1. Primary rights or rights may be explained as *the bundle of rights which are the privileges enjoyed by any person, e.g., a person's right to liberty, safety and reputation.*
2. A violation of breach of the primary rights *gives rise to a sanctioning right or remedial right.*
3. Primary rights exist independently, while sanctioning rights have no independent existence and arise only on the violation of primary rights.
4. The *enforcement of a primary right* is called *specific enforcement* whereas the *enforcement of a sanctioning right* may, according to Salmond, be called *sectional enforcement*.
5. Proceedings to compel a defendant to pay a debt, to perform a contract or to repay money wrongly received, furnish examples of specific enforcement and the right enforced is primary right.

## Sanctioning Rights

Sanctioning rights are divisible into two kinds:

- (a) rights to exact and receive from the defendant a sum of money by way of pecuniary penalty (non-criminal monetary penalties imposed by a court in civil proceedings that apply the civil standard of proof) for the wrong which he has committed;
- (b) rights to exact and receive damages to compensation for the injury that may have been caused to the sufferer.

# **PRIMARY AND SECONDARY FUNCTIONS OF COURT OF LAW**

## **Primary Functions of Courts of Law**

The primary functions of a court of law are the *administration of justice*, viz., the application by the State of the sanction of physical force to the rules of justice. Justice is administered by a court by the enforcement of a right and the punishment of wrongs.

## **Secondary Functions of Courts of Law**

The secondary functions of courts of law consist of activities which, though primarily exercisable by the State, have for the sake of convenience been delegated to the courts of law.

The secondary functions of the courts are rapidly increasing with the growth of civilization. They have been classified by Salmond into four groups:

1. **Petition of Right:** If a subject claims a debt or any other right against the State, or raises an action for breach of a contract against the State, he can file a petition of right in a court of law. The court will investigate the claim and pronounce judgment in accordance with law.
  
2. **Declaration of Right:** A litigant may require the assistance of a court of law not only for the enforcement of any right but also for a declaration that such a right exists. He seeks the assistance of the courts because his rights, though not violated, are uncertain. Examples of declaratory proceedings are declaration of legitimacy, declaration of nullity of marriage, etc.
  
3. **Administration:** A third form of secondary judicial action includes those cases where the court undertakes the management and distribution of property by means of the administration of trust, liquidation of a company by the court or realization and distribution of an insolvent casual.
  
4. **Titles of Right:** Sometimes judicial decrees are employed as the means of creating, extinguishing or transferring rights, e.g., a divorce decree, a decree ordering judicial separation, or an adjudication of insolvency. In such cases the judgment does not operate as the remedy of a wrong, but as the title of a right.

# WHAT IS CRIME?



- Crime is defined as *an offence that is against the law of land*.
- It is also defined as *an unlawful act which is an offence against the public and the perpetrator of that act is liable to legal punishment*.
- It is a breach of criminal law.
- It is also *an omission or violation of the law*.
- In other words, *it is an act committed in violation of the public law*.
- *Crime is human conduct that violates the criminal laws of a state, the federal government, or a local jurisdiction that has the power to make and enforce the laws*.
- Crime consists of conduct that is in violation of federal, state or local laws. When a law is broken, there is a penalty imposed. The penalty can include a loss of one's freedom or even one's life. Without a law to indicate the particular prohibited behaviour, there can be no crime. Therefore, even if an individual's behaviour is so horrible that it is shocking, it will still not be considered criminal if there is no law making it a crime.

# CRIME VS. CIVIL WRONG

*Crime and civil wrongs (or torts)* are two distinct categories of unlawful actions under the law. While they may sometimes overlap, they differ in their nature, legal consequences, and the entities involved.

BASIS	CRIME	CIVIL WRONG (or TORT)
Definition	A <b>crime</b> is an act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law, which makes it punishable by the government. Crimes typically harm public order, safety, or welfare.	A <b>civil wrong</b> , also known as a <b>tort</b> , is an act that harms or infringes upon the rights of an individual or a private party, leading to legal liability. Unlike crimes, civil wrongs do not necessarily affect society as a whole but harm the person who has been wronged.
Parties Involved	In criminal law, the <b>State or government</b> is the complainant (prosecutor), and the accused (defendant) is the person being prosecuted for the offense. The state, through law enforcement and prosecutors, represents the interest of society.	In tort law, the dispute is between <b>private individuals or entities</b> . The party bringing the case is called the <b>plaintiff (victim)</b> , and the person or entity accused of causing the harm is called the <b>defendant</b> .
Purpose	The primary purpose of criminal law is to <b>punish</b> the wrongdoer and <b>deter</b> others from committing similar offenses. Criminal law seeks to protect society by maintaining public order and enforcing standards of conduct.	The primary purpose of civil law (tort) is to <b>compensate</b> the victim for the harm suffered. Tort law aims to provide <b>reparations</b> for personal injuries, property damage, and other types of harm caused by someone else's actions or negligence.
Burden of Proof	In a criminal case, the <b>burden of proof</b> is on the <b>prosecution</b> , and it must prove the defendant's guilt <b>beyond a reasonable doubt</b> . This is the highest standard of proof in law because of the potential severity of criminal penalties.	In a civil case, <b>the burden of proof</b> is on the <b>plaintiff</b> , but the standard is " <b>preponderance of the evidence</b> ", which means the plaintiff only needs to prove that it is more likely than not that the defendant is liable.
Consequences	If found guilty, the accused may face <b>criminal penalties</b> such as imprisonment, fines, probation, community service, or even the death penalty (in certain jurisdictions). The focus is on punishing the defendant for violating societal norms.	If found liable, the defendant may be ordered to pay <b>damages</b> (monetary compensation) or specific performance (to fulfill a contractual duty). The focus is on making the victim whole again, typically through financial compensation for harm caused.
Examples	Murder (Sec. 101, BNS); Theft (Sec. 303, BNS); Assault (Sec. 130, BNS); Fraud (Sec. 318(4), BNS); Kidnapping (Sec. 137, BNS)	<ul style="list-style-type: none"><li>• Negligence: A driver causing an accident due to carelessness.;</li><li>• Defamation: False statements that harm a person's reputation.;</li><li>• Nuisance: Interference with a person's enjoyment of their property.;</li><li>• Trespass: Unauthorized entry onto someone's land or property.;</li><li>• Breach of Contract: Failure to fulfill contractual obligations.</li></ul>
Legal Procedure	Criminal cases are prosecuted by the state, and <b>a criminal trial</b> is held in a criminal court (e.g., District Court, Sessions Court). If found guilty, the defendant may face criminal penalties.	Civil cases are initiated by the individual or organization suffering the wrong (the plaintiff), and are decided in <b>civil courts</b> . The outcome typically involves an order for compensation rather than punishment.

# LAWS TO COMBAT CRIME

- a) Indian Penal Code, 1860 (replaced by the Bharatiya Nyaya Sanhita (BNS) on July 1, 2024)
- b) Criminal Procedure Code, 1973 (replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS) on July 1, 2024)
- c) Indian Evidence Act, 1872 (replaced by the Bharatiya Sakshya Adhiniyam, 2023 (BSA) on July 1, 2024)

# CLASSIFICATION OF LAWS

- a) Civil Laws
- b) Criminal Laws

# DIFFERENCE BETWEEN CIVIL AND CRIMINAL LAWS

CIVIL LAW	CRIMINAL LAW
<p>It is a general law which solves disputes between 2 organizations or individuals. Civil Law deals with Property, Money, Housing, Divorce, custody of a child in the event of divorce etc.</p>	<p>It deals with offences that are committed against the society. Criminal Law will deal with serious crimes such as murder, rapes, arson, robbery, assault etc.</p>
<p>It is initiated by the aggrieved individual or organization.</p>	<p>The Government files the petition in case of criminal law.</p>
<p>In case of Civil Law, to start a case, the aggrieved party needs to file a case in the Court.</p>	<p>As per Criminal Law, to start a case, a petition cannot be filed directly in a court, rather the complaint should be first registered with the police, and the crime needs to be investigated by the Police. Thereafter, a case can be filed in the court.</p>
<p>Objective: To protect the rights of an individual or organization and make sure that the concerned organization or individual receives the compensation.</p>	<p>Objective: To punish the accused and protect society, maintain law and order.</p>
<p>In Civil Law, the wrongdoer gets sued by the complainant or the aggrieved party.</p>	<p>In Criminal Law, the accused person will be prosecuted in the court of law.</p>
<p>In this, there is no punishment like Criminal Law, but the aggrieved party receives the compensation and the dispute gets settled.</p>	<p>In this, punishment is given as per the seriousness of the criminal offence committed or a fine could be imposed.</p>
<p>In the case of Civil Law, the power of the court is to pass judgement or injunction to compensate for damages caused to the aggrieved party.</p>	<p>In the case of Criminal Law, the powers of the court are charging a fine, imprisonment to the guilty of a crime, or discharge of the defendant.</p>
<p>In Civil Law cases, the defendant is considered to be either liable or not liable.</p>	<p>In Criminal Law parlance, the defendant is considered either guilty or not guilty by the court.</p>

# CATEGORIES OF CRIMES

There are 3 categories of crime: **Felonies, Misdemeanours and Violations.**

- a) **Felonies:** These are the most serious of crimes that one can commit. They are punishable by one year or more imprisonment. In fact, there are some states which impose the death penalty for certain types of felony crimes. Felony crime includes personal crimes, such as murder, robbery and rape. Other types are crimes against property, including burglary or larceny.
- b) **Misdemeanours:** They are less serious crimes. These crimes are punishable by less than one year imprisonment. Examples – assault, battery or writing bad cheques.
- c) **Violations (also known as infractions):** They are less serious than misdemeanours and include traffic violations or violations of town or city ordinances.

