

# **Workshop on Criminal Investigation and Trial: Issues & Challenges Dated-12-01-2025**

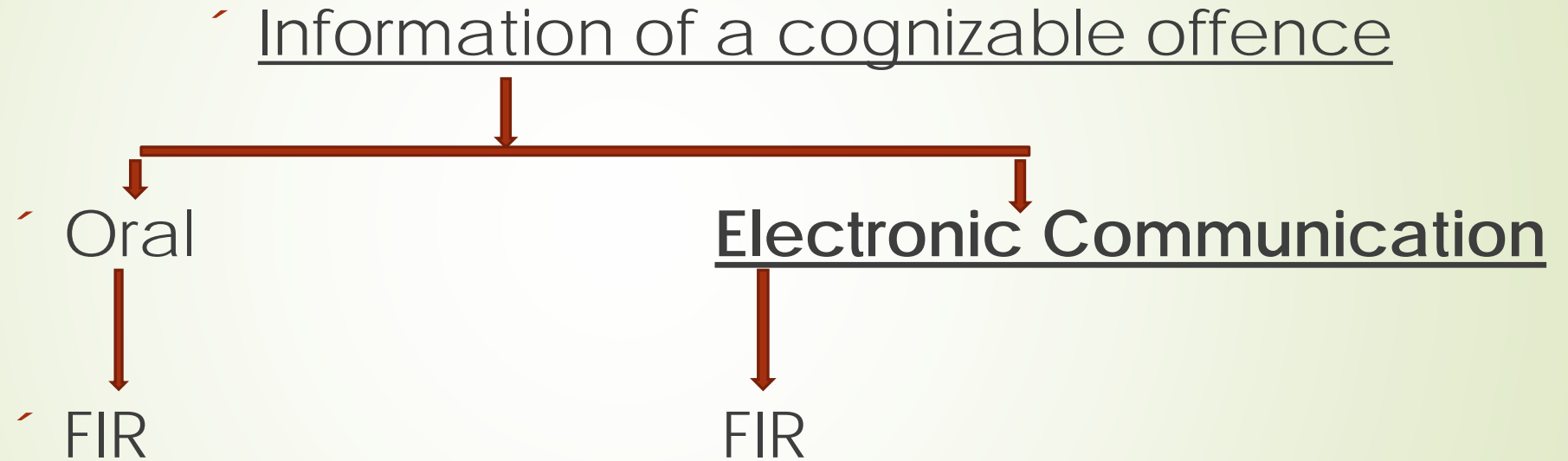
By,

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# FIR: Registration of FIR

(Provisions of BNSS and case laws)

# Section 173 BNSS 2023. Information in Cognizable Cases



- ✓ **Section 173 (1)** – Every information relating to commission of a cognizable offence , **irrespective of area** , may be given orally or by **electronic communication** to an officer in charge of a police station , and if given,
- ✓ **irrespective of area-** ZERO FIR
- ✓ **electronic communication-** All possible means of electronic communications, E-mails, What Sapp etc.

- ✓ (i) Orally , It shall be reduced to writing by him or under his direction, and be read over to the informant ;and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;
- ✓ By electronic communication, it shall be taken on record by him on being **signed within three days** by the person giving it,

- ✓ **Provided that;**
- ✓ If Offence against women U/S 64 to 71, 74 to 79 or 124 of BNS is alleged to have been committed **or attempted** – such information shall be recorded by a women police officer or any women officer.
- ✓ **Provided further that ;**
- ✓ (a) If Offence against women U/S 64 to 71, 74 to 79 or 124 of BNS is alleged to have been committed **or attempted** ,is temporarily or permanently **mentally or physically disabled** – Such information shall be recorded at the residence of

- Person seeking to report such offence or at a convenient place of such person's choice, in the presence of interpreter or a special educator, as the case may be;
- (b) the recording of such information shall be video graphed (Justice J.S.Verma Committee recommendation after Nirbhaya's case).
- © Statement U/S 183(6) (a) shall be recorded as soon as possible.

- ✓ (2) Copy of information to informant shall be provided free of cost.
- ✓ (3) [New Sub Section] if offence is punishable for 3-7 years –officer in charge of police station may with the prior permission from an officer **not below the rank of Deputy Superintendent of police**, considering the nature and gravity of offence,-
- ✓ Proceed to conduct a preliminary enquiry –within 14 days to ascertain whether there is prima facie case exists.