# TYPES OF CRIMES

There are *many different types of crime*, they are classified as –

1. **Against individuals:** often called ***Personal Crimes***. The harm that is sustained due to a personal crime is always against a person. This category of crime includes: *Murder, Forcible Rape, Robbery, Aggravated Assault, Terrorism*.
2. **Against Property:** called ***Property Crimes***, which are not directed specifically at individual people but aimed at property. With property crime, the property may be destroyed or the property may be defaced. Usually, people are not injured, but it is possible that individuals may be harmed, such as in Arson. Crimes against property include *Burglary, Theft, Arson*.
3. **Against State Security:** This section explores crimes against the nation, such as *Treason, Sedition* (Advocating or printing matter that advocates the forceful or violent overthrow of the government), *Sabotage* (Varies: either destroying, damaging, or producing defective property that impedes defence capabilities), *Espionage* (Spying) and *Terrorism*.

# CAUSES OF CRIMES/CHARACTERISTICS OF CRIMINAL

Fundamentally **Poverty, poor living condition, discrimination, poor education** are the Causes of Committing Crimes. It is also the *result of society's failure to produce a decent life for all the people equally.*

Generally, **crimes are committed with an evil intention**. It may be a result of an urge. They are characterized by the:

- *Food Urge/Hunger*: This leads to theft.
- *Sexual Urge*: This is the feeling of having sexual satisfaction. This results in sexual offences and rape.
- *Activity Urge*: This is the urge in which the person wants to be active. Ends up in commission of adventures (crime).
- *Selfishness and Assertion Urge*: Individual wants to achieve something in life. He will try to attract others to become popular and thus, then commit crime.
- *Popularity Urge*: Commits crime to become popular and famous.

Although there are various basic urges there is powerful interaction that determines an individual's personality and that affects the behaviour to a considerable extent.

These urges can be explained on the basis of psychological, physiological and environmental/social causes.

Continued....

### **1. Psychological Causes:**

- *Temperament* – It concerns the manner in which an individual's spiritual energy takes its cause and is noticeable in his conduct. It is also called as an Individual's Personality. Among the most of the criminals there is often an instability of temperament, which is closely associated with attitude. Criminal have a classical temperament instability which actually drives them to commit crimes.
- *Feeling/Emotion* – Anti-social behaviour is always associated to a large extend with the emotion of the particular criminal. (instability in emotions/losing their control).
- *Intellectual Mindful Criminal* – People who are above normal by virtue of intellect may use their mental power to plan perfectly to commit crimes with least risks and least accountability. They use refined and high tech methods or techniques to commit crime (White collar crimes).
- *Psychic/Maniacal Criminals* – Patients with mental disability are though not accountable for their criminal activities, commit crimes due to their mental disability of thinking properly.
- *Character* – It is a part of personality that regulates the behaviour. If an individual has defect in their character such as aggressiveness, intolerance, brutality and cunning, they would be irrational and lose self-control and commits crimes.
- *Stress* – It is one of the important factor that leads to commission of crimes.
- *Aggression* – Aggression and violence always go together. And obviously is one of the most common causes of criminal activity.
- *Depression* – Another most important cause of criminal activity.

### **2. Physiological Causes:**

These are basically due to the biological nature and origin of criminal act. These may be manifested due to –

- The depletion of dopamine and serotonin level (*Neurotransmitters*),
- Presence of abnormal chromosomal pattern such as extra Y chromosome in their genes. Popularly known as *Super-males* with the pattern of chromosomes XYY.

### **3. Social Causes:**

Discrimination in the society, Social Isolation due to the lower level of socio-economic status and other psychosocial factors are also a driving forces for the commission of crimes.

# ESSENTIAL ELEMENTS OF CRIMINAL LAW

The main criminal laws in India include the [Indian Penal Code](#), [Indian Evidence Act](#) and [Criminal Procedure Code](#). People often refer to these three as general laws. Apart from these three laws, we also have other laws that relate to specific kinds of offences. For example, the Prevention of Money Laundering Act deals with particular financial crimes.

The most important thing common in all these laws is that they contain certain basic elements. The following are four basic elements of crime –

1. Accused person
2. Mens rea
3. Actus reus
4. Injury

a) **Accused person** –

Continued....

- No crime can ever occur out of thin air because that would simply be an accident. In order to constitute a crime, it is important for somebody to commit it. The law should always be able to pin-point the person who is responsible for committing an offence.
- The term “**accused person**” *does not suggest that only a human being can commit offences.*
- According to **Section 11 of IPC (now in Section 2 (26) in BNS, 2023)**, the term “**person**” *also includes a company and an association or body of persons. Therefore, even a trust, an NGO and a public company can commit offences.*

Furthermore, certain offences can involve more than one person for the same crime. In such cases, all persons will face trial and may have to face punishment together.

b) **Mens rea** –

- A mere person will never commit a crime unless he possesses some intention to commit it. The law generally refers to this intention as **mens rea**, which means “**guilty mind**” in Latin.
- The term mens rea has been derived from a famous Latin maxim: Actus non facit reum nisi mens sit rea. This basically means that *an act cannot be guilty if it does not accompany a guilty mind.*
- The element of mens rea itself comprises of certain inherent elements, including *intention, motive or knowledge*. For example, Section 300 of IPC (**now Section 101, BNS**) contains various kinds of acts which amount to the offence of murder. These acts may include an act done with the “intention” of causing bodily injury sufficient to cause death.
- Furthermore, it also includes an act of which the offender has “knowledge” of it being imminently dangerous. Therefore, we need to look at the relevant provisions to understand what kind of intention is necessary.

Although mens rea is an essential element of crime, some offences can occur without it. For example, **Section 304-A of IPC (now Section 106, BNS) makes death by negligence a criminal offence.** In such cases, a “negligent act” would not include the intention to cause death. However, negligence or mistake itself is sufficient to constitute a crime.

**c) Actus reus –**

- Merely possessing a guilty mind and thinking of committing a crime is not enough.
- The accused person must also act on that intention and do something in its furtherance.
- Actus reus basically refers ***to an act or omission which leads to the completion of an offence.***
- Both mens rea, as well as actus reus, together are important to create an offence.
- Actus reus can be a ***positive act, such as stabbing a person to cause his death.*** It can also be an ***omission (failure) to perform an action.*** For example, driving a vehicle without a driving license is an omission.

**d) Injury –**

- The last of the basic elements of crime is an injury.
- There can be no crime if no person faces some kind of an injury.
- According to Section 44 of IPC (now in Section 2 (14), BNS), **“injury”** means ***any harm caused to a person illegally either in mind, body, reputation or property.***
- However, there can be ***some crimes which might not require injuries to anybody.*** For example, driving without a driving license is a crime even if it may not harm anybody.

# BHARATIYA NAGARIK SURAKSHA SANHITA 2023, (BNSS)

## What are Cognizable Offences ?

- Offences that are punishable with not less than 3 years of imprisonment are serious offences and are considered **Cognizable**.
- The **Bharatiya Nagarik Suraksha Sanhita 2023, (BNSS)** under **Section 2(g)** states that “*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.
- Cognizable offences are those in which the *police can arrest the accused without a warrant*. The police can also begin an investigation without the permission of the court. The accused is arrested and produced before the court at the stipulated time.
- **Murder, rape, theft, kidnapping, dowry death, etc.** are some of the examples of cognizable offences.
- These offences *can be both bailable, or non-bailable, depending upon the seriousness of the crime*.

### What are Non-Cognizable Offences ?

- An offence that is less serious in nature is considered **Non-Cognizable**.
- Under Section 2(o) of the Bharatiya Nagarik Suraksha Sanhita 2023, (BNSS), “*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;. These are mentioned in the first schedule of the Indian Penal Code and **are bailable**.
- In these offences, the police cannot arrest the accused without an arrest warrant and cannot start an investigation without the permission of the court.
- **Non-serious crimes such as assault, cheating, forgery, defamation, public nuisance, etc. are non-cognizable offences.**
- As per **Section 155 of the CrPC**, if a police officer receives information about a non-cognizable crime, he is supposed to enter the case in the station diary and refer the informant to the magistrate. Only after receiving permission from the magistrate, the police can start investigating the matter. After concluding its investigation, a charge sheet is filed with the court, which is then followed by a trial. If a case has been made out, the court then issues a final order of arrest.

# POWERS OF POLICE

## Cognizable Offences:

**Section 175 of the BNSS, 2023** outlines the powers of police officers to investigate cognizable cases:

1. Any officer in charge of a police station may investigate a cognizable case without the prior approval of a magistrate, provided that the court with jurisdiction over the local area within the station's limits has the authority to inquire into or try the case under Chapter XIV.
  - *Proviso:* Depending on the nature and gravity of the offence, the Superintendent of Police may direct the Deputy Superintendent of Police to take over the investigation.
2. The proceedings of the police officer in such cases cannot be challenged at any stage on the ground that the officer was not empowered to investigate the case under this section.
3. A magistrate empowered under Section 210 may, after reviewing an application supported by an affidavit under Section 173(4) and conducting any necessary inquiries, order an investigation as mentioned above.
4. When dealing with complaints against public servants regarding actions taken in the course of their official duties, an empowered magistrate under Section 210 may order an investigation, subject to:
  - Receiving a report containing the facts and circumstances of the incident from a superior officer; and
  - Considering the assertions made by the public servant regarding the context and situation leading to the alleged incident.
5. Additionally:
  - The police are obligated to register an FIR when the information discloses a cognizable offence.
  - If the offence occurs outside the jurisdiction of the police station, the police must still register the FIR and forward it to the appropriate police station with jurisdiction.

# POWERS OF POLICE

## Non-Cognizable Offences:

**Section 174 of the BNSS, 2023** provides the procedure for police officers when dealing with non-cognizable cases:

1. Recording and Reporting Information
  - When information about a non-cognizable offence committed within the limits of a police station is provided to the officer in charge, the officer must:
    - Record or cause to be recorded the substance of the information in a designated book as prescribed by the State Government rules.
    - Refer the informant to the Magistrate.
    - Forward the daily diary report of such cases to the Magistrate on a fortnightly basis.
2. Prohibition on Investigation Without Magistrate's Order
  - A police officer cannot investigate a non-cognizable case without an order from a Magistrate empowered to try the case or commit it for trial.
3. Powers Upon Receiving Magistrate's Order
  - Upon receiving an order from the Magistrate, the police officer may exercise the same powers during the investigation as in a cognizable case, except the power to arrest without a warrant.
4. Cases Involving Both Cognizable and Non-Cognizable Offences
  - If a case involves two or more offences, with at least one being cognizable, the entire case is treated as a cognizable case, even if the other offences are non-cognizable.

# PROCEDURE TO BE FOLLOWED

The Bharatiya Nagarik Suraksha Sanhita 2023, (BNSS) lays down the procedure that the investigating authorities and the rest of the legal system have to follow while dealing with criminal cases. The approach that the police should have while dealing with cognizable and non-cognizable offences is as follows:

**A) Cognizable Offences** – These are serious offences where police can act without prior approval from a Magistrate.

***Key Provisions (Section 175):***

• *Power to Investigate:*

- The officer in charge of a police station can investigate cognizable cases without the order of a Magistrate, provided the offence falls within their local jurisdiction.
- For serious offences, the Superintendent of Police may assign the investigation to the Deputy Superintendent of Police.

• *Registration of FIR:* The police are obligated to register a First Information Report (FIR) if the information provided discloses a cognizable offence, even if the offence occurred outside their jurisdiction. The FIR must be forwarded to the appropriate police station.

• *Commencement of Investigation:* The investigation may begin immediately after registration of the FIR, including the power to arrest the accused without obtaining a warrant.

• *Judicial Oversight:* A Magistrate empowered under Section 210 may order further investigation upon receiving an application supported by an affidavit under Section 173(4).

• *Special Cases Involving Public Servants:*

- When a complaint involves a public servant acting in the course of their official duties, the Magistrate may order an investigation after considering:
  - A report from a superior officer detailing the incident.
  - Assertions by the public servant explaining the context of the alleged incident.

# PROCEDURE TO BE FOLLOWED

b) **Non-Cognizable Offences** – These are less serious offences where police action requires prior approval from a Magistrate.

***Key Provisions (Section 174):***

• ***Recording Information:***

- When informed of a non-cognizable offence, the police must:
  - Record the substance of the information in a book as prescribed by State Government rules.
  - Refer the informant to the Magistrate.
  - Submit a fortnightly report of such cases to the Magistrate.

• ***Investigation with Magistrate's Permission:*** The police cannot investigate a non-cognizable case or arrest any individual without an order from the Magistrate.

• ***Powers Post-Approval:*** Upon receiving the Magistrate's permission, the police can proceed with the investigation, exercising the same powers as in a cognizable case, except for arresting without a warrant.

• ***Combination of Offences:*** If a case involves both cognizable and non-cognizable offences, the entire case is treated as a cognizable offence, enabling the police to proceed without requiring prior approval.

## COGNIZABLE OFFENCES VS. NON-COGNIZABLE OFFENCES

BASIS	COGNIZABLE OFFENCES	NON-COGNIZABLE OFFENCES
<b>Meaning</b>	Cognizable offences are those in which the investigating authority can arrest the accused without an arrest warrant.	Non-cognizable offences are those in which the investigating authority cannot arrest an accused without an arrest warrant.
<b>Permission of court</b>	Not required, investigation can be initiated as soon as an FIR is filed.	Required, investigation can begin only after the court issues an order.
<b>Severity of crime</b>	Cognizable offences are serious crimes.	Non-cognizable offences are less serious.
<b>Examples</b>	Murder, theft, kidnapping, etc.	Assault, cheating, defamation, etc.
<b>Statutory</b>	It is defined in the Section 2(g) of the Bharatiya Nagarik Suraksha Sanhita 2023, (BNSS).	It is defined in Section 2(o) of the Bharatiya Nagarik Suraksha Sanhita 2023, (BNSS).

# BAILABLE AND NON- BAILABLE OFFENCE

BASIS	BAILABLE OFFENCES	NON-BAILABLE OFFENCES
<b>Provision under BNSS</b>	u/s 2(c) of BNSS, "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;	It is also defined u/s 2(c) of BNSS, "non-bailable offence" means any other offence;
<b>Intensity of Crime</b>	Bailable offences are considered less serious in nature.	Whereas, Non- Bailable offences are considered more serious / heinous in nature
<b>Quantum of Punishment</b>	As a general rule bailable offences are those in which punishment is for or less than 3 years. But there are some exceptions to this rule.	The quantum of punishment is high in Non- Bailable offences which may extend to Life Imprisonment..
<b>Power to Grant Bail</b>	In bailable offences (Section 478 of BNSS), bail is a right and is granted by the police or court as a matter of course. Indigent individuals unable to furnish surety may be released on a personal bond.	For non-bailable offences (Section 480 of BNSS), bail is discretionary and depends on the severity of the offence, prior convictions, and other case-specific factors. While bail is generally denied for offences punishable by death or life imprisonment, exceptions may apply for children, women, or individuals who are sick or infirm. Courts must record reasons for granting or denying bail and ensure conditions like non-interference with evidence or witnesses.
<b>Examples</b>	Cheating (Section 316 BNS), Affray (Section 213 BNS), and Bribery for Elections (Section 171E IPC corresponds to Section 171 BNS).	Dowry Death (Section 106 BNS), Murder (Section 101 BNS), Rape (Section 63 BNS), and Voluntarily Causing Grievous Hurt (Section 88 BNS).

# SENTENCES WHICH THE COURT OF CHIEF JUDICIAL MAGISTRATE MAY PASS

## Who is a Chief Judicial Magistrate (CJM)?

A **Chief Judicial Magistrate (CJM)** is a judicial officer who presides over the Chief Judicial Magistrate's Court, the second-tier court in India's criminal court structure:

- ❖ Appointed by the High Court for each district that is not a metropolitan area.
- ❖ In charge of the Criminal Judiciary at the district level.
- ❖ Can revise or alter orders made by Second Class Judicial Magistrates.
- ❖ Can transfer cases to other courts within the judicial district.
- ❖ Can make rules or special orders to distribute business among the Judicial Magistrates under their supervision.
- ❖ Is the subordinate to the Sessions Judge.

The **CJM and the Chief Metropolitan Magistrate (CMM)** have equal powers and superintendence over magistrates, but the difference is the area in which they operate.

The **current Chief Judicial Magistrate of Gandhinagar** is **Mr. D.J. Rajput**.