- ✓ Proceed with investigation when there exists a prima facie case.
- ✓ Sub Section (4) is like that of section 154 (3) of Cr P C- if report not registered letter to S P of jurisdiction.

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# ARREST

## Satendra Antil Guidelines:BNS

- ✓ Satendra Kumar Antil Vs Central Bureau of Investigation & Anr
  - ✓ Decided on 11.07.2022 [Supreme Court of India]
    - ✓ Misc. Appl. No. 1849/2021
      - ✓ IN
        - ✓ S.L.P.(CRL) NO.5191/2021
- ✓ Justice M.M.Sundresh and Justice Sanjay Kishan Kaul

- ✓ **Categories/Types of offences-**
- ✓ **(A)** Offences punishable with Imprisonment of 7 years or less not falling in category B & D.
- ✓ **(B)** Offence punishable with death , R.I for Life, or Imprisonment for more than 7 years.
- ✓ **(C)** Offences Punishable under special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45) UAPA (S. 43 D (5)) Companies Act 212 (6) etc.

- ✓ (D) Economic offences not covered by special Acts.
- ✓ REQUISITE CONIDITIONS-
- ✓ (1) Not arrested during investigation.
- ✓ (2) Co Operated throughout in the investigation including appearing before investigating officer whenever called.
- ✓ [No need to forward such an accused along with the

- ✓ Charge sheet (Sidharth Vs State of U P , 2021 SCC Online SC 615)]
- ✓ CATAGORY A- After filing of Charge Sheet /Complaint taking of cognizance;
- ✓ (a) Ordinary summons at the first instance / including permitting appearance through lawyer.
- ✓ (b) If such an accused doesn't appear despite service of summons , then Bailable Warrant for physical appearance may be issued.

- ✓ (C ) NBW on failure to failure appear despite issuance of Bailable Warrant.
- ✓ (d) NBW may be cancelled or converted into a Bailable Warrant / Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.
- ✓ (e) Bail Applications of such accused on appearance may be decided w/o the accused being taken in

- Physical custody or by granting interim bail till the bail application is decided.
- CATEGORY-B/D- On appearance of the accused in the court pursuant to process issued bail application to be decided on merits.
- CATEGORY-C- Same as category B & D with the additional condition of compliance of the provisions

- Of bail under NDPS S.37, 45 PMLA , 212 (6) Companies Act 43 d (5) of UAPA, POSCO etc.” needless to say that the category A deals with police cases and complaint cases.
- Sanjay Chandra Vs CBI, 2012 (1) SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account;



- ✓ (a) Seriousness of the charge and
- ✓ (b) Severity of punishment

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# POLICE REMAND

(Interplay between Cr P C and BNSS)

- ✓ Section 187 of BNSS-
- ✓ (1)
- ✓ When ever any person is arrested,
- ✓ It appears that investigation cannot be completed within the period of 24 hours ( s.58),
- ✓ Accusation is well founded,
- ✓ Shall forthwith transmit the accused to nearest magistrate with all documents,

- ✓ Not below the rank of Sub Inspector of Police,
- ✓ (2) Magistrate to whom an accused person is forwarded-
- ✓ having jurisdiction or not to try the case,
- ✓ authorise detention time to time- as magistrate thinks fit,
- ✓ for a term not exceeding 15 days in whole- or in the parts at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days as the case may be as provided in sub section (3).

- And if he has no jurisdiction- to try the case or commit it for trial and considers further detention is unnecessary ,
- He may order the accused to be forwarded to a magistrate having such jurisdiction.
- (3) Magistrate may authorise detention of accused person beyond 15 days- if he satisfies sufficient grounds,
- But no magistrate shall authorise detention of the accused person in custody for a total period exceeding,

- ✓ (i) Ninety days , where punishment with death-life or term more than ten years.
- ✓ (ii) Sixty days where the investigation relates to any other offence.
- ✓ **Points to be noted-**
- ✓ Section 167 of Cr P C provided that the police custody can be granted only for a period of 15 days (as the expression used is **other wise than in custody of police, beyond the period of fifteen days**) and for rest of the period only judicial

- ✓ Custody can be granted.
- ✓ In the case of CBI Vs Anupam J. Kulkarni (1992) a two judges bench held that maximum period of police custody is fifteen days which is limited to first fifteen days.
- ✓ This was followed by a three judges bench in Budh Singh Vs State of Punjab (2000). Later a two judges bench in CBI Vs. Vikash Mishra took the contrary view and observed that Anupam J. Kulkarni case requires re consideration.