# SENTENCES WHICH THE COURT OF CHIEF JUDICIAL MAGISTRATE MAY PASS

A *Chief Judicial Magistrate (CJM)* court can pass any sentence authorized by law, except for:

- Sentences of death,
- Sentences of imprisonment for life, and
- Sentences of imprisonment for a term exceeding seven years.

The CJM court has other powers, including:

- Conducting preliminary inquiries into criminal cases,
- Issuing search warrants,
- Granting bail to accused persons, and
- Hearing and deciding claims related to attachment of property.

The limitation on the sentencing powers of CJM courts is intended to:

- Maintain a tiered judiciary system
- Ensure that cases with potentially severe penalties are adjudicated by courts with the corresponding authority level
- Safeguard the rights of the accused to a fair trial for serious offences

# **SENTENCES WHICH THE COURT OF CHIEF JUDICIAL MAGISTRATE MAY PASS**

## **BNSS – Section 23: Sentences which Magistrates may pass**

### **Description**

1. The **Court of a Chief Judicial Magistrate** may pass *any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.*
2. The **Court of a Magistrate of the first class** may pass *a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding fifty thousand rupees, or of both, or of community service.*
3. The **Court of Magistrate of the second class** may pass *a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding ten thousand rupees, or of both, or of community service.*

Explanation.—"Community service" shall mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.

# CrPC (NOW BNSS) SECTIONS

## Section 291 – Deposition of medical witness (now – Section 326 in BNSS, 2023)

1. The deposition of a civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under this Chapter, may be given in evidence in any inquiry, trial or other proceeding under this Sanhita, although the deponent is not called as a witness.
2. The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject-matter of his deposition.

## Section 291A – Identification report of Magistrate (now – Section 327 in BNSS, 2023)

1. Any document purporting to be a report of identification under the hand of an Executive Magistrate in respect of a person or property may be used as evidence in any inquiry, trial or other proceeding under this Sanhita, although such Magistrate is not called as a witness:

Provided that where such report contains a statement of any suspect or witness to which the provisions of section 19, section 26, section 27, section 158 or section 160 of the Bharatiya Sakshya Adhiniyam, 2023, apply, such statement shall not be used under this sub-section except in accordance with the provisions of those sections.

2. The Court may, if it thinks fit, and shall, on the application of the prosecution or of the accused, summon and examine such Magistrate as to the subject-matter of the said report.

# CrPC (NOW BNSS) SECTIONS

## Section 292 – Evidence of officers of the Mint (now – Section 328 in BNSS, 2023)

1. Any document purporting to be a report under the hand of a gazetted officer of any Mint or of any Note Printing Press or of any Security Printing Press (including the officer of the Controller of Stamps and Stationery) or of any Forensic Department or Division of Forensic Science Laboratory or any Government Examiner of Questioned Documents or any State Examiner of Questioned Documents as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Sanhita, may be used as evidence in any inquiry, trial or other proceeding under this Sanhita, although such officer is not called as a witness.
2. The Court may, if it thinks fit, summon and examine any such officer as to the subject-matter of his report:

Provided that no such officer shall be summoned to produce any records on which the report is based.

3. Without prejudice to the provisions of sections 129 and 130 of the Bharatiya Sakhya Adhiniyam, 2023, no such officer shall, except with the permission of the General Manager or any officer in charge of any Mint or of any Note Printing Press or of any Security Printing Press or of any Forensic Department or any officer in charge of the Forensic Science Laboratory or of the Government Examiner of Questioned Documents Organisation or of the State Examiner of Questioned Documents Organisation be permitted—
  - a) to give any evidence derived from any unpublished official records on which the report is based; or
  - b) to disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.

# CrPC (NOW BNSS) SECTIONS

## Section 293 – Reports of certain Government Scientific Experts (now – Section 329 in BNSS, 2023)

1. Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Sanhita, may be used as evidence in any inquiry, trial or other proceeding under this Sanhita.
2. The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.
3. Where any such expert is summoned by a Court, and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.
4. This section applies to the following Government scientific experts, namely:—
  - any Chemical Examiner or Assistant Chemical Examiner to Government;
  - the Chief Controller of Explosives;
  - the Director of the Finger Print Bureau;
  - the Director, Haffkeine Institute, Bombay;
  - the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
  - the Serologist to the Government;
  - any other scientific expert specified or certified, by notification, by the State Government or the Central Government for this purpose.

# AMENDMENT TO SECTION 293, CrPC

2

THE GAZETTE OF INDIA : EXTRAORDINARY

[PART II—SEC. 3(ii)]

## MINISTRY OF HOME AFFAIRS NOTIFICATION

New Delhi, the 10th November, 2022

**S.O. 5393(E).**—In exercise of the powers conferred by clause (g) of sub-section (4) of section 293 of the Code of Criminal Procedure, 1973 (2 of 1974) and in supersession of notification number S.O. 861 (E), dated the 18 February, 2020 published in the Gazette of India, Extraordinary part II, section 3, sub-section (ii), the Central Government hereby specifies,— (i) Professor, Associate Professor or Assistant Professor, / (ii) Deputy Director, / (iii) Senior Scientific Officer, and / (iv) Junior Scientific Officer of the National Forensic Sciences University as Government scientific experts for the purpose of section 293 of the said Code with effect from the date of publication of this notification in the Official Gazette.

[F. No. 25013/23/2019-WS-III]

ANIL SUBRAMANIAM, Jt. Secy.

# LAWS SPECIFIC TO FORENSIC SCIENCE

**Bharatiya Nyaya Sanhita 2023, (BNS) pertaining to offences against persons –**

**1. Section 121A – Conspiracy to commit offences punishable by section 121 (now – Section 148 in BNS, 2023: Conspiracy to commit offences punishable by section 147)**

Whoever within or without and beyond India conspires to commit any of the offences punishable by section 147, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

**2. Section 299 – Culpable homicide (now – Section 100 in BNS, 2023)**

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations –

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

# DIFFERENCE BETWEEN HOMICIDE AND CULPABLE HOMICIDE

BASIS	HOMICIDE	CULPABLE HOMICIDE
<b>Definition</b>	Homicide refers to the killing of a human being by another, without specifying the intent, manner, or degree of culpability involved.	Culpable homicide refers to the unlawful killing of a human being, where the act is done with intention or knowledge that it is likely to cause death or grievous injury.
<b>Legality</b>	Homicide can be either lawful or unlawful. Lawful homicide includes instances like self-defense, death penalty executions, or deaths caused by accidents.	Culpable homicide is always unlawful and punishable by law, unless it is reduced to a lesser charge such as manslaughter, or in cases where it is not considered to be murder.
<b>Intent</b>	Homicide can occur with or without intent. It may be accidental, negligent, or intentional. The intent behind the killing determines its classification.	Culpable homicide requires intent or knowledge that the act is likely to cause death or grievous bodily harm. It involves a high degree of mens rea (guilty mind).
<b>Mens Rea</b>	In homicide, the presence or absence of mens rea (intent or knowledge) may vary. It can be accidental (without intent), negligent, or intentional.	Culpable homicide specifically involves mens rea, either through direct intent to kill or the knowledge that the act will likely cause death.
<b>Section (IPC/BNS)</b>	Homicide is not directly defined in the IPC but is a general term used to describe killing, which may be either lawful or unlawful.	Culpable Homicide is defined under Section 299 of the Indian Penal Code (IPC) which is now replaced by Section 100 in Bharatiya Nyaya Sanhita (BNS), 2023 and is the basis for distinguishing between manslaughter and murder.
<b>Examples</b>	<ol style="list-style-type: none"> <li>Accidental killing due to a vehicle accident.</li> <li>Self-defense, where someone kills another in self-protection.</li> <li>Execution of a criminal by the state under a death sentence.</li> </ol>	<ol style="list-style-type: none"> <li>Intentional killing with premeditation or knowledge of the likely outcome.</li> <li>Killing in the heat of passion due to sudden provocation (punishable as culpable homicide).</li> <li>Killing with knowledge that an act is likely to cause death (e.g., hitting someone with a weapon knowing it could kill).</li> </ol>
<b>Degree of Culpability</b>	Homicide can be either lawful or unlawful depending on the circumstances of the killing (e.g., self-defense or in lawful execution).	Culpable homicide is always unlawful and involves a certain degree of mental awareness or intent to cause harm or death.
<b>Punishment</b>	Homicide punishment depends on the specific circumstances. Lawful homicides (e.g., self-defense, lawful executions) do not result in criminal charges. Unlawful homicide can be punishable by death, life imprisonment, or fixed terms of imprisonment.	Culpable homicide carries severe punishments, generally resulting in life imprisonment, imprisonment for a term, or a fine. The punishment is often lesser than that for murder but still severe.
<b>Degree of Risk</b>	Homicide may involve varying degrees of risk, ranging from an accidental killing to negligence or intentional killing. It does not always imply that the perpetrator intended to cause death.	Culpable homicide involves a high degree of risk. The perpetrator either intended to cause death or knew that his actions were likely to result in death or grievous bodily harm.
<b>Classification Under Law</b>	<p>Homicide is classified into <b>lawful homicide</b> and <b>unlawful homicide</b>.</p> <ul style="list-style-type: none"> <li>Unlawful homicide can further be divided into culpable homicide or murder based on the level of intent and malice.</li> </ul>	<p>Culpable homicide is a form of unlawful homicide, but it does not necessarily meet the criteria for murder.</p> <ul style="list-style-type: none"> <li>Culpable homicide can be reduced to manslaughter or remain as murder, depending on the circumstances.</li> </ul>

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

### 3. Section 300 – Murder (now – Section 101 in BNS, 2023)

Except in the cases hereinafter excepted, culpable homicide is murder,—

- a) if the act by which the death is caused is done with the intention of causing death; or
- b) if the act by which the death is caused is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
- c) if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
- d) if the person committing the act by which the death is caused, knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations:

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(c) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

# DIFFERENCE BETWEEN MURDER AND CULPABLE HOMICIDE

BASIS	MURDER (Section 101 in BNS, 2023)	CULPABLE HOMICIDE (Section 100 in BNS, 2023)
<b>Definition</b>	Murder refers to the unlawful killing of a person with intent or knowledge that the act will likely cause death or grievous injury.	Culpable homicide refers to the unlawful killing of a person where the act is done with intent or knowledge to cause death or grievous injury, but the offense is considered less severe than murder.
<b>Mens Rea (Mental State)</b>	Murder requires a specific intention to cause death, or knowledge that the act is likely to cause death.	Culpable homicide also requires intent or knowledge, but the degree of intent is generally considered less severe than murder.
<b>Degree of Intent</b>	Murder involves clear, direct intent to cause death, or acts committed in a brutal, planned, or malicious manner.	Culpable homicide may involve intention or knowledge but does not always show the same degree of malice or premeditation as murder.
<b>Severity</b>	Murder is considered the most serious form of homicide and is a grave offense with severe penalties.	Culpable homicide is less severe than murder and may be classified as manslaughter in certain circumstances
<b>Punishment</b>	Punishable by death or life imprisonment or rigorous imprisonment for a term of up to 10 years u/s 101, BNS 2023.	Punishable by life imprisonment or up to 10 years rigorous imprisonment, with possible leniency in sentencing based on circumstances u/s 100, BNS 2023.
<b>Section (BNS)</b>	Defined under Section 101 in BNS, 2023.	Defined under Section 100 in BNS, 2023.
<b>Grave Nature</b>	Murder is the most severe form of homicide, reflecting extreme violence, cruelty, or premeditation.	Culpable homicide is less severe, usually involving situations like loss of control, provocation, or recklessness.
<b>Examples</b>	<ul style="list-style-type: none"> <li>1. Planned killing of an individual for personal gain or revenge.</li> <li>2. Intentionally shooting someone.</li> <li>3. Deliberate poisoning.</li> </ul>	<ul style="list-style-type: none"> <li>1. Killing in the heat of passion due to provocation.</li> <li>2. Killing with knowledge that an act could cause death, but without premeditation.</li> <li>3. Reckless killing without direct intent but with knowledge of the likelihood of death.</li> </ul>
<b>Intent to Kill</b>	The specific intent to kill is the hallmark of murder. Intent is clear and deliberate.	Culpable homicide may not always involve the specific intent to kill but involves intent to cause grievous harm or knowledge that death is likely.

### 3. Section 302 – Punishment for murder (now – Section 103 in BNS, 2023)

- (1) Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.
- (2) When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

### 4. Section 304 – Punishment for culpable homicide not amounting to murder (now – Section 105 in BNS, 2023)

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years and with fine, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

### 5. Section 304A – Causing death by negligence (now – Section 106 in BNS, 2023)

- (1) Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Explanation.— For the purposes of this sub-section, “registered medical practitioner” means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 and whose name has been entered in the National Medical Register or a State Medical Register under that Act.

- (2) Whoever causes death of any person by rash and negligent driving of vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine. (Section 106(2) of BNS shall not come into force on 1<sup>st</sup> July 2024)

## 6. Section 304B – Dowry Death (now – Section 80 in BNS, 2023)

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

## 7. Section 306 – Abetment of Suicide (now – Section 108 in BNS, 2023)

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

## 8. Section 307 – Attempt to Murder (now – Section 109 in BNS, 2023)

(1) Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

(2) When any person offending under sub-section (1) is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person’s natural life.

**Illustrations:**

- (a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.
- (b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.
- (c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of sub-section (1).
- (d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

**9. Section 309 – Attempt to Commit Suicide [CHANGED TO A NEW SECTION] (now – Section 226: Attempt to commit suicide to compel or restrain exercise of lawful power. (New) in BNS, 2023)**

Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both, or with community service.

**10. Section 319 – Hurt (now – Section 114 in BNS, 2023)**

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

## **11. Section 320 – Grievous Hurt (now – Section 116 in BNS, 2023)**

Continued....

The following kinds of hurt only are designated as “grievous”, namely:—

- a) Emasculation;
- b) Permanent privation of the sight of either eye;
- c) Permanent privation of the hearing of either ear;
- d) Privation of any member or joint;
- e) Destruction or permanent impairing of the powers of any member or joint;
- f) Permanent disfigurement of the head or face;
- g) Fracture or dislocation of a bone or tooth;
- h) Any hurt which endangers life or which causes the sufferer to be during the space of fifteen days in severe bodily pain, or unable to follow his ordinary pursuits.

## **12. Section 324 – Voluntarily causing hurt by dangerous weapons or means [118 (1)] and 13. Section 326 – Voluntarily causing grievous hurt by dangerous weapons or means [118 (2)] (now – Section 118: Voluntarily causing hurt or grievous hurt by dangerous weapons or means in BNS, 2023)**

(1) Whoever, except in the case provided for by sub-section (1) of section 122, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to twenty thousand rupees, or with both.

(2) Whoever, except in the case provided for by sub-section (2) of section 122, voluntarily causes grievous hurt by any means referred to in sub-section (1), shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than one year but which may extend to ten years, and shall also be liable to fine.

#### **14. Section 351 – Assault (now – Section 130 in BNS, 2023)**

Continued....

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

**Explanation.**—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

**Illustrations.**

- (a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.
- (b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.
- (c) A takes up a stick, saying to Z, “I will give you a beating”. Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

#### **15. Section 359 – Kidnapping (now – Section 137 in BNS, 2023)**

(1) Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship—

- (a) whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India;
- (b) whoever takes or entices any child or any person of unsound mind, out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child or person from lawful guardianship.

**Explanation.**—The words “lawful guardian” in this clause include any person lawfully entrusted with the care or custody of such child or other person.

Exception.—This clause does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose. Continued.

(2) Whoever kidnaps any person from India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## **16. Section 362 – Abduction (now – Section 138 in BNS, 2023)**

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

## **17. Section 375 – Rape (now – Section 63 in BNS, 2023)**

A man is said to commit “**rape**” if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—
  - (i) against her will;
  - (ii) without her consent;
  - (iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;
  - (iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;

(vi) with or without her consent, when she is under eighteen years of age;

(vii) when she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

## **18. Section 376 – Rape (now – Section 64 in BNS, 2023)**

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape,—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

Continued

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

Continued....

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central Government or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape, on a woman incapable of giving consent; or

(j) being in a position of control or dominance over a woman, commits rape on such woman; or

(k) commits rape on a woman suffering from mental or physical disability; or

(l) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(m) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

- (a) “armed forces” means the naval, army and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;
- (b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861;
- (d) “women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow’s home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

### **18. Section 377 – Unnatural Offences [DELETED in BNS, 2023]**

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

This Section was partly struck down by Supreme Court of India on 06 Sep 2018, to the extent of decriminalizing same-sex relations between consenting adults. (Navtej Singh Johar vs. Union of India).