- ✓ In August 2023 a two judges bench in V. Senthil bala Jee Vs. State took note of the differences and referred the matter to the larger bench.
- ✓ **Section 187 of BNSS** has come into picture in the background of this controversy.
- ✓ In Section 187 of BNSS the word **“ in such custody as such magistrate thinks fit, for a term not exceeding 15 days in the whole or on parts”** means that it is open to the magistrate to authorise wither ‘police custody’ or judicial custody’.

- ✓ This custody can be spread over the period of first 40 days or 60 days as the case may be.
- ✓ The section nowhere says that the maximum period of police custody can be only 15 days.

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# AREEST MEMO

- ✓ Section 35 of BNSS 2023 and In Accordance with direction of Hon'ble Supreme Court of India.
- ✓ Name with alias with the parentage of the arrestee.
- ✓ Mobile number/ WhatsApp mobile number /Email Address.
- ✓ Present address of addressee.
- ✓ Permanent Address of arrestee.
- ✓ FIR No/ D.D.No and Sections of law .

- ✓ Place of arrest .
- ✓ Date and Time of Arrest.
- ✓ Name , Address, e-mail ID and telephone number whomsoever to convey the arrest information.
- ✓ Name , rank and No of officer who making arrest.
- ✓ Reason/ Grounds of arrest.
- ✓ a. Prevent Accused person from committing any further offence.

- ✓ b. For proper investigation of offence.
- ✓ To prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner.
- ✓ To prevent such person from making any inducement , threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officers.

- ✓ As unless such person is arrested , his presence in the court ,whenever required cannot be ensured.
- ✓ Signed by arrested person.
- ✓ Signed by witnesses.
- ✓ Signed by Investigation officer of the case.
- ✓ Police station.
- ✓ Date.

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# TEST IDENTIFICATION PARADE

- ✓ Tip is relevant under section 7 of Bhartya Sakshya Adhinyam 2023 ( Section 9 of Indian Evidence Act).
- ✓ Section 54A of Cr P C / Section 54 of BNSS .
- ✓ Mixing with similar people,
- ✓ No police presence,
- ✓ Keeping witness out of view,
- ✓ Recording of process,
- ✓ Recording witnesses statements,

- Identifying the accused,
- Considering delay- If delay is there in conducting TIP, Police should be able to provide a reasonable explanation.
- Note**- A TI Parade is not considered as Substantial evidence by itself and cannot be used to convict someone, However it can help to corroborate testimony of a witness and rule of false accusations.

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# Role of Public Prosecutor and responsibilities of I o in court cases