# INDIAN EVIDENCE ACT (IEA), 1872

- IEA was passed in India by the Imperial Legislative Council in 1872, during the British Raj.
- It contains a set of rules and allied issues governing admissibility of evidence in the Indian courts of law.
- The Act has been divided into 3 parts, wherein there are total of 11 Chapters –

## PART 1: Relevancy of the facts

→ Contains 2 chapters

**Chapter 1** (Preliminary Chapter) – introduces the Evidence Act (Section 1 to 4)

**Chapter 2** – deals with the relevancy of the facts (Section 5 to 55)

## PART 2: On Proof

→ Contains 4 chapters

**Chapter 3** – includes facts which need not be proved (Section 56 to 58)

**Chapter 4** – includes oral evidence (Section 59 and 60)

**Chapter 5** – includes documentary evidence (Section 61 – 90A)

**Chapter 6** – includes circumstances when documentary evidence has been given preference over the oral evidence (Section 91 – 100)

# INDIAN EVIDENCE ACT (IEA), 1872

PART 3: Production and  
effect of evidence



Contains 5 chapters

**Chapter 7** – includes the burden of proof (Section 101 to 114A)

**Chapter 8** – includes estoppel (Section 115 to 117)

**Chapter 9** – of witnesses (Section 118 – 134)

**Chapter 10** – of examination of witnesses (Section 135 – 166)

**Chapter 11** – of improper admission and rejection of evidence (Section 167)

# IEA IS NOW BHARATIYA SAKSHYA ADHINIYAM 2023, (BSA)

## HIGHLIGHTS OF THE BILL:

- The Bharatiya Sakshya Bill, 2023 (BSB) replaces the Indian Evidence Act, 1872 (IEA). It retains most provisions of the IEA including those on confessions, relevancy of facts, and burden of proof.
- The IEA provides for two kinds of evidence - documentary and oral. Documentary evidence includes primary (original documents) and secondary (that proves the contents of the original). The BSB retains the distinction. It includes electronic records in the definition of documents.
- Under the IEA, electronic records are categorised as secondary evidence. The BSB classifies electronic records as primary evidence. It expands such records to include information stored in semiconductor memory or any communication devices (smartphones, laptops).
- Under the IEA, secondary evidence may be required under various conditions, such as when the original is in the possession of the person against whom the document is sought to be proved or has been destroyed. The BSB adds that secondary evidence may be required if the genuineness of the document itself is in question.

## KEY ISSUES AND ANALYSIS:

- The Supreme Court has recognised that electronic records may be tampered with. While the BSB provides for the admissibility of such records, there are no safeguards to prevent the tampering and contamination of such records during the investigation process.
- Currently, electronic records must be authenticated by a certificate to be admissible as documents. The BSB retains these provisions for admissibility. The BSB also classifies electronic evidence as documents (which may not need certification). This creates a contradiction.
- Under the IEA, a fact discovered due to information received from an accused in police custody may be provable. The BSB retains this provision. Courts and Committees noted that facts may be discovered in police custody by coercion, and without adequate safeguards.
- The IEA (and the BSB) allows such information to be admissible if it was obtained when the accused was in police custody, but not if he was outside. The Law Commission recommended to remove this distinction.
- The Law Commission has made several recommendations, which have not been incorporated. These include the presumption that the police officer caused the injuries if an accused was injured in police custody.

# EXPERT WITNESS UNDER THE BSA, 2023

## Section 39 of BSA, 2023 defines Opinions of experts.

1. When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, 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 any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.

Illustrations –

- a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.
- b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.
- c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

## Section 39 (2) of BSA, 2023 defines Opinions of Examiner of Electronic Evidence.

2. When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact.

Explanation.—For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an expert.

- 1.** When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

**Explanation.**—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

**Illustration:** The question is, whether a given letter is in the handwriting of A, a merchant in Itanagar. B is a merchant in Bengaluru, who has written letters addressed to A and received letters purporting to be written by him. C, is B's clerk whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising him thereon. The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

- 2.** When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the Electronic Signature Certificate is a relevant fact.

# WHAT IS THE EVIDENTIARY VALUE OF AN EXPERT OPINION?

Evidentiary Value of Expert Opinion under the Bharatiya Sakshya Adhiniyam, 2023 (BSA):

1. Relevance of Expert Opinion (Section 39): Expert opinions are considered relevant when the court must form an opinion on specialized matters, such as foreign law, science, art, handwriting, or fingerprints. This includes digital and electronic evidence, where the Examiner of Electronic Evidence is recognized as an expert under Section 79A of the IT Act, 2000. Expert opinions help the court make informed decisions on technical or specialized subjects.
2. Supporting or Contradictory Facts (Section 40): Facts that support or contradict an expert's opinion are also relevant. These facts assist the court in evaluating the reliability and credibility of the expert's findings.
3. Handwriting and Signature Opinions (Section 41): The opinion of a person familiar with another's handwriting or signature is admissible. Similarly, for electronic signatures, the opinion of the Certifying Authority that issued the signature certificate is relevant.
4. General Custom and Usage (Sections 42 & 43): Expert opinions regarding general customs, rights, usages, and tenets of specific communities or families are relevant, provided the expert has special knowledge in the area.
5. Relationships and Conduct (Section 44): Opinions of individuals with special knowledge about familial or interpersonal relationships, expressed through their conduct, are relevant in determining relationships.
6. Grounds for Opinion (Section 45): The basis or grounds on which an expert forms their opinion are also relevant and admissible, allowing the court to assess the reasoning and methodology behind the expert's conclusions.

# WHAT IS THE EVIDENTIARY VALUE OF AN EXPERT OPINION?

## Importance of Expert Opinion under the BSA:

1. Advisory Nature of Expert Opinion: Under the Bharatiya Sakshya Adhiniyam, 2023 (BSA), expert opinions are considered advisory evidence rather than conclusive proof. This means that while expert testimony is admissible and relevant, it does not automatically bind the court to accept it as the final word on the matter. The court retains the authority to weigh and evaluate the expert's findings in the context of the overall evidence in the case. This safeguards against errors or biases that may inadvertently affect the expert's analysis.
2. Evaluation of Expert's Qualification and Competence: The credibility of an expert opinion depends significantly on the qualifications, experience, and specialization of the expert. The court ensures that the expert possesses the necessary skill and expertise in the relevant field, such as forensic science, digital evidence, handwriting analysis, or medical science. A person lacking adequate qualifications may undermine the reliability of the opinion.
3. Scrutiny of Methodology: The methodology used by the expert to arrive at their conclusion is crucial. The court examines whether the procedures followed are scientifically valid, universally accepted, and free from significant errors. For example, in cases of forensic evidence, the techniques employed for fingerprint or handwriting analysis must adhere to established scientific standards. Any deviation from these standards may reduce the weight of the expert opinion.
4. Reliability and Consistency: The reliability of an expert's opinion is assessed based on the consistency of their findings with the facts of the case and other evidence. Courts often prefer opinions that are supported by well-documented research or corroborated by other experts in the field. This ensures that the expert's conclusion is not arbitrary or based on flawed assumptions.
5. Requirement of Corroboration: Expert opinions alone are rarely sufficient to decide a case. Courts require corroboration from additional evidence, such as witness testimony, physical evidence, or documents, to ensure that the expert's findings align with the broader context of the case. This prevents over-reliance on expert testimony, which may sometimes be speculative or inconclusive.
6. Judicial Discretion: Ultimately, the weight of an expert opinion is determined by the court. Judges consider the expert's credibility, methodology, and the logical coherence of their conclusions before accepting or rejecting their testimony. Judicial discretion allows for a balanced assessment, ensuring fairness in cases involving complex technical or scientific evidence.

Example: In a case involving digital evidence, an Examiner of Electronic Evidence may provide an opinion on the authenticity of electronic signatures or data retrieved from a device. While the expert's opinion is critical, the court will also look for corroborative evidence, such as logs, chain of custody records, or corroborating testimony, to ensure that the opinion is valid and reliable.

Conclusion: The importance of expert opinions lies in their ability to assist the court in understanding complex or technical issues beyond the knowledge of laypersons. However, the court's cautious approach in treating expert opinions as advisory rather than conclusive ensures that justice is not compromised due to over-reliance on a single source of evidence.

# Difference between the Testimony of an Expert and an Ordinary Witness

Basis of Distinction	Expert Witness	Ordinary Witness
<b>Reasoning of Statement</b>	The statement of the expert witness is not confined to what has taken place. He can additionally give his personal opinion with respect to the case. For example, a doctor may not have attended the victim but he can still give his opinion as to the cause of death of the victim and the after-effects of certain poison.	The statement of an ordinary witness is based upon facts. He is not allowed to give any opinion, inferences or conclusions regarding the case because it is the job of the court.
<b>Reference to past experiences</b>	An expert can refer to and rely upon the experiments conducted by him in absence of the other party.	An ordinary witness has no such right where he can refer to any past experience to support his statement.
<b>Refreshing the memory</b>	An expert can refer to well-known books, can quote passages from the same as a reference for refreshing his memory.	An ordinary witness cannot have a reliance upon any such books because his statement is based upon facts and not technical knowledge.
<b>Stating facts other than the case</b>	The experts can state facts of other cases which are similar to the present case in order to support their opinion.	The layman is giving statement based upon facts and thus cannot rely upon other judgements as the court deals with different cases differently depending upon the facts and circumstances of the case.
<b>Personal Knowledge</b>	Experts may use their knowledge or skill to draw conclusions	Lay witnesses can only base their opinions on information they personally observed.
<b>Hypothetical Situations</b>	Expert witnesses are expected to answer hypothetical situations and can also refer to past cases or medical situations to answer the questions.	Ordinary witnesses are not expected to give answers to hypothetical situations. They are just supposed to give the facts they already know.

# Difference between the Testimony of an Expert and an Ordinary Witness

Basis of Distinction	Expert Witness	Ordinary Witness
<b>When can a witness testify</b>	Expert witnesses can give testimony even when there is no sufficient evidence to support a finding. The Immoral Traffic (Suppression) Act was passed in 1956	Lay witnesses are constrained by relying on information they have gained through personal knowledge and rationally based perception. It is thus required that a witness may only testify if the evidence is sufficient to support a finding that the witness has personal knowledge of the matter.
<b>Personal Observations</b>	Expert witnesses are not required to be at the crime scene or witness the crime. They are not even expected to have knowledge about the facts of the case.	Lay witnesses may testify to their perception of the incident if obtained through earlier personal observations. Lay witnesses can offer opinions relating to degrees of light, sound, weight and distance as well as a person's appearance, identity, or manner of conduct.
<b>Disclosure Rules</b>	Expert witnesses must disclose to the opposing party a report previewing the expert's proposed testimony. The report must be sufficiently detailed and contain "all opinions the witness will express and the basis and reasons for them".	There is no such obligation upon the ordinary witnesses.
<b>Judicial Scrutiny</b>	Expert's opinion goes through high-end judicial scrutiny and is less reliable since they are based upon opinion and not facts. They are just the perspective of the expert and he needs to establish the reliability of his testimony.	The statement of an ordinary witness is considered more reliable as compared to that of an expert. This is because the testimony of a layman is based upon facts. If in any case, his statement contradicts with the opinion of the expert; his statement will be given an upper hand than the expert.

# CHAPTER X, BSA: EXAMINATION OF WITNESS

Under **Section 140 of Bharatiya Sakhya Adhiniyam 2023, (BSA)**, gives the power to the court to command or order in which the witness may be produced.

**Section 140, BSA: Order of production and examination of witnesses:** The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Examination of a witness is asking the witness questions regarding relevant facts in the case and recording the statements of witness as evidence.

## **Section 142, BSA: Examination of witnesses**

1. The examination of a witness by the party who calls him shall be called his **examination-in-chief**.
2. The examination of a witness by the adverse party shall be called his **cross-examination**.
3. The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his **re-examination**.

# CHAPTER X, BSA: EXAMINATION OF WITNESS

## Section 143: Order of examinations.

1. Witnesses shall be first *examined-in-chief*, then (if the adverse party so desires) *cross-examined*, then (if the party calling him so desires) *re-examined*.
2. The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.
3. The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

# CROSS-EXAMINATION OF WITNESS

- *The examination of witness by the adverse party shall be called his Cross-Examination.*
- In law, cross-examination is the interrogation of a witness called by one's opponent.
- The purpose of cross-examination is not simply to attack an adversary, but to strengthen your own case. Every party has a right to cross-examine a witness produced by his antagonist, in order to test whether the witness has the knowledge of the things he testifies and if, is found that the witness had the means and ability to ascertain the facts about which he testifies, then his memory, his motives, everything may be scrutinized by the cross-examination.
- In cross-examination a great latitude is allowed in the mode of putting questions, and the counsel may put leading questions.
- The object of cross-examination is to check the credibility of the witness. It is one of the principle tests which the law has devised for the ascertainment of the truth, and it is certainly one of the most efficacious. By this means the situation of the witness, with respect to the parties and the subject of litigation, his interest, his motives, his inclinations and his prejudice, his means of obtaining a correct and certain knowledge of the facts to which he testifies the manner in which he has used those means, his powers of discerning the facts in the first instance, and of his capacity in retaining and describing them, are fully investigated and ascertained.

Scriptural basis for cross-examination:

1. The method of eliciting truth by the method of cross-examination is as old as human nature.
2. Cross-examination is commonly esteemed the severest test of an advocate's skill and perhaps it demands beyond any other of his duties the exercise of ingenuity.
3. There is a great difficulty in conducting cross-examination with creditable skill. It is undoubtedly a great intellectual effort: it is the direct conflict of mind with mind; it demands not merely much knowledge of the human mind, its faculties and their modus operandi to be learned only by reading, reflection and observation but much experience of a man and his motives derived from intercourse with various classes and many persons and above all by that practical experience in the art of dealing with witnesses which is worth more than all other knowledge, which will materially assist but without which no amount of study will suffice to accomplish an advocate.

**Object of cross-examination:** The object of cross-examination is to get something, no matter how small to help your own case. When you cannot get that which helps your client, try to get something to weaken 'your opponent', but that is got by a different process entirely. To separate the truth from falsehood, more particularly if the truth told by your opposing witness would be of assistance to your case.

### Rules for the conduct of cross-examination:

These principles are well understood by barristers who have attained any degree of proficiency in the art, and can best be explained as follows:

To cross-examine is to test in a court of law the evidence of an opposing witness.

This is done by means of questions and in accordance with the following working rules:

- "Come to the point as soon as possible"
- "Do not argue with a witness"
- "Do not ask question unless there is a good reason for it"
- "Except in cases where your position is so bad that nothing can injure it, and something may improve it, do not splash about and do not ask a question without being fairly certain that the answer will be favorable to you"
- "If a witness is manifestly lying, leave him entirely alone. Keep calm."

The party, who has a right to take part in any enquiry or trial, can cross-examine the witness or witnesses.

In **B.S. Balaji vs. T. Govindaraju, 1966 AIHC 2484** it was said, where one of the Managing Directors of a firm and had borrowed money on behalf of the firm in that capacity without the consent of the other Managing Director, the later, being an adverse party, had the right to cross-examine the former.

### Range of Cross-examination

The range of cross-examination is unlimited, the only circumscribing limits being that it must ‘relate to relevant facts’.

By **Section 146 to 150 of Indian Evidence Act**, the legislature has tried to give very wide powers to the cross-examination to help him in finding out the truth in oral depositions laid out before the court.

In the course of cross-examination, a witness may be asked questions:

- (i) To test his veracity;
- (ii) To discover who he is and what his position in life is;
- (iii) To shake his credit by injuring his character, although his answer might criminate him or expose him to penalty or forfeiture.

### Cross-Examination of Different types of Witness

- **False Witness:** A person who deliberately gives false testimony is false witness.
- **Truthful Witness:** The truthful witness has been said to be the most difficult of all to cross-examine. He believes and intends his evidence to be true. He is the easiest to deal with, because he does not equivocate. He has no secret meaning and gives his answers readily and without mental serve.
- **Hostile Witness:** A witness, who is antagonistic to the party calling them and being unwilling to tell the truth, may have to be asked leading questions.
- **Biased Witness:** A witness may be said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or prevent the truth, or to state what is false. Bias is that which excites “a disposition to see and report matters as they are wished for rather, than as they are”.
- **Expert as Witness:** Expert witness may be divided into two classes, the professional and non-professional. Example: A farmer called to testify as to the proper method of curing may be fairly considered as a type of the non-professional class, And a physician called to testify as to the mental condition of a party may be taken as professional class.
- **Court Witness:** In civil and criminal cases, the judge has the power to summon witnesses as court witnesses and examine them. They can be cross-examined by both the parties as provided in **Section 165, Evidence Act**. Such cross-examination is not restricted to the points on which he has been examined by the court.

# HOSTILE WITNESS

A witness who is antagonistic to the party calling them and, being unwilling to tell the truth, may have to be asked leading questions.

A **Hostile Witness** is also known as an *adverse witness or an unfavourable witness*. He is a witness at trial whose testimony on direct examination is either openly antagonistic or appears to be contrary to the legal position of the party who called the witness.