## Journey of criminal case from information to court

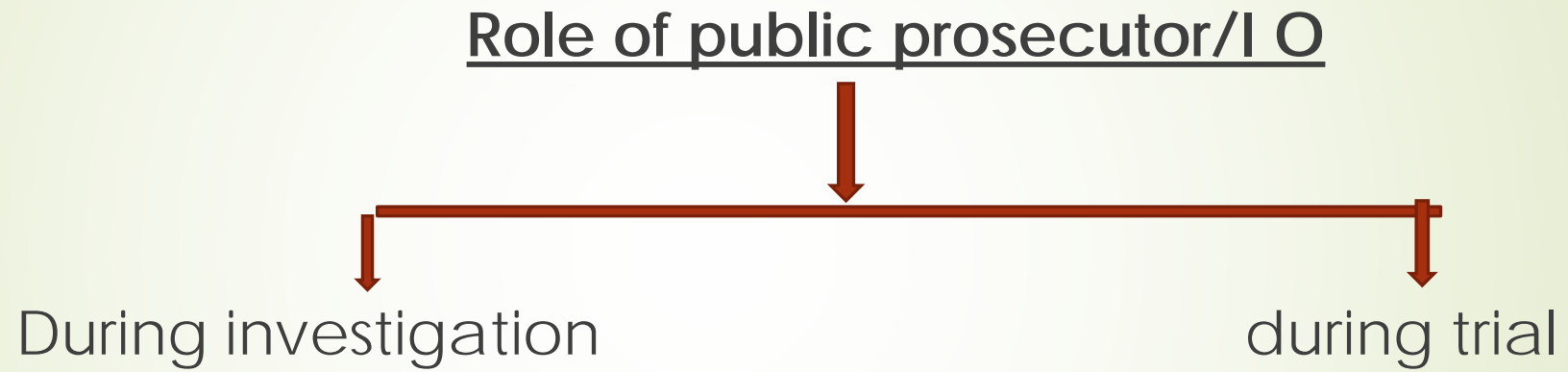




# prosecutor

- ✓ Appointed under section 18 and 19(1) of BNSS 2023.
- ✓ **Duties-**
- ✓ Representing state in criminal cases,
- ✓ Presenting preliminary hearing,
- ✓ Conducting criminal trials,
- ✓ Responding to motion,
- ✓ Organising and executing extraditions,

# Role of public prosecutor/I O



## Role of public prosecutor in criminal cases/specially rape cases during investigation

- ✓ To assist - I o of such case in collection of evidences as well as whenever he is in need of legal assistance and vice versa.
- ✓ Recording of statement of victim u/s 183 of bnss- PP should properly assist to I o by way of legal opinion as well as pros and cons of case whenever statement of victim is being recorded in such cases.

- ✓ Requisition for tip in case of unknown offenders- pp should properly make his proper assistance in case where identification of perpetrator/suspect is required and victim claims to identify.
- ✓ Requisition for tip of material object if necessary- do
- ✓ To assist in case of recording of dying declaration,if necessary-

- ✓ Examination of prosecution witnesses
- ✓ Cross examination of defence witnesses
- ✓ To present during course of cross examination of victim of rape as well as other witnesses
- ✓ To object when irrelevant questions are being asked from prosecutrix or other pws.

# Role of I O during investigation

- ✓ Preserving crime scene,
- ✓ Collecting evidence,
- ✓ Establishing the event of incidence,
- ✓ Analysing information,
- ✓ Developing findings,
- ✓ Writing a report,

- ✓ Examining witnesses,
- ✓ Calling for documents,
- ✓ Taking expert opinion wherever required,
- ✓ Requisition for tip of person or material as the case may be,
- ✓ Submission of report within time.

# Role of I O during trial

- ✓ Testifying in court,
- ✓ Producing witnesses,
- ✓ Establishing evidence,

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# SEARCH AND SEIZURE

- ✓ **Mandatory videography**
- ✓ **Sections 105 and 185 of the BNSS** require that all searches and seizures be recorded using audio-video means, such as a cell phone. This includes searches of premises, vehicles, and individuals, as well as the preparation of a list of seized items and signing it by witnesses. The recording must be forwarded to the District Magistrate, Sub-divisional Magistrate, or Judicial Magistrate of the First Class without delay. For searches conducted with a warrant, the recording must be forwarded within 48 hours.

- ✓ **Police officer's duties**
- ✓ Section 185 of the BNSS also requires that a police officer record the grounds for their belief in the case-diary and specify what they are searching for. The officer should also conduct the search in person if possible.
- ✓ **Police report**
- ✓ Section 193 of the BNSS requires that a police report include details of the sequence of custody for electronic devices.

- ✓ **Progress of investigation**
- ✓ Section 193 of the BNSS also requires that the police officer inform the victim or informant of the investigation's progress within 90 days.

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- ✓ **Section 185 of BNSS : Section 185: Search by police officer.**
- ✓ **Search and Seizure** (1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief in the case-diary and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

- ✓ (2) A police officer proceeding under sub-section
- ✓ (1), shall, if practicable, conduct the search in person: Provided that the search conducted under this section **shall be recorded through audio-video electronic means preferably by mobile phone.**
- ✓ (3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to it.