The witness can be asked:

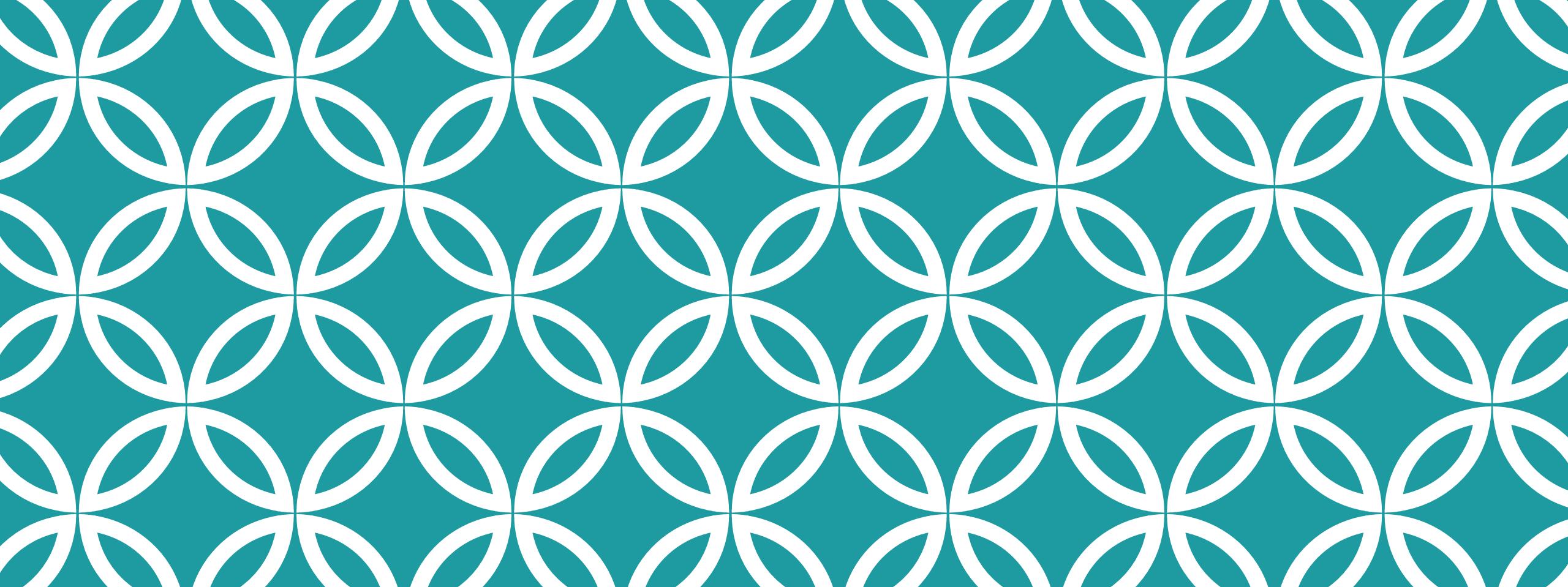
- Leading questions under **Section 143**,
- Questions relating to his previous statements in writing under **Section 145**, and
- Questions which tend to test his veracity under **Section 146**.

# **REFRESHING MEMORY**

- A witness may, while under examination, refers his memory by referring to any writing made by him at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at the fresh in his memory.
- The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if he read it he knew it to be correct.
- When witness may use copy of documents to refresh memory- Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of such document;
- Provided the court be satisfied that there is sufficient reason for the non-production of the original.
- An expert may refresh his memory by reference to professional treatises.

# **RE-EXAMINATION OF WITNESS**

- The cross-examination being closed, the duty or re-examination develops upon the counsel on the other side. It is usually undertaken by the leader, even although the examination-in-chief had been conducted by the junior probably because it is supposed to require the skill and caution which only experience can teach. You will remember that cross-examination is, in like manner and for the same reason, conducted by the leader as a matter of course, unless, as is sometimes the case, where the witness is unimportant or he has great confidence in the junior's ability and prudence.
- The general rule is that the counsel who examined in chief conducts the re-examination, other things being equal any branch of the examination should be given to the counsel who is best acquainted beforehand with the testimony of the witnesses.
- The object of re-examination is simply to obtain from the witness an explanation for what he said on cross-examination. Such an opportunity proceeds from the system adopted in our courts of eliciting evidence by means of questions.
- The object of a re-examination is to afford the witness an opportunity to make explanation, rendered necessary by his cross-examination. Obscurities can be cleared away, and facts to which he testified in his direct examination, and of which his knowledge is clear and distinct. This may be done in a suggestive method, yet without violating the rule forbidding leading questions, for the witness may have his attention directed to one fact which is clear in his mind and gradually led from that fact to those on which he appears to have been confused.



# BSA SECTIONS

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## 1. Section 32 – Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant (now in Section 26, BSA)

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases, namely:—

- a) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question;
- b) when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him;
- c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages;
- d) when the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;
- e) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised;
- f) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised;
- g) when the statement is contained in any deed, will or other document which relates to any such transaction as is specified in clause (a) of section 11;
- h) when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations:

- a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was raped. The question is whether she was raped by B; or the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.
- b) The question is as to the date of A's birth. An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.
- c) The question is, whether A was in Nagpur on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Nagpur, for the purpose of conferring with him upon specified business, is a relevant fact.
- d) The question is, whether a ship sailed from Mumbai harbour on a given day. A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in Chennai, to whom the cargo was consigned, stating that the ship sailed on a given day from Mumbai port, is a relevant fact.
- e) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders is a relevant fact.
- f) The question is, whether A and B were legally married. The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.
- g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.
- h) The question is, what was the cause of the wreck of a ship. A protest made by the captain, whose attendance cannot be procured, is a relevant fact.
- i) The question is, whether a given road is a public way. A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.
- j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased business person in the ordinary course of his business, is a relevant fact.
- k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact.
- l) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.
- m) The question is, whether, and when, A and B were married. An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.
- n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

## **2. Section 45 – Opinions of experts (now in Section 39, BSA)**

1. When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, 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 any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.

Illustrations:

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

2. When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact.

Explanation.—For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an expert.

## **3. Section 46 – Facts bearing upon opinions of experts (now in Section 40, BSA)**

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations:

(a) The question is, whether A was poisoned by a certain poison. The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall. The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

### **3. Section 47 – Opinion as to handwriting, when relevant (now in Section 41, BSA)**

1. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration: The question is, whether a given letter is in the handwriting of A, a merchant in Itanagar. B is a merchant in Bengaluru, who has written letters addressed to A and received letters purporting to be written by him. C, is B's clerk whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising him thereon. The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

2. When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the Electronic Signature Certificate is a relevant fact.

### **4. Section 57 – Facts of which Court must take judicial notice (now in Section 52, BSA)**

1. The Court shall take judicial notice of the following facts, namely:—
  - a. all laws in force in the territory of India including laws having extra-territorial operation;
  - b. international treaty, agreement or convention with country or countries by India, or decisions made by India at international associations or other bodies;
  - c. the course of proceeding of the Constituent Assembly of India, of Parliament of India and of the State Legislatures;
  - d. the seals of all Courts and Tribunals;
  - e. the seals of Courts of Admiralty and Maritime Jurisdiction, Notaries Public, and all seals which any person is authorised to use by the Constitution, or by an Act of Parliament or State Legislatures, or Regulations having the force of law in India;
  - f. the accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette;
  - g. the existence, title and national flag of every country or sovereign recognised by the Government of India;
  - h. the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;
  - i. the territory of India;
  - j. the commencement, continuance and termination of hostilities between the Government of India and any other country or body of persons;

#### **4. Section 57 – Facts of which Court must take judicial notice (now in Section 52, BSA)**

1. The Court shall take judicial notice of the following facts, namely:—
  - k. the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of advocates and other persons authorised by law to appear or act before it;
  - l. the rule of the road on land or at sea.
2. In the cases referred to in sub-section (1) and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference and if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

#### **5. Section 58 – Facts admitted need not be proved (now in Section 53, BSA)**

No fact needs to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

#### **6. Section 60 – Oral evidence must be direct (now in Section 55, BSA)**

Oral evidence shall, in all cases whatever, be direct; if it refers to,—

- i. a fact which could be seen, it must be the evidence of a witness who says he saw it;
- ii. a fact which could be heard, it must be the evidence of a witness who says he heard it;
- iii. a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;
- iv. an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided further that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

## **7. Section 73 – Comparison of signature, writing or seal with others admitted or proved (now in Section 72, BSA)**

Continued....

1. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.
2. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.
3. This section applies also, with any necessary modifications, to finger impressions.

## **8. Section 135 – Order of production and examination of witnesses (now in Section 140, BSA)**

The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

## **9. Section 136 – Judge to decide as to admissibility of evidence (now in Section 140, BSA)**

1. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.
2. If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.
3. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations:

- (a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 26. The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.
- (b) It is proposed to prove, by a copy, the contents of a document said to be lost. The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

## **9. Section 136 – Judge to decide as to admissibility of evidence (now in Section 140, BSA)**

Continued....

Illustrations.

(c) A is accused of receiving stolen property knowing it to have been stolen. It is proposed to prove that he denied the possession of the property. The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact A which is said to have been the cause or effect of a fact in issue. There are several intermediate facts B, C and D which must be shown to exist before the fact A can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

## **10. Section 137 – Examination-in-chief (now in Section 142, BSA: Examination of witnesses)**

1. The examination of a witness by the party who calls him shall be called his *examination-in-chief*.
2. The examination of a witness by the adverse party shall be called his *cross-examination*.
3. The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his *re-examination*.

## **11. Section 138 – Order of examinations (now in Section 143, BSA)**

1. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.
2. The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.
3. The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

## **12. Section 141 – Leading questions (now in Section 146, BSA)**

Continued....

1. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.
2. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.
3. The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.
4. Leading questions may be asked in cross-examination.



THANK YOU

All The Best!