- ✓ **Example 1:** A police officer receives a tip-off about illegal weapons being stored in a warehouse within his jurisdiction.
- ✓ **Reasonable Grounds:** The officer in charge of the police station believes that the weapons are necessary for the investigation of a crime he is authorized to investigate.
- ✓ **Recording Grounds:** He records his belief and the specific details of the weapons in the case-diary.
- ✓ **Search Authorization:** The officer decides that the weapons cannot be obtained without undue delay and prepares to conduct the search.
- ✓ **Conducting the Search:** The officer conducts the search in person and records the search through his mobile phone.

# What's new in BNSS: Search and seizure

- ✓ Audio –Video recording,
- ✓ Transparency,
- ✓ Forensic evidence,
- ✓ Electronic device,
- ✓ The preparation of the list of seized items , signed by witnesses, All of this shall be recorded using audio –video electronic means, preferably by cell phone, and this recording must be forwarded without delay to the concerned court or judicial magistrate of first class.

# **BNSS: Introduction of use of technology during investigation**

- ✓ The Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023 introduces several technological innovations to the criminal investigation process in India, including:
- ✓ **Electronic communication**
- ✓ The BNSS recognizes electronic communication as a valid way to file FIRs, giving digital submissions the same legal weight as traditional ones.



- ✓ **Forensic investigation**
- ✓ The BNSS mandates forensic investigation for crimes punishable by at least seven years in prison. Forensic experts collect evidence at crime scenes and record the process.

- ✓ **Electronic trials**
- ✓ All trials, inquiries, and proceedings can be held electronically.
- ✓ **Digital evidence**
- ✓ The BNSS provides a legal framework for collecting and using digital evidence, which can help law enforcement save time and money.

- ✓ **Audio and video recording**
- ✓ The BNSS mandates the inclusion of audio and video recording during searches and seizures.
- ✓ The BNSS also establishes the National Forensic Sciences University (NFSU) and Central Forensic Science Laboratories.

# Highlighting the Use of Technology in New Criminal Act

- ✓ " Digitizing Justice, Elevating Credibility!
- ✓ Use of Technology is now envisaged in all stages (from e - FIR to investigation to submission of documents to trials). Further, Compulsory
- ✓ Forensic examination in all cases where offence attracts punishment of seven or more years has been envisaged. It has been provided that in offences prescribing imprisonment for 7 years or more, police officer shall cause forensics expert to visit the crime scene to collect forensic evidence

- ✓ States may from such date, as may be notified by them, as early as possible but not later than 5 years, shall make it compulsory.
- ✓ **Some of the other highlights are as under;**
- ✓ a) A new definition of electronic communication 'for use of technology in investigation, trial and court proceedings and service of summons, notices, etc. has been introduced.

- b) The definition of 'Documents' has been expanded to include an electronic or digital record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, cloud locational evidence and voice mail messages stored in digital device.
- c) The definition of 'evidence' has been expanded to any information given electronically. This will permit appearance of witnesses, accused, experts and victims through electronic means. This will ease the process of trial, prevent delays in transporting accused from prisons to courts, and also help in preserving the trial process for future reference that may be necessitated during challenge in higher courts.

- ✓ d) In the definition of primary document (Sec 57, BSA), new explanations have been added to cover:\
- ✓ (i) If an electronic or digital record which is created or stored, and if such storage occurs simultaneously or sequentially in multiple files, each such file is an original.
- ✓ (ii) If an electronic or digital record is produced from proper custody, it is sufficient to prove its contents unless it is disputed.

- ✓ If a video recording is simultaneously stored in electronic form and transmitted or broadcast to another, each of the stored recordings is an original.
- ✓ If an electronic or digital record is stored in multiple in storage spaces computer resource, each such automated storage, including temporary files, is an original.



- e) Scope of secondary evidence has been expanded. Now in addition to certified copies, copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it, are included.

- f) It has been permitted that accused (in custody) may be examined by a Magistrate through electronic means i.e. Video Conferencing / VC facility available in the police station, court, prison or any other such place notified by the State Government. It has been provided that if the accused has been examined through VC, his signature on the statement shall be taken within 72 hours.

- g) A provision has been made wherein the Magistrate may order specimen or sample without the person being arrested. Further there is no existing provision in Cr P C for taking finger impression or voice sample which has been provided for in BNSS.

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THANK YOU